ALBANY, NEW YORK

March 18, 1996

3:05 p.m.

REGULAR SESSION

SENATOR CARL L. MARCELLINO, ACTING PRESIDENT

STEPHEN F. SLOAN, SECRETARY

P R O C E E D I N G S

ACTING PRESIDENT MARCELLINO: The Senate will come to order. I ask that everyone present please rise and repeat with me the Pledge of Allegiance; members in the balcony, too.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT MARCELLINO: In the absence of clergy, may we bow our heads for a moment of silence, please.

(A moment of silence was observed.)

ACTING PRESIDENT MARCELLINO: We'll have the reading of the Journal.

THE SECRETARY: In Senate, Sunday, March 17, the Senate met pursuant to adjournment. Senator Hoblock in the chair upon designation of the Temporary President. The Journal of Saturday, March 16, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MARCELLINO: Without objection, the Journal stands approved

as read.

We have presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Bruno.

SENATOR BRUNO: Mr. President, we have a resolution commemorating Good Joes Day; we'd like to have it read up -- handed up and read, and we'll shortly follow that with a "Manny" -

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution commemorating Good Joes Day 1996.

Whereas, St. Joseph is

everyone's patron saint and not just the patron saint of those who are fortunate to bear his name; and

Whereas, the New York State legislature is appreciative of the vital contributions of those good members known as "Joseph"; and

Whereas, the Society of Good Joes is celebrating its 38th year in memory of the late Joseph Addonizio and its members have banded together under a common name in the spirit of camaraderie and good fellowship; and

Whereas, tradition holds that Saint Joseph is the patron saint of the working person, of all of those who labor with the dignity that only true humility imparts; and

Whereas, on St. Joseph's Day in March, the swallows return to Capistrano, heralding the conclusion of a long, cold winter and the advent of a new spring; now, therefore, be it

Resolved, that this legislative body pause in its deliberations and recognize

this great day, Tuesday, March 19, 1996, in commemoration and deliberation of all Good Joes in the state of New York, to be celebrated on Monday, March 18, 1996, in honor of all Good Joes of this Empire State; and be it further

Resolved that a copy of this resolution, suitably engrossed, by transmitted to Mrs. Rose Addonizio, New Rochelle, New York.

SENATOR BRUNO: Mr. President, can we at this time move the adoption of the resolution -

ACTING PRESIDENT MARCELLINO: Yes, Senator. The question is on the resolution.

SENATOR BRUNO: -- and open it up to anyone else in the chamber, whether they're named "Joe" or not? They might be named Manny, anything, Mr. President.

ACTING PRESIDENT MARCELLINO: The resolution will be opened up for all who wish to be on it; anyone who -- wishing not to be, please inform the desk.

The question is on the

resolution. All in favor, signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, I move the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Number 2720.

ACTING PRESIDENT MARCELLINO: The bill will be recommitted with the enacting clause struck.

Senator Saland.

SENATOR SALAND: Mr. President, on page 31, I offer the following amendments to Calendar 392, Senate 3596.

ACTING PRESIDENT MARCELLINO: The amendments are received.

SENATOR SALAND: Excuse me?

ACTING PRESIDENT MARCELLINO:

The amendments will be received.

SENATOR SALAND: Okay, and Mr. President, also on page 31, Calendar Number 447, I move amendments on that bill, Senate 5104; and I would like to remove a star from Calendar 392, Senate 3596.

ACTING PRESIDENT MARCELLINO: The amendments have been received and the star is removed.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. On page number 13, Calendar Number 352, my Senate Bill 1544, would you place a sponsor's star on that bill, please?

ACTING PRESIDENT MARCELLINO: There will be a sponsor's star placed on bill 1544.

SENATOR KUHL: Also, Mr. President, on behalf of Senator Libous, on page 17, I offer up the following amendments to Calendar Number 397, Senate Print 4003, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: The amendments are received and the bill will retain its place on the calendar.

SENATOR KUHL: Also, Mr. President, on page 23, on behalf of Senator Maltese, Calendar Number 454, I offer up the following amendments to that bill, Senate Print 441, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: The amendments are received and the bill will retain its place on the Third Reading Calendar.

SENATOR KUHL: Lastly, Mr. President, on behalf of Senator Maltese, on page 27, I offer up the following amendments to Calendar Number 483, Senate Print 4344, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: The amendments are received, and the bill will retain its place.

Senator Volker.

SENATOR VOLKER: Mr.

President, I have two motions here. First of all, on behalf of Senator Sears, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Print 1666 and Senate Print 5532.

ACTING PRESIDENT MARCELLINO: The bills will be recommitted and the enacting clause will be struck.

SENATOR VOLKER: Thank you.

On behalf of myself, Mr. President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: My bill, Senate Print 6087.

ACTING PRESIDENT MARCELLINO: It will be done.

Senator Bruno, we have a substitution up here at the desk and we would like to make it at this time.

SENATOR BRUNO: Would you make the substitution, Mr. President.

ACTING PRESIDENT MARCELLINO:

Thank you.

Secretary will read.

THE SECRETARY: On page 28, Senator Volker moves to discharge from the Committee on Elections, Assembly Bill No. 8383 and substitute it for the identical Senate bill, Calendar 500.

ACTING PRESIDENT MARCELLINO: The substitution is ordered.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up the non controversial calendar?

ACTING PRESIDENT MARCELLINO: Yes, we can, Senator Bruno.

Will the Secretary read the non-controversial calendar, and may we have order in the house, please? Thank you.

THE SECRETARY: Calendar Number 159, by Senator Marchi, Senate Print 3009A, an act directing the city of New York to refund to certain not-for-profit organizations the amount of real property taxes erroneously paid to such

city.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 277, by Senator Marchi, Senate Print -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: Can we lay the bill aside?

THE SECRETARY: Calendar Number 290, by member of the Assembly Tokasz, Assembly Print 5085, act to amend the Town Law, in relation to providing for absentee ballots for fire district elections.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 302, by Senator Levy, Senate Print 2670, an act to amend the Vehicle and Traffic Law in relation to leaving the scene of injury to certain animals without reporting.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 306, by Senator Tully, Senate Print 4578 -

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 308, by Senator Lack, Senate Print 6038, an act to amend the Railroad Law, in relation to police officers of a commuter railroad police force under the jurisdiction of the Metropolitan Transportation Authority.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MARCELLINO: Lay the bill aside. Lay the bill aside for the day.

THE SECRETARY: Calendar Number 315, by Senator Sears, Senate Print 1189, an act to amend the Penal Law, in relation to including the use of firearm in the commission

of a class A felony.

ACTING PRESIDENT MARCELLINO: Call the roll -- I'm sorry. Read the last section, then call the roll.

THE SECRETARY: Section 2. This act shall take effect on the first day of November.

(The Secretary called the roll.)

Ayes 51.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 339, by Senator Velella, Senate Print 2716A, an act to amend the Insurance Law, in relation to the maximum automobile insurance discount for anti-theft devices.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of January.

ACTING PRESIDENT MARCELLINO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 355, by -

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MARCELLINO: Lay the bill aside for the day, please.

THE SECRETARY: Calendar Number 357, by Senator Spano, Senate Print 4515, an act to amend the Workers' Compensation Law, in relation to teaching activities of board members.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 376, by Senator Nozzolio, Senate Print 3537A, an act to amend the Vehicle and Traffic Law, in relation to traffic regulations at parking areas and driveways of schools.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 378, by Senator Holland, Senate Print 314A, an

act to amend the Social Services Law, in relation to providing certain applicants and recipients of public assistance.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect in 180 days.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 385, by Senator Padavan -

SENATOR PADAVAN: Lay it aside for amendment.

ACTING PRESIDENT MARCELLINO: The bill will be laid aside for amendment at the request of the sponsor.

THE SECRETARY: Calendar Number 403, by Senator Holland, Senate Print 211, an

act authorizing the United States Military to recruit on the campuses of the State University of New York and other such state college campuses.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 413, by Senator Padavan, Senate Print 6084, an act to amend Chapter 890 of the Laws of 1982 relating to the establishment of certain water charges for hospitals and charities.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos, that completes the non-controversial calendar.

SENATOR SKELOS: Please take up the controversial calendar at this time.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Calendar Number 277, by Senator Marchi, Senate Print 546B an act to amend the Judiciary Law and the Education Law, in relation to creating the 13th judicial district consisting of the county of Richmond.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Leichter.

SENATOR LEICHTER: Mr.

President, on the bill, we have debated this bill before, which creates a separate judicial district for the county of Richmond.

I think as I pointed out before, this bill does not have the approval of the Office of Court Administration, and I just want to point out the people voted against it in other years, just to remind them. When this bill came before us last year, it was opposed by Senators Connor, Dollinger, Galiber, Gold, Kruger, Leichter, Montgomery, Paterson, Santiago, Smith and Solomon.

ACTING PRESIDENT MARCELLINO: Senator Marchi.

SENATOR MARCHI: Are we on a roll call?

SENATOR SKELOS: Mr. President, I believe Senator Leichter was explaining his vote.

ACTING PRESIDENT MARCELLINO: Yes, that was my understanding.

SENATOR MARCHI: I'm explaining my vote Mr. President -

ACTING PRESIDENT MARCELLINO: Senator Marchi, to explain his vote.

SENATOR MARCHI: -- to give - since the opposition are all quality Senators, I'm explaining my vote to give them an opportunity to support this bill.

There are 400,000 residents of the county of Richmond. We have four that have come out of Richmond nominated in convention. The delegates are all Kings County, except for a handful on a proportionate basis.

Well, this certainly gives them a right to at least their commensurate number of judges, but they have ten times as many judges. They don't have ten times the population, but they have ten times as many judges. What kind of fairness is that? It's the reason we want secession. It wouldn't change this equation, but it's that single mindedness that we're not entitled to at least something roughly approximating our population.

This is degrading to the

democratic system, small "d" -- and even big "D" and big "R." I cannot understand anything as vulgar, abusive, than the present practice where -- and I tell you, in my county, there is no political difference on this, we only want fairness, whether they're Democrats or Republicans, they want fairness; we're not getting it.

I don't know whether any of you want to remain, maybe if you're from Brooklyn, you have to, but I don't see how, of your own free will and your own judgment, you want to remain opposed to this bill.

I think you did it in good conscience, and I value you all as good, honest quality people. But this thing is an abortion, this present practice, it should not persist, and I vote aye.

ACTING PRESIDENT MARCELLINO: Senator DiCarlo.

SENATOR DiCARLO: Thank you, Mr. President. I rise as a representative of both the county of Kings and the county of

Richmond, Brooklyn and Staten Island, and I want to praise Senator Marchi for this piece of legislation.

I agree, it is an absolute disgrace that the people of Staten Island are subjected to basically no representation and total control by Brooklyn. This is a piece of legislation that, in all fairness, should be enacted. The people of Staten Island have a right to decide their judiciary, and right now they have no right. So, I commend Senator Marchi and I urge its passage.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: To explain my vote, Mr. President. I couldn't help but be swayed by the oratory of John Marchi, but I voted against this bill last time because I believe what we really need to do is to change the whole way we elect judges, to establish judicial districts that make sense.

What's so interesting about my judicial district is that -- I have the good

fortune of living in Monroe County -- we have half the population of the 7th Judicial District, and I believe -- Senator Kuhl or someone else may correct me -- we have 95 percent of the judges.

I'm one of the beneficiaries of a policy of judicial districts that were drawn up at some other time based on some other theory.

It seems to me, and although I can support the concept of allowing Staten Island to elect its own corps of judges, its own county judges that would act as Supreme Court judges, what I think we ought to do is pour our attention to court reform and look at changing the way we elect our judges throughout this state.

I'm sympathetic to it, but until we deal with the broader issue of fairness regionally for all the regions of this state, I can't vote to create one specific one for Staten Island. But certainly when we get to the issue, as I hope we some day will, about

complete court reform, then I hope to be joining Senator Marchi in his voice.

ACTING PRESIDENT MARCELLINO: Announce the results, please.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Leichter, why do you rise?

SENATOR LEICHTER: I'm going to ask that you lay aside the roll call because I think Senator Marchi raised some questions and I think they ought to be addressed. So I'm going to ask that we -- if that means reconsidering the vote or whatever, it just -- I think we have a procedure where you can withdraw the roll call.

ACTING PRESIDENT MARCELLINO: Without objection, the roll call will be laid aside.

Senator Leichter, you -

SENATOR LEICHTER: Senator Marchi, if you will yield, please, for a question.

ACTING PRESIDENT MARCELLINO: Senator Marchi, do you yield to Senator Leichter?

SENATOR MARCHI: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR LEICHTER: Senator, I think you make a very compelling case, and obviously when John Marchi addresses an issue with so much passion, I think it touches all of us. I think Senator Dollinger answered it in part, but there is another thing that I think disturbed us, Senator, and I believe that actually Senator LaValle said he would talk to you about, by creating a new judicial district -

SENATOR MARCHI: You're absolutely correct, and I took that out, that it changes -- what he's referring to is the number of people in the Board of Regents, and I took that out so that it would be not be a complicating factor.

SENATOR LEICHTER: So that it

will not affect the -

SENATOR MARCHI: It's in the amended bill.

SENATOR LEICHTER: It will not affect the number of Regents?

SENATOR MARCHI: Yes.

SENATOR LEICHTER: All right. Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Will the negatives please raise your hands highly so we can see them?

THE SECRETARY: Those recorded in the negative on Calendar Number 277 are Senators Babbush, Connor, Dollinger, Lachman, Leichter, Montgomery, and Paterson; also,

Senator Kruger. Ayes 48, nays 8.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Also, Senator Smith. Ayes 47, nays 9.

ACTING PRESIDENT MARCELLINO: The bill is still passed.

Secretary will read -- Senator Farley, why do you rise?

SENATOR FARLEY: I would like to be recorded in the negative on Calendar Number 302.

ACTING PRESIDENT MARCELLINO: Without objection, Senator Farley will be recorded in the negative on Calendar Number 302.

Secretary will read, please.

THE SECRETARY: Calendar Number 306, by Senator Tully, Senate Print 4578, an act to amend the Vehicle and Traffic Law, in relation to prohibiting the issuance of a driver's license.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Tully, an explanation has been asked for by Senator Paterson.

SENATOR TULLY: Thank you, Mr. President.

This piece of legislation is another one in the war against graffiti vandalism and it would prohibit the issuance of a driver's license to certain minors and young adults for one year from the time at which they are convicted of making graffiti.

ACTING PRESIDENT MARCELLINO: Senator Paterson, I think you -- why do you rise?

SENATOR PATERSON: First, Mr. President, I wanted you to know that -- Senator Gold had a solution, but we'll discuss it later.

If Senator Tully would yield for a question.

ACTING PRESIDENT MARCELLINO: Senator Tully, would you yield?

SENATOR TULLY: Yes, Mr.

President.

ACTING PRESIDENT MARCELLINO:

He yields, sir.

SENATOR PATERSON: Mr. President, my question to Senator Tully is, do you feel that this legislation is in many ways remote to the actual issue that it's trying to fight? If we're going to fight graffiti, there are penalties that we would attach to an individual who would commit the act of defaming and defiling property; but by denying a driver's license to individuals under age 21, are we not in a speculative way going into other areas of their life, areas that may involve employment, areas that may involve schooling, areas that may involve issues that are related to survival, after we have already punished them for the original vandalism?

SENATOR TULLY: Yes, Mr. President, if I may. Senator Paterson, that's exactly the point.

As you probably recall, many years ago, we passed some legislation that

provided for the open container law and that really wasn't related as much to the particular violation as it was to the fact that the police departments were having trouble in getting convictions for disorderly conduct because when they'd ask the youngsters to move along, they finally realize as a result of court decisions that if they took a step, they were moving along and they were not subject to conviction for discon; so, we had to find some other methods of getting these groups to disband. One of them was the open container law. Has it worked effectively? I believe so.

In this particular case, we do know that, without a doubt, nothing seems to be working in the area of preventing graffiti and we do know that it does lower the quality of life, it's been an economic deterrent, as well as an environmental disaster from the stand point of what our communities look like.

This is meant exactly to do what it is you've stated. It's meant to make young people, young adults and minors realize

that if they commit this offense of making graffiti, that something will happen to them, that there is a provision in the law that has teeth, and if they do it again or if they do it in this particular situation, they are going to be penalized for it and that penalty will be the taking away of their driver's license. That's only a privilege, it's not a right.

SENATOR PATERSON: Thank you, Mr. President.

I think that the legislation definitely demonstrates a great deal of creative thinking on Senator Tully's part.

ACTING PRESIDENT MARCELLINO: Senator Paterson, are you explaining your vote?

SENATOR PATERSON: I'm speaking on the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Okay. On the bill.

SENATOR PATERSON: And I think that these are the types -- this is the type of thought process that leads us to a lot of valuable solutions. I just think in this case

the legislation is somewhat excessive; it may interfere with the fact that the individual who's committed the offense may very much be trying to lead a right path and I might even suggest that if they're in a car, then it will be hard for them to be a recidivist on the subway again.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Abate.

SENATOR ABATE: Yes, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Abate, on the bill.

SENATOR ABATE: Yes. I agree with the intent of the bill, but I do not believe that the punishment that's outlined here will act as a deterrent.

All of us find that graffiti destroys the quality of life, could impact on the economy of that local neighborhood, and young people, as well as adults, who engage in graffiti should be punished. That is not the

issue. But the punishment should fit the crime.

There are some outstanding criminal justice programs that target graffiti offenders, that's, for instance, community service programs which when an individual is arrested and convicted of graffiti, they must devote hundreds of hours, or whatever, to the community to cleaning up graffiti. It's intrusive, it tells that young person there's a penalty, they need to pay back to society through removing that graffiti.

So, yes, individuals should be punished. I think, though, in this case, taking away someone's license is not related to the crime itself. It does not improve the quality of that community. I would prefer mandating if someone is convicted of graffiti that they actually go back into the community they've assaulted, actually go back to the community they victimize, and spend hours cleaning up that community, whether it's removing graffiti or doing some other kind of

thing to improve the quality of that community.

For those reasons, although I agree with the intent of the change in the legislation, I cannot support it. Thank you.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, I have to disagree with my dear colleague because I think this bill is terrific. We have had so many instances of graffiti in my community and surrounding communities and we have tried the community service route and we do make them clean up the mess they made and contribute more in addition to that than just cleaning up. We sometimes have them paint entire parks, benches, fences. It just hasn't seemed to be very effective.

And since many of these people committing these crimes are youngsters who I think put the highest value on their driver's license, it seems to be the one thing that really matters to them, and I think this is an

effective way to go at the problem.

I will also be seeking to vastly increase penalties for graffiti that is motivated out of hate and bias. We have had several incidents recently in my community, actually on the street I live on, in which very damaging and hateful graffiti has appeared on people's homes, and I will be talking about that at another time; but this bill, for this purpose, I think is effective, and I will be voting yes.

ACTING PRESIDENT MARCELLINO: Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. Would Senator Tully, my dear colleague from the Island, yield to a question or two?

ACTING PRESIDENT MARCELLINO: Senator Tully, would you yield?

SENATOR TULLY: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Tully yields.

SENATOR WALDON: Senator Tully, do you have at your fingertips any data regarding the unemployment rate in the city of New York in regard to African-Americans, Caribbean-Americans, Latino-Americans, Latinos, Hispanics in the five boroughs?

SENATOR TULLY: No, Senator, I do not.

SENATOR WALDON: Being that you do not, Senator, would you accept the premise -- if I may, Mr. Tully, Mr. President, through you.

ACTING PRESIDENT MARCELLINO: Do you continue to yield, Senator?

SENATOR TULLY: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator yields.

SENATOR WALDON: Would you accept the premise that those people I just mentioned are disproportionately unemployed compared to others in the city of New York?

SENATOR TULLY: Senator Waldon,

if you're saying that's the premise and that's based on your research and something that you believe in, I will accept the premise.

SENATOR WALDON: I appreciate that very much, Senator.

If I may continue, Mr. President?

ACTING PRESIDENT MARCELLINO: Do you continue to yield, Senator Tully?

SENATOR TULLY: Yes, Mr. President. As a matter of fact, I will continue to yield until Senator Waldon is finished asking me questions so we don't have to go through that for a few more moments.

SENATOR WALDON: I appreciate that very much.

ACTING PRESIDENT MARCELLINO: The Senator continues to yield indefinitely.

SENATOR WALDON: Thank you.

Senator Tully, are you aware of what is called "gypsy" cab drivers?

SENATOR TULLY: Yes, Mr.

President, I am.

SENATOR WALDON: Are you aware that the majority of the people who drive those "gypsy" cabs are people of color, be they from Santo Domingo or Puerto Rico or the Caribbean or born here in America happening to be African-American?

SENATOR TULLY: I can't say that I'm aware of that conclusively, but I'm certain that there may be a great number of "gypsy" cab drivers who fit that category.

SENATOR WALDON: Thank you very much, Senator Tully.

If I may, Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Waldon on the bill.

SENATOR WALDON: No one abhors graffiti more than I. In fact, the church next to my home in Cambria Heights which was until not too long ago a synagogue has been damaged on a number of occasions with graffiti, and we have together as a community gone to

clean it up.

The doctor's home around the corner from me, which is a Tudor with the upper portion of it in white wood, kids have climbed up on his garage and written extremely negative statements, very profane statements on his home, and we have as a community gone up there to clean it up.

So, I support proper punishment for those who do graffiti. I think this is overbearing. I think that it will dramatically impact those people who are from New York City who happen to be people who are, to a greater extent than others, unemployed and who happen to have a need for jobs, such as "gypsy" cab drivers, and for those reasons, at this time, Senator Tully, I will have to oppose your proposal and vote in the negative.

Thank you very much, Mr. President.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2.

This act shall take effect on the first day of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

ACTING PRESIDENT MARCELLINO: Senator Onorato?

SENATOR ONORATO: To explain my vote.

ACTING PRESIDENT MARCELLINO: Senator Onorato, to explain his vote.

SENATOR ONORATO: Senator Tully, I think this is a good bill. I think it does have one flaw in it that -- which I wish you would have addressed. I think that regardless of what the age is, I don't think graffiti is less offensive if it was committed by someone under 21 or someone over 21 because I know in the city of New York, lately we have caught a large group of graffiti artists who were in their 30s.

And I think if this doesn't pass both houses, that in the future you amend the bill to make it regardless of any age, but I do intend to vote for the bill.

I vote aye.

ACTING PRESIDENT MARCELLINO: Senator Mendez.

SENATOR MENDEZ: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number -

ACTING PRESIDENT MARCELLINO: Senator, we're still on a roll call. We'll take care of that in one second. I apologize.

SENATOR MENDEZ: Oh, oh, thank you.

ACTING PRESIDENT MARCELLINO: Read the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 306 are Senators Abate, Connor, Lachman, Leichter, Paterson and Waldon. Ayes 52, nays 6.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Mendez.

SENATOR MENDEZ: Yes. I am requesting unanimous consent to be recorded in the negative on Calendar Number 355, 355.

ACTING PRESIDENT MARCELLINO: Senator Mendez, we didn't do that bill today. It's been laid aside for the day, so we'll have to hold off.

Secretary will read.

ACTING PRESIDENT MARCELLINO: Calendar Number 403, by Senator Holland, Senate Print 211, an act authorizing the United States Military to recruit on the campuses of the State University of New York and such other state college campuses.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MARCELLINO: Senator Holland, an explanation has been asked for by Senator Paterson.

SENATOR HOLLAND: Just as read, that's basically it. The bill authorizes the United States Military to recruit on

campuses of the State University of New York.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Thank you very much, Mr. President. If the sponsor would please yield for a few questions.

ACTING PRESIDENT MARCELLINO: Senator Holland, would you yield for a few questions?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT MARCELLINO: Thank you.

SENATOR PATERSON: Senator Holland, the legislation you proposed is certainly going to be of great merit and opportunity for many individuals around the state, not the least of which would be constituents in my district, many who have been denied opportunity, many have been closed out of other options and may seek careers, as they have in large numbers, in fact, a majority in the armed services, and just on that basis alone, it would be a good bill.

But, there is an issue under lying the legislation that I would like to bring to your attention and ask a few questions and that relates to the many gay and lesbian citizens around New York State whose tax dollars provide the broad revenue bases for which we can provide opportunities to ROTC to come into our campuses, and these individuals who are workers, who are teachers, who are contributors to our society would not be allowed to join the military because of an existing national policy that we feel needs to be changed.

Now, the national policy notwithstanding, it would be New York State taxpayer dollars that would allow for this type of activity to continue; and so my question to you is, with a standing gubernatorial executive order to the contrary and a New York State Supreme Court case also supporting it, my question to you is, what other group, whether it be African-Americans, whether it be Jewish individuals, whether it be women, whether it be

people, whether it be their race, their religion, their national origin, their age or their disability, what other group, if they were being discriminated against with New York State taxpayer dollars, would we allow this process to continue?

SENATOR HOLLAND: I don't know if I totally understand your question, Senator, but we are representatives of the people and we usually create laws for the majority. I don't think we should start here to create laws for the African-American, separating them out, or the Irish-Americans or the Italian-Americans.

This is a bill that allows recruiting for everybody on the State University campuses. All other State University campuses allow it except the state of New York because of Governor Cuomo's Executive Order 28.1. I believe that was a huge mistake. In fact, the university systems have come back off of it a little bit and there is some recruiting on the campuses now, but it needs to be in law, and I think many people

have stated that fact, Senator.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MARCELLINO: Yes.

Senator Paterson, he continues to yield.

SENATOR PATERSON: Senator Holland, you're making my point precisely. I'm not divorcing any individual, whether it by reason of race or religion or national origin or any other classification from the greater family of New York, from the collective citizenry that pay taxes in this state and seek opportunity within the state service.

What I'm saying to you is that if there is open discrimination of any particular group other than the group that's affected by this legislation, I'm suggesting to you that we would never tolerate it, that we would not allow any resources of our state, any dollars that were contributed by the citizens of our state to be used in a fashion that

discriminates against individuals, even if it does create the great opportunity that it does.

And so my question to you was, how can we tolerate allowing for there to be this recruitment on campuses when it has an open policy of discrimination which contravenes the Governor's executive order and a Supreme Court case, Doe versus SUNY, from 1993 which was upheld by the court because of the Governor's executive order?

SENATOR HOLLAND: Doe versus SUNY? I thought it was Doe versus Rosa, but -

SENATOR PATERSON: Right, that's the same case, it had different names at different times.

SENATOR HOLLAND: Again, Senator, I think we pass laws for the majority and this is a definite majority situation and we should allow recruiting on the State University campuses for all.

SENATOR PATERSON: Senator, Mr. President, through you, if Senator Holland would yield for a question.

SENATOR HOLLAND: Yes, I do.

ACTING PRESIDENT MARCELLINO: Senator continues to yield.

SENATOR PATERSON: I'm a little bit confused by the response. Are we passing laws to suit the majority, or are we passing laws that are fair to all?

There are a number of laws we could pass that would suit the majority, but they would be openly discriminatory and they would create a situation in which there would be a denial of opportunity for citizens in the state.

If we are passing legislation that is fair to all citizens, meaning that there may be greater opportunity for some but there is no limitation of opportunity for any, then we would have to vote against this legislation because we are engaging a policy that the military has that is not accepted here in New York State.

And so, if you would please clarify and let me know, are we passing a law

that simply suits the majority, or are we passing a law that's fair to all citizens?

SENATOR HOLLAND: Senator, I'm sure that you and I and everybody in this chamber would like to pass laws that are fair to everyone in the state of New York. I don't believe that's ever done. I think we have to pass laws for the majority, that suit the majority, that are best for the majority, and I think this bill absolutely does that.

I don't think, in answer to your question, that we ever have passed a law that is approved by 100 percent of the people in this state or this nation or my town or village.

SENATOR PATERSON: Thank you, Mr. President, and thank you, Senator Holland, for the answer. If the Senator would continue to yield.

Senator, I think there is a slight misunderstanding between the two of us of what we're actually talking about. I'm not talking about legislation that everyone agrees

with. I certainly understand and have voted in the negative on a number of pieces of legislation in this chamber, but I accept the fact that the majority of Senators and the majority of people that they represent are in favor of the legislation; and, therefore, even though I may have the minority opinion as a citizen of this state, I accept that the legislation's being passed.

What I'm talking about is what I consider to be a policy that is in existence that's prima facie, in other words, it discriminates, it dictates that individuals who, by the nature of sexual orientation, would be excluded from what would be the opportunity provided for in the legislation, provided for by taxpayer dollars, maybe even their own taxpayer dollars.

So, I'm not saying that everyone has to agree with a law, I'm saying that a law has to apply in such a way as it affords equal protection under what I consider to be the constitutional protections of the

Fifth Amendment.

So, what I'm saying is that this state, through its executive order, through the Governor's executive order, has banned this type of discrimination and that we have a privilege to not allow for there to be recruitment in this form on campuses if we so choose. This is not what this legislation does, it actually allows it to happen.

And so if we take a further look at the Supreme Court case, the Doe case, it upholds what the plaintiff was seeking in this particular situation because of the fact that the SUNY policy was in violation of the Governor's executive order.

And so I guess what I'm asking you is, do you not concede that the legislation is discriminatory?

SENATOR HOLLAND: No, Senator, I do not, and as a matter of fact it is -- I think the opinion of Doe versus Rosa was based on your President's opinion, "Don't ask, don't tell," and that's what the opinion was based

on. I don't think it's discriminatory, Senator. I think not to let the military on our campus would be discriminatory.

I think since the federal military is our protector, nationally and internationally, that it only makes sense to me to allow them on the campus and, if we do not, I think we're discriminating against the military and the hiring of people from our state.

SENATOR PATERSON: Thank you very much, Senator. If Senator Holland would continue to yield.

SENATOR HOLLAND: Yes.

ACTING PRESIDENT MARCELLINO: Senator yields.

SENATOR PATERSON: I appreciate, Senator, what your interpretation of the court's decision is, and though it's not mine, it certainly is valid, but what I would like to draw your attention to is what the court's decision was, not the dicta, and the decision was that there was discrimination in

this particular case. I don't think that we would be discriminating against the military as much as we are sending a message to the military that we're not going to invest in an operation that practices this type of discrimination, and so what I'm suggesting - if I might speak on the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Paterson, on the bill.

SENATOR PATERSON: What I'm suggesting is that often there are very vital pieces of legislation that we have introduced that we have to be mindful may apply in such a fashion as it denies opportunity to particular individuals. There are some pieces of legislation I'd like to see on the floor of this Senate regarding the discrimination of gay and lesbian citizens, the first of which would be the civil rights legislation which would allow equal opportunity in employment and in housing and in education and in jobs. When we look at that legislation, we will have an opportunity to stop the discrimination there.

If we look at the bias legislation where we are going to increase the penalties for bias crimes and provide for what will be penalties for individuals in addition to committing a violent act who are actually motivated that way because of the race or religion or the sexual orientation or the national origin of the victim, I think that's a way that we can address it.

For today we have a piece of legislation that I think enables us the opportunity to address it also.

I think I understand the great opportunity that this legislation would provide. There are numbers of people, African-Americans, men and women from my district, and other nationalities, who haven't had much opportunity, and this legislation, its main purpose is quite valid because it will provide for it, but I'm not going to support a bias bill that has bias included in it, and I'm not going to be able to vote for this legislation when I see individuals who have

fought and suffered and paid throughout the centuries for some reason that has nothing at all to do with any kind of anti-social behavior but is, rather, a personal expression; and for that reason, I would encourage that this bill not be supported because I think that there is inherently, in spite of what is a very valid purpose, an application of the legislation which would affect people in different ways.

ACTING PRESIDENT MARCELLINO: Just so everybody is aware, we have a list here of four more speakers on this particular bill, starting with Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. Will Senator Holland yield for a question or two? Holland?

ACTING PRESIDENT MARCELLINO: Senator Holland, would you yield for some questions from Senator Waldon?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT MARCELLINO: He will yield, sir.

SENATOR WALDON: Senator, do you recall when we went from conscription to a volunteer military?

SENATOR HOLLAND: I do.

SENATOR WALDON: Were you in the military, Senator Holland?

SENATOR HOLLAND: I don't have the date when it happened, I just remember it happened. Can you remind me of the date?

SENATOR WALDON: No, no. I said were you in the military at all?

SENATOR HOLLAND: Yes, sir, I was in the United States Marine Corps.

SENATOR WALDON: Do you happen to have -- did you or do you happen to have any information regarding the numbers of those in the military who are from the African-American, Caribbean-American, Latino communities?

SENATOR HOLLAND: I do not have the figures, no, sir.

SENATOR WALDON: Do you recall when you were in the military -- well, if I may, Mr. President, may I continue?

ACTING PRESIDENT MARCELLINO: Yes.

SENATOR WALDON: Senator continue to yield?

ACTING PRESIDENT MARCELLINO: We're following the Tully policy on this one, sir.

SENATOR HOLLAND: That's right.

SENATOR WALDON: Were you in the service during the Korean era?

SENATOR HOLLAND: I was in the Reserves from '53 to '60 and in the Regulars from '60 to '63.

SENATOR WALDON: Okay. Do you recall at any time during your military experience information that might indicate that disproportionate to their numbers in society, blacks, Afro-American, Caribbean-American and other people of color have served in the military? Do you understand what I'm saying?

SENATOR HOLLAND: Yes, I do. Actually, the percentage changed greatly from

1953 when I entered the Reserves until I got out back in '63. The percentage of African Americans increased by a great amount; I don't know what the figures are.

SENATOR WALDON: If I understand you correctly, Senator, the response to my question is that yes, African-Americans now far outnumber in the military their number in our society-at-large, is that correct?

SENATOR HOLLAND: I would say yes, sir.

SENATOR WALDON: Are you aware that Colin Powell did not attend any of our military academies?

SENATOR HOLLAND: I am.

SENATOR WALDON: Can you tell us, please, from your information, where he received his training as a military officer?

SENATOR HOLLAND: I don't know where he received his training in the military. I know he went to the city of New York; I don't know after that.

SENATOR WALDON: Well, I was

in his class, his ROTC class, and he is a product of ROTC and went on to become the chairman of the Joint Chiefs of Staff. Thank you, Senator Holland. Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Senator Holland yield just for a couple quick questions?

ACTING PRESIDENT MARCELLINO: Senator, will you yield?

SENATOR HOLLAND: I yield.

SENATOR DOLLINGER: Could you tell me the current status of military recruiters' access to state college campuses in New York?

SENATOR HOLLAND: They are basically on the campuses; the only thing they can't do, they are prohibited from using university placement services.

SENATOR DOLLINGER: Just so I understand it, this bill doesn't specifically say that they can use university placement services, does it?

SENATOR HOLLAND: It says that they can do any recruitment on the -- that any other organization can on the campuses of SUNY and CUNY.

They are limited in that right now.

SENATOR DOLLINGER: Okay. Again, through you, Mr. President, there's nothing in this bill that says that. This bill says simply that they can send representatives for the purposes of recruiting.

SENATOR HOLLAND: That's correct.

SENATOR DOLLINGER: It doesn't say anything that says that they can use the university's recruitment services, does it?

SENATOR HOLLAND: Well, it doesn't in so many words, no, but it basically puts them on the same level as anybody else recruiting on the campuses.

SENATOR DOLLINGER: Okay. Well, I guess I'd just point out if that's what is really intended, I would have been a bit

more artful in my drafting, but let me ask another couple questions.

SENATOR HOLLAND: Okay.

SENATOR DOLLINGER: Is there any evidence that you're aware of that, as a consequence of the executive order that is referenced in the memo in support of this, that in any way the recruiting practices among any population on the state campuses has been affected as a consequence of that executive order?

SENATOR HOLLAND: Has it changed any of the recruiting on state campuses?

SENATOR DOLLINGER: Again, through you, Mr. President, Senator Holland, I apologize, it's not an artful question at all.

Is there any evidence that in the wake of the enactment of the executive order, that the recruitment to any one of the branches of the United States military was impacted as a consequence of the order? It went up, or went down or it stayed the same, do

you have any evidence that shows its effect

SENATOR HOLLAND: I do not have the percentages, Senator. I know that there was a great debate when the order was signed and a few other times, and I do not know if there was a huge decrease or a huge increase. I know that for the first amount of time, they were more limited than they are now, and then the SUNY people and the CUNY people allowed them to come back on the campuses, with the exception of the placement services.

SENATOR DOLLINGER: Okay, but just so I understand it, Mr. President, there's no evidence that the effect of the executive order was in any way to deny opportunities to anyone who was on the college campus who wanted to be in the military, that it actually reduced the number of people who gained access, is that correct?

SENATOR HOLLAND: Senator, but the thing is, it's much easier for college students who are going to school on a

University campus if the recruiters for whoever ALCOA, whatever, the military, come to the campuses, it makes it much easier for them, you have to understand that.

SENATOR DOLLINGER: I understand that, but I'm simply trying to find out is there any objective evidence, because I think one of the points that's been made is, would -- excuse me, has the executive order denied opportunities in the military for our college students? I think the answer that you've given me is that you do not know.

SENATOR HOLLAND: I do not have the percentages, no, I do not, but I feel that there would have been more opportunities, just as Senator Paterson said, more opportun ities had the military been on the campus.

SENATOR DOLLINGER: Again, through you, Mr. President, if Senator Holland would continue to yield.

ACTING PRESIDENT MARCELLINO: Senator continues to yield.

SENATOR DOLLINGER: There was

a time in this country, Senator, when the United States Military had a segregated policy, that is, it had a white military and a black military. Would it have been appropriate for New York State at that time to suggest that military recruiters couldn't come on campus unless they recruited everyone to the same Army?

SENATOR HOLLAND: I wasn't here then, Senator, I don't know. It doesn't sound right.

SENATOR DOLLINGER: It doesn't sound -

SENATOR HOLLAND: Doesn't sound right.

SENATOR DOLLINGER: Well, then I'd ask you the following question: If the United States Military said that, "Because of your sexual orientation, you can be in the Army, but if you have a sexual orientation that is not a majority accepted sexual orientation, you can't be in the Army," doesn't it seem as though it doesn't sound right to you?

SENATOR HOLLAND: This is somewhat what I wanted to say to the last question that Senator Paterson had. I know what the court case says and that's why I'm here, to change the court case. I think that's wrong. I think we are discriminating against our people who are students who are on the campuses of SUNY and CUNY by not allowing the military full access to the placement services. I believe that is discrimination.

SENATOR DOLLINGER: Again through you, Mr. President, would it be discrimination -

ACTING PRESIDENT MARCELLINO: Senator Holland, do you want to continue to yield?

SENATOR HOLLAND: Yes.

SENATOR DOLLINGER: Do you think it's discrimination if the United States Military refused to allow African-Americans to serve in the military?

SENATOR HOLLAND: It certainly would today, Senator. I don't know what it was

back when you were a baby, or before that, when things were different -- that was a joke.

SENATOR DOLLINGER: It actually was before I was a baby.

SENATOR HOLLAND: Things change. It certainly is wrong, no question about it. Things change, but I believe this Executive Order 28.1 and the court case is discrimination today.

SENATOR DOLLINGER: Okay.

Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I appreciate Senator Holland's candor.

I guess some things never change, and I would just like to read something that I think still has truth: "Every generation has come to understand the basic wisdom of our Constitution, that only by protecting the freedom of others can we ensure it for ourselves; that to encourage or allow government to discriminate against any belief

or creed or private way of life would threaten us all. This is so because we could never be sure which particular value would dominate government at any particular point in time. Only neutrality by government was deemed safe and that is what our Constitution assures."

I understand what this proposal seeks to do; I'm not sure, quite frankly, in reading the bill it actually achieves what Senator Holland would like to achieve. This simply says that you can permit them access; they already have access. But the lines I just read from were from the Executive Order 28 in which the state of New York, as a position, as a state policy, the Governor, acting through the executive order, said we are not going to permit any institution which gets benefits from the state to discriminate on the basis of sexual orientation.

It seems to me that was the policy back in 1983, that it changed a policy that was a bad policy which in my judgment the military discriminates on the basis of sexual

orientation, much like it once did on the basis of race. It was wrong to do it on the basis of race; it's wrong to do it on the basis of sexual orientation.

I daresay, if there were still a segregated military on the basis of race, we would be proud to ban military recruiters because we believed that it was unjust and unfair and against the American theory of government to allow the military to discriminate on the basis of race.

And so, Mr. President, I'm going to vote against this, as I did last year. It seems to me this is all about fundamental liberties, it's all about what we believe as a state, it's all about what we share in common, much as Governor Cuomo -- then Governor Cuomo outlined in the executive order. It's all about the concept that by neutrality, government was deemed safe, and that's what our Constitution assured.

I regret the fact that the United States military has a policy that

prohibits and discriminates on the basis of sexual orientation. I know that there are people up on the wall in Vietnam, people who gave their lives in World War II, people who continue to give their lives for their country who may be gay and it seems to me it's grossly unfair that our country doesn't recognize that, doesn't recognize that the military's policy on this is wrong-headed, and it seems to me we in this state should send a clear message to the generals in Washington and to everyone else who believes that sexual orientation is a fitting way to divide people in our nation. That's wrong.

We should only judge people by the strength and the content of their character as Dr. King once told us. It seems to me the military does not do that. We in this state sent them a message in 1983 that that was wrong. I think by voting no against this bill we will send them a continuing message that that's wrong and, consistent with America's view of fair-handedness for everyone, it ought to be

changed.

ACTING PRESIDENT MARCELLINO: Senator Abate.

SENATOR ABATE: Yes, on the bill. I think my colleague -

ACTING PRESIDENT MARCELLINO: Senator Abate, on the bill.

SENATOR ABATE: I think my colleagues have so eloquently stated their opposition to this bill; but I, too, want to be on record stating why I oppose the bill. We have before us two competing interests. One, I believe, is fundamental, goes against the grain of our Constitution, against the fundamental reasons why we call ourselves Americans.

The other interest is the capacity and the ability for the military to recruit. And let me just take a moment to discuss these interests.

When an entity such as -- an institution such as the military engages in a policy that either overtly or through disparate impact affects a segment of our society -- in

this case, it's lesbians and gays -- we as a state and we as a legislature, have to send a strong message that in nowhere, whether it's in housing or in education or equal opportunity, whether it's employment, that no member of our society should face discrimination or be placed in an unequal position because of who they are and what they stand for.

If we were to substitute and the policy were not if you're gay or lesbian, you'll be dismissed by the military, if we would dismiss gay and lesbian as a criteria and put in its place a substitution, an Irish American man, an Italian-American woman, a Jewish man, a Latino, an African-American, we today would have no sympathy or tolerance to supporting this legislation because it would have a disparate impact on a subset of students in those facilities who want access to the military but are denied that access because of who they are, not because of their ability to perform, be loyal Americans or do the job, just because of the stigmatization because they

belong to one group or another.

I believe this is a bill about fundamental rights, equal protection under the law. If we as a legislature can't put aside our bigotry and our biases, and we all have those biases at one time or the other, we must recall in our lives where one of us have faced discrimination. Whether it's our ancestors or our current generation, we know what it feels like to feel hatred and bigotry. We have to take that pain we've individually felt, apply that pain to this discriminated group, and stand up.

The other interest is the interest -- and I am sympathetic because there are needed jobs, the military needs to recruit, but by this bill, we're not saying to the military they cannot recruit. What we're saying is they cannot do it in state institutions as long as they discriminate against any member of New York State. They still can advertise, they still can send letters to students on campuses, they can use

student groups, nothing prevents them from setting up an office across the street from the campus and doing recruitment.

So, now we're putting two interests, one is of constitutional merit against administrative capacity. In my mind, while there is some merit on the part of the military to have an ability to make it easy for them to recruit, that is a lesser interest today that must be protected, and for those reasons, I oppose this bill.

ACTING PRESIDENT MARCELLINO: Senator Marchi -- he waives.

Read the last section, please -- I'm sorry, Senator Leichter, why do you rise?

SENATOR LEICHTER: Would Senator Holland yield for a question or two, please?

ACTING PRESIDENT MARCELLINO: Senator Holland, do you yield to Senator Leichter?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR LEICHTER: Senator, were you asked by the U.S. military or a representative of the Pentagon to put in this bill?

SENATOR HOLLAND: No. No, sir.

SENATOR LEICHTER: This is all your idea?

SENATOR HOLLAND: I hope so.

SENATOR LEICHTER: Did anybody from the military come to you and say, "Senator Holland, please help us. America's military preparedness is being hurt. We need this bill because we're being limited in our recruitment on New York State campuses?"

SENATOR HOLLAND: No, sir. It came about -- I believe you -- because of the executive order of Mario Cuomo.

SENATOR LEICHTER: I'm sorry, I didn't hear you, sir.

SENATOR HOLLAND: I said no, sir, I believe it came about because of the

executive order of Governor Cuomo.

SENATOR LEICHTER: I under stand, but is it your view that the military is being limited and being impacted negatively by that?

SENATOR HOLLAND: Yes, I believe it is, Senator, and I really object to what Senator Abate said. She said let all the other companies come in on the campuses and set up and talk to the students the way they want to. Have the military get a place across the street. I think that's degrading.

SENATOR LEICHTER: But, Senator, it's your view, if I understand your answer to my question, that this, as you see it, negatively affects the U. S. military's recruitment in New York State?

SENATOR HOLLAND: Yes, sir.

SENATOR LEICHTER: Senator, if you would be good enough to continue to yield.

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield?

SENATOR HOLLAND: Yes, sir.

ACTING PRESIDENT MARCELLINO: Senator continues to yield.

SENATOR LEICHTER: And I appreciate that that is your genuine, sincerely held view, but did you check with anybody in the military whether that was actually the case?

SENATOR HOLLAND: What? What was actually the case?

SENATOR LEICHTER: Your believe that the executive order had a negative -

SENATOR HOLLAND: I've read a lot of things, Senator, and I can tell you that they say, and here's some issues on focus, that they are on campus, as you say, but they are prohibited from using university placement services that every other organization that the recruiting office on campus can use.

SENATOR LEICHTER: Senator, if you would continue to yield.

SENATOR HOLLAND: Yes, I do.

SENATOR LEICHTER: It may be

that that's really very insignificant, very unimportant. I mean, I know that I have not been approached by anybody from the military. I don't believe that anybody from the military, an official representative of the U. S. military has said, "We need Senator Holland's bill," and I was just interested what led you to do this. You're obviously trying to help the military, aren't you?

SENATOR HOLLAND: I believe we, you and I, this country, this state, owes a lot to the military of this nation and the people who serve in that military.

SENATOR LEICHTER: Absolutely.

SENATOR HOLLAND: And I think it's degrading when they cannot get the same placement services or offer these services to the students of the universities of this state and are told to go across the street and find something over there and maybe the students will come and find you.

SENATOR LEICHTER: Senator, if you'll agree with me, the issue is that we want

to see the U. S. military, in order to carry out their mission, to be able to recruit in a way that the military thinks is important, is that correct?

SENATOR HOLLAND: Yes, sir.

SENATOR LEICHTER: Is that the basic issue here?

SENATOR HOLLAND: Or the same rights as anybody else.

SENATOR LEICHTER: But, Senator, wouldn't it be something that we ought to look to the military to tell us? Now, I have a lot of respect for you as a Senator. You told me you were in the Marine Corps. I'm sure you served with great honor, but, you know, you're not a representative of the Pentagon, you're not really current on what their recruitment needs are, nor am I.

I served in the military, too. We have two members here who are colonels, they served in the military, but they're not current either as to what their recruitment needs are. I just wonder whether this bill is

really being driven by the need of the military or whether there's another reason here.

SENATOR HOLLAND: Senator, I don't know if everybody in this house checks with the highest authority whenever they pass a bill. Maybe it's a kosher bill. Do we check with God? No, we don't do that. I didn't check with the Pentagon. I think it's a good idea. I think the military ought to have the rights that every other recruiting firm does on campus, and that's why I put the bill in. If you want to blame it solely on me, fine.

SENATOR LEICHTER: But, Senator, God has his representatives here, he's got rabbis, you can check with rabbis. The military has their representatives, too. I'm not saying that you have to check with -- and I'm embarrassed to say I can't pronounce the name of our Chief of Staff.

SENATOR HOLLAND: I can't, either.

SENATOR LEICHTER: I would accept that, "No, I didn't talk to the Chief of

Staff, but I talked to this general and I received a letter from this colonel." I mean, I just don't understand why, well-intentioned as you are, you're riding, you know, like the cavalry to the rescue of the U. S. Military and they're saying, "What's Holland doing? Who needs this? We haven't asked for it."

SENATOR HOLLAND: One other side of the argument that we already made is it also opens up more opportunities for the students on the campuses. Let's put that one in. Do you want to try that one? I mean, I've exasperated myself on the others.

SENATOR LEICHTER: Senator, then let me ask you, was there any student group that reached out to you?

SENATOR HOLLAND: No.

SENATOR LEICHTER: Was there a group of black students, since obviously -- and I share the concern that they have the maximum opportunity because we know the importance of that, but did anybody ask of that group, ask you to put in this bill?

SENATOR HOLLAND: No, sir, but a number of people in this house mentioned it.

SENATOR LEICHTER: Okay. Thank you, Senator, I appreciate it and, as always, Senator Holland, you're very candid and you're very forthright, very direct in your answers.

I mean, it seems to me that when you pass -

ACTING PRESIDENT MARCELLINO: Senator Leichter, are you on the bill?

SENATOR LEICHTER: If I may, Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Leichter, on the bill.

SENATOR LEICHTER: If you have a bill of this sort whose aim and purpose is to assist the U. S. military in recruitment, the U. S. military said, "We don't need it, we didn't ask for it, not a single letter." I think has anybody here received where the U. S. military has said, "Do we really need this"? And I must say, Senator Holland, and I'm not

suggesting this was your motivation, but you cannot help but feel there's a homophobic content to this bill, that this bill really doesn't have so much to do with the military as it has to do with somehow stigmatizing gays and lesbians, and that's really how the bill strikes me and how it strikes many people.

If, indeed, there was a problem here for the military, then it's something that maybe we need to address; but when there is no problem whatsoever and when New York State has had a policy that we abhor discrimination in any form, shape or manner against any group, any individual, and that is a policy that we very genuinely, sincerely hold, it's a solemn belief that we have, and for that reason, we have had this executive order which expresses our policy, apparently has created no problems for the military, so my question is, why this bill, and I must say that the view that I have of it and what comes across for me is that we're not really dealing with the military; what we're doing, unfortunately, is stigma

tizing people, and for that reason, I cannot support this bill.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Hoblock.

SENATOR HOBLOCK: Thank you, Mr. President. Just briefly on the bill.

ACTING PRESIDENT MARCELLINO: Senator Hoblock, on the bill briefly.

SENATOR HOBLOCK: I listened to the debate last year, listened to the debate this year. I've heard the arguments on this issue so many times; and quite frankly, I get a little more surprised all the time in terms of what is being brought into the debate.

Senator Leichter, in all due respect, I don't know of anybody that is trying to push for this bill, either. I don't think that the defense of our country is going to rest on the rise or fall of this bill. I think there's been a number of recruiters that have expressed an interest and felt that they have been discriminated against and I guess it's a

matter of that and a matter of courtesy.

We also see being brought into the bill the issue that powers in Washington, the President and Congress have made certain decisions about who ought to be in the military or not, and we're debating this bill because we ought to make a statement that we disagree with their decisions.

Well, respectfully, I would request that you write to President Clinton and ask him to change his mind, or perhaps you might want to run for Congress and be part of that decision-making process; but the point is, that happens to be what they decided and we are here in New York living with those decisions like we live with all others. And I tell you that we could probably spend a lot of time passing a lot of legislation here making statements to Washington because we disagree with what's going on there.

But, we're dealing with the reality here and the reality is that because we disagree or there are some that disagree with

some of the policies made in Washington as it concerns our United States military, therefore, we're going to discriminate against it and we are going to choose where they're going to be and where they're not going to be.

They are on private colleges and universities now. Why are we not debating taking them off of those campuses? They receive taxpayers' funds. Why are we not doing that? Why don't we start debating back and forth as to where everybody ought to go based on our individual beliefs, our social values, as to what is discrimination and what's not.

All we're trying to do here is to give students fair opportunity and give an employer fair opportunity. But, in trying to develop that fair opportunity, it's got to be based on what our view of the social values are of that particular employer or the group they're trying to attract. I think we've got to get beyond that.

If somebody feels that they shouldn't be there, fine, don't pander to them,

don't apply; but by doing so, I think we're denying a lot of other people and I think that's as much discrimination, I don't think it's any less, it's as much.

So Senator Holland, I'm going to congratulate you on this bill and I'll be glad to support it.

ACTING PRESIDENT MARCELLINO: Senator Gold.

SENATOR GOLD: Yes, Mr. President, I'll be very brief, but I wanted to just clear something up. I listened to Senator Leichter and I kept wondering, and I didn't want to ask him to yield, but I said to myself if Senator Holland did or did not have the support of the government would it change his vote? So, I don't understand the question.

Senator Holland, it wouldn't change my vote. I think that a member is allowed to have an idea and bring it to the floor and get support or not. But on all the other scores, I do agree with the position of those who feel that there is something that may

be even more important than this bill and that's the divisiveness of where it winds up.

I've listened to some of my colleagues in terms of what the military has done for people in this country, and there's no doubt but that some people have done very well who may not have done well if they had not been in the military; but I think there is a major issue in the military which too many people in this country are not dealing with and it's something we should deal with.

This is a phenomenal country. I wouldn't want to live any place else. It doesn't mean that we can't make it better, and the problem is that when people talk about making it better, there's always somebody who says, "If you don't like it here, move." Well, I ain't moving. I'm staying here and we're going to fight to make it better, and one of the ways we can make it better is to make people feel more comfortable where they're being made uncomfortable in a situation where other people have no right to make them feel

uncomfortable and, for the reasons that have been set forth, I, too, will vote against the bill.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Excuse me. Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, we would like a slow roll call on this bill.

ACTING PRESIDENT MARCELLINO: I need to see five Senators up for a slow roll call.

A slow roll call has been called for.

SENATOR SKELOS: Can we sound the bell?

ACTING PRESIDENT MARCELLINO: Would the bells ring, please, for a slow roll call?

For the notice of everyone

within earshot, there has been a slow roll call requested by Senator Paterson on this bill, S 211.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Alesi.

(Affirmative indication)

Senator Babbush.

SENATOR BABBUSH: No.

THE SECRETARY: Senator Bruno.

(Affirmative indication)

Senator Connor.

(Negative indication)

Senator Cook.

(There was no response.)

Senator DeFrancisco.

(There was no response.)

Senator DiCarlo.

SENATOR DiCARLO: Aye.

THE SECRETARY: Senator Dollinger.

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

ACTING PRESIDENT MARCELLINO: Senator DiCarlo to explain his vote.

SENATOR DOLLINGER: I think I'm Senator Dollinger, but -

ACTING PRESIDENT MARCELLINO: Senator Dollinger. You look so much alike, I couldn't help it.

SENATOR DOLLINGER: I just have to respond to a comment made by the chairman of the Veterans Committee which I appreciate but I respectfully disagree with. When the comment is that by this bill what we're really trying to do is give the military a fair opportunity, it seems to me that what we're doing is giving someone a fair opportunity who doesn't, in turn, give a fair opportunity to the students in our schools, And a fair opportunity would be to look someone in the eye and say, "You're smart enough, you're strong enough, you've got enough courage, you've got enough personal fortitude to give your life for your country, and under those circumstances, you can be a member of the United States military;" but it

seems to me what we do is we deny them a fair opportunity when what we say is, "You can have all those things, but if you happen to be gay, you can't do it." That's fundamentally unfair.

So, it seems to me the notion that we're giving someone a fair opportunity to be unfair to the students that I represent, all the students that I represent, it seems to me there is something wrong with that and under those circumstances, as I said before, I will be voting against this bill.

No.

ACTING PRESIDENT MARCELLINO: Continue the roll.

THE SECRETARY: Senator Espada.

(There was no response.)

Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Gold.

SENATOR GOLD: No.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: No.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: No.

THE SECRETARY: Senator Hannon.

(There was no response.)

Senator Hoblock.

SENATOR HOBLOCK: Yes.

THE SECRETARY: Senator Hoffmann.

(There was no response.)

Senator Holland.

(Affirmative indication)

THE SECRETARY: Senator Johnson.

(There was no response.)

Senator Kruger.

SENATOR KRUGER: No.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: No.

THE SECRETARY: Senator Lack.
SENATOR LACK: Aye.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: Aye.
THE SECRETARY: Senator LaValle.
SENATOR LaVALLE: Aye.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Aye.
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.
(There was no response.)
Senator Marcellino.
SENATOR MARCELLINO: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator

Markowitz.

SENATOR MARKOWITZ: No.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Aye.

THE SECRETARY: Senator Mendez.

(There was no response.)

Senator Montgomery.

(There was no response.)

Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Mr. President, to explain my vote.

ACTING PRESIDENT MARCELLINO: Senator Paterson, to explain his vote.

SENATOR PATERSON: The executive order that was promulgated in 1983 by Governor Cuomo, 28.1, bans this type of discrimination that we've been discussing in state service and employment. What is happening here is that -

ACTING PRESIDENT MARCELLINO: Excuse me, Senator Paterson.

Ladies and gentlemen, can we have some order in the house to hear the Senator?

Thank you very much.

SENATOR PATERSON: What is happening, Mr. President, is that ROTC, or any other recruiter, any other employer, ALCOA, are subjected to the same -- would be subjected to the same treatment if they were discriminating

against anybody by reason of race or religion or national origin or sexual orientation.

So what we're really saying is we're not talking about a national policy, we're talking about a state policy and we're saying that if there is a clear evidence of discrimination, that we treat the employers the same. And this is the reason that we would suggest that there are other ways of recruit ment that the military can engage in without this need to come on campuses and do it at the expense of taxpayers who are, at the same time, being victimized.

This bill does create a tremendous opportunity for people who have been denied opportunity; but maybe we're really missing the message that Dr. King admonished us over a quarter of century ago, that when there is no justice anywhere, there's injustice everywhere.

So I would not want to be in a situation where myself or any other group of people are benefitting when others are being

denied, and for that, Mr. President, I must vote no on this legislation.

ACTING PRESIDENT MARCELLINO: Continue the roll, please.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.

SENATOR RATH: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Santiago.

(There was no response.)

Senator Seabrook.

SENATOR SEABROOK: No.

THE SECRETARY: Senator Sears.

SENATOR SEARS: Aye.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Aye.

THE SECRETARY: Senator Skelos.

(Affirmative indication)

THE SECRETARY: Senator Smith.

SENATOR SMITH: No.
THE SECRETARY: Senator Spano.
(There was no response.)
Senator Stachowski.
SENATOR STACHOWSKI: Yes.
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.
(Affirmative indication)
Senator Volker.
SENATOR VOLKER: Yes.
THE SECRETARY: Senator Waldon.
(Affirmative indication)
THE SECRETARY: Senator

Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT MARCELLINO: Will you call the absentees, please?

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Espada, excused.

Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hoffmann.

(There was no response.)

Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Maltese.

(There was no response.)

Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

(There was no response.)

Senator Santiago.

(There was no response.)

Senator Spano.

(There was no response.)

ACTING PRESIDENT MARCELLINO: Results, please.

THE SECRETARY: Ayes 36, nays 19.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT MARCELLINO: No, there is none, sir.

SENATOR SKELOS: There being no further business, I move we adjourn until Tuesday, March 19th, 19 -

ACTING PRESIDENT MARCELLINO: Senator Paterson?

SENATOR PATERSON: Would you

please recognize Senator Mendez.

ACTING PRESIDENT MARCELLINO: Senator Mendez.

SENATOR MENDEZ: Thank you, Mr. President. There is going to be a Democratic conference.

ACTING PRESIDENT MARCELLINO: Excuse me.

SENATOR MENDEZ: There is going to be a Minority conference in Room 314 immediately.

ACTING PRESIDENT MARCELLINO: There is an immediate call after session ends, Room 314, for the Democrat conference.

Senator Skelos.

SENATOR SKELOS: There being no further business, I move we adjourn until Tuesday, March 19, 1996, at 3:00 p.m. sharp.

ACTING PRESIDENT MARCELLINO: Without objection, the Senate stands adjourned until Tuesday, March 19 at 3:00 p.m. sharp.

(Whereupon, at 4:35 p.m., the Senate adjourned.)