NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

September 17, 2001

1:25 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time ask you to call the house to order for an ordinary session of the Senate.

ACTING PRESIDENT KUHL: The Senate will come to order.

I ask all the members and staff and everybody in the chamber to rise and join with me in saying the Pledge of Allegiance to the Flag.

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

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

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

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Friday, September 14, the Senate met pursuant to adjournment. The Journal of Wednesday,

September 12, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no 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 Bruno, that brings us to a calendar.

SENATOR BRUNO: Mr. President, can we return to reports of standing committees. I believe there's a report of the Rules Committee at the desk.

ACTING PRESIDENT KUHL: We will return to the order of reports of standing committees.

There is a report of the Rules Committee at the desk. The Secretary will read.

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

Senate Print 5792, by Senator Maltese, an act to amend a chapter of the Laws of 2001, enacting the Emergency Primary Rescheduling Act of 2001.

ACTING PRESIDENT KUHL: Senator Bruno.

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

ACTING PRESIDENT KUHL: The motion is to accept the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The Rules report is accepted, and the bill is reported directly to third reading.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up the Rules report.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1476, by Senator Maltese, an act to amend a chapter of the Laws of 2001, enacting the Emergency Primary Rescheduling Act of 2001.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT KUHL: Senator Maltese.

SENATOR BRUNO: Is there a message at the desk?

ACTING PRESIDENT KUHL: Senator Maltese, before you do that, there is a message of necessity at the desk.

SENATOR BRUNO: Move to accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1476. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The

message is accepted. The bill is before the house.

The chair recognizes Senator Maltese.

SENATOR MALTESE: Mr. President, there's no need for me at the present time to go into the terrible circumstances that dictate the speed of this legislation in order to protect one of our most precious freedoms, the right to vote.

This legislation, I am advised, has been agreed upon by the Assembly, the Senate, and the Executive, or the Governor.

Basically, what the bill enacts is the Emergency Primary Rescheduling Act of 2001. What it seeks to do is supplement the legislation that we have just passed in response to the emergency situation. And this would refer to absentee ballots.

This legislation seeks to permit those persons residing in an area south of Canal Street whose lives have been disrupted and families disrupted, to give them access to the right to vote if their residences are no longer habitable, if their polling places in

many instances are closed or inaccessible and if that situation still prevails as of Election Day.

This provides that rather than an application, the application can be done by letter requesting an absentee ballot after the effective date of this act.

In addition, it dispenses with all the -- and waives only for the purpose of this emergency the requirements of having the applications themselves received prior to Election Day. In most cases, the prior law stated seven days.

What we're attempting to do, with the cooperation of -- the splendid cooperation, I might add, of the City Board of Elections, all parties involved, despite the fact that the director, Danny DeFrancesco, has just undergone a double bypass and is resting well -- I spoke to him earlier at Lenox Hill Hospital -- despite the fact that I am advised by Mr. Gentili, the deputy director, that power has not yet been restored, yet with all that in mind, they are prepared to go ahead to the best of their ability.

This legislation would therefore provide that those date requirements would be waived only for this emergency.

In addition, it provides that the Board of Elections shall make a good faith effort to provide absentee ballot applications and absentee ballots to voters requesting such applications, provided that any ballot not timely returned to the board shall be void.

Those rules are still in effect as to the actual ballots rather than the applications, and they provide that they can be returned to the board right up until 9:00 o'clock on September 11th or that they are received by the board, canceled by a duly authorized postal authority, not later than the day before election -- those are the same rules now in effect -- and with the additional proviso that they must be received not later than seven days after the election, which provides the finality to the election that we might need in a close election.

In addition, with respect to the area south of Canal Street, it provides that any registered voter eligible to vote for

September 25th or the October 11th runoff in the city shall be entitled to vote by absentee ballot without making any showing other than that they reside south of the Canal Street line -- and it recites from the Hudson River, west side to the east side.

In addition, it provides that the ballot and the application may be returned at the same time to the Board of Elections. This is something, by the way, that in many cases has been done at the board, in many cases unofficially.

In addition, it does provide that, insofar as possible, requests for applications and ballots may be made by telephone. I am in touch with some of the boards -- not all of them, yet, in the city -- but certainly the Queens board and the Brooklyn board, they're advising that by virtue of the increase in pay for inspectors and coordinators, they feel that they can even expand the hours for telephone contact with the board.

I discussed with the Queens board they're hoping to have telephone lines available perhaps up until midnight of every

day for those applicants who wish to obtain an absentee ballot.

The ballots still have to comply with the rules as far as the absentee ballot would be in the envelope; the application, which would be filled in, would be in the outer envelope.

Basically, those are the changes. They've been put into effect by -- in, hopefully, a very prudent but in an immediate manner by counsel. And I wish to express our appreciation to the counsel, all three, for the Governor, the Assembly Speaker, and of course our own leader, Senator Bruno.

There is also a provision in the law seeking to provide -- showing legislative intent that seeks to protect that the inability of a Board of Elections to provide an absentee ballot application or an absentee ballot in a timely fashion shall not in any way impair the validity of the results of the September 25, 2001, or October 11, 2001, runoff election. What that's seeking to do is indicate both legislative intent and provide guidelines for a court that might be called

upon to act in the event of a close election.

ACTING PRESIDENT KUHL: Senator Connor, why do you rise?

SENATOR CONNOR: Thank you, Mr. President. And thank you, Senator Maltese, for that explanation of what the bill does.

My concern is what the bill doesn't do. And in my mind, this bill is the epitome of the majority mentality in this Capitol. And I'm not talking about this house.

As you all know, Senator Duane and I represent the area below Canal Street, as does Assembly Member Glick and the Speaker. As you all may not know, last week I quietly voiced objections to the bill we were doing because it didn't address the real needs with respect to redoing this primary. It still doesn't.

We have problems with a consent decree from a federal court that requires we certify the results by October 2nd so military ballots can go out. Well, we have a runoff on October 11th. How are we going to comply with the federal court decree and get military ballots out? We need to address that in

legislation. We haven't addressed it yet.

This bill deals with a very real problem that came up yesterday when 400 or 500 people at an outdoor community board meeting on Canal Street, just outside the frozen zone, were very unhappy with what was done last week and were blaming their legislators. People in the other house said they'd do a bill, and apparently they worked all night.

Well, my colleagues, Article 2, Section 2 of the State Constitution says no absentee ballot is valid unless the person is outside the county. So we're providing relief here that's unconstitutional.

Simple way to do it, though. Because you may say, Gee, then how did we let election inspectors vote? We always call it absentee so they don't have to leave their polling place. How do we let other categories of people who are within the county vote? Under Article 9, there's a special ballot provision. This bill should provide special emergency ballots for these people. Then it's constitutional.

We've done it before when people

knew how to draft bills, when people listened to colleagues who had a little bit of expertise. If we did that, these people would get constitutional ballots.

And, you know, we're not going to be the final judge of this. Some court is going to judge this when there's an election dispute. And they're going to assume our legislation says what it says and our constitution says what it says. And so the people who are literally bombed out of their homes and somehow go to the trouble to get one of these ballots may find out their vote didn't count. Thank you, America. Thank you, New York State Legislature.

What else is not done here? The application for the absentee ballot, how are people going to get them, get them back to the board? How are they going to get their ballots?

And, you know, there are other answers. Florida was devastated by a hurricane a few years back just before Election Day. Their legislature provided for mobile voting stations manned by the National

Guard so people could go and vote. And they had different ones set up for different precincts so people were voting for the right candidates.

There's no reason we couldn't do that. For the Battery Park City EDs, set up a mobile voting station outside the frozen line on Canal Street and tell people, announce: Go there and vote, that way you'll get to vote for the right council candidates, the right whatever.

Nobody wanted to listen to that. All in a big hurry, we are. All in a big hurry to do a press release and tell people in Lower Manhattan: We've solved your problem, you can vote.

Yeah, you can vote if you jump over backwards, spin through hoops, get an application into the board, get your absentee back by close of polls on that day. When in fact most of these people are still in Manhattan, they're just staying with friends or relatives somewhere else. They're working in Manhattan. We're getting back to work in New York.

Just tell them where to go to vote. Don't tell them they've got to go to the board and get an application and fill it out. There are other ways to address this. We have affidavit ballots that anybody can walk into a polling place and ask for. All we had to do was provide that people who were displaced could go to any polling place.

Because if they're staying with a relative out in Queens or whatever, it's very difficult to get in and out of Manhattan today. It's not -- I know we want to say it's back to normal. We're working very hard to get back to normal. The mayor and the governor are working very hard to get us back to normal. A lot of businesspeople and residents are working very hard to get back to normal. But it's not normal.

Let them go into any polling place and get an affidavit ballot, fill it out, put their address where they reside, where they resided, and hand it in.

We're all, But wow, they'll get the wrong ballot for council. But their vote - it's very simple, you provide that their vote

counts for any office they were eligible to vote for. It counts for mayor and public advocate and comptroller. And if there's countywide judges running and it's in the right county, it counts for those judges. And if they've voted for the council candidate listed on the ballot but they don't reside there, then it doesn't count for that.

But aha, if they cared enough to go to vote in the primary and they wrote in the name of one of the candidates who was running in their district -- because they all campaigned right up until 10 o'clock on September 11th, or 9:30 -- so if somebody out in Queens who used to live in Battery Park City says, I want Candidate X for my councilman, they go into a place in Queens, they vote for all the other offices for which they're eligible -- they're can't vote for Queens borough president, obviously, but if they're smart enough to write in a candidate who's running in Manhattan, it counts. It doesn't count if they checked off a Queens candidate.

And if they write the name of their

neighbor seven candidates down there, I think, seven or eight running for City Council, and they write in one of those names, they're a good citizen -- they paid attention to the campaign, and they're for somebody -- count it. Count it.

To say they have to go get an application now and get it back -- mail service, I assure you, throughout the city is not quite normal. It's very good, they delivered the mail every day, but some of it was a few days late as they delivered it, naturally.

We're just doing -- we're doing a press release here instead of sitting down and thinking and listening to ideas that come, oh, from the Minority. Well, my colleagues, Mr. President, I think all know I know a little bit about election law. There are ways to address this. There are ways other states have addressed it in crises, in hurricanes and the like. Why aren't we doing that? Why are we in a such a hurry, why are we so ill-prepared?

You know, why was this an overnight

thing because some residents yelled? Why wasn't it done last week? Why weren't these suggestions considered then? And the fact of the matter is we're not helping these people the way we ought to help them. There are simple solutions that will work legally, won't offend our state constitution and will allow these people to get special ballots.

You know, "below Canal Street," we say that as if all the EDs begin at Canal Street and go north and all the election districts begin at -- the others go south. I believe in my district and in Senator Duane's districts there are election districts part of which are north of Canal Street and part of which are south of Canal Street. In some cases the polling place may be north of Canal Street in those EDs, and in other places the polling place may be south of Canal Street.

And there may be EDs that are wholly above Canal Street whose polling place is below Canal Street. So those people get no relief. Policemen and National Guardsmen will say to them, "ID? You don't reside below Canal Street, you can't walk in there." "Oh,

but my polling place is over there."

Why wasn't more thought given to this? Why can't we pause and give it more thought? I don't understand it.

Now, Mr. President, I'm not going to vote against it, because I don't want to get in a fight in Lower Manhattan with somebody saying: Oh, we had the bill to help you and, you know, Connor got all the Democrats to vote against it and there weren't enough people left here and it went down in a slow roll call. I'm not going to fall into that.

But I'm not going to remain quiet, Mr. President. This bill doesn't cut it. It doesn't cut it, and there are ways to make it work and we're not even considering it.

ACTING PRESIDENT KUHL: Senator Maltese.

SENATOR MALTESE: First of all, I would like to read Article 3, Section 25 of the State Constitution: "Notwithstanding any other provision of this Constitution, the Legislature, in order to ensure continuity of state and local governmental operations in

periods of emergency caused by enemy attack or disasters, natural or otherwise, shall have the power and the immediate duty to provide for prompt and temporary succession for the powers and duties of public officers of whatever nature, and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the duties and powers of such offices; and (2) to adopt such other measures that may be necessary and proper for ensuring the continuity of governmental operations. Nothing in this article shall be construed to limit in any way the power of the State to deal with emergencies arising from any cause."

Mr. President, far be it from me to in any way criticize or imply criticism of a colleague. But over the last few days since that terrible day, we have had occasion, all of us, to work with members of the other party, members of the other house, members of the other branches of government. I do not believe that this is by any stretch of the imagination a press release. I regard such conversation at this time and in this place is

as unseemly, improper, and insulting to not only the members of the Legislature but to the victims of the terrible tragedy.

I understand that Senator Connor, representing a district that is affected, and most affected, is upset. At the same time, I do not believe that this gives anyone license to take this Legislature or any member of the Legislature or any member of the government to task for trying to remedy a terrible situation, for trying to alleviate the suffering of people who feel that their right to vote has been abridged or terminated in any shape, manner, or form.

Certainly we are hopeful that any future judicial act respecting a complaint or an appeal to the court would take into consideration the legislative intent behind this legislation. At the same time, this legislation uses the terminology "good faith effort." I think, most respectfully, Mr. President, most respectfully, fellow Senators, this is a good faith effort.

ACTING PRESIDENT KUHL: Any other Senator wish to speak on the bill?

Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

I don't have much at all to add to what Senator Connor has said about the travesty of this bill. It virtually ensures the disenfranchisement of people who live below Canal Street and may in fact disenfranchise people living above Canal Street. And it certainly would have the effect, undoubtedly, of tainting an election for a council district, which is a very critical election for an area which is the one most impacted by this terrible disaster.

So to negatively impact any voters in that district is wrong, absolutely wrong.

I mean, bizarrely, there's a section here which calls for people to write a letter requesting an absentee ballot. At the meeting that Senator Connor and I worked with community members to put together and chair yesterday, people didn't even have a piece of paper or pens. I actually brought pads and we handed out sheets of paper to people so they could write down information.

People don't have paper there, they don't have a desk, they don't have telephones, they don't have anything. They have nothing. We don't even know where tremendous numbers of them have scattered to.

For us to unilaterally disenfranchise any voters in that district is just plain wrong. I urge my colleagues not to do that to citizens of the State of New York, and particularly not to do it to citizens of the State of New York who have been most horribly impacted by this despicable act of terrorism. They've been hurt enough. Don't hurt them more by not allowing them the opportunity to vote for people who are going to be fighting for their future.

Thank you.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect, expire and be deemed repealed on the same date and in the same manner as a chapter of the Laws of 2001.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Connor, why do you rise?

SENATOR CONNOR: Yes, Mr. President, I'd like unanimous consent to be recorded in the negative on that last vote.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Connor will be recorded in the negative on Calendar Number 1476, I believe it was.

Senator Duane.

SENATOR DUANE: Thank you, Mr. President. Similarly, I'd like to be recorded in the negative on Calendar Number 1476.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Duane will be recorded in the negative on Calendar Number 1476.

Senator Bruno.

SENATOR BRUNO: Mr. President, I am waiting to hear back from our counsels. We

have one more piece of legislation that, if we can get it done in a short time frame, it adds to some of what we've already done in terms of strengthening the antiterrorist activities here in the state and in the country.

I'm waiting back to hear momentarily on what the time frames are. I was told five minutes ago or six minutes ago that it will be here in 15 or 20 minutes. Now, if that is so, then I would suggest that we will just be in recess for 10 or 15 minutes. If it looks like it's going to be extended and not critical, then we will live to look at it another time.

But that's what we're waiting for. I just wanted to share that with you. So we should hear within a couple of minutes. And if we're going to do it, we'll just stand at ease until about ten after.

(Whereupon, the Senate stood at ease at 1:58 p.m.)

(Whereupon, the Senate reconvened at 2:05 p.m.)

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, can we ask for an immediate meeting of the Rules Committee in Room 332.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Rules Committee, immediate meeting of the Rules Committee in the Majority Conference Room, Room 332.

And the Senate continues to stand at ease.

(Whereupon, the Senate stood at ease at 2:06 p.m.)

(Whereupon, the Senate reconvened at 2:11 p.m.)

ACTING PRESIDENT KUHL: I ask the members to take their places, staff to take their places.

Senator Bruno.

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

ACTING PRESIDENT KUHL: We will return to the order of reports of standing

committees.

There is a report of the Rules Committee at the desk. The Secretary will read.

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

Senate Print 5793, by Senator Volker, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT KUHL: Senator Bruno.

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

ACTING PRESIDENT KUHL: The motion is to accept the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The Rules report is accepted.

The bill is ordered directly to

third reading.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1479.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 1479.

THE SECRETARY: Calendar Number 1479, by Senator Volker, Senate Print 5793, an act to amend the Criminal Procedure Law, in relation to interception.

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

ACTING PRESIDENT KUHL: There is.

SENATOR BRUNO: I'd move that we accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1479. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The message is accepted.

The bill is before the house.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT KUHL: Senator Volker, for an explanation.

SENATOR VOLKER: Mr. President, this bill has been amended from its initial version, which -- and it relates to wiretapping. It now relates only to the wiretapping of people who are covered by the bills that we passed today -- that is, terrorism -- so that only people who would be covered under the terrorist provision would be able to use what is known here as a roving interception.

You have to go in to get an order but if the person moves or whatever, you'd have to go back in and ask for a subsequent order. Under a roving interception, you wouldn't have to do that. The feds already have authority quite similar to this.

And so this bill is limited to terrorists. It is effective -- has the effective date of the other bills that we

passed today. And it shall sunset after two years from the effective date.

ACTING PRESIDENT KUHL: Does any other member wishing to speak on the bill?

Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as a chapter of the Laws of 2001.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negative and announce the results.

THE SECRETARY: Ayes, 53. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President and colleagues, there being no further business to come before the Senate at this time, I would move that we stand adjourned, subject to the call of the Majority Leader, with intervening days being legislative days.

And, as we adjourn, that we stay mindful of all the victims and continue to mourn those that are lost in this terrible tragedy here in this state and across the country, and that we also remember in our thoughts and prayers the families of many of the victims that have been afflicted.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: On motion, the Senate stands adjourned, subject to the call of the Majority Leader, intervening days to be legislative days.

(Whereupon, at 2:16 p.m., the Senate adjourned.)