THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 23, 2001

11:15 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

I ask everyone present to please rise and repeat with me the Pledge of Allegiance.

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

THE PRESIDENT: In the absence of clergy, may we each bow our heads in a moment of silence.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, January 22nd, the Senate met pursuant to adjournment. The Journal of Saturday, January 20, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: 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 SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

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

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

SENATOR SKELOS: Also, if we could adopt the Resolution Calendar in its entirety.

THE PRESIDENT: All those in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up the noncontroversial calendar at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 14, by Senator Volker, Senate Print 207, an act to amend the Criminal Procedure Law, the Public Health Law, and the Family Court Act, in relation to the authorized destruction of dangerous drugs.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 24, by Senator DeFrancisco, Senate Print 430, an act to amend the Criminal Procedure Law, in

relation to access to sealed records.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 27, by Senator Marcellino, Senate Print 490, an act to amend the Penal Law, in relation to including the theft of dogs and cats within the crime of grand larceny.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 30, by Senator Goodman, Senate Print 684, an act to amend the Penal Law, in relation to computer networks.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 35, by Senator Balboni, Senate Print 852, an act to amend the Penal Law, in relation to enacting the "anti-weapons of mass destruction act."

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect in 90 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

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

SENATOR MARCELLINO: Can we have

the reading of the controversial calendar, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 24, by Senator DeFrancisco, Senate Print 430, an act to amend the Criminal Procedure Law, in relation to access to sealed records.

SENATOR ADA SMITH: Explanation.

SENATOR PATERSON: Explanation.

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

SENATOR DeFRANCISCO: This is a bill that basically allows for a court to order that sealed records be open for review upon a request by -- upon a finding by the court that there's extraordinary circumstances to allow the unsealing upon application by the professional licensing organizations doing the investigation on possible discipline. This applies to sealed records of attorneys, doctors, and other professionals.

And the purpose of it is that in the event that there's an inquiry concerning

whether based upon some facts or some allegations that a professional should have his license either suspended or there should be some type of action taken on account of certain activities of that professional, that licensing body or investigative body should be able to get access to those records that have been sealed by a prior proceeding.

And the judge is only allowed to do that and to unseal the records upon notice to the person being investigated for possible disciplinary actions and upon the showing of extraordinary circumstances.

And I have been many, many times accused of being a trial attorney, that I just somehow have an affinity towards doing everything trial attorneys want. This happens to be opposed by the trial attorneys.

But I think it's a good bill because the bill would provide some useful information in some instances. So that if someone is doing something improperly and unprofessionally, the regulatory agency can get whatever evidence they want to get upon a showing of extraordinary circumstances.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, would Senator DeFrancisco yield for a question.

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: Madam President, I'm looking for an example of the extraordinary circumstances that would be the catalyst -

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Senator Paterson, if I could just interrupt for a minute. There will be an immediate meeting of the Environmental Conservation Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Environmental Conservation Committee in the Majority Conference Room.

You may proceed, Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

I just wanted to know if Senator

DeFrancisco would inform the body of the type of extraordinary circumstance that he thinks would be the catalyst for actually unsealing the records.

SENATOR DeFRANCISCO: Well, it would have to be on a case-by-case basis.

One I can think of, it may very well be that someone could be -- a charge could be dismissed or adjourned in contemplation of dismissal because that particular charge may have been the first offense alleged against the professional. Maybe there's a dismissal based upon -- in the interests of justice, because of many, many different reasons, because that professional may be a stalwart in the community. And weighing all those things together and all the good things that person has done, in the interests of the justice, the court might dismiss the case.

Or, as I mentioned before, an adjournment in contemplation of dismissal for a first offender. It may very well be, from the criminal standpoint, and the need to sentence someone to a criminal sentence may

not be that important. But the activity may be a theft of client funds, for example. It may be some extremely unethical activity that might not raise to the level that a prosecutor would really want to go for a conviction and a possible sentence.

And I think when a judge, weighing all those factors, can make a determination based upon the alleged offense and what information might be available, based on the charge that was ultimately adjourned in contemplation of dismissal, that that might be useful in either supporting the unethical conduct or possibly clearing the professional from that allegation by a complainant.

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: Those recorded in the negative on Calendar Number 24 are Senators Brown, Duane, Hassell-Thompson,

Montgomery, and Paterson. Ayes, 52. Nays, 5.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos, that completes the controversial calendar.

SENATOR SKELOS: Please recognize Senator Larkin.

ACTING PRESIDENT MEIER: Senator Larkin.

SENATOR LARKIN: Mr. President, on the Resolution Calendar, on Calendar Number 248 on the Resolution Calendar, we'd like to open that up.

This is in recognition of Autism Day. And we know that all of us have some areas of concern in that throughout the state. And so we'd like to open it up for everybody if they'd like to get on it.

ACTING PRESIDENT MEIER: Senator Larkin, that was Calendar 248?

SENATOR LARKIN: 248 on the Resolution Calendar.

ACTING PRESIDENT MEIER: Resolut ion 248 will be open for cosponsorship. Anyone who wishes to, inform the desk.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Print 3, by Senator Bruno, an act to amend the Insurance Law and the Public Health Law;

And Senate Print 1265, by Senator LaValle, an act to amend the Insurance Law.

Both bills ordered direct to third reading.

ACTING PRESIDENT MEIER: The bills will be reported directly to third reading.

Senator Skelos.

SENATOR SKELOS: Move to accept the Rules report.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The Rules report is accepted.

Senator Skelos.

SENATOR SKELOS: Mr. President, if you could call up Senate 1265, Calendar Number 39, for the purposes of Senator Stachowski voting.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 39, by Senator LaValle, Senate Print 1265, an act to amend the Insurance Law, in relation to coverage.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect July 1.

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: No.

ACTING PRESIDENT MEIER: Senator Stachowski will be recorded in the negative.

SENATOR SKELOS: Withdraw the roll call.

ACTING PRESIDENT MEIER: Roll call is withdrawn.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

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

ACTING PRESIDENT MEIER: Immediate meeting of the Local Government Committee in the Majority Conference Room.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Senate Calendar Number 3 -- Bill 3.

ACTING PRESIDENT MEIER: The

Secretary will read Senate Calendar Number 38, Senate Print Number 3.

THE SECRETARY: Calendar Number 38, by Senator Bruno, Senate Number 3, an act to amend the Insurance Law and the Public Health Law, in relation to coverage of primary and preventive obstetric and gynecologic care.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT MEIER: Senator Bruno, Senator Connor has requested an explanation.

SENATOR BRUNO: Mr. President, we have been for a lot of years dealing with health issues in this chamber. And many of those health issues have improved the quality of life for all the people here in New York.

We focused last year on women's health issues. We created a task force on women's health issues. And this is a first bill that comes from the good work of that task force, that was chaired by Senators Rath and Bonacic and assisted by many of our colleagues here in the chamber, with many of the advocacy groups that are out there who of course have a vital interest in women's health

issues.

So the bill before us really deals with what everybody recognizes, that if you're going to have good health, that deals with disease prevention and early detection of anything that is afflicting especially women. So this deals with breast and cervical cancer screening as a mandate, it deals with osteoporosis, bone density screening, and it provides, with a doctor's prescription, contraceptives.

And it also clarifies a '94 law that gives more direct access for women for OB-GYN treatment by doctors so that they don't have to go to a primary care physician in order to access that kind of examination or treatment.

That in essence is what happens in this particular piece of legislation. And I'm sure that my colleagues Senator Rath, Senator Bonacic, Senator Hannon in the Health Committee, Senator Seward, who assisted in the Insurance Committee, can help in terms of answering whatever other observations or questions my colleagues might have.

Thank you.

ACTING PRESIDENT MEIER: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

Well, if this represents progress on this issue, I'm delighted. Certainly we were disappointed when we left last year without having done this. Although on a personal level, I'm glad we did prostate cancer.

But the fact is that there are a couple of things with this bill that are different than the Assembly version that's passed the Assembly. So I would urge -- I mean, I assume this will pass here, but I would urge the Majority to get together with the Assembly very quickly in conference committees and work out some of these differences, because they're not insignificant. And at least for me, they compel me to vote against this bill in its present form.

I hope it will be back, because obviously it's too important an issue to get

bogged down between the houses and become a one-house in each house. In fact, if you look at -- there are pieces of this bill that, if you just cut the rest of it out, I think both houses would pass in about an hour. But that said, we do have some concerns.

And if I may, Mr. President, yield the floor to Senator Schneiderman for the purposes of offering an amendment.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Mr. President, I have an amendment at the desk. I'd like to call it up, waive its reading and give an explanation.

ACTING PRESIDENT MEIER: The amendment is at the desk, and you're recognized for the purpose of explaining it.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

We're going to be offering two amendments to this bill. And the two amendments essentially would conform it not just to the Assembly bill, as Senator Connor mentioned, but to the Bonacic bill that had on

it as of my last calculation last year, a dozen Republican Senators as sponsors.

That bill, the same as the Assembly Bill, did not include the extraordinarily broad conscience clause that is in the current piece of legislation. As we discussed last year, this conscience clause, which is the same conscience clause as in Senator LaValle's bill on fertility treatment, is broader than any that has ever been passed in the State of New York.

Its language, particularly the language that exempts organizations that are operated, supervised, or controlled by or in connection with a religious organization from the requirement that they provide contraceptive coverage -- this would cover a joint venture between Fordham University and a biotech firm. This covers hundreds of thousands of women in New York State who need this coverage.

It is far broader than anything we've ever passed. And I suggest that unless it is amended to delete this broad clause, I would strongly recommend a no vote. I think

this is a poison pill that the Assembly will never pass. It's a poison pill of the magnitude that it probably belongs in Senator Balboni's "weapons of mass destruction act."

This is a stonewall to actually moving on the bill. And I strongly suggest we take it out. I urge a yes vote on the amendment to delete this clause and, if it is not deleted, a no vote on the bill.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: The question is on the amendment. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT MEIER: The amendment fails. The amendment fails.

Senator Oppenheimer.

SENATOR OPPENHEIMER: I believe I have an amendment at the desk. And I'd like to waive its reading and speak on it, if I may.

ACTING PRESIDENT MEIER: The

amendment is at the desk. The reading is waived, and you're recognized for the purpose of explaining it.

SENATOR OPPENHEIMER: Thank you, Mr. President.

This amendment requires insurance coverage for annual mammograms for women over age 40 and provides that these mammograms won't be subject to deductibles or copayments. To put financial obstacles in the way of breast and cervical screening seems obscene to me.

Current law provides for mammograms every two years for women over age 40 -- and actually, at the recommendations of a physician, it can be more than annually -- and for women over 50, it would be annual. Now, the current law does provide for deductibles, and that is not included in my amendment. I would waive deductibles.

The bill before us, Senate Bill 3, would require annual mammograms for women 40 to 49 but then over age 50 would require the recommendations of a physician. This is contrary to our current law. Our current law

says that women above the age of 50 can access an annual mammogram. Also, Bill Number 3 allows for deductibles.

I think we should note that the American Cancer Society recommends that there be annual mammograms provided for all women as a way of obtaining their preventive health care.

Studies have shown that women pay 68 percent more than men for their out-of-pocket health costs. And this is primarily because there are so many preventive care measures that are taken by women, required by women.

Now, this amendment will help to lower this disparity by requiring health insurers to cover annual mammograms for women age 40 and over, and it prohibits the charging of deductibles for mammograms, or copayments. I think to put financial barriers in place that discriminate against women is really unconscionable in this society.

I urge the adoption of this amendment.

ACTING PRESIDENT MEIER: The

question is on the amendment. All those in favor signify by saying aye.

SENATOR CONNOR: Party vote in the affirmative.

SENATOR BRUNO: Party vote in the negative.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 24. Nays, 36. Party vote.

ACTING PRESIDENT MEIER: The amendment fails.

Senator Bruno.

SENATOR BRUNO: On the bill, Mr. President.

You know, it would be unfortunate if we just tend to politicize an issue that's as important as this. I understand when you talk about eliminate copay, any cost, totally free -- when you talk about that, it sounds as if you are the benefactors of all of the people who are out there.

But I'm asking my colleagues to consider what the task force considered and

all the responsible people consider, that every aspect of health care today has a copay. And you start eliminating copays on this issue, and you will be forced by pressures to eliminate copay in every aspect of health care. And the 3 million-plus people in this state without insurance will grow to astronomical numbers.

Now, is that a responsible thing for any legislative group to do to the public? Sure, it's nice to talk about a giveaway. Let's make it free. Politically, that's expedient. But let's not be political with an issue that is as important as this. And let's not posture, because any bill that becomes law is going to have a copay in it.

So politically, you want to take a position, it's been defeated. Not because we wouldn't like to participate in giveaways, but because we want to be responsible to the public and to the people of this state and keep the uninsured numbers at some manageable level.

We passed Family Health Plus. Why did we do that? Because there are over

3 million people without insurance in this state. That's intended to include about a million of the people who can't afford insurance. Child Health Plus, why did we do that?

So I'm asking you to be responsible. I know that you will support this. And we will negotiate. And by the way, we're waiting for the Assembly to pass a bill.

The importance of this relates to the fact that this is Senate 3 and that we are doing this early in the session. We want to see this become law.

And on the conscience clause, why should this body or any other body be dictating to a religious group -- and they have to be religious -- that they must mandate something that they feel religiously they can't support? Why should we mandate and legislate that that has to happen?

And, Senator, it is not accurate to say that they can partner and they can at will do what they please, because the Insurance Department in this state is mandated to make sure that if anyone uses the conscience

clause, it's on religious grounds, and they will attest to that. So they will monitor and they will police that this is not used indiscriminately.

And I know there are others that are much more knowledgeable -- Senator Bonacic, Senator Rath, and the others on this issue -- and they may have some observations and comments.

So to the bill, this is an important piece of legislation. We want to move the process. And I would urge my colleagues to support this so that we can get a bill that does become law.

ACTING PRESIDENT MEIER: Senator Dollinger.

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

I understand Senator Bruno's comments, and I appreciate his assigning this bill certainly the political and social importance of making it Senate 3 and bringing it to the floor early on in the session.

Senator Bruno, I would disagree sharply with one thing you said, however. The

amendment that was proposed by Senator Oppenheimer to eliminate copays for the most important form of preventive care for women over the age of 40 to early detect and treat breast cancer I don't think should be characterized as a giveaway.

I think if you stand up for women who believe that mammograms are the most important means of detecting this horrible disease, which has extracted a horrible price from New York women, and without a copay, when most of our preventive treatments in this state do not involve copays, it seems to me what we're doing is creating parity for women over the age of 40 with many other people who don't have to pay copays in this state. And I just believe that to characterize it as a giveaway is inaccurate.

Mr. President, on the bill. I too am troubled by the conscience clause, and let me explain briefly why. This conscience clause has two parts. The first part says that if you're an employer, you cannot be required to provide certain forms of diagnostic and treatment, which most likely is

going to mean contraceptive care, to your employees.

I believe that there is a foundation for making that exception for an employer. I believe the Catholic Conference, the Catholic Church, doesn't necessarily have an obligation to provide treatments that are inconsistent with its fundamental mission to its employees. And I believe that a carefully drafted conscience clause -- not this one, and I'll explain why -- but a carefully drafted conscience clause could exclude certain religious organizations from providing these benefits.

However, this conscience clause goes another step and it says that any health maintenance organization, either sponsored or controlled by a religious organization, is subject to the same possibility that the people who it provides coverage to will not get those benefits, will not get that treatment or detection or care.

And it seems to me that that goes too far, because it says that the mere fact that you're in the business of health care -

you're not in the business of religion, you're in the business of health care, providing health care -- under those circumstances, your religious beliefs can prevent you from providing mandated services that we require everyone else to provide.

I would suggest that that clause goes too far when it applies to a health maintenance organization regardless of its affiliation to any religious institution. If they're in the business of health care, we should be able to mandate what type of health care benefits they provide to their policyholders.

Conversely, if they're in the religion business and they have a fundamental tenet against providing that coverage to their employees, I believe that a carefully drafted conscience clause would be appropriate for an employer. But not when they're in the business of health care.

And let me conclude by telling you this is not the right way to do it. This says that it has to be held to be contrary to the religious tenets of the organization. And I

would suggest to you that some day the courts of this state will sit down and have to interpret whether the type of health care provided under the plan is contrary to the religious tenets of any religious group.

I believe that that will plunge New York State unconstitutionally into having our courts evaluate the religious tenets of religious organizations. It violates the First Amendment. It will jump the courts of this state into the religious affairs of religious communities around this state. And that is not the right thing to do.

The civil courts of this state should not be in the position of deciding the religious tenets of any organization. That belongs completely as an ecclesiastical matter, and we ought to stay out of it.

The bottom line for me, Mr. President, I'm still not sure which way I'm going to vote. But I believe that a broad clause like this is dangerous. I think it plunges us into a pattern of unacceptable conduct. I believe that a more narrowly confined religious conscience clause would

work. And my guess is as I sit here I'm going to vote against this bill because I don't think the religious conscience clause does the job.

ACTING PRESIDENT MEIER: Senator Rath.

SENATOR RATH: Thank you.

There is nothing quite so powerful as an idea whose time has come. One of the sage persons that we revere said that a long time ago. And I think this idea has come. It's come to the floor of the New York State Senate. It was here at the end of last year, but it never quite got to the floor for debate. And although a bill passed in the other house, we slowed things down some.

At the request of Senator Bruno, a task force was formed on health and wellness. And as you know, health and wellness goes a lot further than one bill.

This is the first bill that we will be seeing in relation to health and wellness. It has to do, of course, with women's services. I think the laundry list of items that it's going to provide have been well

documented and talked about on the floor.

But I'd like to say something about the cost issue because, as the chairman of the Local Government Committee, that was my biggest concern last year and why I personally wanted to step back and take some time to look it over.

We spent a lot of time talking about costs. We spent a lot of time talking about copays. I pay a copay. I'm sure the women on the other side of the aisle, my colleagues here on this side of the aisle, we pay copays. We don't mind. We can afford to pay that. It helps keep the cost of insurance down, it helps avoid overutilization, it does a lot of things. It makes us a partner with our employers and the health insurance companies who are providing the insurance that we have as a result of being employees.

I think it's important that we know that the poor women of this state are taken care of. They're taken care of by Medicaid, and more will be taken care of as Family Health Plus comes into place. The low-income earners, Family Health Plus as well as the

Healthy Women Partnership; again, another place. Healthy New York, another program that will help employers cover the cost if they would not ordinarily cover the cost because they're small business people.

And how many times on this floor have we talked about small business people? How many times have we said we need to do what we can to keep businesses in New York State, we can't drive them out with high taxes, high costs, et cetera, et cetera. You know the argument as well as I do.

And this was a slowing down in order to clarify what the costs were going to be. I said, as chairman of Local Government, my concerns were not only with the cost for business but, if we have uninsured and if the ranks of the uninsured rise dramatically, who ends up paying for them? We know. They become the costs to the counties, where I come from -- and all the counties, but I certainly do recall those county days and the health care costs -- in partnership with the state.

And so we have a balance, a cost and a benefit balance. It would be nice to

say we can be all things to all people all the time. We know we can't do that. And so with the chairman of Insurance and the chairman of the Health Committee, we spend a lot of time talking with my colleague Senator Bonacic, the cochair of the Health and Wellness Task Force.

And so we have a piece that is coming out today that I'm sure will be passed. Is it the last you have heard of this? I doubt it. What will the Assembly do? I don't know. Will we end up with a better bill when we finally come to the end of session? I certainly hope so. Because I think there's a lot of improvement always that can occur.

But you've got to start with something. You've got to start with a piece that has, as it were, crossed the finish line once. Will there be another race and other finish lines before the end of this session? I expect so.

But let me just close with a comment about a 1997 report from Smith Barney research. It found that women make three-fourths of the health decisions in American households and they spend almost two

out of every 3 health care dollars, approximately $500 billion annually. This is spent by women because women are the caregivers. You know it and I know it. It's been traditional. And I don't want my male colleagues to take offense. However, if the mother in the household stays healthy, everyone else can get healthy, because the mother is there to make sure everyone has got the opportunity to get either to the doctor or get the care they need.

So we know that women have traditionally played that role of caregiver. This bill essentially ensures that the caregivers are eligible for care, that the caregivers are eligible for care. I think it's important that we pass this, we make this statement, and then we get on with the business of how we can turn this into law.

ACTING PRESIDENT MEIER: Senator Bonacic.

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

I would like to focus on what this bill accomplishes. The bill addresses women's

health and wellness. As was adequately pointed out by Senator Oppenheimer, women pay 68 percent of health care costs out of their pocket, not covered by existing insurance policies and health plans in the State of New York.

That is an inequity. And we want to address that inequity. And I congratulate my Assembly colleagues that are working to address that inequity. But let's talk about what we would be accomplishing today if we pass this bill.

Breast cancer: Number one killer of women ages 40 to 59. Under the law today, a woman who is 50 years or older can get a mammogram or a Pap smear on a doctor's recommendation every year, but not women 40 to 49. This bill says that women will be covered, upon a doctor's recommendation, every year from 40 to 49.

Now, when we have 41,000 women dying of breast cancer in the United States every year, we have 12,000 women in the state of New York getting breast cancer every year and 3500 of them are dying, that is scary. We

can't wait. We can't pontificate. This accomplishes aid for those women immediately. And I tell you what. If they had a mammogram, those women, every year from 40 to 49, we save 30 percent of those 3500 women that are dying.

That's how important this is. And you know the scary part? The women that are getting the breast cancer, 70 percent of them have no history. They don't know it's there. So early detection on breast cancer is critical to the women of this state.

I want to congratulate our leader, the women of our Senate conference and the women of this Senate body, as well as the task force members and those advocates out there that have come in and have identified the women's issues in health that they want addressed. So we accomplish that by this legislation today.

The second thing, osteoporosis. Not glitzy; you don't hear about it much. But it is growing in the United States as a very bad disease for the citizens of this country. 8 million people have osteoporosis. 10 million are waiting to happen. And by the

way, on osteoporosis, it affects women eight times greater than men; on breast cancer, women five times greater than men.

So what do we do by this bill? We allow women to access services for the treatment of osteoporosis through insurance policies that they don't have now. That they don't have now.

So as the leader points out, this is a bill in prevention. Because we pay for mastectomies, we pay for breast surgeries, we pay catastrophe dollars to address that covered by policies now, on the back end. For osteoporosis, we pay for those 1.5 million fractures, of which 300,000 are hip fractures. We pay now. But we don't pay for the prevention. That's what we accomplish by this bill.

The third thing we accomplish, we get rid of a loophole. And that is a woman for primary care doesn't have to go through a gatekeeper, she can go to a gynecologist to be treated.

And last but not least, the fourth aspect of this bill is the contraceptive

provision. And now every insurance policy for individuals can access contraceptives. Yes, there is a religious clause. Yes, we can discuss better language, or this language. But this is a woman's health and wellness bill. Don't lose sight of what we're trying to accomplish. We never had contraceptive coverage, and now we will be covering.

Do we get all of the women? Some slip through. Because let's just -- I'm not picking on the Catholic Church, but let's stay with the Catholic Church. We have about 35 HMOs, they have two Catholic HMOs. They're going to insist that those HMOs don't have contraceptives, so these women won't be able to access that. But we think it's a small portion. That's something we continue to address tomorrow.

So for all of these reasons, I ask you to support this bill, to improve not only women's health but wellness for the families of the state of New York.

Thank you very much, Mr. President.

SENATOR OPPENHEIMER: Mr. President, I would like to ask the Senator a

question if he will yield.

ACTING PRESIDENT MEIER: The Senator has yielded the floor. He's sat down.

We have a speaker's list, if you would like to be added to the list.

Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

I would like to offer my hearty congratulations to my two colleagues, Senator Rath and Senator Bonacic, who have for years championed this issue and done yeoman's service in bringing it to the attention of the entire conference.

And my thanks to Senator Bruno for his personal leadership in providing the guidance and the direction to make sure that it would happen and happen early in this session.

All too often the hard work that goes on behind the scenes is not recognized by the general public. But I know how hard Senator Rath and Senator Bonacic, along with the other members of the task force, have struggled with this issue, because it an

intricate issue. It cuts across so many lines. We're talking about delivery of health care, we're talking about insurance, we're talking about religion, and we're talking on a very emotional and painful level, from personal experiences, about people -- real, living human beings who are facing enormous risk if they don't get this kind of coverage that we are now going to make available in New York State. And for some of us, the faces of people who are no longer with us haunt us while we have this dialogue.

And no matter what we do, we'll always think that there's something else that can be done. And I think Senator Rath said it best when she said that this is part of an ongoing process. And Senator Bruno established at our press conference a little while ago that the task force will continue. I'm proud to be part of this task force and to know that I am in a legislative body that is going to make addressing health issues a major priority, not just for a few weeks, not just for this session, but forever.

Thank you, Senator Bruno, for the

kind comments that you made to the three women Republican Senators. Because we do feel that our numbers allow us to be on an even playing field. When you said the numbers 33 men and 3 Republican women, but it's an even game, we recognize that today because you are standing here with us on these important measures.

Breast and cervical cancer continue to take women's lives, younger women all the time. The statistics are alarming. If undiagnosed in a young woman, the disease is more virulent and tends to cause a mortality much faster than for an older woman. Therefore, the need for that early diagnosis is critical. If women don't know that it's part of their history, if it's not something that is on their mind, and if there is no family history, it's unlikely they're going to feel highly motivated to go and incur a huge expense to find out if they are at risk, if they have developed the disease.

We need to provide that safety net that says your insurance will pay the cost of cervical cancer screening or mammography. This measure will do that, and for that, the

women of New York State will be grateful.

Osteoporosis. I like Senator Bonacic's reference to it. It's not a glitzy issue, he said, it's not a glitzy disease. Do you know what it is? Does everybody recognize what osteoporosis does? Have you all seen those little old ladies with what is called a dowager's hump, women who are bent over, they don't stand up straight, women who started off at 5 foot 5 or 5 foot 6 in their youth and by the time they're 65, 75, or 80, they're 4 foot 8 and they can't stand up straight? Do you know how brittle those bones are? Do you know how painful it is for them if they fall? And do you realize how likely it is that they will suffer fractures, painful fractures, that obviously will cost them time, energy, anguish, and, as Senator Rath points out, hurt all of their families while they're recovering?

We have a responsibility, since we know the data on osteoporosis, to detect it early. Now is the time to find out if a woman is subject to osteoporosis, at an early age so that she can have treatment. And that

includes calcium and hormonal treatment and increased exercise.

Because this is the beginning, we will probably be standing here looking at other legislation in years to come and months to come that will include many more things that will allow that type of diagnosis and treatment. Since exercise is such a big part of it, maybe we'll be looking at legislation that allows mandatory coverage in health clubs so that the exercise component will be there along with the medical component.

All of this is preventative care. We are learning as we go. And we are prepared to venture into the future with the interest of women's health at heart.

But the most significant piece of this legislation, bar none, is the inclusion of contraceptive care in insurance policies in New York State. Women of all ages have protested the inequity of having to pay out-of-pocket for contraceptive coverage for years. And how many of them have needed it not for contraceptive purposes but for prescribed hormonal treatment?

Now we are addressing one of the most basic needs for women to control their own bodies, to control their own destinies, to have a sense of dignity with their health. This is a sign that we recognize all of those things are as important policy initiatives as any economic platform in this state government.

And I'm enormously proud to be here today as a member of the task force on women's wellness, thank all of my colleagues who participated in this, and pledge continuing commitment to do even more for women's wellness in New York State.

ACTING PRESIDENT MEIER: Senator Hannon.

SENATOR HANNON: Yes. I rise because I want to address the two points that were raised by the Minority.

Before I do that, I really want to congratulate Senators Bruno and Bonacic and Rath for having brought this Senate such a long way, and especially on the point Senator Hoffmann just mentioned. Getting the coverage in regard to contraception is a major step.

And I don't think it has been recognized and I don't think it has been acknowledged by the advocates who are out there.

Let me just address quickly the questions of copay and the conscience clause. To the extent that people want to do away with this, they diminish whatever intellectual standing they have left. Copay and deductible is an essential aspect of insurance in order to extend the benefit to as many people as possible. We've spent a considerable amount of time making sure that we would do a serious dent to the uninsured in this state. It makes no sense to introduce things that won't work.

Now, we're introducing this not in a discriminatory way. And notwithstanding what Senator Dollinger said, this is not something unique in regard to preventive and screening services. It's the same. And in the bill it says it shall be done in a reasonably consistent way, supervised by the insurance. Specifically says that so that it applies the same way as everything else. If we're not to do it, would we be taking coverage for heart attacks or EKGs or things

like that and saying they're not as good?

And second, the reason you do a copay is this is not a means test. We've already taken care of -- full coverage -- for those people who can't pay. We have Medicaid, we Family Health Plus. If you're older, we have Medicare. So we're not dealing with that. And to try to use some kind of amendment that will become a cheap political trick I think does a disservice to getting good care for as many people as possible.

Second, the conscience clause. There was a comment that this is not the right way to do it. You know, it really I think is a misunderstanding of the health care system. Someone over there tried to make a distinction that you can be religious or you can offer health care, ignoring the rich history we have in this nation of religions seeing as their mission offering health care.

And so it strikes me as inherently contradictory that we would welcome the benefits of that mission, welcome the benefits of an HMO, the Fidelis, that does Medicaid managed care to the poor throughout northern

New York, where nobody else would do it -- we ignore those benefits and then we try to say, oh, wait, but you can't have a conscience clause.

We have coexisted. There are rich, rich treatises on church and state. And we do have involvement back and forth. I think it is very simple to say that a conscience clause belongs in this arena and that we ought to have it whatever what the actual wording may be. I don't think that saying it goes forward to some type of technology alliance with a biotech company is reading what's in this proposal. And I don't think it's a logical conclusion.

Thank you.

ACTING PRESIDENT MEIER: Senator Goodman.

SENATOR GOODMAN: Mr. President, clearly this bill confers many substantial benefits which were not heretofore available. And to that extent, we're deeply grateful to its sponsors and to the committee, especially to Senators Bonacic and colleagues who were so heavily involved.

May I say, however, I think we owe it to ourselves to look beyond the immediate questions that have arisen today and to say to ourselves what happens to the individuals who work for institutions run by the Catholic Church who may themselves not be Catholic - they might be Muslim, they might be Hindu, they might be any number of other religions who are not bound by the Catholic strictures inherent in this. What can they possibly do to protect themselves?

Mr. President, I rise to suggest that there is a method by which this can be accomplished, one to which this house should address itself most earnestly. That is the so-called the Hawaii plan. Under the Hawaii plan, if I work for an institution, let us say a Catholic hospital, and this bill passes - which we expect that it will do because of its many benefits -- then the question is if I want coverage for contraception, in what manner can I obtain it?

The answer in Hawaii is I can request a rider from the insurance company which provides certain coverage, and that

rider gives me the opportunity to obtain contraceptive coverage at the discounted price which would otherwise be available to me.

In my judgement, this does two things. First of all, it respects the absolute right of the Catholic Church to prescribe for its followers those tenets which it believes to be fundamental. And I have no argument with this. I think we owe great respect to the Church, and its point of view in this house has always maintained that position very clearly.

However, what about the people who do not happen to prescribe to those tenets? What do we do about the people who need the coverage and who earnestly require it but would otherwise be barred from obtaining it? The answer is under the Hawaii plan I can obtain a rider. The rider will allow me as an individual to obtain the necessary insurance coverage. And that's precisely the effect which I think we should make available to people.

In short, there's no reason why those of us who deeply respect the Catholic

Church's right to narrow its coverage in the fashion which this bill would permit to preclude those who wish to do something other than that to do it. I think this is a rational approach, and I hope that in the days ahead, as we proceed in this ongoing process of analysis, that we will able to come up with a Hawaii-type plan, apply it here, and permit greater flexibility in the application of an exceedingly urgent matter.

And I also point out that contraception is not a term that is single-purpose. There are certain contraceptive methods which also have a dual purpose, one of which is to regularize a woman's menstrual cycle, another of which might be to help prevent HIV infection from spreading.

There are a variety of reasons why contraception is per se not merely birth control but medically necessary. I hope we'll keep that in mind as well as we consider the possibility of applying the Hawaii plan to this matter.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, on this bill.

I think that I certainly appreciate the comments especially made by Senator Rath in terms of us making it possible for the caregivers to be eligible for care. And the fact that we have expanded access through our Family Health Plus and our Child Health Plus is very welcome, very important, and I applaud us for doing that.

The legislation before us does provide for women access to be covered by our insurance policies, our HMOs and providers for preventive services. And obviously that's very important. We start out with gynecologic services.

Now, the problem that I have with the legislation, and the problem that I think is extremely important because it is going to create two tiers of health care for us, or two classes of women who will be covered under this legislation, is the section that deals with contraceptives which allows for employers

who are connected to religious-affiliated organizations to disallow coverage for their employees.

Now, as far as I can tell, if there is an HMO or if there is a provider that employs women in such situations as hospitals, where we have women who are doctors, nurses, clerical people, housekeeping people, nutrition people, I daresay that the largest percentage of people who work in hospitals are women. What about people who work in nursing homes that have a religious affiliation? What about people who work in group homes or other social service organizations, as there are so many in my district? What about women who work in schools where there is a religious affiliation?

So now, with this legislation, not only do we, as under our current law, allow for religious-affiliated health providers to opt out of providing reproductive health services to women -- we already allow that. They are, however, supposed to have some sort of a carve-out so that for those services that they don't provide, they are to refer women to

other services. Whether or not they do is an argument and a question, but that is what we provide for now.

So with this legislation, we're now carrying that one step further. We are saying not only do you not have to provide services, reproductive health services to women, but you are now allowed to not cover, under your health benefits program, reproductive health services to women that you employ. So we're talking about thousands and thousands of women across the state.

And especially in my district, where there are hospitals that are religiously affiliated and where there are HMOs that are religiously affiliated. And as you know, all Medicaid constituents, all Medicaid recipients, must be affiliated with an HMO. And many of them are affiliated with a religiously based HMO. So that, obviously, those women will not be covered. And that's obviously a problem.

Now, the question of prevention - which Senator Goodman raised, and I certainly agree, and Senator Bonacic raised -- HIV and

AIDS is a particular issue and problem because it is people of color in this state, especially women of color, who are now suffering the largest percent of increase in active AIDS cases and HIV infection. And we know that contraceptive devices protect those women or will help to protect and will help to prevent that spread of HIV infection.

So once again, the women who need it most, the women who are most vulnerable, the women who are not able to go out and access private care, the women who don't work in corporate situations or who don't work in government where we're all covered, those women who work in their communities in those programs, those developmental programs, those little group homes, those social services programs that are sponsored by religiously based institutions will not be covered under this bill.

So this is really a very major percent of the constituents in my district, and I daresay in a number of our districts. But then these women are not going to be speaking to us because they won't even know

that we have essentially eliminated them by virtue of this legislation.

So while I applaud the intent of it, I must vote against it because this really does not -- does not -- provide full and complete access to every woman in our state equally.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you, Mr. President. I was going to ask a question of Senator Bonacic when he was speaking earlier. And he seems to be involved at the moment.

If Senator Bonacic would yield for a question. But he's not -- he doesn't have the floor.

ACTING PRESIDENT MEIER: He doesn't have the floor, Senator.

SENATOR OPPENHEIMER: Okay, let me just state what my concern was.

The bill seems to be addressing the issue of women age 40 to 49 so that they would now be able to access mammogram screenings.

However, as I read the law currently in place now, women are able to access a mammogram every other year presently and, if their doctor prescribes, they are able to access it on even a more frequent basis.

So I fail to understand and wanted an explanation of how this new bill would increase the access to those very vulnerable women age 40 to 49 that we are hoping to give additional protection to. It doesn't look like it's additional, it might even be a subtraction of what they currently have.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: Mr. President, following up on what Senator Oppenheimer is asking, I wonder if there is somebody from the task force who could answer a question.

ACTING PRESIDENT MEIER: Give me just a second, Senator.

Well, who are you asking to yield? Because the -

SENATOR STAVISKY: I'm simply asking the sponsor to answer a question, a very specific question.

ACTING PRESIDENT MEIER: State the question, Senator.

SENATOR STAVISKY: My question is, on page 3 of the bill -- and this essentially is what Senator Oppenheimer was asking -- on lines 5 through 8, it says - currently the law says a mammogram every two years, or more frequently upon the recommendation of a physician. And they add the language "a mammogram every year, or at such other interval as the physician may recommend, for covered persons age 40 to 49."

The question is, by adding the phrase "a mammogram every year or at other such interval," you're repeating what is in the previous clause, which says "every two years or more frequently." It's the same language. That's really, Mr. President, my question. Or isn't it the same language? In other words, you're saying apples and oranges and oranges and apples.

SENATOR BRUNO: No, I'm told by people who have worked on this very directly, Mr. President, that it broadens the physician's ability to relate. And once it's

broadened, then it is in law and stays there.

So it just broadens for every year their ability to get that screening. So it's more coverage.

SENATOR STAVISKY: It already says every two years, Mr. President.

SENATOR BRUNO: Well, it's more coverage.

SENATOR STAVISKY: Thank you, Mr. President.

SENATOR BRUNO: And if a physician says that it's required more frequently than one year, based on that particular individual's history, then that would be the case and it will be mandated in terms of coverage.

So it truly broadens the coverage for women. Thank you.

SENATOR STAVISKY: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Seward.

SENATOR SEWARD: Thank you, Mr. President.

I think we in this chamber can take

pride in the fact that we have a long history of supporting and promoting policies and statutes and budget items that have promoted supported women's health and wellness over the years. That's a longstanding Senate position.

But admittedly, there are gaps in the law. And this legislation before us fills those gaps by providing additional opportunities for mammography and cervical cancer screening, bone density tests for the early detection of osteoporosis, as well as the doctor-prescribed prescriptions.

Will more women have access to these treatments and services as a result of this legislation? The answer is unequivocally yes. And for that reason, I want to join in honoring and thanking, number one, our leader, Senator Bruno, as well as Senators Bonacic and Rath and all the members of the task force who have worked very, very hard to put a package together to fill those gaps that currently exists in the law and to provide these much-needed services to more women in New York State.

And particularly, I think it's

important that the early detection of diseases, which is the main thrust of this legislation, this early detection of diseases that affect women can only save lives. And not only that, but also spare them the very intrusive and, yes, expensive procedures that would be required to treat diseases that are more advanced, whether that be cancer or any other disease.

So this type of legislation, in my mind, is very forward looking and forward thinking, that not only protects women's health but also encourages a healthier society in general.

You know, there has been quite a bit of discussion here today about the cost factor and the deductible and copays and the general cost factor in general. And certainly, as chair of the Insurance Committee, we need to wrestle with this issue. Because as health insurance premiums rise, the number of uninsured, the number of people who drop out of the insurance market, also rises. So it's very much a balancing act here that we have to deal with.

And I must say, after a lot of discussion with medical professionals and examining the medical and scientific data affecting the treatments and diseases that this legislation deals with, as well as conversations with both providers and payers, I can say unequivocally that this bill provides very, very important health care services to more people but also does so in a cost-effective manner.

And we estimate that with all the coverage that is listed in this legislation, that any increase in cost would be very minimal. As well as the fact that the bill covers this issue by calling for a study of the health benefits and the costs, so that the long-term savings can be quantified because of the early detection of these diseases.

The long and short of it is when you come to talk about copays and deductibles, there's absolutely no evidence that I'm aware of that copays or deductibles form a barrier to having the benefit of these services now. Or any other services, for that matter. And for those women who honestly cannot afford the

benefit of these screenings and these types of services, we in New York have the Healthy Women's Partnership in place, which has done an outstanding work over the years of providing early detection and screening for those low-income women who honestly cannot afford these services.

So we're well-covered in this area. And I rise in support of this legislation because it's going to provide additional services to more women, foster a healthier New York. A lot of benefits under this legislation.

And again, I want to congratulate the task force for its fine work.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 16. This act shall take effect on the first day of January.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, to explain my vote.

I'm going to vote no on this. And I know that someone is going to go out and do an editorial and say that I voted against health services for women. But let me just say why I'm voting against this. This is worse than half a loaf for many women in this state. And for the majority of women in my district, this is not even a half a loaf. This does not cover them for the most important aspect of their health care. We cannot separate the reproductive aspect of a women's body and health from everything else. They all go together. We must cover them all.

And for those institutions that don't want to, because of their religious tenets or whatever other reasons, they should not -- if we are covering health services with our public health dollars, we should not allow those institutions to deny health services to women in our state.

So that's why I'm voting no. And I hope that that rationale and that reason is clear to everyone who is interested and

listening.

Thank you.

ACTING PRESIDENT MEIER: Senator Montgomery will be recorded in the negative.

Senator Oppenheimer, you had your hand up. Did you want to explain your vote?

SENATOR OPPENHEIMER: No.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I concur very, very strongly with what Senator Montgomery just said. I think that there are times when leaving out a large group of people makes a piece of legislation unacceptable.

And I don't want to take anything away from the fine provisions in this bill that correspond to the Bonacic bill and the bill passed by the Assembly. But if I can make an analogy, the hundreds of thousands of women who work for private corporations, insurance companies that can deny this because of some purported affiliation, to deny them contraceptive coverage is to disrespect the

consciences of those women. It is their conscience that should be respected.

And this effort to put forward a bill that leaves out hundreds of thousands of women in my mind is analogous to the hate crimes bills introduced in this house years ago that left out victims of bias-related violence because of sexual orientation. It's not okay to leave people out on something this important. And those bills didn't pass, and this bill won't pass until this issue is dealt with.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Schneiderman will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 38 are Senators Breslin, Connor, Dollinger, Duane, Hassell-Thompson, Montgomery, Oppenheimer, Paterson, Santiago, Schneiderman, A. Smith and Stavisky. Ayes, 48. Nays, 12.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 39.

ACTING PRESIDENT MEIER: The Secretary will read Calendar Number 39.

THE SECRETARY: Calendar Number 39, by Senator LaValle, Senate Print 1265, an act to amend the Insurance Law, in relation to coverage for diagnosis testing.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT MEIER: Senator LaValle, an explanation has been requested of Calendar 39.

SENATOR LAVALLE: Thank you, Mr. President.

First let me start off by acknowledging the leadership of our Majority Leader, Senator Bruno, in advocating and being a strong advocate for additional health care for the citizens of our state; on the last bill, for creating the task force and the terrific work by Senator Rath and Senator Bonacic.

Last year we debated this bill that

is before us. And I am going to go through the bill once again, as I did last year. This bill is before us because of one of the ways that society has changed. And that is that couples are get married later and are starting their families later in life. Because of that, we have one in every six couples that are infertile and are having problems reproducing.

This problem affects 6.1 million Americans in our country. It has become such a problem that assisted reproduction therapy has become a specialty and there are programs in most populated areas of our state and country.

Before I talk about some of the provisions in the bill, in developing this bill, we tried to do a very careful balancing act. Senator Bruno addressed some of the problems in trying to provide additional services: If you're not cautious, you will drive up the cost and the number of uninsured individuals seeking health coverage.

As a matter of public policy, this Legislature has been very aggressive in trying

to provide more health coverage for more of our citizens -- Family Health Plus, EPIC Plus, Child Plus, and on and on -- in what we have done. And so here we have tried to provide for those couples that are having a problem, to ensure that their health coverage provides for the diagnosis and treatment of medical conditions that would result in infertility.

In doing that, we provide the following. We establish a $60,000 lifetime limit on benefits. Prescription drugs are not subject to the lifetime cap. The individual must be insured for a period of 12 months before accessing their infertility coverage.

Infertility would be determined in accordance with ACOG standards. Those standards basically are that the couple have been infertile for a period of 12 months. If they are age 35 or older, that period is a six-month period.

The coverage is provided for individuals ages 25 to 44. That age category tracks statistically where people are beginning to have problems. Women are the most fertile between ages 18 to into their

20s, and then statistically you begin to see problems arising between ages 25 to 44.

Prescription drugs for infertility are covered only if the insurer's policy covers the prescription drugs. Coverage is subject to annual copayments and insurance and deductibles as is deemed appropriate by the superintendent.

Senator Bruno and Senator Hannon I think addressed those issues in the last debate and the importance, once again, in dealing with cost factors and in making sure that we are instituting a public policy that is not going to have an adverse effect by putting more people into the uninsured pool.

The coverage is provided for four embryo transfer procedures. However, if there is a live birth, then only two more embryo transfer procedures that would be covered. This does not cover reversal of sterilization, reversal of sex change operations, cloning, or sperm retrieval from deceased individuals. And the deceased individuals, there's an exception: unless there had been some prior intent by the deceased individual.

Lastly, the much talked about and discussed conscience clause. First let me start by saying this. Senator Bruno talked about, and under his leadership it has been a hallmark that bills that this house, this Majority have talked about, he has asked that we do everything possible to negotiate to bring about a result so that that legislation can become law.

Last year, I had indicated on this bill that there were two versions, there was an A version and a B version. We negotiated with all of the interested parties to bring the bill that we did last year before this house. After its passage in the Senate, we went to the Assembly and we offered numerous ideas for change to improve the bill to bring about a result that would have both houses passing the bill.

My counsel has indicated to me that on the conscience clause, having the stakeholders at the table talking about various ideas, we offered probably 10 to 12 various ideas to bring about a comfort level on the part of the stakeholders, yet not

dissolving important principles that they may have had. The stakeholders were willing to move forward. The Assembly, for whatever reason, in the year 2000 -- and I would hope in the year 2001 that they would change their mind -- just said no to a conscience clause.

Now, there's been a lot of discussion and there have been conscience clauses, religious exemptions in a number of areas both in the Education Law and in the Health Law that we have made for various religious groups, honoring their religious intent. There are numerous states that have enacted conscience clauses in dealing with the matter before us -- California being one, Texas. There are two or three others that have enacted this. At a federal level, dealing with contraceptive devices, the Congress has enacted a conscience clause dealing with that matter.

So this is not something that is new. The IRS code and the definition of what a religious organization is puts very tight parameters as to who we are talking about. Senator Hannon was very specific when he

talked about Fidelis. Fidelis is the Catholic HMO that has been doing business for a considerable period of time and, as Senator Hannon said, providing health coverage for citizens of this state when no one else would and dealing with individuals who were not wealthy enough to have health coverage.

So I believe this issue of a conscience clause can be worked out, should not be a deterrent in passing either the bill that was debated prior to this or this bill. It should not be politicized. There are individuals who need health coverage, and we should not compromise that at any juncture.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. I have an amendment at the desk and I'd like to call it up and waive its reading.

ACTING PRESIDENT MEIER: The amendment is at the desk, the reading is waived, and you are recognized for an explanation.

SENATOR DUANE: Thank you very much, Mr. President.

The amendment that I'm putting forward mirrors the Assembly legislation on this issue of infertility. And just briefly, some of the areas that differ include that persons having an individual policy would be covered. The issue of what specific treatments would be permitted under the legislation is not restricted in the version which I've presented to the desk.

And also the amendment which I have at the desk would not expire. It would be something which would remain in effect and we wouldn't have to come back here and debate this issue again and again through the years.

I share concerns, though, in a slightly different way on the issue of the religious exemptions. And I think that while there are some good things about this legislation, it really could be a vastly improved piece of legislation. And I believe that my amendment would make this a bill which would be better for those couples and families and people in the state of New York who are

having trouble conceiving children.

ACTING PRESIDENT MEIER: The question is on the amendment. All those in favor signify by saying aye.

SENATOR PATERSON: Party vote with exceptions.

SENATOR SKELOS: Party vote in the negative.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Will the exceptions to the party vote raise your hands, please, so the Secretary can get you.

THE SECRETARY: Ayes, 21. Nays, 39. Party vote with exceptions.

ACTING PRESIDENT MEIER: The amendment is defeated.

Senator Duane.

SENATOR DUANE: Thank you, Mr. President. On the bill, would the sponsor yield for some questions.

ACTING PRESIDENT MEIER: Senator LaValle, do you yield for a question?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you very much.

It appears that the bill does not extend coverage to individual policies. I was hoping the sponsor could tell us why individual policyholders are excluded from the legislation.

SENATOR LAVALLE: This bill applies to group policies only, as you have indicated. It does not -- it allows individuals to negotiate whatever terms that they want or don't want with a health provider.

SENATOR DUANE: Thank you.

Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MEIER: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: There's a section of the bill that refers to a reasonable

expectation that treatment will result in a healthy child, as determined by guidelines established by the American College of Obstetricians and Gynecologists and the American Society for Reproductive Medicine.

My understanding is that there are no such guidelines put forward by the American College of Obstetricians and Gynecologists. I'm wondering if the sponsor could explain to us where he got the idea that there were such guidelines in existence.

SENATOR LAVALLE: I'm glad you raised this question, Senator Duane, because this is an issue that very specifically is between the patient and their physician. The physician then evaluates that circumstance based on the individual's age and any other medical condition that that individual would have.

I would note that, statistically, people who have assisted reproductive therapies do not have any higher incidence of children that might have birth defects. So studies that have been done show a similarity between those who have assisted therapies and

those that have normal childbirth.

But the decision -- specifically to your question is that decision is made between the physician and the patient, and it could vary from individual to individual based on the circumstances that the physician evaluates and the will of the patient to maybe move ahead with some chance.

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

ACTING PRESIDENT MEIER: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you.

I accept what the sponsor has just said as something which could have been said in the legislation, but it doesn't say that. It says "as determined by guidelines established by the American College of Obstetricians and Gynecologists." And the American College of Obstetricians and Gynecologists actually objects to that

language, because it has no such guidelines.

So I'm wondering why the sponsor did decide to use that language even though no such guidelines exist and, further, why it is that he didn't put in that this is a decision which could be made between the patient and the family and their gynecologist.

SENATOR LAVALLE: Senator Duane, I am told that the American Society for Reproductive Medicine does have guidelines, does have guidelines.

I think you have been looking - basically looked at the American College of Obstetricians and Gynecologists, ACOG. They do not have standards. But the American Society for Reproductive Medicine, I am told that they do have standards.

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

ACTING PRESIDENT MEIER: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DUANE: If that is the case, then I've never seen the American Society for Reproductive Medicine guidelines, and I think we'd all like to see that. And I have no knowledge that they don't exist.

But at the very least, then, wouldn't it be a good idea to take out the reference to the American College of Obstetricians and Gynecologists?

SENATOR LAVALLE: That's something we'll look at, Senator.

SENATOR DUANE: Thank you.

And if the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT MEIER: Senator LaValle -

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I'm also very concerned about the language that says a reasonable expectation that the treatment will result in a healthy child. I'm wondering if the sponsor could provide a definition of what a healthy child is.

SENATOR LAVALLE: Senator, I just addressed that. I think there are standards. I think that is something difficult to define. I mean, there are certainly definable problems that a child may have on birth, but we may disagree as to some things that I might not think of a child as being unhealthy and you may disagree with that.

But once again, I mean I think I talked about the comparison in terms of the assisted reproductive therapies, someone using that, and what is within the medical community defined as being unhealthy, and compare that to individuals that just have a normal childbirth where there may be some sort of a problem, a heart problem, some sort of deformity. Those are the kinds of things that I think we can agree on that would be unhealthy, the child being born unhealthy.

SENATOR DUANE: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: Thank you.

I am very concerned about that last

point. I think that a child who is born under a definition of unhealthy might in fact grow up to have a wonderful life.

But aside from the sort of human aspect of that, or maybe it's really a spiritual aspect of that, I also would have concerns about litigation which could result without a better standard of what is and isn't healthy. I think that that's been left too vague in the bill.

I described some of my other issues with the legislation when I offered my amendment. But I do want to say that for those reasons, and the reasons which I've just discussed, I'll be voting no on this.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to just a couple of questions, please.

ACTING PRESIDENT MEIER: Senator LaValle, do you yield to a couple of questions?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator, just a couple of technical questions on the bill.

One is the $60,000 lifetime limit that's contained in the bill. Through you, Mr. President, does that include the cost of delivery of the child if there are complications in the delivery of the child?

SENATOR LAVALLE: That deals just with the reproductive services, the assisted reproductive therapies. But not in the - because that would be covered, Senator, under the normal -

ACTING PRESIDENT MEIER: Senator LaValle, excuse me a second.

Can we have some order in the chamber. We're conducting a debate. If you have a conversation, take it outside.

I'm sorry, Senator LaValle. Please continue.

SENATOR LAVALLE: That would be covered under the normal provisions of the health care contract, delivery of services, delivery services. Here we are talking about

the additional coverage, the diagnosis and treatment of medical conditions which result in infertility. That's the piece that we're debating here.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator LaValle will yield to a question.

SENATOR LAVALLE: Yes, I will.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: As I think you know, Senator, in some cases the cause of infertility can be anatomical, in the sense of intrauterine problems with a woman, for example. And my question is, would it be anticipated that the $60,000 limit would include surgery to deal with intrauterine problems of the potential mother?

SENATOR LAVALLE: As I recall, that would fall under definition of the problems leading to infertility. It would not -- what your -- the question you're asking me is that endometriosis -

SENATOR DOLLINGER: Right.

SENATOR LAVALLE: Okay, that's

the most common. That would fall outside of this coverage, outside of the $60,000. Would not include.

I mean, some of the things that would include -- that are included in this are -- we always think of the more exotic, of the embryo transfers. But there are things - there are hormone therapies that would be included in the infertility portion of the bill, or various medications. It would include surgical procedures to correct a physical blockage or structural problem in the reproductive organs. Intrauterine insemination.

Those are the kinds of things that we're talking about within that $60,000 coverage, as well as the in vitro provisions that are at the more exotic level.

SENATOR DOLLINGER: Again through you, Mr. President, just a clarification for Senator LaValle's comments.

ACTING PRESIDENT MEIER: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR DOLLINGER: That section that you just read that talked about surgical interventions and others, is that in the bill? Or is that -

SENATOR LAVALLE: No. I mean, it's not lined out. But these are some of the procedures and some of the things that are done. We don't micromanage all -- I mean, you would have to list all sorts of medications and various treatments.

I think the point that you're trying to get at, and I think within current law, Senator, is that if it is a correctable medical condition, then it doesn't fall under this legislation. It falls under current law.

And those are some of the things that I think you have in your mind as to repairs that may be needed or a certain blockage or certain problems. And that would be covered under current law. A person not having this kind of coverage would be able to have those kinds of things.

And indeed, people that have problems, they begin at the very basic level

looking at things that are correctable medically before we get into the whole arena of infertility or the reproductive treatment programs. Some that I mentioned in terms of hormone treatments and insemination, and then to the more exotic of the embryo transfers and so forth.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator LaValle will yield -

ACTING PRESIDENT MEIER: Senator LaValle, will you yield?

SENATOR LAVALLE: Yes. Yes, I will.

SENATOR DOLLINGER: And I'll explain what I was driving at -

ACTING PRESIDENT MEIER: Hold it. Hold it. Hold it.

Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes, I would.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Thank you, Mr. President. Through you.

The reason why I asked the question is because I wanted to get an understanding of why you chose $60,000. What's the magic with that number, if any?

SENATOR LAVALLE: Well, Senator, like a lot of things, we sat down with the various stakeholders that were interested in this. And as I said at the very onset, we wanted to create a balance between affordability and being able to provide services to people.

And so based on the experience of individuals -- you know, we sat down with people who represent the American Infertility Association and we talked about what is a typical experience, and you try and quantify that. And I think probably the high amount was, as I recall, you know, someone put on the table $100,000. And someone else put $40,000.

And we looked at realistically what a normal couple would encounter, and that would be $60,000. And that would include, Senator, the four embryo transfers, which are the most expensive parts of the -- of what a couple would incur. That's the most expensive

portion of the infertility process or the assisted reproductive therapy process.

SENATOR DOLLINGER: Again through you, Mr. President, if the sponsor will continue to yield.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: My next question is, whose lifetime is counted? Is that the lifetime of the couple or the lifetime of each of the individuals?

SENATOR LAVALLE: That's a very good question, Senator. Because I myself asked that very question, so I know the answer.

It covers both the male and the female in those age categories, between 25 and 44. One of the things that I did not mention in this debate, that 40 percent of the problems are related to the female, 40 percent of the problems are related to the male, and the other 20 percent are either unknown or it's a combination of the two.

So, I mean, it's a very good

question to say a male at 25, where there is some sort of problem, is he covered at age 25. And the answer is yes. And if the female is age 25, she would be covered as well.

SENATOR DOLLINGER: So again through you, Mr. President, just for clarification, the number for a couple then is really $120,000?

SENATOR LAVALLE: No. No. No.

SENATOR DOLLINGER: Well, again, through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MEIER: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: So just so I understand it, it would be $60,000 for the male and it could be $60,000 for -

SENATOR LAVALLE: No, no. I'm sorry, I misunderstood. I thought you were talking about the age. It's $60,000 per couple.

SENATOR DOLLINGER: Okay. But

again through you, Mr. President, that's nowhere expressed in the bill, though. It doesn't actually say it. It says a lifetime limit. It doesn't say for a couple.

SENATOR LAVALLE: It would be $60,000 in the lifetime of that policyholder within those age limitations that we talked about and the number of procedures that we talk about in the bill, a limitation on the four embryo transfers or, if there is a birth, then two transfers after that.

SENATOR DOLLINGER: And again through you, Mr. President, if the sponsor will continue to yield.

SENATOR LAVALLE: Yes.

SENATOR DOLLINGER: I'm just trying to be careful here because we don't really describe this couple relationship, we talk about lifetime. And I simply want to try to give someone somewhere some guidance as to whether it would mean $60,000 worth of infertility treatments for each of the individuals in the marriage or $60,000 total for the couple. That could be a significant additional cost in the bill.

SENATOR LAVALLE: Senator, I think where we're getting confused -- and I had indicated this before -- it's tied to the individual policy that the individual has. So it is going back to if the male happened to have an individual policy, that policy would limit it to $60,000. If the female happened to have her own policy, that policy limit would also be $60,000.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: If I can just interrupt for a minute, there will be an immediate meeting of the Veterans Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Veterans Committee in the Majority Conference Room.

SENATOR DOLLINGER: Through you, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: I have one more question on this topic, if Senator LaValle will continue to yield.

ACTING PRESIDENT MEIER: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator LaValle, the point of my questions was because, as you have stated, 40 percent of the problem can be female and 40 percent of it can be male, and I think we needed to decide whether this was a $60,000 limit for the male and the female combined or, as I now understand it, if they both had separate policies -- one worked for a school district, one worked for a private employer, they both had coverage -- they'd have $60,000 each under that, because they're covered by separate policies.

SENATOR LAVALLE: By those policies, yes.

SENATOR DOLLINGER: Okay. And my question is, through you, Mr. President, with Senator LaValle's concurrence, isn't the big cost involved in the drug therapy? And therefore isn't the unlimited cost that's

contained in the second part of that paragraph, which says that the $60,000 limitation shall not apply to prescription drugs related to the infertility?

SENATOR LAVALLE: Assuming that the coverage that the individual has has prescription drug coverage, the prescription drug coverage is outside of the $60,000 limitation.

The limitation, Senator, so that you see the thought process that we went through, is really in the first -- you go through some of the treatments that I talked about initially, hormone treatments would be -- insemination treatments.

SENATOR DOLLINGER: Right.

SENATOR LAVALLE: And even before you got to that, you would look at some of the correctable medical treatments or problems that the individual could have. Even before you get to the hormone treatments and insemination.

Once you have gone through that tier of treatments, then you go into the more exotic, the embryo transfers. Those

treatments are very costly. And that's why there was some limitation, because you can well understand the frustration of the couples, and a couple may want to go on and on and on and have six or eight of these treatments, and that in and of itself could eat up the entire -- the amount that we have, of $60,000, can eat it up.

So there had to be some boundaries put around the number of treatments for the embryo transfers. And medical practice, however, starts well before you get to embryo transfers. It starts with less costly things, drugs and medication that have a success rate, and so forth, before you get to the more costly and more exotic treatments.

SENATOR DOLLINGER: One final question, Mr. President.

ACTING PRESIDENT MEIER: Senator LaValle, do you yield for a final question?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator LaValle, once you get to that complicated and

very costly procedure, the embryo transfer or other -- I think the tendency would be to use the word "exotic," but that's the wrong word. Unusual, let's say -- treatments at the final stages of trying to resolve a fertility problem, could you just tell me what the success rate is and the science is in those treatments at the final stages of attempting to deal with infertility? Just tell me what the success rate is and how -- I mean, you've described it as very expensive. My understanding is they're very expensive.

SENATOR LAVALLE: Yes. Yes. First of all, when we're talking about the in vitro fertilization, only 5 to 10 percent of the patients actually need that, go to that level.

And what was your -- the result, the success rate?

SENATOR DOLLINGER: My question, through you, Mr. President, if Senator LaValle will yield -

SENATOR LAVALLE: I have that someplace. Let's see. Okay. According to the latest statistics, the success rate for

live birth per egg retrieval or IVF is 27.7 percent.

SENATOR DOLLINGER: And that's the -

SENATOR LAVALLE: And then they have, you know, other statistics here. The success rate is higher than the 20 percent chance that a healthy reproductively normal couple has of achieving a pregnancy that results in a live-born baby in any given month.

So as I said, we're talking success rate. And the last treatments are in the neighborhood of -- and there are various kinds of treatments. We just talked about the in vitro fertilization. But the other treatments as well are 27 -- the highest would be 29.8 percent. So you're talking about under 30 percent.

SENATOR DOLLINGER: Right.

Through you, Mr. President, just one follow-up question, if Senator LaValle will yield.

ACTING PRESIDENT MEIER: A follow-up to the final question, Senator

LaValle. Will you yield?

SENATOR LAVALLE: Yes.

SENATOR DOLLINGER: The reason why there's a follow-up, because in essence if your bill provides for four of these types of treatments and the success rate is 27 percent, in almost every case, since that's the average, in order to have one live birth you'd have to go through all four treatments. Because the success rate is only a quarter - only a quarter of the attempts actually succeed. So under those circumstances, on the average -- and again -

SENATOR LAVALLE: But, Senator, just recall one other thing. And that's why I mentioned this. Only 5 to 10 percent of the couples ever reach that level.

SENATOR DOLLINGER: But through you, Mr. President, under this bill we're giving them access to that final set of treatments, which are, as you've described them, very costly, which have a success rate of about 27 percent, and we're allowing them to have four of those procedures. And I understand that we're not talking about a big

number. But we're talking about a large investment in time, money, procedures.

And I understand, this is done with the perhaps lifelong desire of the couple involved in having a child. But we're spending the most, the biggest share of our money on a procedure that three out of four times will not succeed under the most favorable assumption.

SENATOR LAVALLE: We are also assuming, you know, the rate of technology and how this infertility field, medical field is growing, that statistically those numbers, you know, will improve.

Senator, what this bill does is it gives people who have no hope a great hope. And this is a -- the treatment process -- and I've spoken to many of the people who have gone through these frustrations -- is a very tiered process that begins with looking at things that would be covered in their medical insurance policies today because it could be surgically corrected. Then we go to the other levels; again, I repeat, you know, through drug treatments and hormone treatments. And

between those two, we are covering 90 to 95 percent of the people and allowing them to receive a positive result.

So I know that you focused in on this 5 to 10 percent. But I think that even there that a 30 percent success rate isn't too bad.

SENATOR DOLLINGER: Mr. President, I thank Senator LaValle for, as is his practice, an enlightening and compassionate view of the difficult and complicated question that this bill poses.

But I think, Senator LaValle, I disagree with you when we get to the -

ACTING PRESIDENT MEIER: Senator, Are you on the bill now?

SENATOR DOLLINGER: Yes, please, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I disagree with you when we get to the final step.

What I heard you say is that 95 percent of the people who deal with the problem of infertility currently, now, have

most of their difficulties in conceiving children covered by our current coverage, whether it's surgical interventions or drug therapies. Assuming that their policies have coverage, they would get some benefit to try to deal with the problem of infertility.

But what that bill does is this bill says that of that 5 percent who need other treatments, in vitro or otherwise, there's going to be an enormous resource of the insurance pool of funds committed to a small portion of those who deal with the problem of infertility and, in dealing with that, it's going to be very very costly to deal with.

Senator LaValle, I think if you look at your numbers, you're going to find that on the average, every person will need to have the four treatments, because it only works in 27 percent of the time. So in order for one couple to have one child, on the average there would have to be four attempted in vitro fertilizations in order for it to occur.

Mr. President, we dealt with a bill

that dealt with another mandate earlier today. This bill is an enormously costly mandate that may reduce the available insurance funds that would otherwise put money into surgical and hormonal procedures that would eliminate the problem of infertility for a vast majority of New Yorkers.

I think that in analyzing a mandate you have to look at the science, the extent of the people who are unprotected, and the cost. And it's my view that this mandate falls short on all three counts.

The science is somewhat speculative. Compassionate, Senator LaValle, I agree. But the science of one in four of an opportunity for even a small population is a very -- at a very substantial cost, I think when you use that kind of a test of the number of people affected, the science involved and the success of the science, and the cost, this mandate does not work.

I'll vote in the negative, Mr. President.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: Yes. On the bill, Mr. President.

In her book Recreating Motherhood: Ideology and Technology in a Patriarchal Society, Barbara Katz Rothman, who is a professor of sociology at Baruch College and the Graduate Center of the City University of New York, has written: "The treatment of infertility needs to be recognized as an issue of self-determination. It is as important a an issue for women as access to contraception and freedom from forced sterilization."

And I owe the book and the quote to my wife, Dr. Susan Lachman, who is also a sociologist.

But I must tell the members of this chamber, through you, Mr. President, that I am as equally concerned, if not more concerned, about this issue in a broader sense. My colleagues were discussing the specificity of the issue. I'm concerned what this issue means to American society.

A few years ago, Gertrude Himmelfarb wrote a book -- she's one of America's great historians -- and the book was

called One Nation, Two Societies. And she spoke about the United States being divided, and the division was a social divide. And unfortunately, whether we are Democrats or Republicans, we witnessed this social divide during the recent presidential election.

But I'm concerned that this bill could create another divide. It is not difficult for the wealthy to pay $7,000, $8,000, or $10,000 for the necessary medication or procedure that is important to eliminate infertility. But the poor people of this land, this great land, cannot afford to pay that amount of money.

This, Mr. President, creates a greater divide, of the poor against the well-to-do, poverty against the wealthy, unless this chamber and unless the Assembly create a bill, a compromise bill that has a stand to passage.

16 percent of Americans cannot conceive. Many of them will be able to conceive with the new technology and medications that we have, but they cannot use this unless they are insured. These people

have chosen to give birth to life. They cross the boundaries, they cross the bridges, they want to have children. And it is our responsibility to listen to them and not to create a greater divide in America between the poor and the wealthy.

Mr. President, if I had my druthers, based upon my vote on the amendment, I would take and accept the bill from the Assembly. But I have faith in the major faith organizations of this state, who have been in constant dialogue with each other and the leaders of the State Senate and the leaders of the Assembly.

I will vote for this bill. With reservation, but I will vote for this bill because I look upon this bill as a first step towards a compromise bill that will allow all people who are in need of aid to eliminate infertility to receive that aid, regardless of their economic position in society, regardless of race, ethnicity, and religion. It is a first step towards a compromise between the two houses of this Legislature.

And I hope the compromise will not

be attempted at the last hours of the session of this Legislature, as took place last year.

I therefore vote yes on this bill.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Children and Families Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Children and Families Committee in the Majority Conference Room.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect July 1.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 39 are Senators Breslin, Brown, Connor, Dollinger, Duane, Hassell-Thompson, Kuhl, Maltese, McGee, Meier, Montgomery, Onorato, Oppenheimer, Paterson, Sampson, Schneiderman, Seward, A. Smith, M. Smith, Stachowski, and Stavisky.

Ayes, 39. Nays, 21.

ACTING PRESIDENT MEIER: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: If we could return to motions and resolutions, I believe there's a privileged resolution at the desk by Senator Bruno. I ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT MEIER: Motions and resolutions.

The Secretary will read the title.

THE SECRETARY: By Senators Bruno, Leibell, and Spano, Legislative Resolution honoring the Honorable James J. McGowan upon the occasion of his retirement after many years of distinguished service as New York State Commissioner of Labor.

ACTING PRESIDENT MEIER: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed,

nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a privileged resolution at the desk by Senator Seward. I ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read the title.

THE SECRETARY: By Senator Seward, Legislative Resolution commemorating the 20th anniversary of service to the rural communities of Tompkins County, New York, by Better Housing for Tompkins County, Incorporated.

ACTING PRESIDENT MEIER: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The

resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Bruno, I hereby give written notice, as required by Rule 11, that he will move to amend the Senate rules.

ACTING PRESIDENT MEIER: The notice has been received at the desk and will be filed.

SENATOR SKELOS: Please recognize Senator Dollinger.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. Thank you to the Deputy Majority Leader.

I also give notice, pursuant to Rule 11, of a motion to amend the Senate rules which is at the desk, Mr. President.

ACTING PRESIDENT MEIER: That notice has been received at the desk, and it will be filed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing

committees.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Marcellino, from the Committee on Environmental Conservation, reports:

Senate Print 743, by Senator Johnson, an act to amend the Environmental Conservation Law;

781, by Senator Marcellino, an act to repeal Title 17 of Article 23;

And Senate Print 806, by Senator Marcellino, an act to amend the Environmental Conservation Law.

Senator Rath, from the Committee on Local Government, reports:

Senate Print 858, by Senator Balboni, an act to authorize the Congregation Shira Chadasha;

And Senate Print 859, by Senator Balboni, an act in relation to authorizing the Chabad Lubavitch of Old Westbury to file.

Senator Morahan, from the Committee on Veterans and Military Affairs, reports:

Senate Print 89, by Senator Maltese, an act to amend the Real Property Tax Law;

109, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

364, by Senator Morahan, an act to amend the Civil Service Law;

371, by Senator Morahan, an act to amend the Military Law;

And Senate Print 500, by Senator Morahan, an act to amend the Real Property Tax Law.

All bills ordered direct to third reading.

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

ACTING PRESIDENT MEIER: We have a motion, Senator Skelos.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Volker, Mr. President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the

enacting clause: Senate Number 1163.

ACTING PRESIDENT MEIER: So ordered.

With regard to the committee reports, without objection, all bills are reported directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe we have one more committee report, Senator Saland's committee.

There will be an immediate conference of the Majority in the Majority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Majority Conference in the Majority Conference Room.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could again return to reports of standing committees, I believe there's a report at the desk.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Saland,

from the Committee on Children and Families, reports:

Senate Print 115, by Senator Marcellino, an act to amend the Social Services Law;

394, by Senator Saland, an act to amend the Social Services Law;

395, by Senator Saland, an act to amend the Family Court Act;

404, by Senator Skelos, an act to amend the Social Services Law;

And 421, by Senator Skelos, an act to amend the Domestic Relations Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Without objection, all bills directly to third reading.

Senator Skelos.

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

ACTING PRESIDENT MEIER: There is no housekeeping.

SENATOR SKELOS: There being no further business, I move we adjourn until

Monday, January 29th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Monday, January 29th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 1:35 p.m., the Senate adjourned.)