THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 1, 2000

11:03 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.

Will everyone present please rise and repeat with me the Pledge of Allegiance to the Flag.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT MEIER: In the absence of clergy, may we now bow our heads in a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, February 29, the Senate met pursuant to adjournment. The Journal of Monday, February 28, 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 Kuhl.

SENATOR KUHL: Yes, Mr. President. On behalf of Senator McGee, on page 25 I offer the following amendments to Calendar Number 310, Senate Print 4620A, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR KUHL: Also, Mr. President, on behalf of Senator Padavan, on page 26 I offer the following amendments to Calendar Number 327, Senate Print 6427, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: Amendments received. The bill will stay on the Third Reading Calendar.

SENATOR KUHL: Also, on behalf of Senator Bruno, Mr. President, on page 27 I offer the following amendments to Calendar Number 332, Senate Print 909, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received. The bill will remain on the Third Reading Calendar.

SENATOR KUHL: And lastly, Mr. President, on behalf of Senator Trunzo, on page 27 I offer the following amendments to Calendar Number 335, Senate Print 1076A, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR KUHL: Thank you.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up the noncontroversial calendar.

ACTING PRESIDENT MEIER: The Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 139, by Senator Wright, Senate Print 6304, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

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, 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 147, by Senator Marcellino, Senate Print 4134A, an act to amend the Environmental Conservation Law, in relation to management of wildlife resources.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first day of January.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 184, by Senator Morahan, Senate Print 5725A, an act to amend the Education Law, in relation to providing for an additional annual apportionment.

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, 41.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

236, by Senator Kuhl, Senate Print 3244, an act to amend the Vehicle and Traffic Law, in relation to authorizing the operation.

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, 41.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 254, by Senator Hannon, Senate Print 813, an act to amend the Criminal Procedure Law, in relation to imposing plea bargaining limitations.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DOLLINGER: Lay the bill aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number

263, by Senator Bruno, Senate Print 5898, an act to amend the -

SENATOR SKELOS: Lay the bill aside temporarily.

ACTING PRESIDENT MEIER: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 268, by Senator Larkin, Senate Print 6279, an act to repeal Chapter 57 of the Laws of 1974 incorporating.

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, 41.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 269, by Senator Marcellino, Senate Print 6284, an act authorizing the assessors of the County of Nassau.

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.)

ACTING PRESIDENT MEIER: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Mr. President, just to explain my vote briefly.

I'm going to vote no on this bill. This is another one of the continuing bills that we have from Nassau County every year because of the tax-exempt status of properties that, at least to my understanding -- and I've only read it briefly -- are transferred during a period of time and they're delayed in applying for their tax-exempt status.

I continue to believe that this issue -- which plagues, frankly, communities across the state. I have a couple in my own district which have run into the same problem. We either should do a statewide bill that settles this issue once and for all, allows for partial tax exemptions in property tax

years, or we're going to continue to have to do this on a case-by-case basis.

It just seems to me that the better approach is to have a statewide bill. We did this, as Senator Marcellino knows, with the pension system when we gave the pension authorities the ability to resolve disputes with the pension system on a case-by-case basis.

We should do the same thing with state tax-assessing units, give them the ability to do it on a case-by-case basis so that the inequity and the unfairness that this bill highlights can be handled without having to have an appeal to the State Legislature, which of course carries with it a political side to it and a potential for unfairness in one part of the state versus what happens in another.

I appreciate the sentiment and the goodwill with which Senator Marcellino brings the bill to the floor. But until we have a statewide method for addressing this problem, I'm going to continue to vote no, Madam President.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 45. Nays, 1. Senator Dollinger recorded in the negative.

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 271, by Senator Goodman, Senate Print 1101, an act to amend the Transportation Law, in relation to increasing penalties.

SENATOR DUANE: Lay it aside, please.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 275, by Senator LaValle, Senate Print 1971, an act to amend the Education Law, in relation to the unlawful sale of dissertations, theses, and term papers.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 277, by Senator Saland, Senate Print 3021A, an act to amend the Executive Law and the Education Law, in relation to providing security information.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first day of September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 315, by Senator Johnson, Senate Print 1590A, an act to amend the Real Property Tax Law, in relation to establishing assessments.

THE PRESIDENT: Read the last section.

SENATOR DOLLINGER: Lay it aside, Madam President.

THE PRESIDENT: The bill is laid aside, Senator.

Senator Skelos, that completes the reading of the noncontroversial calendar.

Senator Duane -

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: -- why do you rise?

SENATOR DUANE: I'd like to ask for unanimous consent to be recorded in the negative on Calendar Number 236.

THE PRESIDENT: Senator Duane, you will be so recorded as voting in the negative on Calendar Number 236.

SENATOR DUANE: Thank you.

THE PRESIDENT: And that's without objection.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could go to the controversial calendar

and start with Senator Johnson's bill, Calendar Number 315.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 315, by Senator Johnson, Senate Print 1590A, an act to amend the Real Property Tax Law, in relation to establishing assessments.

THE PRESIDENT: Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: Yes, Madam President.

This bill simply corrects the law to say essentially that waterfront-dependent businesses -- marinas, boatyards, boat sale centers, water-dependent -- shall be assessed at their current use and not at the highest and best use.

This avoids the current situation where many of these marinas and the boatyards are being sold for housing because the tax burden is just too high to bear to maintain that facility. And of course everyone who likes to use the water is deprived, then, of a place to dock his boat, have it serviced, and

so on.

In other words, if you live on an island, live on a lake, live on a river, you are really being denied the services which private enterprise would willingly provide if they weren't taxed out of business.

And so this just says tax it at its use and don't tax it at a value greatly exceeding the revenue that can be derived from that property.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, if Senator Johnson will just yield to a question.

THE PRESIDENT: Senator Johnson, will you yield to a question?

SENATOR JOHNSON: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President.

Does this bill deviate from the standard that we use with respect to all other

commercial properties or all other properties that are on the tax roll? Are we really changing the standard in this bill by going to a -- something other than the best and highest use of the land?

SENATOR JOHNSON: Well, what we're saying here, essentially, is that waterfront property is limited. Commercial property per se is really unlimited. And of course these people have the same opportunity as a commercial operation on another location to go to court in an Article 78 proceeding, possibly get their taxes reduced.

But this is an unnecessary redundancy that they shouldn't be forced to go through every couple of years in order to maintain their property. I think waterfront property is a unique piece of property.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, if Senator Johnson will yield to another question.

THE PRESIDENT: Senator, will you yield?

SENATOR JOHNSON: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: I don't dispute, Senator Johnson, that waterfront property is unique, given its limited amount, especially on a coastline like Long Island or, frankly, up in my neck of the woods, bordering Lake Ontario.

My question is, does this bill create a differentiation between properties that have docks and marinas on them and other waterfront properties that may not have such facilities?

In other words, if you had two parcels next to each other, one had a dock and a marina on it and it would be valued under your bill under this "value in use" concept, and you had a property right next door to it that had no marina or docking facilities but was simply vacant land, would the second piece of property continue to be valued on its highest and best use and the first property be valued on this value-in-use basis?

Are we creating an inequity between the way we deal with waterfront property -- is it simply on the basis of the fact of whether they've got a marina on them?

SENATOR JOHNSON: Well, let's put it this way. Vacant real estate on the waterfront is valued at its highest and best use. But where there's an established facility there which is being overtaxed, they would get relief through this bill.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Again, through you, Madam President.

Senator Johnson, you used the phrase "overtaxed." Under the current system, they're properly taxed. What you're suggesting is that for reasons of access and other reasons, we should treat marina properties differently than other waterfront properties; is that correct?

SENATOR JOHNSON: We're talking about commercial property, essentially. All right? This is regarding commercial waterfront property, nonresidential waterfront

property which is already developed.

As I said to you, this would eliminate the necessity of these boatyard owners either being overtaxed and going out of business or constantly bringing actions to bring the taxes in line with the revenue developed from that property -- which, as you know, is what happens in an Article 78 or a - what's the other proceeding?

SENATOR DOLLINGER: Certiorari.

SENATOR JOHNSON: -- certiorari proceedings that are done all over this state and all over this country -- to eliminate the necessity of doing that and therefore hope to continue to preserve the waterfront property which is serving the residents of our community and which, if that's developed into condos, that land is taken away from the general use by the community for docking boats, having your boat serviced, and so on.

SENATOR DOLLINGER: Again, through you, Madam President. I apologize for belaboring this. I just want to make sure I understand it clearly. If Senator Johnson will yield to a question.

THE PRESIDENT: Senator Johnson, do you continue to yield?

SENATOR JOHNSON: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: In the example I used a moment ago where you have one property that has marina facilities already developed and you have a vacant lot next door, my question is, will there be a difference in the method of valuing the property for real property tax purposes between the already developed commercial site and the vacant commercial site? And, if so, how do you reconcile that difference?

SENATOR JOHNSON: Counsel doesn't apprehend the problem which you have postulated.

SENATOR DOLLINGER: Well, let me go back and again, through you, Madam President, if I can, restate the question.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: I'm simply

trying to find out, Senator Johnson, whether this treats all waterfront property the same or whether it only treats those that are currently commercially developed. Could you just explain that to me and tell me, does it treat them all the same or does it treat only those which are commercially developed?

SENATOR JOHNSON: Senator, I would say that in regards to property which is already developed, not vacant land -- we're talking about nonresidential activities of a water-dependent nature. I guess empty land doesn't really have any activities on it at the moment. So I would say that it refers to developed property, waterfront property commercially developed.

SENATOR DOLLINGER: Again, through you, Madam President, just so I make sure -

THE PRESIDENT: Senator Johnson, do you continue to yield for another question?

SENATOR JOHNSON: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: I apologize, through you, Madam President, for belaboring the point. I just want to make sure I understand.

Is the property that already has improvements on it going to be assessed in a value of use but the property next to it, which is also commercially zoned but is vacant, will that continue to be assessed at the highest and best use when it has nothing on it?

SENATOR JOHNSON: Yes. Yes, that's correct. That's my understanding of the bill.

SENATOR DOLLINGER: Through you, Madam President, I appreciate Senator Johnson's patience. But -

THE PRESIDENT: Senator Johnson, do you continue to yield -

SENATOR DOLLINGER: Actually, Madam President, I don't need him to continue to yield. I'll just address the bill, if I can.

THE PRESIDENT: On the bill? All right, go ahead, Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, I voted in favor of this bill in the past, I guess not fully understanding the implication of it.

Because it seems to me that if what we're doing is drawing a distinction between properties and waterfront properties -- which I agree with you, Senator Johnson, are in short supply, given the finite amount of appropriate frontage, whether it's on Lake Ontario, Lake Erie or, frankly, on Long Island Sound. It seems to me that what we will do if we pass this bill and this bill becomes law is we're going to create an inequity in the way we treat similarly situated properties.

One property will be taxed at a slower rate, at a smaller rate, because it is being used, currently used, as marina facilities, whereas a similarly situated property which is undeveloped will find itself still subject to the highest and best use method of appraisal and therefore pay at a higher rate or a higher amount of taxes.

That seems to me to be an inconsistency that will drive the way this

bill operates. And, frankly, it could create even greater inequities and greater unfairness for shorefront property owners.

So I know that the Conference of Mayors and the communities are against this because of the tax-shifting effect of reducing and changing the way we appraise properties in this state. I frankly think that this creates an unacceptable inequity between certain types of shore property operators and others that already have currently developed land. And based on the opposition of the Conference of Mayors, I'm not sure that it's justified and I think it may create only greater inequities downstream.

I'm going to change my vote in the negative this year, Madam President. But it's an interesting issue, and I think a complicated one that calls into question the whole way we evaluate waterfront properties. I'm not sure this is the right approach.

Thank you.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect January 1.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 1. Senator Dollinger recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, I would like to be recorded in the negative on Calendar Number 263.

THE PRESIDENT: Without objection.

SENATOR MONTGOMERY: Thank you.

THE PRESIDENT: That has been laid aside, Senator Montgomery. That bill has been laid aside.

SENATOR MONTGOMERY: I'm sorry. Okay, thank you.

THE PRESIDENT: So we'll wait on that.

The Secretary will read.

THE SECRETARY: Calendar Number 254, by Senator Hannon, Senate Print 813, an

act to amend the Criminal Procedure Law, in relation to imposing plea bargaining limitations.

SENATOR DUANE: Explanation.

SENATOR SKELOS: Lay the bill aside for the day.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 263, by Senator Bruno, Senate Print 5898 -

SENATOR SKELOS: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 271, by Senator Goodman, Senate Print 1101, an act to amend the Transportation Law, in relation to increasing penalties.

SENATOR DUANE: Explanation.

THE PRESIDENT: Senator Goodman.

SENATOR SKELOS: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

Senator Skelos.

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

THE PRESIDENT: No, Senator.

SENATOR SKELOS: Any substitutions to be made?

THE PRESIDENT: There are no substitutions, Senator.

SENATOR SKELOS: The Senate will stand at ease.

THE PRESIDENT: The Senate stands at ease.

(Whereupon, the Senate stood at ease at 11:24 a.m.)

(Whereupon, the Senate reconvened at 11:25 a.m.)

ACTING PRESIDENT MORAHAN: I ask the house to come to order.

SENATOR SKELOS: There will be an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Rules Committee -- what did you say, Senator?

SENATOR SKELOS: In the Majority Conference Room.

ACTING PRESIDENT MORAHAN: In the Majority Conference Room.

SENATOR SKELOS: And we'll stand at ease, please.

ACTING PRESIDENT MORAHAN: And the Senate will stand at ease.

(Whereupon, the Senate stood at ease at 11:26 a.m.)

(Whereupon, the Senate reconvened at 11:30 a.m.)

ACTING PRESIDENT MORAHAN: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time call up Calendar Number 263.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 263, by Senator Bruno, Senate Print 5898, an act to amend the Penal Law and the Highway Law, in relation to violence committed on school grounds.

ACTING PRESIDENT MORAHAN: Senator Bruno.

SENATOR BRUNO: Yes, Mr.

President.

The bill that's before us is a bill that we passed in this house unanimously last year. And it's referred to as Suzanne's Law. And today we celebrate a very sad anniversary, and that is the second year that Suzanne disappeared from the SUNY campus here in Albany and has not been heard from since.

Her parents, Doug and Mary Lyall, are here with us, and they have turned what is a terrible, terrible tragedy in their lives into something that can be positive to help others throughout this state.

What this bill does is just increase the penalties one notch on any crime that is committed in any school environment - that's nursery school, daycare centers, elementary schools, colleges. So that anyone that's on a campus will recognize that if they commit a violent crime or felony, they are going to be punished very, very severely.

Now, last year we passed the Campus Security Act. And that helped. And that was the result of Suzanne's disappearance. And what that did, and is now law, it coordinates

all the activities of the law enforcement people on the campus and in the municipality so that there is a plan when someone disappears or is hurt. It also established a hotline so that parents or any interested party can reach in in one place and get an immediate response, because minutes are critical when someone is hurt or disappears from a school environment.

So we're really indebted to the Lyalls, who are here with us, and to their family -- they have two children, Steven and Sandra; a granddaughter, Heather. And this has been a terrible thing for them to revisit.

But they have been courageous enough, and we thank you, for being here today and for being out there every day. They have collected, so far, something like 25,000 signatures to help the Assembly understand how critically important this issue is to the safety of young people throughout this state.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Bruno.

Senator Farley.

SENATOR FARLEY: Thank you very much, Mr. President. I rise in support of this legislation and in support of the Lyalls in this incredible tragedy.

You know, I'm a professor at the State University of New York at Albany. This is the second tragedy that has happened in this Capital District. Karen Wilson, a few years ago, was abducted, never heard from again. Suzanne Lyall has been abducted and never heard from again.

This sends a message to these predators that as they go to any campus in this state that we're going to go after them, the penalties are going to be increased, the reporting time is decreased.

I think it's critical that this - and I applaud my colleagues in this house. You supported this legislation 59 to nothing last year. And it is a piece of legislation that should become law.

As Senator Bruno said, the Lyalls have turned this tragedy and this personal torment that they go through that never has any closure -- they still don't know where

their daughter is -- they've turned it into a positive thing.

And the fact that Suzanne is going to have a law named after her, I say wonderful. You have made a difference in this state. You've made a difference on behalf of everybody that has got a young person at a college campus.

This is something that we should pass. And I applaud my colleagues and urge them to support it.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Duane.

SENATOR DUANE: Thank you very much, Mr. President. Would the sponsor yield to a question?

ACTING PRESIDENT MORAHAN: Senator Bruno?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR DUANE: Thank you very much.

I also applaud this legislation, and I particularly applaud the provisions having to do with tightening up the reporting and the increase in penalty to not just prosecute those who would perpetrate these kinds of crimes but also to send a message that this kind of crime will not be tolerated in our state.

And I'm also wondering if, in light of the stronger reporting requirements and the increase in penalties, if the sponsor might not also be willing to allow the Senate to consider a bill which would do the exact same things on bias crimes.

ACTING PRESIDENT MORAHAN: Senator Bruno.

SENATOR BRUNO: What we're doing here -- and thank you, Senator, for your support and for your words of support and your recognition of the importance of what's happening here to deter crime.

But we see as a difference -- and we're open. You and I have discussed this issue, and we're open to doing whatever is necessary to protect the public and punish

them severely. And that hasn't changed. So that matter is still under discussion and review with me and with our conference.

But what we're talking about here is an area. We are in essence saying that if you, a perpetrator, invade an area that is special -- the geography of a school, a nursery, a daycare, an elementary school, a campus -- if you go -- in fact, this legislation allows signs to be put up that this is a special, secure school area. That's the difference in what we're doing. You trespass, you go on to commit a crime, you are going to be punished severely.

Now, in the bias-crime legislation that's out there and that has passed the Assembly, it includes all kinds of groups - race, creed, color -- that you are punished in a special way. And I guess the present perception is that it's almost, almost all-encompassing. So since it's almost all-encompassing, why do we want to exclude some people from being punished if the same crime takes place? Why do we want to exclude people?

What we have said is we'll take your bill and we'll increase the penalties for everybody, as if any crime that's committed on anyone is considered a bias crime. So you add a phrase to your bill that says "and all others," we'll pass it.

ACTING PRESIDENT MORAHAN: Senator Duane.

SENATOR DUANE: Through you, Mr. President, if the -- actually, I think I'm just going to speak on the bill, if I may.

ACTING PRESIDENT MORAHAN: Senator Duane, on the bill.

SENATOR DUANE: Well, I certainly want to again commend Senator Bruno on this legislation. I think that it will have its intended effect so that we will not in the future see similar tragedies such as the one that Suzanne Lyall's family has had to deal with. And I think that we all express our extreme sorrow and hope that in some small way we'll be able to prevent this from happening to other families.

I do also, though, want to comment that in fact the bias bill, in each of the

forms that have been presented to the Senate, in fact does include everyone regardless of race, religion, ethnicity, gender, sexual orientation, disability. In fact, you would not have to add "all others," because everybody is already included in the bias-crimes legislation.

I do, though, want to thank Senator Bruno for his comments that the legislation is still under consideration and express the hope that we will come to a speedy resolution on it.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Duane.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. If I may be heard on the bill.

ACTING PRESIDENT MORAHAN: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I have a daughter in the first grade in a New York City elementary school. And I hear what we're trying to do with this bill. I think it's an important step.

But after what just took place in Michigan yesterday, where a first-grader was shot by another child who brought a gun that was found by that child, unlocked and loaded, brought it into school and shot and killed someone in the school, I think we are playing around the margins with an issue that this house has got to act on this year.

Twelve children every day in the United States die from gunshot injuries, most of them from injuries caused by the fact that we do not have laws in this country requiring that guns be locked and imposing penalties on people who leave guns where children can get them.

The Assembly is passing these bills year after year, and in this case -- and I'm proud of the leadership this house shows on many issues, including the bill we're voting on now. But in this case, when we're dealing with the issue of guns, this house is the problem. And we have to step up to the plate and take action.

There have been a series of reports by the Harvard School for Public Health

documenting in detail the fact that in other countries around the world that have the same level of violent acts as the United States, the same level of violent crime, but nothing like our level of death and serious injury, because guns in those countries are not available.

This is a national crisis. It is a public health crisis. And if we care about children and we care about schools and we're serious about the concerns that have been expressed here today and that are reflected in this bill, then this year the Senate has to take action to create a gun-free zone, not just in schools but around all of our children, no matter where they are.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Senator Balboni.

SENATOR BALBONI: Mr. President, I rise to note that the Majority Leader of this house has taken an idea that is long overdue. It's such a shame that we focus on an issue after a tragedy.

To consider the parents' loss and then to consider their courage in coming to this body and supporting this measure is a very dramatic act on their part.

But what the Majority Leader is doing with this particular issue is he is recognizing something that perhaps is lost on most of us. Our campuses today are some of our greatest resources. It is the vehicle, we hope, to encourage our futures. But in order for individuals to be able to come to learn, they must accept a place that is free of violence, and safe. We have to make our campuses safe harbors. That's what this legislation does.

Again, it's a shame that we've not considered this before. But sometimes out of tragedy come good ideas. This is an issue that we should act this year to do and complete.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President.

Loath as I am to disagree with our Majority Leader, I'm going to be voting no on this bill. And I want the Lyalls to know, if they are listening, that this has nothing to do with the tragedy of the loss of their daughter.

It has to do, for me, with the fact that I don't understand why we take upon ourselves, as the legislative body, to implement such a bill or such legislation as this without being in concert and making sure that each university and each school -- I think we've passed bills, we've put into law that each educational institution is to develop a plan for the safety of the people on their campuses.

So I would leave it up to them. I trust their judgment. I trust their ability to come up with a plan. And I would hope that that plan would include security for people who work and who are students and what have you.

But with this legislation which simply -- as the memo says, "recognizing that current law does not adequately address the

profound consequences of these crimes, the bill mandates enhanced penalties." That's all that it does. It mandates enhanced penalties.

Now, in another paragraph of your memorandum in support you talk about students age 12 to 18. So, you know, while we use the Lyalls as the rationale for doing this legislation, we're in fact talking about children as young as 12, and possibly younger, as has happened in New York City last week. There was an 11-year-old that was charged with assault and a deadly weapon.

So I think that we're just reaching too far. We're reaching into our schools to create crimes for which we can penalize children. And that's why I'm voting against this legislation.

And let me just say one more thing before I close. We understand that at least 50 percent of the crime is committed by white people. But 95 percent of the people who are incarcerated are people of color. So whatever crime bills we pass, ultimately it does not mean the same thing to everybody. And we know, therefore, that most of the people who

are going to end up being sentenced based on this legislation, and every other one that we pass, is going to be people of color. And now we're talking about children of color.

So I must be opposed to this legislation, and I hope that some of my colleagues would join me in at least expressing our rejection of this direction for us to go in with our criminal justice and penal system.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Montgomery.

Senator Gentile.

SENATOR GENTILE: Thank you, Mr. President. On the bill.

ACTING PRESIDENT MORAHAN: Senator Gentile, on the bill.

SENATOR GENTILE: I too want to add my voice of saying that this is a laudable bill. Certainly, Senator Bruno -- and I think most here in this house will agree that adding additional penalties, enhanced penalties on school grounds, given the nature of school grounds, is a good thing for us to be doing.

Although the words of my colleague Senator Montgomery are taken with great concern.

But certainly I think we can move forward and do this, enhancing penalties for crimes committed on school grounds. However, given the fact -- given the fact that - adding to the comments of my colleague Senator Schneiderman, I believe that we need to go further, not only with locks, trigger locks on guns.

I think what we need to do, given the fact that most of the crime that we see with schools, around schools, involve guns - as of yesterday we had another incident with a shooting with two children, five and have years old, I believe their ages were -- what we need to do is go further and institute a program of gun tracing in this state.

Tracing the guns in this state will lead to finding out the illegal market, tracing the illegal market in this state. Because most of the guns that we find in this state that are used for crimes are obtained on the illegal market.

Gun tracing is a program that has

been started at the federal level. It has been used in Boston, it has been used in Philadelphia to great success. We need to bring a program of that type here to this state throughout our state.

And I believe that before we leave this session this year, we need to have a gun-tracing bill, legislation, passed in this house, passed in the other house, and signed by the Governor.

So while I applaud this step, I think it's only the first step in what we need to do before this session is over.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Gentile.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

I would like to congratulate Senator Bruno and the Lyalls for bringing this issue to our attention again, and my colleagues in this chamber for having passed this legislation in the past.

As a schoolteacher, former

educator, I can attest quite seriously and quite sincerely that education simply cannot take place anywhere where there's fear, where there's violence, and where predators have free access and ease of entry. We must send a clear message to those who would perpetrate crimes against our children, even if they are children doing it, that it's unacceptable behavior.

I hear Senator Montgomery's concerns. They're real. They deserve consideration. They deserve respect. But, Senator, I must say, we must act. What are the alternatives? Do nothing? Allow them to continue doing what they're doing with no message sent?

Clearly the schools have not been able to establish control. We've just had two cases in college campuses in my district very recently, within the last few weeks, of assaults on campus. A girl taking a shower found a stranger watching her in her dormitory in the middle of the afternoon. Where was college campus security? Where was the plan? How does it stop that? They know who the

person was. They caught him. What's he going to get, a peeping Tom? That's nonsense. You cannot have that.

This kind of behavior has got to stop. The message has got to be clearly delivered that this is not going to be tolerated in the state of New York and should not be tolerated in any civilized society. Violence against our children cannot go on, even if it's perpetrated by other children. It must stop.

I would welcome alternative suggestions. We have proposed law after law after law increasing penalties on crimes, for crimes, only to have the same argument raised by the same people. I have heard no counter. I have heard nothing coming the other way. We have had program after program after program in the schools. For the last 30 years, there have been more programs spent on talking to kids, psychoanalysis of kids, giving them treatment, giving them all kinds of programs, giving them all kinds of attention.

They have not worked. The violence is there, it is still there, it is increasing,

and it must be stopped. And that means we must punish those who deliver the crime, who commit the crime, who are convicted of the crime, regardless of who they are. And I think that message is being delivered by this law. I will vote aye.

I again congratulate the Majority Leader for his leadership on this issue. And I thank my colleagues who have been in support of this for the past two years. This issue, its time has come. And we should be urging the other chamber to act appropriately. They have been passive on this issue; they must act on this issue.

ACTING PRESIDENT MORAHAN: Thank you, Senator Marcellino.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I voted for this bill in the past, and I'm going to vote for it again. I just have a couple of quick comments about it.

One, this is a good bill. It could be made better through one little amendment. And that amendment would be to adopt a bill

that I've had in print. Senator Marcellino has talked about ideas. Here's an idea. Take harassment of a child in a school zone by an adult. It's only a misdemeanor now. In a school zone, an adult harassing a child ought to be a felony. It ought to be against the law. It ought to be punishable by more than a year in prison.

In the Pittsford Central School District, right next door to where I represent, three children were on their way home and were almost abducted by someone who attempted to get them in a car. Most of it was verbal. It would all fall under a misdemeanor harassment.

Let's make, in a school zone, a felony out of that kind of conduct by an adult to a child. Add that as part of this bill. This bill deals simply with felonies, increases penalties. Let's take some of the conduct that we describe as a misdemeanor other places and elevate it to a felony inside the school district.

The second point I want to make is that I think the point that Senator Duane made

shouldn't be missed. And that is what we've done is we have said in certain instances that depending on who the victim is, we will increase the penalties. In this bill, we're saying depending on where the crime occurs we will increase the penalties.

My question is, what if we determine that there's an aspect of the perpetrator that we are not willing to tolerate? That is, they are motivated by hate in engaging in a criminal activity. If we're going to punish people because of who the victim is, if we're going to increase penalties, and we're going to increase penalties because of where it occurs, shouldn't we also increase penalties if the person is engaging in the crime because they're motivated by hate against a person, whether it's because of their religion, because of their color, or because of their sexual orientation?

Shouldn't we do that too? Shouldn't we be consistent and say we as a society won't tolerate where it occurs, in a school zone, we won't tolerate it if the

victim is a child or a student -- why should we be any more tolerant if the perpetrator is motivated by hate?

That bill -- and I appreciate Senator Bruno's comment that that bill is still in play in this session. But it seems to me that it's a logical extension of what we're doing here to also apply it to perpetrators who are motivated by hate.

Finally, I'll just conclude on another note that I don't want to miss. We have been gathering data about crimes and where they occur. We're gathering data about crimes on college campuses. We're gathering data about crimes that occur in school zones. Wouldn't it also be appropriate to gather the same data with respect to hate crimes? And, I would add, the data with respect to stops, the data with respect to interventions in police departments against people in this state.

Maybe if we had a racial profiling bill in which we gathered that data, we would have more information so we could make more intelligent choices about the future of how we use our penal system as a deterrent to

behavior that we all find unacceptable. It seems to me it's a logical corollary to this bill that we move in the steps of gathering information about hate crimes and gathering information that would prohibit racial profiling as well.

I would welcome the Majority to take up that bill before the end of this session, to complete our discussion and our analysis of how we deter what we all acknowledge is completely unacceptable behavior.

ACTING PRESIDENT MORAHAN: Thank you, Senator Dollinger.

Read the last section.

THE SECRETARY: Section 4. This act shall take -

SENATOR CONNOR: Excuse me, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. I want to comment on the issues raised by Senator Dollinger just now and a little earlier by Senator Duane.

What we have started to do in the law in relatively the last score of years is to start to humanize the consequences of the breaking of law. This particular bill, which I'm going to vote for, does it by geographic location. It takes an area, a school zone, which we as a society see as precious to the pillar of our development, because children really are the energy of our future.

When we look at crimes against individuals, we have already raised the penalties for crimes committed against individuals in the law right now. So I would really have to refute the argument that there's a difference between geographic-location crimes and crimes waged against individuals.

We have in our statutes right now an increase in penalties if you commit crimes against a police officer. Aggravated assault is that crime. We have elevated the crime if you commit a crime against a corrections officer while you're in an institution, as opposed to another inmate. Because we distinguish between those individuals who also

represent that same pillar of society, that law enforcement is essential to a democracy and a civilization.

So when Senator Duane gets up and just asks why we -- now that we are in the business of raising penalties for specific types of crime, everybody would qualify as a victim based on the protected classes in the hate-crimes bill: those of sex, sexual orientation, age or disability, national origin, race, religion, or color.

And so when we look at those classifications, the reason we are being so specific, the reason we don't want to say "all others" is because we don't want any confusion in our society today that hate does exist, and we don't want anyone to worry that we as a law-making body are not addressing it.

And so it is with the same spirit that is the catalyst for this legislation that we are taking certain victims and holding them not to be more important than any other human beings, but that those types of crimes tear at the fabric of our society in a different sense. When a police officer is injured or

killed by an individual, it is an act more against our society than anything else.

Now, our society itself, which was founded on a Constitution that didn't have protected classes, that was founded on a Constitution that separated one-sixth of its population -- to the extent that in 1820, writing in the Edinburgh Review, the great English wit Sydney Smith once asked: "Which of the tyrannies of Europe to which the Americans object systematically tortures and separates one-sixth of its population?" So this is something that really is a blunt one, even what the meaning of the Declaration of Independence and the Constitution were at the time of their formation.

So I think that in terms of the fact that we still have people manifesting that hate and violence, and that they've extended themselves beyond race to do it against people because of their religion and sexual orientation, which are the largest-growing hate crimes now, that it is something that we need to connect to the same type of philosophy that was used to draft this

bill, which I heartily support.

ACTING PRESIDENT MORAHAN: Thank you, Senator Paterson.

Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I'm going to support this bill, which as Senator Bruno pointed out, passed unanimously last year. I have checked the record. Actually, Senator Montgomery was excused that day when the bill passed 59 to nothing. So I think we -- let no one here doubt her consistency.

And, you know, this bill -- and on behalf of my colleagues on this side of the aisle -- as Senator Bruno pointed out, in this house has bipartisan support, and we do applaud Senator Bruno for bringing this bill.

What's important to remember is this bill is not the total answer. The Campus Security Act that we passed is as important or perhaps more important in deterring afuture instance. I think when we debated that, I pointed out the need to coordinate with local law enforcement on campuses.

I was on a task force a number of years ago led by Senator Oppenheimer that held hearings at various campuses about the problem of rape, and was absolutely astounded to hear university administrators say that they dealt with that internally, through their student discipline process, and were hesitant to call the DAs or police. I mean, excuse me, that's a major felony in this state, and there's no exemption in there for students or campuses. So we went a long way with that.

This bill is important because it sends a message, it sends a message about how we as a society feel about those who invade one of our great sanctuaries, our educational institutions. We have done this sort of thing, increased penalties, to also express our societal outrage at those, for example, who would violate the integrity of religious institutions or cemeteries. So we have done it in a very special way.

Do we really think these things will stop because the penalties are cranked up a notch? Hopefully, it will, but realistically, it may not. But what will be

there is the statement of the people of the state of New York, through their legislators, about the collective outrage at these things.

Similarly, over the years, I might point out, as Senator Paterson noted, we have enhanced penalties for particular crimes against particularly vulnerable citizens. For many years, I think it was Senator Farley would have bills to increase penalties for certain crimes against senior citizens.

We certainly support and have in the past enacted legislation, as Senator Paterson pointed out, with respect to public servants, our law enforcement officers, to express the way we feel as a society about the importance that we attach to that -- those servants.

The things that Senator Montgomery point out cut beyond all these bills. They cut to the very essence of how our penal system operates and criminal justice system operates, and they do raise issues that must be of grave concern to everyone here. And I hope we will address those in a systemic way, because all these things we do about sending

messages and increased penalties and all fail miserably if the integrity of our criminal justice system and our penal system is subject to question. And it certainly is in some regards.

So I applaud Senator Bruno for this. On behalf of my colleagues, I join him in expressing to Mr. and Mrs. Lyall our thoughts and prayers, our sympathy for the tragedy, and our appreciation for their courage in trying to turn this into something that will protect others from such a tragedy.

So I'm voting for this bill, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Connor.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first day of September.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Montgomery recorded in the

negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 271, by Senator Goodman, Senate Print 1101, an act to amend the Transportation Law, in relation to increasing penalties.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT MORAHAN: Senator Goodman, an explanation has been requested.

SENATOR GOODMAN: Who requested the explanation, Mr. President?

ACTING PRESIDENT MORAHAN: Senator Duane.

SENATOR GOODMAN: Mr. President and Senator Duane, this bill has as its purpose an attempt to prevent the abuses which have crept into our system, being perpetrated by a group of unscrupulous furniture movers.

I first became aware of the problem when my own personal effects were put on a truck. I was moving from one apartment to

another. I was given an estimate, and that estimate proved to be one that was totally fictitious. Because at the time that they were supposed to unload my furniture from the truck, the estimate had quadrupled, and the demand was made to pay them four times the original amount or they would not unload my material from the truck; rather, it would go to some unknown warehouse.

This is obviously an outrageous situation which prompted the Senate Investigations Committee to hold a series of public hearings on mover abuses. And this bill is a core bill in an attempt to stem such abuses.

Specifically, what it does is to increase penalties for violating a motor carrier certificate or permitting an acting carrier of household goods to operate without a license.

ACTING PRESIDENT MORAHAN: Senator Duane.

SENATOR DUANE: Would the sponsor yield to a handful of questions?

ACTING PRESIDENT MORAHAN:

Senator Goodman, do you continue to yield?

SENATOR GOODMAN: To a hatful of questions, or a handful? Did you say would I yield to a handful of questions or a hatful?

SENATOR DUANE: Perhaps slightly less than a handful of questions.

ACTING PRESIDENT MORAHAN: Slightly less than a handful. About four.

SENATOR GOODMAN: Yes, the answer is I will do so. Thank you.

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

SENATOR GOODMAN: Yes.

SENATOR DUANE: Thank you.

I'm wondering how the new fine was determined.

ACTING PRESIDENT MORAHAN: Senator Goodman.

SENATOR GOODMAN: The new fine was determined by the judgment of the sponsor.

(Laughter.)

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

SENATOR GOODMAN: Yes, I do.

ACTING PRESIDENT MORAHAN:

Senator Goodman, do you continue to yield?

SENATOR GOODMAN: I do, sir.

ACTING PRESIDENT MORAHAN: He thinks so. Yes, he yields.

SENATOR DUANE: Thank you, Mr. President. Obviously that was a good enough answer for me on that one.

I'm wondering, though, whether or not the new fines might not be just considered to be the cost of doing business by these unscrupulous movers.

SENATOR GOODMAN: No. Actually, Senator, after the public hearings revealed the abuses to which I referred a moment ago, it was quite evident that more than a casual slap on the wrist would be needed, and it was imperative that we have a fairly severe fine to try to curb these abuses.

ACTING PRESIDENT MORAHAN: Senator Duane.

SENATOR DUANE: Through you, Mr. President, if the sponsor would yield to another question.

ACTING PRESIDENT MORAHAN: Will the sponsor yield for another question?

SENATOR GOODMAN: Yes, I will.

SENATOR DUANE: I also was wondering why the determination was made only to do a civil action as opposed to a criminal and civil action. Is there an impediment to making this a criminal offense?

ACTING PRESIDENT MORAHAN: Senator Goodman.

SENATOR GOODMAN: Senator, the criminal courts, as you know, are very crowded with crimes against individuals. And therefore it was our judgment that the civil route would be the preferable one, not to add to the crowding of the courts in criminal matters which involve abuse and violence against individuals.

ACTING PRESIDENT MORAHAN: Senator Duane.

SENATOR DUANE: And if the sponsor would yield for a final question.

ACTING PRESIDENT MORAHAN: Senator Goodman, will you yield to another question?

SENATOR GOODMAN: Yes, I will continue to yield, sir.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR DUANE: Thank you.

I don't see that there's a memo attached as to what the City of New York's position is on it. Since this would be under the jurisdiction of the New York City Department of Consumer Affairs, I'm wondering whether or not the administration this year has taken a position on the legislation.

ACTING PRESIDENT MORAHAN: Senator Goodman.

SENATOR GOODMAN: Senator, this bill has passed in several previous years in the Senate, and during this period there's been no objection voiced by the city whatsoever.

SENATOR DUANE: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Goodman. Thank you, Senator Duane.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of

November.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Bruno, that completes the reading of the controversial calendar.

SENATOR BRUNO: Mr. President, can we at this time return to the reports of standing committees. I believe there's a report from the Rules Committee. I ask that that be read now.

ACTING PRESIDENT MORAHAN: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill direct to third reading:

Senate Print 6720A, by Senator Johnson, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT MORAHAN: Senator Bruno.

SENATOR BRUNO: Move to accept the report of the Rules Committee.

ACTING PRESIDENT MORAHAN: All in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, say nay.

(No response.)

ACTING PRESIDENT MORAHAN: The report is accepted.

Senator Bruno.

SENATOR BRUNO: Can we at this time take up Calendar 356, Mr. President.

ACTING PRESIDENT MORAHAN: The Secretary will read Calendar 356.

THE SECRETARY: Calendar Number 356, by Senator Johnson, Senate Print 6720A, an act to amend the Vehicle and Traffic Law, in relation to motor vehicle dealers.

ACTING PRESIDENT MORAHAN: Senator Bruno.

SENATOR BRUNO: Is there a message of necessity at the desk?

ACTING PRESIDENT MORAHAN: Yes,

Senator, there is.

SENATOR BRUNO: Move we accept the message.

ACTING PRESIDENT MORAHAN: All in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The message is accepted.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Roll call.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Is there any housekeeping at the desk, Mr. President?

ACTING PRESIDENT MORAHAN: No,

there is not, Senator Bruno.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time recognize Senator Connor.

ACTING PRESIDENT MORAHAN: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. Thank you, Senator Bruno.

Mr. President, I believe there's a motion at the desk. I ask that it be read, and I would like to be heard on the motion.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Senate Bill 6482, by Senator Connor, an act to amend the Election Law, in relation to election of delegates and alternate delegates.

ACTING PRESIDENT MORAHAN: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

This is a motion to discharge my bill. But let me outline for you what I want to do in this discussion. First I'll give you a little history, as I know it, of how these

things have worked over the years, identify a problem, and tell all of my colleagues - particularly my Republican colleagues, in the context of this year -- why this bill is good for the people of the state of New York, why it's good for your political party, why it's good for your party leadership, and why we ought to do something.

A little history. Once upon a time, New York had a system for both major political parties in its law -- a prelude. Does a party, if we pass this into law, does a political party have to follow this? No. A political party has a First Amendment associational right to do whatever it wants to do.

What this bill says, though, is any political party that wants to use the state's election mechanism for its presidential primary has to accept this bill. If it's a state-conducted primary, it's at state, county, city, and town expense. And the Supreme Court has made it very clear that the state can then therefore set forth the frame of that.

If the Democratic Party doesn't like this, they can say, "We're not opting in, we want to run our own caucuses at our own expense. We'll pick our delegates, our presidential candidate any way we want." If the Republican Party, if this were law in a year, said, "We don't want to do this, we don't want to have a presidential primary, we all want to meet in a back room, pick our delegates, pick our presidential candidate," you can. You have a First Amendment right to do that.

But if you want to use any kind of state mechanism or state expense or local expense, then this would be the system.

What's the problem? If you go back to 1972, both political parties had a system very similar to the ones the Republicans have next week. They ran slates of delegates. I was a young Turk then; we ran a McGovern slate of delegates. We didn't have McGovern's name even on the ballot in those days, just a slate of delegates. But we had an army of volunteers who could give out little palm cards at every polling place.

At least in that primary, McGovern caught fire. People got that palm card and voted for our delegates. They were folks like Moe, Larry, and Curly, I guess - 25-year-olds, 30-year-olds.

Who were the regular organization's candidates for delegate, supporting I forget whom then? Oh, state senators, Congress members, party chairmen. Sound familiar? They all went down to glorious defeat. And at the Chicago convention, the New York delegation were 300-and-some young folks not in connection, really, with the party's mechanisms in New York.

Not a good thing for McGovern in the end, not a good thing for the Democratic Party. Certainly not a good thing for the leadership at the time. Although I look around here, and those of my colleagues who are now as old as me were as young as some of my other colleagues in those days, and we thought it was great while it lasted.

The Democrats changed their system to deal with this. We had kind of a convoluted thing. And by next time out,

'76 -- now, by '80 we had caucuses to pick delegates, but a beauty contest. If you remember, Kennedy won the beauty contest. We picked the delegates later.

The Republicans have pretty much stuck with the same system throughout. But we had problems.

In 1976, the regular Democratic organization kicked some upstart peanut farmer, former governor of Georgia off all the ballots in New York State. He didn't get a single delegate from New York State, much to our embarrassment. By primary day -- we had it in June then, I guess, early June -- it was clear that Jimmy Carter was our presidential nominee, but he wasn't going to get a single delegate in New York. And a lot of people who dropped out got all the delegates.

And it was mildly embarrassing to the Democratic organization then, who naturally thought this guy might win and wanted to have some sort of friendly relationship. Because that is politics in both political parties, obviously.

We got to -- by 19-- let me get

this straight. By 1988, we had a different system in place. And the Democratic Party realized, wait a minute, we want a national convention where the state's party leaders are among the delegation for sure. We want that connection. When we pick our candidate, we want to know, hey, you know, you can call the state chair and whatever.

So we've opted for a different system over the years that features a beauty contest, delegates awarded proportionate to how the candidates do. But we hold in reserve 40 or 50 percent of the delegates, at least, who are selected after the primary and who must include people like the State Chair, the Speaker, the statewide elected officials, all the Congress members.

My Republican colleagues, good system as you face next Tuesday. So it's a good system. This bill isn't exactly that.

But what this bill would do is allow a political party to hold up to 50 percent of its delegates in reserve for selection by the state committee after the primary. Yes, you have to divide who they're

pledged for based on the beauty contest. Okay? But, you know, the at-large delegates picked afterwards can decide who they're for after the primary. I know that appeals to some people's political instincts as well.

But you get to be delegates at your own party's convention, and you don't send a delegation of totally disconnected upstarts who've latched onto a hot presidential candidate as your delegation and condemn whoever your party's nominee is to this disconnect. You know?

I would think -- it certainly has worked for us. I think it would work for the Republicans or any other party that opted in. You want your party's leadership heading up that delegation when it goes. And you want them doing that no matter who sweeps the primary, no matter who the hot candidate is on March 7th or whenever the primary is.

Obviously what we've had here, we had litigation in 1992 on the Democratic side, by Tsongas, to get on the ballot. He was hot that month. We had litigation by Forbes in the Republican Party four years ago. He was

hot for a while. Got himself on the ballot through the federal courts. And of course we saw recently the federal courts placing Senator McCain's name on the ballot. And Keyes, yes. And Forbes.

So the old game doesn't work. Not only does it not work for its political ends, it's not working very well for the players in there, depending on next week's results. I suggest that this has the virtue -- this bill, what would it do? The executive director of the State Board of Elections would place automatically on the party ballot statewide, in a beauty contest, all the well-known, generally accepted candidates for President in the political party. Who are they? I know who they are, or who they were a month or two ago. I put the TV on, there were seven Republicans debating. If they make the demand, put them all on the ballot. You know? You can pick half your delegates after the fact.

Secondly, it would allow district delegates -

SENATOR GOODMAN: Would Senator

Connor yield for just a moment, please.

ACTING PRESIDENT MORAHAN:

Senator Goodman.

SENATOR GOODMAN: I don't want to interrupt the -

SENATOR CONNOR: I'd be delighted. I'd be delighted, Senator.

ACTING PRESIDENT MORAHAN:

Senator Connor, do you yield?

SENATOR CONNOR: Yes, I do, Mr. President.

ACTING PRESIDENT MORAHAN:

Senator Goodman.

SENATOR GOODMAN: Senator Connor, I'll speak to your general proposition in just a moment.

But I would like to focus very heavily on line 37, page 2 of your bill, in which you do indicate that the executive director of the State Board of Elections shall file a certificate indicating that any nationally known or recognized candidate who made a demand upon him to appear on the ballot may be placed upon the ballot.

What is the definition of a

nationally known candidate? Would a David Duke, for example, be permitted to be on the ballot? What's to determine the discretion to be exercised by one single bureaucrat in a matter this sensitive and this important? This is the part of your bill that most concerns me.

SENATOR CONNOR: Absolutely. Let me address that, because I notice that Assemblyman Faso put a bill in last week. I had a prior bill to this directed at this March 7th. But this does not affect next week. Obviously that's -

SENATOR GOODMAN: Just for the purpose of your responding to the question, that the debate people on the radio and on television and in the media have criteria which say that anyone who has been approved with federally acceptable funds for the campaign will be recognized by them to appear, but others will not.

Now, do you make any such distinction in your bill?

SENATOR CONNOR: That's where I was going. That's where I was going, Senator,

if you'll be patient.

Assemblyman Faso put in a bill last week saying, well, let's automatically put on everybody who qualifies for federal matching funds, or who would have qualified.

My original bill a few weeks ago directed toward this year, before the federal court acted, used federal matching funds. Knowing that it excluded George W. Bush, because he isn't in the federal matching fund program. But that, when I was looking to this March 7th, wasn't a problem. McCain had qualified, Forbes, the others who -- Forbes never did, I'm sorry.

But in any event. So that was one option, and obviously Assemblyman Faso took it.

My concern was when you get a Governor Bush who says "I don't want federal matching funds" -- which he's entitled to do because he raised so much money. Spent a lot of it, too. To say "would have qualified," well, without the auditing procedures and filing your donations and all with the FEC, that's a -- that, unfortunately, is a

speculative standard. Yet everybody recognizes that certainly up to a week or two ago, George W. Bush was the favorite nominee -- and may be again after yesterday. So that's why I didn't go with that standard.

This standard is what California uses, Connecticut uses. The Board of Elections, of course, would adopt regulations. What the other states look to is who have the TV people included in the debates, how many states are they running in, are they getting on the ballot in, who's generally recognized.

If David Duke wanted to run in the primary, he'd have to go get petitions. That's what we provide for fringe candidates. They have a right to run, they want to run, whatever. Lyndon LaRouche, I guess, got on the Democratic ballot through petitions this year. Those kind of candidates would have to do this.

But let's be realistic. We all know who the major candidates are. We see them on TV. They're raising money, they're off running in other states' primaries, they're running in New Hampshire, they're

running in the Iowa caucuses.

You need some good faith here. You know, the public has a lot of say in this. Public opinion -- and I'm not suggesting federal judges look at public opinion. They look at the law. But we've already seen how public opinion can propel somebody onto the ballot, notwithstanding technicalities.

So I'm open to refinements on this. I suggest that it -- and I'm not averse to Leader Faso's suggested solution. I just, frankly, was really concerned for George W. Bush in the future, not -- you know, I don't know how you say "would have qualified." Based on the total amount he made, he would have qualified. But as we know, there are distribution and limit standards that can only be evaluated when the candidates file for it and document it.

As I say, local people who want to run for delegate can file in their congressional districts a petition to list them as a delegate. You know, presumably not -- you know, a party could do that for all their delegates. Or they could only do it for

half the delegates. Within the congressional district, the delegates would win a portion based on how the presidential candidates did in proportion. And the at-large afterwards would be distributed.

It's a pretty simple system, and it avoids -- by the way, a presidential candidate under this could run and have no delegates running in any congressional district if that's burdensome to them. You know, a John McCain or a Bill Bradley could just get themselves on the ballot, run statewide, no delegates running in the congressional districts, and they can pick them afterwards. Which is what they can do now.

So a lot of the stuff in the press about how the Democrats this year, well, they had a burden too, you had to petition for delegate -- you didn't have to. You didn't have to. Where people petitioned for delegate in a congressional district, fine. They get on the ballot, they run for delegate. Where they didn't, Bradley can still get delegates in those congressional districts. If he gets 40 percent of the vote or 50 percent of the

vote in a congressional district, he gets half the delegates and he gets to pick them afterwards. Or at least he gets to designate to the state committee who he feels is loyal, and the state committee will pick them afterwards for him, those people pledged to a irst-ballot support or whatever the party standard is.

It's not a winner-take-all system. There's some proportionality. We'd eliminate, really, all the technical hurdles that frankly have made New York -- and if this can work in Connecticut, if it can work in California, a far larger, in some respects different political culture, more diverse -- California, between the north and the south of the state, is more diverse than all the little differences we point out in our state between upstate, downstate, and all that.

Works in California, works in Connecticut, works well -- works well for everybody. Gains the respect of the public because it's a fair and open system, preserves the party leadership's prerogatives in terms of heading up their delegation.

Yeah, okay, maybe for the candidates -- you know, the candidates get a certain edge by having illustrious names running for delegate in a district. But let's face it. Once upon a time, it worked. It worked for the Democrats up until 1972. Oh, gee, State Senator So-and-so is running in my district as a -- who the heck were the regulars back then? A Muskie delegate, I guess. You know, we had a bunch of people all under 30 running for McGovern. They beat State Senator Whoever-it-was-then. It didn't work well for him.

And you know what? These are now national campaigns. You know, when a prominent party official puts their name on the ballot, is it really going to get George W. Bush more votes? Yes, in an even-up thing. But if George W. Bush crashes and burns, and I'm not suggesting he has, or if somebody else gets hot -- you know, nobody's voting for somebody they don't like for president because I'm the heading the delegate slate. You know?

So I suggest, with all due respect to my Republican colleagues, you've kind of

allowed an old system to persist when the nature of the nation, the nature of the way we pick presidential candidates has changed. It's no longer conventions where all the huddling goes on to pick a candidate. Maybe that worked better for the parties in those days, but that isn't the way it is today. It's primaries, it's Iowa, New Hampshire, South Carolina. It's momentum, it's press, it's TV ads.

And I don't know why, frankly, prominent elected officials in either party - it's one thing to endorse your favorite guy for President. Why you'd put your name on the ballot -- you know, your name's on the ballot, my colleagues. Some of your names are on the ballot. And you're probably going to be okay next Tuesday. But, you know, you put your name on the ballot a month or two ago - right? You put your name on the ballot a month or two ago because the candidate looked good. And something could happen in the meantime in Iowa or Texas or South Carolina or Michigan that makes your candidate out of the race, and your name's on the ballot as a

certain loser on primary day.

The system doesn't make any sense anymore. It did in the old -- twenty, thirty years ago. It doesn't anymore.

More important than the practical politics of this is the public's confidence in an open system. You know, I think ultimately Governor Bush was hurt for a while in New York because people looked at John McCain. Naturally, he has credentials. I don't support him, I don't agree with him on a lot of issues, but I don't question his right to run for President in a minute. He earned that. He earned that by his public service, he earned that by his wartime sacrifice for the nation.

Who are we kidding? We can't use the backroom politics anymore. I suggest to you, my colleagues, this bill -- why now? People say, Why now? We've got four years to fix it now. The federal courts, the federal courts made it plain. They solved this year's dilemma. So now we've got four years to fix it.

I suggest to you the following.

Now it's easy to do the right thing, because nobody has a vested interest anymore. It's easy to do the right thing. We can all do the right thing and not worry, does this help Presidential Candidate X or Presidential Candidate Y. Because this year's fixed, now's the time to do it.

No matter who is sworn in as President, Mr. President, next January 20th, within a week, particularly in the party whose candidate isn't President, there will be people jockeying to become the candidate four years thereafter. And they'll tell you, Oh, it's not four years, by then it will be 3 years and 9 months later, and we'd better start raising money.

And people will be calling you within six months of the new administration taking office, people -- particularly in the party that's on the outs, naturally -- will be calling around, lining up people to support them for President four years later. That's the system now.

You know, once upon a time, people went to conventions in the end of August or

September and they picked a presidential candidate. The presidential candidate didn't even go. They called them up: "Governor Roosevelt, we've nominated you, will you come out to Chicago," or whatever. They had an eight-week campaign.

Well, now it's not. People are already maneuvering to be the candidates the next time, in case Bush loses or Gore loses or whatever. So now's the time to do the right thing, because we'll all be compromised a year from now. We'll all be worried about, well, how is this going to help this one or that one or whatever.

Do it now. Do it with a clean slate. Do it before we all have political conflicts of interest because we're for the senator from Tennessee or the governor from Idaho or whatever it is.

Don't wait. And this is addressed to the other house as well. Don't say we've got lots of time to fix it, we've got four years. A year or two from now, those who want to fix it will find there are others who think, no, I don't want to fix it, this helps

me, helps my candidate.

Do it now. No bias in it. You know, we all know who we're for for President this year. Fine. This year, it doesn't affect this year. Let's do it for four years from now. Let's just do it. It works for the parties, it works for the public. And if we do it now before we're all lining up with the next go-round, we can get it done. We can get it done.

I urge my motion.

ACTING PRESIDENT MORAHAN: Thank you, Senator Connor.

Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President.

Thank you, Senator Connor, for that history lesson. That long history lesson. Thank you also for confessing that you were organizationally very naughty during the McGovern years. Had that not happened, you might be a front-runner instead of Al Gore, organizationally. You never know in this business.

Thank you also for all of your

intended help and support for our primary next Tuesday here in this state. It makes you feel good that you have such a high level of concern for all of us.

I want to just share with you that I am not standing here to debate the merits of this procedural motion. Because while you are correct, the time has come for us to change the primary system here in New York State, we have been talking about it and working on it for some weeks, and it will change. And we will appreciate the support.

So the subject is timely. It should happen. It can't happen between now and next Tuesday, because it would create more confusion than it would solve.

And also, again, if I were discussing the merits of this particular piece of legislation, I would have to say that I'm told by our very learned counsel that it's so flawed that we have to start over. And we will engage you in starting over and putting together something that makes sense for all the people of this state.

And when I say our learned counsel,

I'm very, very cognizant of the fact that learned counsel on this side says "you're right," learned counsel on this side says "you're wrong." And that's why there's so many learned counsels that do so well.

(Laughter.)

SENATOR BRUNO: It's always an inspiration to me that there can be so many experts that feel so strongly and who are so highly paid for their expertise. And I applaud them. And I'm told by one of my learned counsels we need more learned counsels.

(Laughter.)

SENATOR BRUNO: But in seriousness, I appreciate the interest, and we will reconcile our differences. Because I think where we're headed is in the right direction, and what we want to do is something that makes sense for the entire constituency of this state. And get some clarity, create the ballot access that all of us want, make it fair, make it equitable, and really give the people a chance to speak out on primary day.

So I'm going to ask my colleagues

procedurally to join us in a party vote in the negative when the vote comes up.

ACTING PRESIDENT MORAHAN: Thank you, Senator Bruno.

Senator Goodman.

SENATOR GOODMAN: Mr. President, let me start by saying that I'm in total accord with the two previous speakers when they characterize the existing system as not good. In fact, I would say that it reeks, that it has deep defects. And those could never been more adequately illustrated than they were by the fact that a man with the general support of Senator McCain was kept off the ballot this year. This was a travesty.

And may I just say as a matter of personal privilege, in a sense, that in New York County, where I happen to be the chairman of the Republican Party, I passed the word that there was to be no challenge to any petition whatsoever for Mr. McCain or Mr. Forbes, and there was none. And in so doing, I assured that there would be a contest which could very well result in my own defeat as a delegate.

So I'd like to make very clear my position on this. It was one which went, I think, to the merits of the case and recognized the defect in the situation.

Now, if I can just ask for Senator Connor's gracious attention, I'd like to proceed. Sorry.

I was just commenting, Senator Connor, that in my own district as county chairman in Manhattan, where we have eight delegates at stake, we passed the word that there was to be no challenge to the McCain or the Forbes petitions, and there was none. And that assured their being on the ballot and, in effect, assured the fact that there would be a contest over which I, as a delegate, do not have control in any sense.

And I may awaken on next Wednesday to find that I have been rejected by the voters, which would be an untoward and an unpleasant experience, to say the least. But it could happen and, if the voters will it, it should happen.

But let's go on from there. The fact of the matter is you present us with a

bill which is strongly supported by such stentorian voices as those of the New York Times editorial board, which has conveyed to me their very deep feelings about the important principle of revising this system. And I believe deeply that it should be revised.

But I feel, as I may have indicated in my first question to you a few moments ago, that the proposal you've made for the determination of who should be on the ballot has some serious flaws. To place this responsibility in the hands of one bureaucrat would, in my judgment, be a very dangerous practice.

Although the present bureaucrat in office happens to be all right, I don't know who that would be in the future. I have no idea what his bias or her bias might be and what judgment lack might occur at that time. So that would be a very dangerous opening that we could create through which some very defective candidates could be drawn, and that would be a significant problem.

I see some other problems in the

structure that you've proposed -- which I think, incidentally, is thoughtful and sincere, and I commend you on having come up with a bill that's worthy of careful thought.

How would we work a favorite son candidacy, for example? Suppose instead of wishing to designate a specific candidate in advance, a state should advance its own interest and wish to have a favorite son? Under your system, that would not be feasible.

Further, I point out to you that there would be other procedural problems which would surround this. Let me give you one specific example. In closely contested conventions, historically it is a fact, and the present practice is after the second ballot in the Republican convention -- I think the same rule may apply to the Democrats - but with the permission of the designated candidate, a delegate may be released to exercise his own judgment as to whom he may wish to vote for.

And in that instance, there is in existence a very significant factor here, which is that in voting for a delegate, the

people of the district, the congressional district, may wish to select someone who in their judgment would best reflect their views. That can often be accomplished by designating a state official, an elected official such as a Congressman or a Senator, an Assembly member, or someone else who is deemed to be appropriate to advance that thought.

But under your system, no such thing would be possible, because it would all be totally in the hands of the candidate after the -- with the exception of your 40 percent, I think you said, which would be in -- but there would be a significant undermining of the opportunity for the electorate to select someone whose judgment they'd have confidence in in the very serious event of a deadlocked convention. So I ask you to think very carefully about that.

But let me just say, in summation, that Senator Bruno is not a man who speaks lightly of his commitments, and he has a distinctive record of having stuck with the things he says he's doing to do. Furthermore, he has an instinct as a reformer, as is

evidenced by the way he's turned this Senate into an operating body. The railroad runs on time these days. And Senator Bruno has espoused some of the more significant reforms that have come before our body in the last decade.

So I have confidence in his expressed willingness to look carefully at this and to get something done timely. And if I didn't, I might be sorely tempted to ask you to amend your resolution and try to work on it as a work in progress on the floor. But I think Senator Bruno's suggestion is far preferable, which is let's get our learned people together and come up with a timely and significant change in this system.

And let me conclude as I began, by saying the system stinks. It's a very, very bad and defective system which must be revised and it must be done timely. We can't put it off indefinitely. Your sense of timing is one with which I happen to be in accord. We should do it before the new pressures of the next election arise.

But let it be said, my good

colleagues and friends, that at this stage of the game the proposal which you've advanced is one which is significantly flawed and defective. And therefore, with due respect, I think we can improve upon it through the process recommended by the Majority Leader.

ACTING PRESIDENT MORAHAN: Thank you, Senator Goodman.

Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President.

Let me begin by commending Senator Connor on his very articulate explanation of why the legislation that's before us today is legally, from a matter of public policy, from a political standpoint, and from a commonsense, good-government standpoint, absolutely the right thing to do.

And also express a little bit of surprise at Senator Goodman -- pleasant surprise -- that he chose to address some of his substantive criticism of this bill that we're trying to release during the discussion on the motion to discharge. His doing that undermines the -- this notion that this is

simply a procedural mechanism, a procedural movement.

And so, since Senator Connor has done such an outstanding job in discussing the actual merits of the legislation, I'm only going to say a few words about that, and then I'm going to talk about motion to discharge and what that means and what we're doing here today.

By advancing this legislation, Democrats, everyone here should know, are doing a little bit, on a lesser scale, a little bit of a mea culpa, which is saying that even our process is a little bit too onerous. Even our process. We're admitting that by advancing this legislation today, which would change the way Democrats currently do things.

And the way we do it right now is that there need to be 5,000 signatures statewide in order to qualify candidates for the ballot. Okay? Very much different than the much more onerous requirements that the Republicans advance, by which they need 5,000 statewide and one-half of 1 percent in every

single congressional district and all the rules pertaining to that, to petitioning on the ballot, including the subscribing witnesses and delegates all have to reside within a district, all of that.

Which essentially, when we boil it down for you, we need 5,000 for any of the candidates to have required under the current law, irrespective of the fact that a judge ruled that some of the portions of the current law were unconstitutional for this election. It meant that 24,000 signatures were needed by the Republican candidate. We needed 5,000, they needed 24,000.

And anyone who is familiar with this process knows that if we needed 5,000, we didn't really need 5,000. Everyone knows you need much more than that. The rule of thumb is three times that amount, to withstand the challenges that inevitably come because of other provisions of our Election Law that are so obscene and arcane as to be a perfect mechanism to prevent candidates that you don't want from getting on the ballot.

So we didn't need 5,000, we needed

15,000, in actuality. Not legally, in actuality. And for Republican candidates, they didn't need 24,000, they needed 72,000 signatures. That is the reason why candidates chose not even to try to get on the ballot in this state.

So having said that, and echoing all of the other arguments that Senator Connor laid out, all of which I believe made perfect sense, let me talk for a second about what this means, what we're doing here today, this motion to discharge. Because this is some fundamental problem that I have had since I stepped foot in this legislative body.

Some would have us believe that if you say that the motion to discharge is a procedural motion, that you are not taking a vote on the substance of the legislation that's at hand. Now, as I pointed out before, Senator Goodman -- and I applaud him for doing this -- undermined that by talking about the substance of the bill.

But I'm going to prove to you now that a vote on a motion to discharge is a vote on the substance. And let's do that by

analyzing why people vote the way they do on a motion to discharge. So let's start with voting yes on a motion to discharge.

There are two reasons to vote yes on a motion to discharge. One is that you agree with the policy implication of the legislation at hand. You agree with it, you want to see it enacted into law, you vote yes on the motion to discharge to get it out of committee onto the floor so that it can be enacted into law. That's reason number one why you vote yes.

Or you vote yes because you disagree with the policy implication of the legislation at hand but feel that that legislation is of such substance and of such weight that it deserves to be heard and a vote taken by the full floor of the Senate. That's a very noble proposition, incidentally, and I don't think we see it very much.

Those are the two reasons why people vote yes. People vote no on a motion to discharge because you are flat out against the policy that the legislation would bring to bear for the residents of New York State. Or

you might vote no on this legislation because you agree with the policy implication but would never vote on something that a Democrat has sponsored or has brought to the floor.

And I wouldn't suggest that anybody in this house would undertake such an endeavor whereby they would put politics over the interests of what's good for the people of the state. So I'll leave that one alone for a second.

And the third reason why somebody would vote no a motion to discharge is that they agree with the policy -- the conception behind the policy, but they think the bill is flawed. That's what Senator Goodman was talking about.

To which I respond by saying the following. Every single day in this house, the members of the Minority, because of the flawed rules of this house, come in and vote on a legislative agenda that is entirely set by the Majority. We don't vote on anything that does not have some kind of acquiescence on the part of the Majority. The legislative agenda in this house is completely driven by

the Majority. So we in the Minority are asked to vote every single day on legislation that we have no say whether it should be voted on or not.

And you know what? It's not such a bad thing conceptually that we're forced to take votes on things that we may not want to. We've got to take positions. That's what this is all about. But to block, to block from coming to this floor legislation which would unquestionably change a system which is flawed and everybody recognizes it's flawed is a fundamental problem.

I believe this so much so that I have changed my position on a constitutional convention in the state of New York. When I was first elected to the Senate, I opposed the constitutional convention. I thought there were some things that we needed to remedy in the fundamental structure of how we perform governance in New York State, but I was afraid to open up the process for fear that some of the things that I cherish and hold dear to me, as they are outlined in the Constitution, could also be tampered with.

Having witnessed, as a member of this house, how we conduct ourselves here, I have now changed my position. And I now believe that we need a constitutional convention to do one thing. We need it to do a bunch of things, but one thing I'm concerned with right now is having the rules of this house, or possibly the Assembly, and/or possibly the Assembly, more closely mirror the rules of the United States Senate, whereby any 40 members of the house, or 40 percent of this house, if we chose to do it, could filibuster and block any piece of legislation. And thereby you create an instant bipartisanship that would advance democratic principles and promote solid public policy.

We don't have that here. And as a result, we are forced to sit here and vote on procedural measures. And Senator Bruno is right, we're just voting on a procedural measure. Know what the procedural measure does? The procedural measure releases a bill that's been bottled up in committee, and that bottling it up prevents it from becoming law. That's what the procedure is.

So when you're voting no -- you want to say you're voting no on a procedure? Go ahead, say you're voting no on it. You're voting no on a procedure that would allow a bill to come out so that you can vote on it. That's what you're voting no on today.

And today's New York Times, I'll read you a line from it, hit it right on the head. And I'll read you two quick sentences. "Joseph Bruno, the Senate Majority Leader, plans to rally his Republican caucus to cast a party-line vote against the motion" -- that's the one we're talking about -- "playing down the significance of the showdown by labeling the vote merely procedural. That should fool no one. A vote against discharging Mr. Connor's bill from the certain burial ground of the Elections Committee is the equivalent of a vote against the bill itself." Is the equivalent of a vote against the bill itself.

So I would suggest to Senator Goodman that if he has fundamental problems with the legislation -- and I respect that - then let it out of committee and vote no on it on the floor. Or propose your own bill, which

you've had many, many years to do, to change this system. And let's get on with it.

But I don't want to hear that this procedural motion means that you're not voting against something that would have a positive impact for the people of this state. We heard the same argument on hate crimes. It's a procedural motion.

You voted against hate crimes, members of the Majority. You're going to vote against this, members of the Majority. And it's dead wrong. And to the extent that we can expose the fallacy and the argument that it's just a procedural motion, I hope I have been effective in doing that today.

I extol the virtues of this legislation, applaud everyone who intends to vote in support of it, and would urge everyone who intends to vote no on this to reconsider conceptually what that vote means. Your constituents will not understand what it means by your argument that you're voting on a procedure, because we're going to tell them that you voted to block a positive reform for the people of New York State. It is what you

have done here by casting your negative vote.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Hevesi.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I also join in support of this legislation. And I don't think it's a mystery to anyone -- and I followed the trial, the case that Senator McCain brought. The language the federal judge used in that trial should embarrass every member of the Senate. The language the judge used was that our ballot laws do not pass the giggle test, that our laws are absurd, they're irrational, and, most importantly, as was done four years ago, our laws are unconstitutional. They're an unfair burden on the people of the State of New York trying to exercise their rights to vote in a democratic system.

That is a disgrace. It is a disgrace that every four years we are held up to national shame for this. And it's time to do something about it.

It is not hard. Senator Connor, an expert in this area, has worked out a lot of details in this bill that I think commend themselves to us. We should vote for this bill. We should bring it to the floor. We should get this national embarrassment out of the media every four years. We should get this national disgrace of New York's ballot-access laws on the track to recovery.

I want to now address the issue that Senator Hevesi addressed so persuasively. I was a trial lawyer. Saying something is procedural doesn't mean it does not have tremendous substantive effect. The only way you get a bill to the floor of the Senate is through a procedure. Voting a bill out of committee is a procedure. The procedural step of getting a calendar number, that's a procedure.

We don't do these things, we don't pass any legislation -- the Majority frequently does motions to discharge bills out of committee. That's a procedure. Gets unanimous consent to waive the third reading. That's a procedure.

Let's get rid of this smokescreen. If you vote against a motion to discharge, you are killing a bill. If you vote against a hostile amendment, you are killing the provisions of that amendment. Let's call it what it is. Procedure is the only way to get a bill to the floor. If you won't let a bill to the floor, the bill ain't going to pass.

And everyone who votes against this motion is voting against the bill, as Senator Hevesi has pointed out, voted against our right, our opportunity to consider this legislation. This is something that I don't think the voters are going to understand. And I don't think they should understand.

If you're voting against a motion to discharge on this bill, you'd better have a very quick counterproposal getting to the floor through a procedure, which is the only way to get things to the floor.

A vote no on this bill is a vote against democracy in two senses: in terms of the substance of ballot access, and in terms of this house's ability to consider this legislation.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I'm sorry that Senator Bruno isn't here. I tape-recorded his statement earlier. I'm going to give it to my 15-year-old son. He turns 16 on March 15th, and he's going to ask me for the keys to my car. And I'm going to say to him, "Wait a second, son. You need a license before you can drive that car."

You know what he's going to say to me? "Just a procedure, Dad, that's all it is. It's just a procedural issue. I know how to drive the car. Why should -- this is procedure, Dad. This has nothing to do with substance."

And I'm going to lecture him about the need to have a license before you can drive a car, and he's going to say just what Senator Bruno said. "That's a procedural motion. It doesn't affect anything substantively at all. It's purely and simply a procedure, Dad. And why should I comply

with the procedure?"

And I would just suggest I'm going to can what Senator Bruno -- I'm just going to tape it and I'm going to take it home and make sure that my son lectures me about procedure versus substance and how the procedure of getting a license doesn't affect the substance of driving a car.

I think Senator Bruno makes a great point. I completely disagree with it, by the way, but he makes a great point.

This bill, on its substance, is a fascinating thing to track when you track the other great election that's happened in this planet in the same period of time. Did you follow the elections in that country -- you remember that country, the one that called us Satan. You know, in Iran.

Remember what happened in Iran? They had new elections, new parliamentary elections. They had thousands of people who wanted to run as candidates. And lo and behold, what happened? They filed their procedural request to be a candidate, and all of a sudden they ran into a problem. The

clerics, the Islamic fundamentalists that run Iran, started throwing people off the ballot. And said, Guess what? You don't qualify to go on the ballot. Why? Because you're not enough of an orthodox Muslim to qualify to go before the voters.

We were aghast in this country. How dare anyone use religious fundamentalism as a principle for getting access to be ballot? How dare anyone say, You're not orthodox enough as a Muslim to run for office?

I would just suggest to you that what we do in this state is we allow the high priests of politics to do exactly the same thing. What did the high priests of the Republican Party say to John McCain? Not orthodox enough. You can't get on the ballot. And we've got all these rules, all these little procedural rules which will affect the substance of people's right to vote. And if you don't jump through all these procedural steps, you can't get on the ballot.

Why is it that we recoil in horror when Iran does it, but there's certain people in this state who seem to celebrate it when we

do it here in New York? Where is the notion of democracy in either of those two systems? Where's the notion of people running for office and getting a chance to take their issues to the voters and letting the voters decide?

I am astounded by the response that this bill shouldn't become law, or that it's seriously flawed. I think what Senator Connor's bill does, it promotes something that I've been lectured about in this hall through my whole career. And people say to me, "Rick Dollinger, you're one of those old liberal Democrats. You're not enough of a free-market guy. You don't believe in competition."

Well, I supported deregulation of our utilities. I supported deregulation and opening to competition of our telecommunications. I supported the opening of our health care system to competition. I would like to have more competition in our airfares.

And yet this bill does one thing. It prevents competition in our elections. It preserves a system that prohibits and limits

competition. Why is it that we're so capitalist in all these other businesses but when it's our business, the business of running elections, we act like socialists?

We control the marketplace. We're not going to let anybody else get into our little game of running for office. And sure enough, we're limiting access to people's right to run for office by all these steps which Senator Connor's bill will eradicate.

Let's be honest. Let's open our system to competition. And I would suggest that it will have a tremendous benefit to New York. When we make New York a freely competitive state, New York's power and leverage in Washington will be amplified. Because everybody's going to come to New York. Candidates from all stripes, across the spectrum, they will come to New York, because we have the third largest number of delegates to both of the conventions. We will get greater clout if people come here and compete on our home court for our voters.

And it seems to me, in a state which already pays far too much to Washington

and gets far too little back, we would send a message about our relative importance as a state in this nation if we opened our primary system to greater competition.

I'll close with one other example. There was a forlorn candidate a while back who was a member of a new party, an old amalgamation of parties who got together. And he didn't have a lot of support. In fact, he eventually ran for national office and he got less than 40 percent of the vote. He didn't have widespread support. In fact, he was never even a member of the party that he was running for until he went to the convention, the national convention. And he got less than 40 percent of the vote. He was an outsider, the true outsider. He's the greatest Republican President in history, Abraham Lincoln.

I would suggest to you that if he had to navigate his way through the process that we now have in this state, he would never, ever have seen the doorstep of 1600 Pennsylvania Avenue.

Let's do it for Lincoln. Let's

change this rule for Lincoln, to open up the ballot and make it work.

ACTING PRESIDENT MORAHAN: Thank you, Senator Dollinger.

All in favor of accepting the motion to discharge signify by saying aye.

SENATOR CONNOR: Party vote in the affirmative.

SENATOR VELELLA: Party vote in the negative.

ACTING PRESIDENT MORAHAN: The Secretary will call the party roll call.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 23. Nays, 36. Party vote.

ACTING PRESIDENT MORAHAN: The motion is defeated.

Senator Connor, do you wish to be -

SENATOR CONNOR: No, I'm leaving.

ACTING PRESIDENT MORAHAN: Don't try to fool the new guy.

Senator Velella.

SENATOR VELELLA: Mr. President, there being no further business to come before

the Senate, I move we adjourn until Monday, March 6th, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT MORAHAN: On motion, the Senate stands adjourned until Monday, March 6th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 1:05 p.m., the Senate adjourned.)