

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ALBANY, NEW YORK

March 4, 1998

11:21 a.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

1 P R O C E E D I N G S

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

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

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

11 (A moment of silence was
12 observed.)

13 Reading of the Journal.

14 THE SECRETARY: In Senate,
15 Tuesday, March 3rd. The Senate met pursuant
16 to adjournment. The Journal of Monday, March
17 2nd, was read and approved. On motion, Senate
18 adjourned.

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

22 Presentation of petitions.

23 Messages from the Assembly.

24 Messages from the Governor.

25 Reports of standing

1 committees.

2 Reports of select committees.

3 Communications and reports from
4 state officers.

5 Motions and resolutions.

6 Senator Marcellino.

7 SENATOR MARCELLINO: Thank you,
8 Mr. President.

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

12 ACTING PRESIDENT MEIER: So
13 ordered.

14 SENATOR MARCELLINO: Thank you,
15 sir.

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

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

24 ACTING PRESIDENT MEIER: So
25 ordered.

1 Senator Skelos.

2 SENATOR SKELOS: Do the
3 non-controversial calendar.

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

7 THE SECRETARY: Calendar Number
8 28, by Senator Alesi, Senate Print 5930, an
9 act to amend the Penal Law, in relation to the
10 crime of failure to obey a police officer.

11 ACTING PRESIDENT MEIER: Read
12 the last section.

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

16 ACTING PRESIDENT MEIER: Call
17 the roll.

18 (The Secretary called the
19 roll.)

20 THE SECRETARY: Ayes 42.

21 ACTING PRESIDENT MEIER: The
22 bill is passed.

23 THE SECRETARY: Calendar Number
24 43, by Senator Hannon, Senate Print 5042, an
25 act to amend the Public Health Law.

1 ACTING PRESIDENT MEIER: Read
2 the last section.

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

5 ACTING PRESIDENT MEIER: Call
6 the roll.

7 (The Secretary called the
8 roll.)

9 THE SECRETARY: Ayes 42.

10 ACTING PRESIDENT MEIER: The
11 bill is passed.

12 THE SECRETARY: Calendar Number
13 62, by Senator LaValle, Senate Print 35-A.

14 SENATOR SKELOS: Lay it aside
15 for the day.

16 ACTING PRESIDENT MEIER: Lay it
17 aside for the day.

18 THE SECRETARY: Calendar Number
19 63, by Senator LaValle, Senate Print -

20 SENATOR SKELOS: Lay it aside
21 for the day.

22 ACTING PRESIDENT MEIER: Lay it
23 aside for the day.

24 THE SECRETARY: Calendar Number
25 68, by Senator Saland, Senate Print 489, an

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

3 ACTING PRESIDENT MEIER: Read
4 the last section.

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

7 ACTING PRESIDENT MEIER: Call
8 the roll.

9 (The Secretary called the
10 roll.)

11 THE SECRETARY: Ayes 42.

12 ACTING PRESIDENT MEIER: The
13 bill is passed.

14 THE SECRETARY: Calendar Number
15 77, by Senator Larkin, Senate Print 2369-A, an
16 act to amend the Navigation Law.

17 ACTING PRESIDENT MEIER: Read
18 the last section.

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

21 ACTING PRESIDENT MEIER: Call
22 the roll.

23 (The Secretary called the
24 roll.)

25 THE SECRETARY: Ayes 42.

1 ACTING PRESIDENT MEIER: The
2 bill is passed.

3 THE SECRETARY: Calendar Number
4 175, by Senator Volker, Senate Print 5217, an
5 act to amend the Civil Service Law.

6 ACTING PRESIDENT MEIER: Read
7 the last section.

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

10 ACTING PRESIDENT MEIER: Call
11 the roll.

12 (The Secretary called the
13 roll.)

14 THE SECRETARY: Ayes 43.

15 ACTING PRESIDENT MEIER: The
16 bill is passed.

17 I'm sorry. Senator Gentile.

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

20 ACTING PRESIDENT MEIER: The
21 bill is passed.

22 Secretary will read.

23 THE SECRETARY: Calendar Number
24 204, by Senator Lack, Senate Print 1167, an
25 act to amend the Election Law, in relation to

1 polling places in Suffolk County.

2 ACTING PRESIDENT MEIER: Read
3 the last section.

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

6 ACTING PRESIDENT MEIER: Call
7 the roll.

8 (The Secretary called the
9 roll.)

10 THE SECRETARY: Ayes 43.

11 ACTING PRESIDENT MEIER: The
12 bill is passed.

13 THE SECRETARY: Calendar Number
14 207, by Senator Farley, Senate Print 2651, an
15 act to amend the Election Law and the State
16 Finance Law.

17 ACTING PRESIDENT MEIER: Read
18 the last section.

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

21 ACTING PRESIDENT MEIER: Call
22 the roll.

23 (The Secretary called the
24 roll.)

25 THE SECRETARY: Ayes 43.

1 ACTING PRESIDENT MEIER: The
2 bill is passed.

3 THE SECRETARY: Calendar Number
4 243, by Senator Marchi, Senate Print Number
5 6007, an act to amend the Real Property Tax
6 Law, in relation to exemption.

7 ACTING PRESIDENT MEIER: Read
8 the last section.

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

11 ACTING PRESIDENT MEIER: Call
12 the roll.

13 (The Secretary called the
14 roll.)

15 THE SECRETARY: Ayes 44.

16 ACTING PRESIDENT MEIER: The
17 bill is passed.

18 THE SECRETARY: Calendar Number
19 260, by Senator Maltese, Senate Print 1650-A,
20 an act to amend the General Business Law.

21 ACTING PRESIDENT MEIER: Read
22 the last section.

23 SENATOR PATERSON: Lay that
24 aside, please.

25 ACTING PRESIDENT MEIER: Lay

1 the bill aside.

2 THE SECRETARY: Calendar Number
3 270, by Senator Johnson, an act to amend the
4 Real Property Tax Law.

5 ACTING PRESIDENT MEIER: Read
6 the last section.

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

9 ACTING PRESIDENT MEIER: Call
10 the roll.

11 (The Secretary called the
12 roll.)

13 THE SECRETARY: Ayes 43.

14 ACTING PRESIDENT MEIER: The
15 bill is passed.

16 THE SECRETARY: Calendar Number
17 280, by Senator Skelos.

18 SENATOR SKELOS: Lay the bill
19 aside for the day -

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

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

24 ACTING PRESIDENT MEIER: At the
25 request of Senator Leichter.

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

4 ACTING PRESIDENT MEIER: Read
5 the last section.

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

9 ACTING PRESIDENT MEIER: Call
10 the roll.

11 (The Secretary called the
12 roll.)

13 THE SECRETARY: Ayes 45.

14 ACTING PRESIDENT MEIER: The
15 bill is passed.

16 Senator Dollinger.

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

21 ACTING PRESIDENT MEIER:
22 Without objection, Senator Dollinger will be
23 recorded in the negative on Calendar Number
24 175.

25 SENATOR DOLLINGER: Thank you,

1 Mr. President.

2 ACTING PRESIDENT MEIER:

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

5 SENATOR SKELOS: Controversial
6 calendar, please.

7 ACTING PRESIDENT MEIER:

8 Secretary will read.

9 THE SECRETARY: Calendar Number
10 260, by Senator Maltese, Senate Print 1650-A,
11 an act to amend the General Business Law.

12 SENATOR DOLLINGER:

13 Explanation.

14 ACTING PRESIDENT MEIER:

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

17 SENATOR MALTESE: Yes, Mr.

18 President.

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

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

1 the city of New York but throughout the
2 state.

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

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

1 violation. A civil penalty of not less than
2 \$250 nor more than \$1,000 will be imposed for
3 each violation.

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

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

25 We looked into some of the

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

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

14 ACTING PRESIDENT MEIER: Yes.
15 Senator Paterson.

16 SENATOR PATERSON: Thank you,
17 Mr. President.

18 If Senator Maltese would yield
19 for a question.

20 SENATOR MALTESE: Yes.

21 ACTING PRESIDENT MEIER:
22 Senator yields? Senator yields, Senator
23 Paterson.

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

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

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

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

10 SENATOR MALTESE: Mr.

11 President, I think the point is well taken,
12 except that what we've tried to do with this
13 bill over the years -- originally, it had
14 terminology relating to commercial enterprise
15 and we've tried with the soliciting business
16 language to answer the objections. In
17 addition, the -- the addition of the last
18 portion of this line 4, the provisions of this
19 section shall not apply to newspapers is again
20 a response to objections as to how much of a
21 newspaper would be considered as soliciting
22 business and how much would be
23 constitutionally protected under some
24 non-commercial aspects.

25 The response to the question,

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

25 ACTING PRESIDENT MEIER:

1 Senator Paterson.

2 SENATOR PATERSON: Thank you
3 very much, Senator Maltese.

4 Mr. President, on the bill.

5 ACTING PRESIDENT MEIER:
6 Senator Paterson, on the bill.

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

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

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

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

19 ACTING PRESIDENT MEIER:
20 Senator Kuhl.

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

23 ACTING PRESIDENT MEIER:
24 Sponsor yields.

25 SENATOR KUHL: I just

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

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

25 Number one, under the current

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

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

17 SENATOR MALTESE: Mr.

18 President, it would seem that there isn't, and
19 I think that a question like that, a question
20 would be responded to again by the terminology
21 of the court as far as a common sense
22 approach.

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

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

17 SENATOR KUHL: If Senator
18 Maltese would continue to yield.

19 ACTING PRESIDENT MEIER:
20 Senator continues to yield.

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

1 mall now, would we have a violation?

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

13 SENATOR KUHL: Will the Senator
14 continue to yield?

15 ACTING PRESIDENT MEIER:
16 Senator yields.

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

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

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

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

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

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

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

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

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

5 But my point to you would be, I
6 think that we can change all of this, and I
7 think there's time to do that. I note from
8 the introduction date that you introduced this
9 bill in January of 1997. It sat here a year,
10 passed last year. I don't think the Assembly
11 is -- just from historical perspective is
12 going to take this bill up in its current form
13 tomorrow, so it would seem to me that it would
14 properly be presented if you look at an
15 amendment and I apologize for bringing this to
16 you at this last minute, but I wasn't aware
17 that this bill really applied to more than the
18 city of New York until I just asked you about
19 20 minutes ago, Senator; so I would just
20 consider it a personal request on you to think
21 about that amendment.

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

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

15 Thank you, Mr. President.

16 SENATOR MALTESE: Mr.
17 President.

18 ACTING PRESIDENT MEIER:
19 Senator Maltese.

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

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

16 ACTING PRESIDENT MEIER:

17 Senator Dollinger.

18 SENATOR DOLLINGER: Thank you,
19 Mr. President.

20 Will Senator Maltese yield to
21 just two quick questions?

22 ACTING PRESIDENT MEIER:

23 Senator yields.

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

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

8 SENATOR MALTESE: Yes, it is.

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

11 SENATOR MALTESE: Yes, there
12 is.

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

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

8 SENATOR DOLLINGER: Thank you,
9 Mr. President.

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

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

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

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

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

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

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

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

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

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

25 ACTING PRESIDENT MEIER:

1 Senator Padavan.

2 SENATOR PADAVAN: Thank you,
3 Mr. President.

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

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

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

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

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

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

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

18 ACTING PRESIDENT MEIER:
19 Senator Dollinger.

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

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

4 SENATOR PADAVAN: We don't do
5 that.

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

8 ACTING PRESIDENT MEIER:
9 Senator Dollinger.

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

17 SENATOR PADAVAN: Will the
18 Senator yield to a question?

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

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

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

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

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

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

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

10 SENATOR PADAVAN: Will you
11 yield?

12 SENATOR DOLLINGER: Yes.

13 ACTING PRESIDENT MEIER:

14 Senator yields.

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

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

1 New York.

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

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

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

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

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

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

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

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

10 SENATOR SKELOS: Last section.

11 ACTING PRESIDENT MEIER: Read
12 the last section.

13 Senator Maltese.

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

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

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

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

21 ACTING PRESIDENT MEIER: Read
22 the last section.

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

25 ACTING PRESIDENT MEIER: Call

1 the roll.

2 (The Secretary called the
3 roll.)

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

8 ACTING PRESIDENT MEIER: The
9 bill is passed.

10 Senator Skelos.

11 SENATOR SKELOS: I believe that
12 completes the calendar.

13 Is there any housekeeping at
14 the desk?

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

17 SENATOR DOLLINGER: Mr.
18 President.

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

22 Senator Dollinger.

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

1 Number 207.

2 ACTING PRESIDENT MEIER:

3 Without objection, Senator Dollinger will be
4 recorded in the negative on Calendar Number
5 207.

6 Senator Marcellino.

7 SENATOR MARCELLINO: Mr.

8 President, I have a personal request. Can we
9 have the address of Paterson Pizzeria? It's
10 been batted around, and we could take it up
11 stairs to our staffs.

12 SENATOR DOLLINGER: Send you a
13 flyer.

14 SENATOR MARCELLINO: Send me a
15 flyer, Senator.

16 ACTING PRESIDENT MEIER:

17 Senator Skelos.

18 SENATOR SKELOS: Any further
19 housekeeping?

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

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.)