ALBANY, NEW YORK

March 4, 1998

11:21 a.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order. Ask everyone present to rise and repeat with me the Pledge of Allegiance.

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

In the absence of clergy, we ask that we now bow our heads in a moment of silence.

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 3rd. The Senate met pursuant to adjournment. The Journal of Monday, March 2nd, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MEIER: Without objection, the Journal stands approved as read.

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 Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

On behalf of Senator Libous, please remove the sponsor's star from Calendar Number 144.

ACTING PRESIDENT MEIER: So ordered.

SENATOR MARCELLINO: Thank you, sir.

ACTING PRESIDENT MEIER: Secretary will read. We have one substitution.

THE SECRETARY: On page 20, Senator Larkin moves to discharge from the Committee on Racing, Gaming and Wagering Assembly Print 6685 and substitute it for the identical Senate Bill 4025.

ACTING PRESIDENT MEIER: So ordered.

Senator Skelos.

SENATOR SKELOS: Do the non-controversial calendar.

ACTING PRESIDENT MEIER: Secretary will read the non-controversial calendar.

THE SECRETARY: Calendar Number 28, by Senator Alesi, Senate Print 5930, an act to amend the Penal Law, in relation to the crime of failure to obey a police officer.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 43, by Senator Hannon, Senate Print 5042, an act to amend the Public Health Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 62, by Senator LaValle, Senate Print 35-A.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MEIER: Lay it aside for the day.

THE SECRETARY: Calendar Number 63, by Senator LaValle, Senate Print -

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MEIER: Lay it aside for the day.

THE SECRETARY: Calendar Number 68, by Senator Saland, Senate Print 489, an

act to amend the Family Court Act, in relation to evidence of child neglect.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect in 120 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 77, by Senator Larkin, Senate Print 2369-A, an act to amend the Navigation Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 175, by Senator Volker, Senate Print 5217, an act to amend the Civil Service Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT MEIER: The bill is passed.

I'm sorry. Senator Gentile.

THE SECRETARY: Ayes 42, nays one, Senator Gentile recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Secretary will read.

THE SECRETARY: Calendar Number 204, by Senator Lack, Senate Print 1167, an act to amend the Election Law, in relation to

polling places in Suffolk County.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 207, by Senator Farley, Senate Print 2651, an act to amend the Election Law and the State Finance Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 243, by Senator Marchi, Senate Print Number 6007, an act to amend the Real Property Tax Law, in relation to exemption.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 260, by Senator Maltese, Senate Print 1650-A, an act to amend the General Business Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay that aside, please.

ACTING PRESIDENT MEIER: Lay

the bill aside.

THE SECRETARY: Calendar Number 270, by Senator Johnson, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 280, by Senator Skelos.

SENATOR SKELOS: Lay the bill aside for the day -

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

SENATOR SKELOS: -- at the request of Senator Leichter.

ACTING PRESIDENT MEIER: At the request of Senator Leichter.

THE SECRETARY: 287, by Senator Skelos, Senate Print 2408-B, an act to amend the Penal Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first day of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, thank you. If I can have unanimous consent to be recorded in the negative on Calendar Number 175.

ACTING PRESIDENT MEIER: Without objection, Senator Dollinger will be recorded in the negative on Calendar Number 175.

SENATOR DOLLINGER: Thank you,

Mr. President.

ACTING PRESIDENT MEIER:

Senator Skelos, that completes the reading of the non-controversial calendar.

SENATOR SKELOS: Controversial calendar, please.

ACTING PRESIDENT MEIER:

Secretary will read.

THE SECRETARY: Calendar Number 260, by Senator Maltese, Senate Print 1650-A, an act to amend the General Business Law.

SENATOR DOLLINGER:

Explanation.

ACTING PRESIDENT MEIER:

Senator Maltese, an explanation has been requested of Calendar Number 260.

SENATOR MALTESE: Yes, Mr. President.

Despite what my good colleague suggested maybe that I should read what I said in debate last year, I won't do it exactly as we did last year.

This bill is a bill that has been requested by numerous civic and community organizations not only specifically down in

the city of New York but throughout the state.

As more and more business enterprises have gone outside the city, as more and more Chinese restaurants and pizza parlors and other similar establishments have begun business and gone on the internet, as far as making bigger and more colorful pamphlets, circulars, brochures and what have you, we find that more and more of them are tossed into hallways, thrown on lawns, and litter private property to the detriment of the home owner, to the detriment of the purchasers of business own establishments and to the detriment of aesthetics and the people that work very hard to make their communities a nice place -- nice place to be.

The specific purpose of the - of the legislation is to prohibit the placing of any papers, flyers or pamphlets soliciting business on any private property where the owner has placed a sign prohibiting the placement of such papers. These papers would then be deemed as litter and the owner of any such business would be held liable for any

violation. A civil penalty of not less than $250 nor more than $1,000 will be imposed for each violation.

Now, this bill was amended this year to remove the language from the Administrative Code of the city of New York, and placed in the General Business Law to be given statewide application. The objections that were brought up last year -- the bill, by the way, passed with only two nay votes last year, and the -- the objections at the time were on the question of the purpose of the leaflets, whether the leaflets would be having -- coming within the definition of soliciting business, whether they would include non profit groups, whether they would include groups like the Girl Scouts, whether they would include political pamphlets.

We've received a counsel's advice that the phrase "soliciting business" would -- would not include any of the Girl Scouts groups, the so-called charitable groups, and certainly that includes any type of political pamphlet or brochure.

We looked into some of the

constitutional questions that were brought up last year, based on a United States Supreme Court case, City of Cincinnati versus Discovery Network, and based on the -- that case and the dissent in that case, it would seem that our -- our proposed legislation would meet the constitutional test and would make -- would be constitutional.

I think the purpose, the laudable purpose, of this statute makes it something that we in this house should support. The -- at this point, I will answer any questions, if there are any.

ACTING PRESIDENT MEIER: Yes. Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Maltese would yield for a question.

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: Senator yields? Senator yields, Senator Paterson.

SENATOR PATERSON: Senator, there are often enough times that I get up

with a dissenting opinion and solicit information about legislation. Today I'm asking this question really as a supporter of the legislation and someone who used to become very frustrated by some of the situations that you describe, particularly where pamphlets from restaurants are left under the doors of apartment dwellers such as myself and what they often do is, they expose that the person isn't home. They see them pile up for a number of days, it becomes clear that the apartment is vacant for a period of time and it becomes a real property safety issue, and how I, in my frustration never thought that as a lawmaker there was a solution, is a little -- is something I have to reckon with, but what alleviates the whole feeling is the fact that you've introduced this legislation.

My question relates to the issue that you just raised, and when you stated that you have got an opinion from a counsel that the phrase "doing business" meets a test that would eliminate not-for-profits or political campaigning from the ambit of the types of literature that you would like to

curtail, what I'm wondering is that why would not the counsel recommend that, to make it specifically clear, that we just write it in the bill? In other words, what constitutional test would be -- would be impinged upon by us just not making the bill more clear so that we don't have any court tests later on that causes us to lose what I consider to be valuable legislation?

SENATOR MALTESE: Mr. President, I think the point is well taken, except that what we've tried to do with this bill over the years -- originally, it had terminology relating to commercial enterprise and we've tried with the soliciting business language to answer the objections. In addition, the -- the addition of the last portion of this line 4, the provisions of this section shall not apply to newspapers is again a response to objections as to how much of a newspaper would be considered as soliciting business and how much would be constitutionally protected under some non-commercial aspects.

The response to the question,

Senator, is that this is an agreed-upon bill with my Assembly sponsor and the Assembly sponsors, and he had to respond as I do in this house. He was doing the same in his house with the people that were supporting the bill, and we together arrived at the conclusion that the soliciting business would meet the test as far as non-profit groups, that there comes a point, I guess, that you could leave the test as the Supreme Court has at one point indicated, a common sense approach. Specifically in the Cincinnati case they spoke about a common sense approach, and I think that perhaps this would come under that -- that category, common sense approach. Without conceding in any way that this bill would not become law or not pass the Assembly I would say that if we indeed end up with repeat bills in the future, in others years, and I would not again take Senator Maziarz' suggestion but I would at that time again confer with my Assembly colleague and try to arrive at some solution to the non-profit aspects and the political pamphlets.

ACTING PRESIDENT MEIER:

Senator Paterson.

SENATOR PATERSON: Thank you very much, Senator Maltese.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: I certainly would like to compliment Senator Maltese for his work on this particular issue, and I will accept that answer and vote for the bill but I would like to point out that right in the bill there is an exception for newspapers which are placed, and I would think that to write into the bill, to make it clear that this is the type of business that depends on this type of contact, delivery of newspapers, and all I'm saying is that there are tenants groups, the Girl Scouts solicit in this fashion, there are not-for-profits, there is political campaigning. There are these types of endeavors that I thought should have been exempted, and I raise it because the type of work that I would like to have seen done on the bill has actually already been done in the case of newspapers, and we just think that it

would make a cleaner bill, would make the issue more clear, but if Senator Maltese believes that this meets the constitutional test, I will just suggest that I would rather have not have it left in doubt at all.

There's nothing in this bill that I have an objection to. It's something that should have been there and wasn't that I think just would have made the bill far better and I can understand the agreement as far as sponsorship, but I do think that we do have a duty and we would really not like to see this valuable legislation overturned on a technicality when we'd have to come all the way back here and to it over again.

I thought I'd just like to put my suggestion on the record. Otherwise, I support the bill.

ACTING PRESIDENT MEIER: Senator Kuhl.

SENATOR KUHL: Yes, I wonder if the Senator would yield to a question.

ACTING PRESIDENT MEIER: Sponsor yields.

SENATOR KUHL: I just

want to say, while I think the intent of the bill is laudatory certainly in the city of New York, I do note and I was a little confused when I first started to review the bill that I have the amendments to the Administrative Code of the city of New York, and in discussing with my staff people, they tell me that this was a memo that was being distributed as short a time ago as just a week ago, so I should say for the benefit of the members that are listening to this, that I understand there's a new memo but it's rather a surprise to me that all of a sudden we see a bill here that's statewide when it's been in past practice dealing with the city of New York.

Now, for the most part, I don't have any difficulty with you trying to address problems that you have in the city of New York, but certainly I have a problem with statewide legislation that may have a detrimental impact on a number of not-for-profit groups and other businesses in my area, and I just have a couple of questions.

Number one, under the current

reading of the bill, and correct me if I'm wrong relative to the intent of in, the legislation says that any papers, flyers or pamphlets soliciting business placed anywhere on private property where the owner has posted signs, O.K., will result in a violation.

Now, the question to you is, when you go through a mall in our area and the landlord of that facility has posted a sign against solicitation which would bring about a violation if there were solicitations and you have tenants who have leased property or store fronts from this landlord, and they choose to place these pamphlets on behalf of a not-for-profit in that area, is there a violation of the law under your statute?

SENATOR MALTESE: Mr. President, it would seem that there isn't, and I think that a question like that, a question would be responded to again by the terminology of the court as far as a common sense approach.

I think that we here are talking about non-public property. The bill has gone through many revisions and one of the

revisions dealt specifically with talking about private property as opposed to the public property. In addition, a subsequent addition to the bill was that the owner would post a sign to the effect that the placement of such papers would be prohibited, so I think in a mall establishment similar to that where there is some question as to whether the owner would encompass a person who leased a portion of that premises, I think there's no question that within the confines of the area leased, the -- the lessor would have the right to post such signs and within the confines of the mall where the owner has displayed that the owner would be permitted to post such a sign and enforce such a posting.

SENATOR KUHL: If Senator Maltese would continue to yield.

ACTING PRESIDENT MEIER: Senator continues to yield.

SENATOR KUHL: Along that same line of questioning then, Senator, given then the fact that brochures that transfer to customers in other places within the mall which were, say, in the general area of the

mall now, would we have a violation?

SENATOR MALTESE: Well, as far as aesthetics are concerned, you would have a type of violation. I assume as in every penal statute, you would have to have strict construction and I think there could be some showing that the person who's -- who has had prepared or printed or circulated the papers, flyers or pamphlets could be termed not - could be proven or shown to not be the cause of the litter, then I think the proof would save and absolve him from responsibility.

SENATOR KUHL: Will the Senator continue to yield?

ACTING PRESIDENT MEIER: Senator yields.

SENATOR KUHL: In your direct remarks, Senator, when you explained the bill, you, through your explanation, seemed to indicate it was your feeling that statutory construction by the judiciary would, in fact, lead to the removal of any liability of not-for-profits like Girl Scouts.

Let me pose to you a situation that is occurring in my district. We have

school -- Girl Scouts who are totally dependent upon their viability as a unit on the sale of Girl Scout cookies. We see Girl Scout cookies sold in -- down here in the corridors in the capital region. If Girl Scout units, little Brownies, were walking through the mall selling cookies and distributing -- or distributing brochures about where people could buy these cookie sales, would they be in violation of this statute if there was a sign posted by the landlord saying no solicitations of business?

SENATOR MALTESE: Mr. President, this was the question that came up last year, and I think had been posed by our colleague, Senator Dollinger, and it was responded to that it is the legislative intent of this bill and myself as sponsor and Assembly Stringer as sponsor in his house, that they would not be encompassed within the confines of this bill.

SENATOR KUHL: Let me ask you one further question. I think this goes to my support for Senator Paterson's suggestion that you think about pulling your bill back and

amending this to define this, because I think there's one reality here that is perhaps forgotten in the proposal, and that is where in the bill, if in fact a not-for-profit group is cited in violation -- and keep in mind now we're talking about, let's say, 20 Brownie Scouts going through a mall, each trying to distribute 20 pamphlets apiece.

Now, under your statute, each one of those pamphlets is going to cost that unit $250, and if they're successful with the distribution of 250 pamphlets at $250 you're talking about a minimum fine of $50,000.

Now, if they get cited, if there is some ornery, grumpy enforcement official who says, Well, I'm aware of Senator Maltese's law, and says, You can't do this and boy, I really don't want to do this, but I have to, and he issues them a citation. Now you've brought upon them, I think, the onerous burden financially of having to defend that violation, and I agree with Senator Paterson that I believe if you were to define the exemption for these types of units within your piece of legislation, that you would remove

that ultimate lawsuit and that huge cost upon a not-for-profit institution that really isn't necessary and certainly isn't your intent from the way I'm reading the law.

But my point to you would be, I think that we can change all of this, and I think there's time to do that. I note from the introduction date that you introduced this bill in January of 1997. It sat here a year, passed last year. I don't think the Assembly is -- just from historical perspective is going to take this bill up in its current form tomorrow, so it would seem to me that it would properly be presented if you look at an amendment and I apologize for bringing this to you at this last minute, but I wasn't aware that this bill really applied to more than the city of New York until I just asked you about 20 minutes ago, Senator; so I would just consider it a personal request on you to think about that amendment.

I don't want to see these institutions, these not-for-profit corporations who are in fact struggling to survive, promote a very noteworthy cause and

have a very noteworthy purpose in building training requirements and experience in life time experiences, put in this situation where they have to think about their viability, and I think it runs contrary to the kinds of things that we present on the floor of this house, Senator, in that we are always looking to remove liability and provide immunity to civic organizations, Little League, Girl Scouts, things of that nature, and I think that, well, again the purpose of this bill is laudatory, what you're attempting to do. I think there's some fine tuning you need to do to make it even better.

Thank you, Mr. President.

SENATOR MALTESE: Mr. President.

ACTING PRESIDENT MEIER: Senator Maltese.

SENATOR MALTESE: While I previously made a statement for Senator Paterson to review which I think covers a portion of what my good colleague, Senator Kuhl, had indicated, I think that a law enforcement official who had the -- and I

guess you can call it the alleged courage to ticket and possibly arrest the 20 little Brownies and bring them before some judicial body where you would have presumably an appointed or an elected jurist sitting in judgment who would then consider the fining of the -- the fining or punishment of these young persons who are seeking to do a community service, accompanied by their solicitors' parents and grandparents and voters and other people who would be interested, if somebody would have the audacity, the audacious courage to fine them, I think there would probably be a legislator in that district that would be able to find the initiative to change that.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

Will Senator Maltese yield to just two quick questions?

ACTING PRESIDENT MEIER: Senator yields.

SENATOR DOLLINGER: I won't deal with the Brownie issue. I think Senator

Kuhl did it perfectly. This bill, as I understand it, Senator, is designed to prohibit the delivery of ads, advertising for Chinese restaurants or pizzas or whatever, in the city of New York, specifically, or throughout the state now, currently, is that correct?

SENATOR MALTESE: Yes, it is.

SENATOR DOLLINGER: And there's an exception for newspapers, is that correct?

SENATOR MALTESE: Yes, there is.

SENATOR DOLLINGER: Through you, Mr. President. How do you justify the fact, Mr. President, that the newspaper is 50 percent ads soliciting business? That's what a newspaper is. Half of it is the delivery of news. The other half of it solicits business, including Chinese restaurant business, pizza business, and all kinds of business. A newspaper is a business solicitation tool. How do you justify making exception for newspapers when you're going to ban pamphlets that solicit business as well? What's the difference?

SENATOR MALTESE: Mr. President, the difference is that we were seeking to bring it within the confines of constitutionality and we did so that it would not be -- this statute would not be prohibited by the First Amendment and interpretation of the First Amendment by the courts.

SENATOR DOLLINGER: Thank you, Mr. President.

I appreciate Senator Maltese's attempt to explain what is a distinction in the law that makes this bill totally unconstitutional. We cannot as government reward one form of speech through a newspaper which is loaded with ads soliciting business for David Paterson's Pizzeria. We allow that to be delivered to the front door, but if David Paterson Pizzeria puts out a flyer and delivers it to the same door on top of the newspaper in which his ad is located, it becomes a violation of the law for him to place his pizza advertisement on the top of the newspaper.

One is constitutionally protected, and the other isn't, even though

it's the same ad? I would suggest, Senator Maltese, that the practical problems for not-for-profit groups that Senator Kuhl talked about are very real if we're going to apply a common sense approach. Common sense would dictate we have a specific exception for the Girl Scouts. We'd also have a specific exception, frankly, for those young students who drop a flyer at my house that says Johnny's Lawn Mowing Service, call this number.

This is commerce at its roots. This is small business where oftentimes the entrepreneur is small, under 6 feet tall. These are the kinds of things that, in my part of the world, are dropped at your door all the time. Babysitting, cat-sitting, dog-sitting, cut your lawn. These are the entrepreneurs of the next generation to be told by Senator Maltese that if I post a little sign that says, No Flyers, and he puts it at the door, I can call Johnny and say, You violated the law; you owe me money. We're suddenly putting a burden on the small entrepreneurs of New York State, suddenly sending them a message that

now we're going to be on their back instead of helping them.

I would suggest that this bill, given the noble intent of it as to what happens in New York City, considering all of these things becoming indicia of the fact you're not home, in my neck of the world what's the greatest indicia that you're not home is when newspapers pile up on your door step. Of course, under this bill they'll be able to do that under this law but, when a bunch of flyers end up on the front step, you'll be able to say they violate the law.

Frankly, I think in attempting to carve out an exception for newspapers, you have done the one thing that the Constitution says you can't do. That is you cannot favor one form of commercial speech over another. In this, we favor newspapers or flyers when they both have the same content, solicitation of ads.

Senator Maltese, I'll make you a bet right here. My bet is this. I'll spend a day in this chamber without a desk, I'll give you my desk, I'll have it transported

over there if this bill is determined to be constitutional. If it's unconstitutional, as I believe it on its face must be, because it discriminates between forms of protected speech, I'll take your desk, move it over here between Senator Markowitz and myself and you can stand for a day if you lose. If I lose, I'll give you my desk. You can fit it right over there on the Republican side for a day as well. I'll bet my desk on the fact that this is unconstitutional.

We shouldn't adopt this. It needs common sense refinement, like Senator Kuhl mentioned. It needs further refinement to pass any kind of reasonable constitutional test. I'll bet my desk that this is unconstitutional. We in government shouldn't be doing this. It's not our job to tell which form of speech is protected and which isn't. Let the speech occur. Let the young entrepreneurs go forward. Don't make an exception for newspapers to do it when it is clearly unconstitutional and unworthy of a vote in the chamber.

ACTING PRESIDENT MEIER:

Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

You know, Senator Dollinger, there is one distinction between having a New York Times delivered to your doorstep every morning or the Daily News, whatever paper you choose, and my going home tonight and finding three -- probably on the average three circulars on my front steps which have been there probably the last few days telling anybody who wants to know that I'm not home.

The difference is that I could order the New York Times to be delivered and it will be delivered, but if I have it on order, I can tell them I no longer have it on order. It's my choice. The garbage that's left there every day seemingly is not my choice, and what Senator Maltese simply wants to do is to enable someone like me to put a little sign on the lawn that says, Please do not leave flyers on my doorstep.

I think I have a constitutional right as well not to have the front of my house littered, not to have a clear signal for

any thief that there's nobody home. I think I have that right. Now this preoccupation with Girl Scouts, I guess maybe they differ, but where I come from, the Girl Scout Troops in my neighborhood ring the door bell. Some of them put up a bridge table in the local shopping center. I even read the other day that they're on the internet, but they have never thrown a flyer at my door bell. Maybe Jamaica is different, but I have never seen them, but I too accept the explanation that Senator Maltese gave as it relates to this bill with regards to those claims and organizations.

We have a problem of litter, of security, of this on my property. Keep in mind someone has unlawfully, as far as I'm concerned, walked up to my door, crossed my lawn and left something there that I didn't order, and didn't solicit. It was either a mailman, a delivery man, a newspaper deliverer where I have ordered nothing. I think my rights are being violated, and so do all my constituents, and if there is one issue that I get communicated to about, it's this one, all the time.

Now, I have a lady in my district who is blind, and they are constantly dumping stuff at her door, in her doorway. Obviously it's of no value to them because she can't see, and I contacted, because she sent me the information, the delivery organization and said, Please stop delivering this -- these flyers, usually in a cellophane bag, to this woman. It's not doing you any good and it's causing her a great deal of discontent. They don't stop. They ignore me. So you can't apparently even appeal to their -- how do I put it appropriately -- feeling toward an individual under those circumstances.

So I would say say this bill is long overdue. I hope it gets through this time both houses, as quickly as possible.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, one thing just to follow up with Senator Padavan, I understand the concern about excess litter. The only problem is there's no differentiation between that and your political campaign workers coming up to

the people in your district in October with a little flyer and sticking it in the door. It happens every fall.

SENATOR PADAVAN: We don't do that.

SENATOR DOLLINGER: You're out of order, because I have the floor.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: The point is any one of us who goes door to door with a political flyer in the months of September and October is doing exactly the same thing as Senator Maltese wants to stop, and I'm just suggesting that you can't take commercial speech and political speech and say -

SENATOR PADAVAN: Will the Senator yield to a question?

SENATOR DOLLINGER: Mr. President, when I finish, I'd be glad to.

ACTING PRESIDENT MEIER: Senator Dollinger will yield when he finishes his statement.

SENATOR DOLLINGER: I just want to finish the thought, Senator Padavan, and

that is we can't discriminate between forms of speech. We can't allow a line of people to stand at the front door of Senator Padavan's house, one of them has got the New York Times in his hand and he gets to walk up to the door and put it on the door. The other has Senator Padavan's political flyer and he gets to walk up and put it on the doorstep, but the guy who wants to sell him David Paterson Pizzeria, we're telling him you can't do it. You don't get to communicate with Senator Padavan.

I suggest to you, I'm willing to bet my desk on it that you cannot discriminate between those forms of speech. We can't do it. We can't say one is O.K. and the other is not when they do exactly the same thing, have the exact same impact on the person that lives in the house. You can't do it. We can't do it. We can't favor one at the expense of another. That's exactly what the First Amendment was designed to do was to protect all forms of speech from government intrusion, much less the government saying, It's O.K. if you drop political flyers. It's O.K. if you drop newspapers which are loaded

with solicitations for business, but if David Paterson Pizzeria wants to take his little flyer and roll it up and put it in the door, that's a no-no.

I suggest to you we cannot discriminate as much as we'd like to. We can not discriminate between those forms of free speech. My desk, I'll put my desk bet on the table any day.

SENATOR PADAVAN: Will you yield?

SENATOR DOLLINGER: Yes.

ACTING PRESIDENT MEIER: Senator yields.

SENATOR PADAVAN: First, Senator, I don't allow litter when it's my campaign, to be distributed in my district. For one reason, my constituents don't like it. Maybe yours do.

I can also tell you in the city of New York there is a local law prohibiting -- prohibiting the posting of campaign signs or literature on poles. Now, I guess you would have probably objected to that on free speech grounds, but it's a law of the city of

New York.

However, my question to you is very simple. You talked about campaign literature and I or anyone else doing what you outline, but the bill, Senator, specifically refers to a business. It says the owner of any business, flyers or pamphlets soliciting business.

Now, I don't relate campaigning to business although maybe you do, but nevertheless, I believe it's quite clear here that we're talking about commercial enterprise and, therefore, your analogy doesn't make any sense.

SENATOR DOLLINGER: With all due respect to Senator Padavan, my expectation is that at least 25 percent of the people in my district, if they don't vote for me when they get my flyer in their door, they think it's litter too. I think it's political speech; they think it's litter because they throw it in the trash baskets and say, I wouldn't vote for that guy in my life, so I guess litter, Senator Padavan, is all in the eyes of the beholder, what constitutes litter;

but my point is simply this: When it's a flyer and it says "Buy Rick Dollinger on Election Day" which is what, in essence, the flyer says, what's the difference between that flyer and the one that says by "Paterson's Pepperoni Pizza"? And the answer is there's no difference.

I'm just suggesting, Senator Padavan, that we cannot discriminate between forms of communication and you can't have newspapers which are loaded with ads. What do you do with the Penny Savers that are distributed all through Rochester, New York? Looks like a newspaper, is just loaded with ads. Is it unconstitutional to say you can put the New York Times there, but you can't put the Penny saver there? We can put Senator Padavan's flyer there, but we can't put Paterson's Pizzeria?

I'm just suggesting the government can't draw those distinctions. If we allow commercial speech, if we allow political speech, the effect is the same, one walking to your door sticking it in your doorknob and leaving it there. We can't say

that one form of content is bad and other forms of content are good. That's what the First Amendment was designed to do, to prevent the government from differentiating between context in commercial speech.

I just don't believe it's constitutional. I don't believe it ever will be and again there's the offer. It's your desk for a day if you want to bet.

SENATOR SKELOS: Last section.

ACTING PRESIDENT MEIER: Read the last section.

Senator Maltese.

SENATOR MALTESE: Mr. President, if I could just respond in part, with my apologies to the leader.

I believe that the main point that Senator Dollinger has been making is differentiation between a constitutionally protected material, free speech, and yet the Supreme Court in Oraleck versus Ohio State Bar Association indicated that, and quote, "We have stated that speech proposing a commercial transaction is entitled to lesser protection than other types of constitutionally

guaranteed expression," and Justice Stevens, in another Supreme Court decision, had made a differentiation -- well, I can't find it now, but the differentiation, I think, in the Cincinnati case was that there are degrees of protection there that the Constitution and the First Amendment gives and that the Supreme Court can differentiate depending on common sense and the extent to which the speech is, in fact, commercial so, therefore, there is a differentiation between different degrees of protected speech.

It's very plain that they place commercial speech below political speech, political pamphlets and other types of speech; so, therefore, I think that in relation to this legislation that it can protect newspapers if you will or differentiate between newspapers and brochures soliciting business.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT MEIER: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 260 are Senators Dollinger, Kuhl and Meier. Ayes 51, nays 3.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: I believe that completes the calendar.

Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: There's some housekeeping, Senator Skelos.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT MEIER: Senator Balboni. No? Senator Dollinger. You scratch your nose there, it's dangerous.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, may I have unanimous consent to also be recorded in the negative on Calendar

Number 207.

ACTING PRESIDENT MEIER: Without objection, Senator Dollinger will be recorded in the negative on Calendar Number 207.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I have a personal request. Can we have the address of Paterson Pizzeria? It's been batted around, and we could take it up stairs to our staffs.

SENATOR DOLLINGER: Send you a flyer.

SENATOR MARCELLINO: Send me a flyer, Senator.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Any further housekeeping?

On behalf of Senator Bruno, I hand up the fooling leadership changes and ask it be filed in the Journal, and there being no further business, I move we adjourn until Monday, March 9th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MEIER: The leadership changes will be filed in the Journal.

On motion, the Senate is adjourned until Monday, March 9th, at 3:00 p.m., intervening days will be legislative days.

(Whereupon at 12:09 p.m., the Senate adjourned.)