NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 5, 2002

11:05 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 please 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: With us once again this morning to give the invocation is the Reverend Peter G. Young, from Blessed Sacrament Church in Bolton Landing, New York.

REVEREND YOUNG: Let us pray.

On this cold and chilly day, may we communicate with all our constituents in a plain and clear manner, realizing that they want to understand the legislative process. Let us guide our efforts to be honest and open with all of our New York State citizens, with patience and persistence, in our attempts to understand one another.

May we pray that we will enjoy the opportunity of this service now and forever.

Amen.

THE PRESIDENT: Reading of the

Journal.

THE SECRETARY: In Senate, Monday, February 4, the Senate met pursuant to adjournment. The Journal of Sunday, February 3, was read and approved. On motion, Senate adjourned.

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

Senator Skelos.

SENATOR SKELOS: Madam President, 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.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Fuschillo, from the Committee on Consumer Protection, reports:

Senate Print 92A, by Senator Maltese, an act to amend the General Business Law;

385, by Senator Skelos, an act to amend the General Business Law;

And Senate Print 2505A, by Senator Hannon, an act to amend the General Business Law.

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

Senate Print 781, by Senator Marcellino, an act to repeal Title 17;

Senate Print 3917, by Senator Saland, an act to amend Chapter 748 of the Laws of 1991;

4434, by Senator Marcellino, an act to repeal Article 16;

4730, by Senator Marcellino, an act to amend the Environmental Conservation Law;

And Senate Print 5551, by Senator Marcellino, an act to amend the Environmental Conservation Law.

All bills ordered direct to third reading.

THE PRESIDENT: Without objection, all bills reported direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Kuhl, we have one substitution.

SENATOR KUHL: Make the substitution, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 12, Senator Marchi moves to discharge, from the Committee on Corporations, Authorities and Commissions, Assembly Bill Number 9264B and substitute it for the identical Senate Bill Number 5160C, Third Reading Calendar 112.

THE PRESIDENT: Substitution is ordered.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. I move to adopt the Resolution Calendar, which is on the desks of the

members, with the exception of Resolution Number 3943.

THE PRESIDENT: All in favor of adopting the Resolution Calendar, with the exception of Resolution Number 3943, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is so adopted.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. May we now have the noncontroversial reading of the calendar, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 63, by Senator Johnson, Senate Print 5260A, an act to amend Chapter 672 of the Laws of 1993.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 70, by Senator Velella, Senate Print 66, an act to amend the Criminal Procedure Law, in relation to the commission of crimes against children.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 72, by Senator Maltese, Senate Print 95, an act to amend the Penal Law, in relation to clarifying.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 88, by Senator Balboni, Senate Print 860 --

SENATOR HASSELL-THOMPSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 91, by Senator Kuhl, Senate Print 4388, an act to amend the Vehicle and Traffic Law, in relation to exempting.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 92, by Senator Trunzo, Senate Print 4669, an act to amend the Vehicle and Traffic Law, in

relation to conforming.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

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

SENATOR KUHL: Yes, Madam President. Could we return to the order of motions and resolutions.

I understand there's a privileged resolution at the desk by Senator Dollinger. If that's the case, could we have the title read, and I move for adoption at this time.

THE PRESIDENT: Motions and resolutions.

The Secretary will read.

THE SECRETARY: By Senator Dollinger, Legislative Resolution Number 3927, celebrating the 30th anniversary of Title IX

of the Federal Educational Amendments of 1972.

THE PRESIDENT: All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. May we now have the controversial reading of the calendar, please.

THE PRESIDENT: The Secretary will read.

SENATOR KUHL: Thank you.

THE SECRETARY: Calendar Number 88, by Senator Balboni, Senate Print 860, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

SENATOR PATERSON: Explanation.

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

SENATOR BALBONI: Thank you, Madam President.

This bill would amend Section 511

of the Vehicle and Traffic Law --

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Madam President, may I interrupt the debate, please.

THE PRESIDENT: Excuse me, Senator Balboni.

SENATOR KUHL: We'd like to call an immediate meeting of the Finance Committee in the Majority Conference Room, Room 332.

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

You may proceed, Senator Balboni.

Senator Paterson.

SENATOR PATERSON: Madam President --

THE PRESIDENT: Excuse us again, Senator Balboni.

SENATOR PATERSON: Madam President, I thought the explanation was satisfactory.

THE PRESIDENT: Does any other member wish to be heard on this bill?

Then the debate is closed --

SENATOR PATERSON: No, no --

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR PATERSON: If Senator Balboni would yield for a question.

THE PRESIDENT: Senator, do you yield for a question?

You may proceed, Senator.

SENATOR BALBONI: Madam President, I will yield to a question if I am permitted to tell what the bill does first.

SENATOR PATERSON: All right, Madam President.

SENATOR BALBONI: For those folks watching at home, this is an important concept.

This bill allows prosecutors to use a presumption of knowledge of suspension or revocation on behalf of motorists who have had their license suspended or revoked -- suspended more than three times and they have received notices of that.

The reason for this is that if you talk to any traffic prosecutor, they will tell you of the difficulties associated with attempting to prove as an element of this

crime that the individual is driving with a suspended license. Because the way that you do that is you have to show that the individual received through the mail the suspension notice.

And there have been cases -- and these cases I've chatted about last year. But People versus Parsons is the one that I normally cite, out of the City of Rochester, 541 New York, subsection 321, 1989, which best describes the frustrations attendant to trying to prove this.

And they are, in this case, in order to prove the sufficiency of mailing, the courts are left with no other choice but to dismiss the case if the proof is not received.

The People introduced into evidence as exhibits an order of revocation addressed to the defendant and an affidavit of regularity to show the proof of the mailing of the order of revocation to the defendant. The court reversed the defendant's conviction on the basis of the fact that the proof of mailing of the affidavit was insufficient.

In other words, it's not enough to

say the court and the DMV mailed the order of suspension.

So what we're trying to do here is after three times -- that is the threshold -- you should know, you knew or should have known that your license was suspended or revoked.

And obviously, the backdrop against this is the incredible carnage that has been happening on our roadways. With the eerie parallel, or the eerie, I should say, circumstance that the people who commit these crimes most often, of hit-and-runs and bad accidents, happen to have their license either suspended or revoked.

Senator Paterson, I yield to your question.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, understanding that Senator Balboni has yielded, Senator, the same way it is difficult to prove that someone mailed the revocations, it's also hard to prove that you didn't receive them.

And I would suggest that the likelihood of not receiving it three times is

probably not -- doesn't happen often. But if someone didn't receive it once, the likelihood of them not receiving it two other times is -- certainly the odds would increase, because maybe it's going to the wrong address or something like that.

But, Senator, from the defendant's point of view, it's proving a negative. How does the defendant prove that they didn't receive the notice of revocation? How does the defendant establish to the court that they are unaware that they're driving with a suspended license?

SENATOR BALBONI: There are circumstances which would take the burden of proof and place it back on the prosecutor. This is the shifting burden of proof in regard to the evidentiary question of whether or not they had in fact received notification of the suspension or revocation.

And the way you would do this is by saying -- by showing that you were not present. In other words, you committed the offenses and you moved to Hawaii, there was no forwarding address available. That -- and

that you would be able to show, through affidavit or other witness testimony, that an individual had been stealing your mail.

You would be able to show through, again, witness testimony that at the time of the stop that the arresting officer informed you that the offense was not one that you would have your license suspended for. Or that you missed a court date or the court thought you missed a court date, resulting in the issuance of a bench warrant and the order of suspension, but you in fact didn't miss the court date, you were in the court but the court failed to note that you were.

There are a whole myriad of evidentiary circumstances that could be proved at court through the testimony or affidavit evidence -- affidavit of witness testimony.

SENATOR PATERSON: Thank you, Madam President. If the Senator would continue to yield.

THE PRESIDENT: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, I am just being honest with you. I don't know how you prove that a neighbor was stealing your mail.

In addition to that, the fact that you might have moved to Hawaii does not necessarily mean that you didn't get the mail. In other words, you could show that you moved to Hawaii. That doesn't mean that you didn't receive the notice of revocation. So I don't know that necessarily, as long as the prosecutor raises that, that the burden of proof shifts.

All I'm saying to you is if it's a strict liability type of situation where we're just saying, "Look, if it was sent three times, you should have known, and you are therefore responsible," that's one thing.

But I think what I'm trying to establish to you -- and I guess my question is, if you would just comment on this -- is how can we honestly tell the public through the passing of this law that this is a

shifting burden of proof when in fact it's not really possible for the defendant to establish any criteria on this point? You just can't prove that you didn't get something.

And every time you raise the discussion, the prosecutor -- and both of us have been there, we've seen this done -- can very adroitly suggest that you did receive something.

SENATOR BALBONI: Madam President, through you. Senator Paterson, I would turn your attention to lines 13 and 14 of the bill, which talks about presumption of knowledge, not a presumption of guilt.

Your reference to a strict liability characterization of this bill is, with all due respect, misapplied. There is no strict liability. In fact, I had an extensive discussion with Senator Hassell-Thompson about this.

Strict liability language would read something like "upon three or more suspensions, the defendant is guilty of aggravated unlicensed operation." As opposed to "upon three or more suspensions, the

defendant is presumed to have knowledge of the suspension." It's a much different set of circumstances.

Strict liability, as we know in our criminal jurisprudence, refers to crimes like driving while intoxicated where intent is not an issue. What's your blood alcohol level? If it exceeds the threshold, you are guilty, period. That is a strict liability crime.

This is not. This refers to the evidentiary aspect or, I should say, evidentiary element of the crime. That means you have to prove the intent, or the mens rea.

And I would point to Richardson On Evidence, page 58, Section 3-105: "In criminal cases in New York, presumptions are permissive, which means that the jury may but not need to accept the inference supported by the presumption." So juries in this state are permitted to accept or reject the particular presumption.

And when I say shifting of the burdens, all that this does is it places upon the defendant the burden of proving that they did not receive the mail. Once that has been

established, the burden then shifts back to the prosecutor to prove by beyond a reasonable doubt that the individual in fact had the intent, knew that his license was either suspended or revoked, but nonetheless operated the vehicle.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Yes, Madam President. May I interrupt the debate on the floor?

THE PRESIDENT: Absolutely.

SENATOR KUHL: I would like to call an immediate meeting of the Veterans Committee in the Majority Conference Room, Room 332.

THE PRESIDENT: There will be an immediate meeting of the Veterans Committee in the Majority Conference Room, Room 332.

SENATOR KUHL: Thank you.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I'm going to speak on the bill, and thank Senator Balboni for his information.

I still do not agree with Senator Balboni's interpretation of what actually

happened in practicality as a result of the passing of this law. His language in -- I guess it's Section 13 here, is not strict liability language. I'm not objecting to the language, I'm objecting to the application. In other words, I see it as a strict liability situation.

I don't want to be misunderstood on this point. If Senator Balboni actually had introduced a bill and said, "Listen, we suspend your license three times and you lose your license," these days I don't know if I could vote against it. Because the vehicular tragedies and the irresponsibility of people when using alcohol or other substances before operating an automobile, after countless incidents, many of them heralded for the tragedy and the loss of life and the pain it caused so many innocent people, in this day and age I don't know if I would vote against it.

I'm just suggesting to Senator Balboni that he is right about his classification in evidence. He cites Richardson On Evidence to support that. But I

just don't think that this law applies in that particular way.

I will vote for the bill, because I think that it is very necessary to strengthen protections against damage or pain to innocent people who operate motor vehicles in this state. And I certainly appreciate Senator Balboni's research on this particular subject.

And I think that there probably is a point -- maybe not three, but further down -- where we would automatically revoke a license because of countless numbers of suspensions. Three I don't think would be the right number, because a person could have their license suspended three times in a couple of days. It can happen very quickly.

But there is a point that I think a strict liability enforcement would apply. I'm just saying that I would find it difficult to defend an individual with this inference that the jury is invited to draw based on the fact that an individual had not received notice of revocation and has a problem proving it.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. Just to comment on the bill.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: I have to say that I certainly appreciate the opportunity that Senator Balboni afforded me yesterday in pulling the bill back and researching it and taking the time to help to explain to me what the intent of the bill is.

I don't have, certainly, the legal eloquence of my colleague Senator Paterson, but I certainly have the same concerns that I had that the presumption, while it is the presumption of knowledge that you're attempting to achieve, I still think that the jury would consider this based upon the assumption of guilt. And so I'm still having a dilemma.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. Would the sponsor please yield?

THE PRESIDENT: Senator Balboni, do you yield for a question?

SENATOR BALBONI: Yes, I do,

Madam President.

THE PRESIDENT: You may proceed, Senator Hevesi, with a question.

SENATOR HEVESI: Thank you, Madam President.

I voted for this bill last year. I'm going to vote for it again. I think its intent is noble. And I don't, despite some of the arguments of my colleagues, have a problem with their interpretation of it.

My concern, and I related it last year -- and my question to the sponsor is whether I'm correct still in this assessment -- my concern is that upon my count last year, an individual could have had their license suspended and been caught for it up to ten times before that individual was eligible for felony-level penalties.

And since, by definition, the sponsor of this legislation is concerned about this issue, I was wondering whether he could address that or whether we are moving to remedy that situation as this bill tries to take a step in that direction.

SENATOR BALBONI: Madam

President, through you.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: As a result of your comments last year, Senator -- and I thought I had gotten a chance to speak to you about this; I apologize -- I talked with some prosecutors. And it is their belief, this is down in Nassau County, that if you were to take this step and amend 511 to do this, that this would allow the police and the prosecutors to bring people in sooner in their process, their life of crime, as it were, from this particular standpoint.

In other words, the most egregious cases could be brought into the court system ahead of time. The licenses could be pulled. The felony counts that you speak of would, in fact, still be pretty much far off in terms of the suspension.

You were accurate in your description. But the -- once you are convicted of Section 511, you know, your license, in terms of the revocation and also the misdemeanor-level penalty associated with it, in the prosecutor's views, would deter a

lot of people from going forward with this.

It would also alert the court and the probationary law enforcement units to the fact that you're a problem -- you know, the driver, that the driver has a problem and is somebody who's going to have to be watched. As a result of the disposition, the courts could require that the individual receive alcohol or drug counseling and treatment.

And so what their point to me was, this would be a very necessary first step of catching the offender early, earlier in the system. So that you could try to perhaps provide help and benefit and monitoring for this individual. Would you be able to put them to the felony standpoint? No.

But remember this, Senator Hevesi. Many times there are other crimes that are committed in connection with this violation, either DWI or a reckless endangerment, and so there are other opportunities to provide for a felony prosecution. You know, it's rare that an individual is simply pulled over for, like, say, blowing through a traffic light and then it is found that the license is suspended 10

or 13 times.

If you recall, last year I read some amazing statistics. You know, a Coram man, 135 times -- this is in January 2000. A guy was stopped in Coram, his license had been suspended 135 times. Another man in West Babylon had 106 suspensions.

You know, so I guess the approach that I have adopted here is to try to provide the law enforcement officials with a mechanism by which they could get somebody into the system sooner than having to wait. And also signal to the community as a whole that driving with a suspended license, driving with a revoked license is a very serious offense.

SENATOR HEVESI: Madam President, will the sponsor continue to yield?

THE PRESIDENT: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, I do.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: Thank you.

Through you, Madam President, just by way of clarification, the individual who

had his license suspended 130 times, that is not an indication that that individual had driven with a suspended license, got stopped, got caught --

SENATOR BALBONI: 135 times, no.

SENATOR HEVESI: -- and continued to do it.

So can you just elaborate on exactly how that happens?

SENATOR BALBONI: Yeah. Madam President, through you, as any practitioner of this type of law understands, if you have a court appearance to respond to a moving violation, you could have an order of suspension issued from the bench every time you miss a court appearance, an issuance you can have, you know, for multiple jurisdictions.

So if you're somebody who just rides around and gets speeding tickets all over the state, you could technically rack up this kind of record. I mean, it's kind of inconceivable that the system wouldn't have caught these guys ahead of time. But again, we haven't amended this section to do this,

so . . .

SENATOR HEVESI: Thank you, Madam President. Would the sponsor continue to yield?

THE PRESIDENT: Senator Balboni, will you yield?

SENATOR BALBONI: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: Thank you. A final question for you. Because the perception is that when you read in the newspaper about some tragedy and the newspaper indicates that the individual had his license suspended, you know, X number of times, that there is a perception that he had been caught driving each one of those times, which is actually not true.

SENATOR BALBONI: That's correct.

SENATOR HEVESI: My question to you is this. In the hypothetical where an individual had a period of suspension that just continued uninterrupted, how many times can that individual be pulled over, get a conviction for the suspension, their license

remains suspended, drives again, gets pulled over, gets another conviction -- how many times can that happen under current law before that individual faces felony charges?

SENATOR BALBONI: I don't know, truly, the answer to that, because it would depend upon the circumstances. You know, over what time period? In other words, you could have a crime spree where the guy just decides that for the next 48 hours they're going to go and they're going to commit all sorts of crimes, all sorts of traffic offenses.

For example, driving from Long Island to Albany, you could get stopped multiple times and be given speeding tickets. Now, you haven't had the opportunity to appear before a court. The officer can make a decision, if he's able to access the other information, that, you know, you have been driving fast up the Taconic or up the Thruway, they can make a decision: "You know what? I'm going to suspend your license. I'm going to issue it right here. I'm going to just say you've got to go see the justice of the court here." They have the ability to do it if they

feel that you were driving in a reckless manner.

But it really depends on the time period, how many times you get stopped, who stops you, what are the circumstances of the stop. There's a lot of factors that could play into that hypothetical that wouldn't be appropriate here.

SENATOR HEVESI: Thank you.

Madam President, briefly on the bill.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: Thank you, Madam President.

I want to thank the sponsor for bringing this legislation. I'm going to support it.

We had a discussion about some of the hypotheticals that I just raised last year. And everyone will please forgive me, I don't have the actual number of times that an individual can be stopped for driving with a suspended license, get the conviction, continue to do that, before the level of

penalties escalates to felony offense.

But if memory serves, it's 10 times. It was either nine or ten times before it kicks from the third degree to the second degree to the first degree. And that I find is a much more pressing problem than the fact that somebody can technically come under the phrase "having had their license suspended 80 times." You know, which is awful and the person should not do that.

But for missing a court appearance, for whatever reason, a slew of times, pales in comparison to an individual who is a true recidivist, has their license suspended, and keeps thumbing their nose in the face of the law and continues to drive. It's those individuals who I think we really need to crack down on.

So this is a good bill. And if the prosecutors in Nassau County and other counties are empowered by this legislation to interrupt that malevolent course of behavior that some individuals feel predisposed to engage in, that's terrific.

I would simply suggest that we

tackle the broader issue, which is if you reoffend, if you continue driving with a suspended license and you keep getting caught -- and remember that if you extrapolate the number outwards, the number of times that you get caught to the number of times that you actually committed the offense, obviously you've committed the offense many, many times greater, exponentially greater than the number of times you got caught for. That kind of flagrant behavior deserves to be dealt with very swiftly.

So whether it is three times or maybe five, but certainly not ten, if somebody reoffends on driving with a suspended license time after time after time, that individual should be facing more stiff penalties, felony-level penalties.

So I support this bill, but I suggest that we take up the broader issue.

Thank you, Madam President.

THE PRESIDENT: Does any other member wish to be heard on this bill?

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54. Nays, 2. Senators Duane and Hassell-Thompson recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time 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.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

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

Senate Print 6265, by Senator Bruno, an act to amend the Insurance Law and the Public Health Law.

SENATOR BRUNO: Move to accept

the report of the Rules Committee.

THE PRESIDENT: All in favor of accepting the report of Rules Committee please say aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The report is accepted.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time take up Senate 6265.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 138, by Senator Bruno, Senate Print 6265, an act to amend the Insurance Law and the Public Health Law, in relation to coverage.

SENATOR PATERSON: Explanation, please.

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

SENATOR BRUNO: Madam President and colleagues, the bill before us we refer to as the Women's Health and Wellness Bill for

primarily the women in New York State.

This is not a new issue to any of us. The issue has been before us for a couple of years. We've had a conference committee on this issue when the Assembly passed a different version than we passed. It was the first conference committee to fail to reach an agreement on a bill that became law.

So we have been revisiting and we have been trying to get to a place where the Assembly could join us. Now, I hope that we are there. But I have no confirmation of that, so I don't want to indicate anything that I don't know for a fact.

But this bill is critically important that it become law. Critically important because what we know about disease is that the earliest you detect that you have an illness, the more treatable you become. So to prevent serious disease, early detection is the answer.

So what this bill does is it drops the mammogram age from 50 to 40 here in this state for women; cervical cancer screening; osteoporosis testing. And osteoporosis,

50 percent of women over 50 are afflicted. 3,400 people a year die from breast cancer in New York State, almost 41,000 nationally. It's tragic.

This also creates access to gynecologists, obstetricians without going through your primary care physician, which delays the process.

So those are the four positive aspects, plus some other things.

The points of debate have been a contraceptive clause. Now, what we have referred to as "a conscience clause," so that we don't mandate that any religious institution, against their religious belief, mandate contraceptives -- that's been the conscience clause that we have had in our legislation for two years.

The Assembly has not seen fit to pass that version of the conscience clause. We are now narrowing the focus by way of compromise. And we have tried -- I think this is our fourth version of where we are -- we are trying to compromise. Why are we trying to compromise? To get a result.

Now, the politics have related to the contraceptives and the conscience clause, and I think that's terribly unfortunate.

There is a copay that relates to some parts of this, and a question of high deductibles comes up. Well, let me share with you, and please listen to what I'm saying, because for those people that want to hide in terms of a vote on this issue, for whatever their reasons are, no woman in this state will be denied access to the coverage they need that can't afford to pay a copay because of a deductible. There's money already set aside.

And I'm asking the constituency out there and I'm asking Senators on both sides of the aisle to make your offices available and to put out a communication to women that if you can't afford a copay -- and it's nominal, less than $2 a month -- call you. You will direct them to access to get the coverage. If they are excluded by their deductible, a high deductible, call your office. You will create access for them. And I'm talking to members on both sides of the aisle.

So I don't want those that would

like to hide to talk about copays or high deductibles. That is off the table. That is not real. That's a smokescreen.

And those that would like to mandate that a church, a religious institution, where it's against their religion to dispense contraceptives, be mandated that they must, that is unconscionable, in my mind. That is something that we shouldn't politicize in this climate where we have been together. We have done some major things here in this state together, both sides of the aisle, this side with this side, with the Assembly.

We did the largest health care bill that's ever been passed in the history of this state. We did that in a bipartisan way. Why? Because it was important to all of the people of this state. It was important to deliver health care to all the people of this state, and the quality that all of us would desire.

This is important that this get done. We are where we are to get a result. We want to get a result. We're not looking for conference committees. We're not looking for talk. We're not looking for smokescreens.

We're looking for a result. So we have moved to where we are to create action.

So the action that we're taking today -- and believe me, I am as sympathetic as I can be to those people that feel in their hearts and in their minds the trauma of voting. Because in some instances in this house you feel literally that you're between the rock and the hard place.

Well, there's no rock, there's no hard place. What we're doing here today is moving towards getting a result to help protect the lives of women here in New York State, the lives of women in New York State.

Thank you, Madam President.

THE PRESIDENT: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President.

I'd like to start off first by saying what we have in common on this legislation on both sides of the aisle, in both houses. We're extremely concerned with the health of our wives, our sisters, our children, and our grandchildren when it comes to diseases of breast cancer, osteoporosis,

unintended pregnancies, abortions.

And what can we do as a collective body to guard against those risks to make men and women more healthy? I think this legislation gets it done.

We started this struggle together, both sides of the aisle, in both houses two years ago. And we had legitimate differences of opinion as to what was best for the men and women of this state and their general health.

But our goals were threefold when they started this legislation. It was, one, make sure that women 40 to 49 could access a mammogram as part of their insurance policy. Because, as we know, that is the leading cause of death among women, breast cancer, age 40 to 55. That's what this legislation would cover.

And let me just say, not to bore you, but how great the problem is: 41,000 women die a year in the United States from breast cancer. Forty-one thousand. In the state of New York, it's 3500. And if we had early detection and prevention, I bet that number would be less. And while we engage in legitimate and reasonable debate, there's got

to come a time for closure. Because women are dying as we debate and don't have a law.

The other thing we wanted to do, and I call it the silent disease, is the disease of osteoporosis. Again, women eight times greater to incur that disease than men. And in the state of New York, a little -- slightly less than 2 million women have osteoporosis. Two million women. In the United States, it's 28 million.

So again, this legislation, as part of the insurance policy, would allow a man or a woman to get an osteoporosis screening. All right?

And last but not least, the most contentious problem we had, the issue of contraception. This legislation would now allow every woman in the state of New York to access contraception. And if she couldn't afford it, we have a fund with $12 million in it which is to help, Healthy Women Partnership Fund.

Now, we know that contraception, women take for hormone balance. And I'll give you another statistic that is shocking. There

are 6 million unintended pregnancies a year in the United States, and half of those end in abortion.

So the reason why this is a good law is on many -- there's many fronts. One, it improves the health of the men and women of the state of New York. On the cost end, with insurance, it's early detection and prevention. And with contraception, it avoids unintended pregnancies, abortions, and expensive hospital care carrying that unintended pregnancy to full term in the hospital.

Now, I want to thank Senator Joe Bruno, who worked through very tough issues within our conference, within various constituencies, and negotiated with Assembly members, women advocates. And his leadership in bringing this legislation forward has just been exemplary.

I want to thank our three women Senators, Nancy Larraine Hoffmann, Pat McGee, and Mary Lou Rath, who never let our conference get away from the focus on this issue.

But I especially want to thank the advocates. Because the advocates today -- and that's the real test. These advocates represent over a hundred women's groups in the state of New York. Thousands and thousands of women stood with the Senate today and said "We are in a comfortable place for this legislation to pass."

The only issue remaining -- and as I said to my friends in the Assembly on both sides of the aisle, and on this side of the aisle, both sides, do not let this become a political issue for the battle of the sexes. It will do a disservice to the men and women and children of the state of New York.

We need closure. We need the help of every Senator here calling on their friends and the members and the leadership in the Assembly to now get it done. Because the women advocates of the state of New York say it should be done, and we should not lose any more lives to breast cancer.

Thank you, Madam President.

THE PRESIDENT: Senator Hoffmann.

SENATOR HOFFMANN: Thank you,

Madam President.

Thank you, Senator Bonacic, for your leadership on this. It was a difficult and sometimes contentious conference committee, and you never waivered in your commitment. Thank you for being so gracious in acknowledging the feelings and the hard work of many of us in this chamber and those outside the chamber.

The advocates, the many organizations around the state who have repeatedly visited legislators, come to Albany, tried to make the case publicly, tried to explain the very important and elemental facts of why we need a comprehensive women's wellness bill, are also to be recognized and thanked today.

I would specifically like to acknowledge, from NARAL, Kelli Conlin; from Family Planning Advocates, Joanne Smith; from A606 [sic], Donna Montallto; from the National Republican Pro-Choice Coalition, Lynn Griefe; Marra Ginsberg, from "To Life," the breast cancer survivor organization; and Gerri Barish, 1 in 9 Breast Cancer Center also.

And if I've left anybody out, I apologize. Because across this state, this has been a rallying cry for people concerned about many facets of women's health for several years.

As Senator Bonacic explained, the importance of early detection means the difference between life and death. And for a woman who is poor or uninsured or whose insurance coverage does not allow her early detection for cervical cancer, for breast cancer, or some of the other cancers for which there are screenings not readily available, now these women will be able to live.

It is as simple as survival, when we get down to the very bottom line of this issue. Poor women are not able to pay for a breast cancer screening. Even when they are considered high risk, in many cases the insurance coverage does not allow it. There are studies that show a disproportionate number of African-American women succumb to breast cancer because there is a late diagnosis because they did not have insurance coverage in the first place.

And thanks to this measure, and Senator Bruno's commitment that we will find a way to pick up the copay in those instances where there is still an inability to meet that modest differential, we will save many, many lives in this state. It is a proud day for this Senate to be passing this bill today.

Osteoporosis, very rarely talked about. Up until recent years, it was referred to as "the dowager's hump." We've all seen these frail, elderly women who are hunched over like this. What we also don't even see or hear about are the hip replacements, the breaks, the back problems, women who wind up in nursing homes in their eighties because their bones are fragile, they can't heal and they're unable to take care of themselves at home. It's a horrible way for someone to live out her senior years.

But osteoporosis can be detected early, can be taken care of with a relatively simple and fairly inexpensive regimen of vitamins and medications that will address that bone density loss. But again, it's early screening, it's early detection that is the

key.

And proudly, we can say that we now care about those women, we want to prevent any woman from dying that agonizing death that comes when bones are brittle and she's resigned to the life of an invalid.

And the contraceptive insurance coverage that we have so long needed. There are few areas where there is as much of a gender disparity as this one. Contraceptive coverage should have been made available years ago. It is not just about contraception, it is about general physical care. For many women, especially young women, birth control pills are prescribed as a means of regulating hormonal imbalances and addressing other problems within women's physical makeup.

But never have those birth control pills been covered under insurance plans, with very few exceptions. The average cost is around $30, $35, sometimes $40 a month. And young women, working, poor women, even middle-class women have had to bear that full cost without the benefit of insurance coverage.

For an average woman, a year's cost of birth control pills would have been about $460. With a modest copay that we anticipate following this, that cost goes down to $60, or $5 a month. This, my friends, is a reasonable and a responsible way for us to address an inequity and a pressing health concern in this state.

As to the issue of the conscience clause, I've had many discussions with my friends in the Catholic Church. I've spoken at length with representatives of the diocese in Syracuse, Bishop Moynihan, for whom I have great respect as a civic as well as religious leader. And I understand why they wanted an absolute prohibition against any church-related activities in this area.

But I've also studied the Constitution, and I have watched as our counsels, Senator Bonacic, and the others involved in these negotiations have analyzed this issue. The Constitution of the United States is very, very clear in the First Amendment, dictating that there must be separation of church and state, there must be

respect for independence in religion, and that we cannot as a nation or a state dictate to a religious entity what it must do.

But when a religious entity is serving a larger public purpose and is not solely operating as a religious entity, it is no longer covered under that same, very narrow definition as "religious." Organizations which are chartered under a Catholic diocese banner but serve the general public at large, whose employees come from the general public at large, clearly do not fit the narrow definition of "church." And therefore, the conscience clause takes this into consideration, and they are handled differently than would be a Catholic diocese or a church-related function solely operating for the benefit of the members of that church.

Clearly, we must respect the rights of the church when it is solely a church function and -oriented activity. But where the larger public is concerned, those people are entitled to fair insurance coverage as well as people who are operating under any other nonreligious employment activity.

Today marks a milestone for the Senate. I hope that our friends in the Assembly recognize how far this chamber has come. I hope that there will be no attempt to politicize this issue any further. I would urge our members in the other chamber to quickly address any small, technical differences of opinion they see here, because clearly there can be nothing that would impede them from embracing this measure as it's been presented today.

It is a proud day for the Senate. I thank Senator Bruno for his leadership, all of the members of this chamber who have worked so hard to bring it about. And I want to thank the advocates once again for keeping the issue squarely in front of the people of New York State during these several years of arduous deliberations.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I believe there's an amendment at the desk.

THE PRESIDENT: Yes, there is,

Senator.

We have reviewed it, and it is germane.

SENATOR SCHNEIDERMAN: Thank you. I would waive its reading and request that I be heard on the amendment.

THE PRESIDENT: You may proceed on the amendment, Senator.

SENATOR SCHNEIDERMAN: Thank you very much.

Senator Bruno, and Senator Bonacic, who's worked very hard on this legislation, I know, and the others in the Majority have indeed come a long way with this bill. I don't like it as much as Senator Bonacic's old bill, but, you know, I understand that this is a tremendous step.

Our amendments are simply to clarify some things and I think in fact to make them more consistent with what my colleagues on the other side of the aisle have already stated about this bill. And there are only three pieces of the legislation we're seeking to amend.

In Section 5, paragraph (B), we

just want to make it absolutely clear that all women will have access to mammograms and will not be limited by deductibles and copays, as Senator Bruno indicated he wanted to do. We don't really need a complicated system to notify them of alternative programs; let's just put it in the bill.

Similarly, in paragraph (D) of Section 5, we want to make the same provision for cytology screening.

Finally, and I don't think there really can be any dispute about this -- and I think this must just be an oversight -- in Section 12, paragraph (cc) of the legislation, it talks about the so-called conscience clause, the religious exemption, but it does not make clear that women who work for organizations that invoke this exemption are not subject to additional charge when they have to go to an alternative insurer to receive coverage for contraception or other services.

And I gather it's the intention of the sponsors to treat all New Yorkers fairly under this bill, to treat all women equally

under this bill, and not to charge people more just because they happen to be working for a religious organization if they don't subscribe to the tenets of that organization and their own individual conscience allows them to seek contraceptives, even if they're working for an organization that is subject to the more limited but still substantial religious exemption herein.

I would urge that with these changes, this bill becomes a better bill. And I would urge that with these changes the bill becomes more consistent with the intentions that Senator Bruno and Senator Bonacic and others have stated here today.

This is a major step. There are a couple of details that could be cleaned up to make it a better bill. In particular, I do not think we should pass legislation this year -- and I know there's time for negotiation left -- that doesn't make it clear that women should not be charged extra. And under this bill, they could still be charged extra if they are working for an institution covered by the religious exemption.

So I'm offering that amendment. I urge everyone to vote yes. And I think that particularly given the fact that we've paid tribute today, and I'm sure there are more tributes yet to come, to the advocates, the incredible network of organizations that were organized to advocate for this bill, I think if you asked those advocates they would urge a yes vote on this amendment also.

So I would suggest a vote yes --

SENATOR CONNOR: Madam President.

THE PRESIDENT: Senator Connor.

Excuse me, Senator.

SENATOR CONNOR: Will the Senator yield for a question?

THE PRESIDENT: Senator Schneiderman, do you yield?

SENATOR SCHNEIDERMAN: Yes, Madam President, I yield.

THE PRESIDENT: Go ahead, Senator Connor.

SENATOR CONNOR: Senator, with respect to who pays, tell me if I'm correct. Organizations covered by the religious exemption, the bill is very specific as to the

rider that individual employees get, and it's clear there who pays.

Does not your amendment relate to the lack of any statement in the bill as to who -- whether the employer or the employee pays for the rider with respect to employers that are not in any way involved with the conscience clause?

SENATOR SCHNEIDERMAN: Yes, thank you, Madam President.

The answer is yes, there is -- and I believe it's just an error in drafting that leaves a distinction between one group of riders and another group of riders. It is not clear in this legislation that no women in the state should be required to pay extra for a rider. Whatever their employer is, everyone should have equal access to health care.

And Senator Connor is correct, that is a distinction that I believe is an unintentional distinction in the bill that I think should be cleaned up and would be clarified by this amendment.

THE PRESIDENT: Senator Hannon.

SENATOR HANNON: Yes, against the

amendment.

Madam President, one of the things that Senator Bruno said, putting this bill together, was "I'd like to get results. I want to see that we will be able to make the representation that people will get mammograms if they want it."

And so we took an existing program that we have -- we in the Majority have been building upon for a number of years, along with the Executive, to build the Healthy Women Partnerships, where we added $2 million to increase the number of mammograms and cervical tests by over 25 percent throughout this state several years ago. And that has been there in the budget each year subsequent.

We took that language for the Healthy Women's Partnerships and made sure that if anybody had a difficulty with a deductible, under their own self-view -- no one testing, no forms -- that they would be able to get the mammogram, Healthy Women's Partnership.

So we could say what we're doing is delivering more mammograms in this state,

because that's what we want to do, to prevent and screen for breast cancer.

Now, this amendment would do several things that I think deter from the efficacy of the bill. First of all, it's -- health insurance is a labyrinth. We all know it from the number of calls that come into our offices. But in this case the labyrinth is the fact that probably half of the employers in this state, the place where one gets the health insurance, half of the employers of this state are under federal legislation and, no matter what we would say about deductible, copay, and the shape and form of the insurance contract, we can't touch it. It's preempted from our jurisdiction.

So that the option was let's not go into that blind alley in this labyrinth, let's offer mammograms through the Healthy Women's Partnership. That's one huge, huge reason.

The second thing is, what are you going to do if someone doesn't want to go there but they don't have enough money? We have worked mightily in the past seven years to make sure that health insurance in this

state has increased vastly. The last thing we just did was the family health insurance, which during the course of this year will give health insurance availability, through the Medicaid system, to those up to 150 percent of poverty. So that if somebody is a family of four with $27,000 a year of income, they would be covered.

And we have gone beyond that, so that if that is too low an income level, they still can't get insurance, we have the Healthy New York plan through the Insurance Department.

So we have worked. We have made a commitment. The idea with this bill was get results, deliver those results.

We can't, with going through an amendment like this, have false promises, because that's all that it would be. Oh, we've taken away the deductible. Well, you know what? If half of the state doesn't come under our jurisdiction, we can't take it away. There's nothing we can do. And that's the problem.

So if this canvass of agreement

procedure would succeed, by the way, we couldn't even get results. This thing would have to go back to committee. So I don't believe this is an amendment that should be supported. This should be defeated.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, would the Senator yield for question?

THE PRESIDENT: Senator, will you yield for a question?

SENATOR HANNON: If the question is in order on an amendment.

THE PRESIDENT: Is that correct, Senator Schneiderman?

SENATOR SCHNEIDERMAN: Thank you. I will endeavor to make it so. Through you, Madam President.

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: In this legislation, or in any other part of the law that you have referred to or not referred to, any part of the law in the State of New York, is there a guarantee -- is there a guarantee

that women who walk into a doctor's office and are told "You can't have a test because you don't qualify" will receive that test?

Is there any guarantee that that will not take place after we pass the bill in this form, with all these alternative programs and complexities that the Senator has described?

SENATOR HANNON: Let me get the point. Your point is under this bill can you be denied a mammogram? Is that your question?

I mean, you made reference to this bill --

SENATOR SCHNEIDERMAN: Yes. Yes.

SENATOR HANNON: -- any other law, any other law of the state. I'm trying to narrow your question.

SENATOR SCHNEIDERMAN: Yes. Through you, Madam President, that you cannot be denied a mammogram for failure to meet a requirement for deductible or copayment.

Is there any woman in the state who will be denied those tests for those reasons after this bill passed?

SENATOR HANNON: Under this, you

can access through the Healthy Women's Partnership and get the mammogram and no one can be denied. That's the way I read it.

SENATOR SCHNEIDERMAN: Through you, Madam President. If it is to be the case that there are no women who will be denied coverage, why not make that clear in the bill and eliminate the copay?

THE PRESIDENT: Senator Hannon.

SENATOR HANNON: It's sort of like saying if it's not a problem, why not take care of it anyway? I don't believe it's a problem.

SENATOR SCHNEIDERMAN: Thank you. Thank the Senator for his answers. Thank you, Madam President.

I would still urge a yes vote on the amendment. I don't think this guarantees all the women of the state will receive the treatment that we're seeking in this legislation.

THE PRESIDENT: Senator Dollinger, do you wish to speak on the amendment?

SENATOR DOLLINGER: Thank you,

Madam President. Just briefly on the amendment.

I think -- I understand the colloquy between Senator Schneiderman and Senator Hannon. And I understand Senator Bruno's comment earlier about early detection is critically important. And I think we all agree on that.

The question that this amendment poses is: Should there be any obstacle, any at all, to early detection and treatment? And with all due respect to Senator Bruno, I appreciate -- and Senator Hannon has also pointed out the $12 million that we've made available to cover those deductibles.

But I think if there is a deductible in place, it ignores what happens in the families in my community. Because the very first question that's asked when someone says, "I feel like I should go to the doctor," too often in many communities in this state, including in Rochester, the very first question is "Can I afford to pay for it? If it costs anything, can I afford to pay for it?"

And with all due respect to Senator Bruno, it would never occur to a woman seeking treatment, for either a mammogram or for osteoporosis, to say, "Let's call my State Senator and find if there's $12 million available in the Healthy Women's Partnership." That would never occur to them.

I would like to think that I've worked hard in my district, but the very last thing I would do, I think, is have a woman call me and say, "Could Senator Dollinger find some money for me to help pay for the copay," for either an osteoporosis or, for that matter, for a mammogram service.

It seems to me that if what we want to do is provide an obstacle-free way to get women to essential health care that's been described so eloquently by Senator Hoffmann and Senator Bonacic, the easiest way to do this is to say as a policy matter in this state that the copays and the deductibles will not be permitted because this service is too vital to have any woman say "Can I afford the deductible? Can I afford the copay?" As minimal as it may be.

And I see the chairman of the Health Committee standing. I know he's worked very hard to build up a fund to be able to pay for this. But I think the presence of a deductible and a copay will provide, in some cases, an obstacle to a decision in the home about whether they should seek this service.

I think this is too important to create any obstacle, and that's why the amendment makes such good sense and it warrants a vote.

THE PRESIDENT: Senator Hannon, do you wish to speak?

SENATOR HANNON: Getting into a full discussion of health care is something I wanted to totally avoid.

But when people try to simplify and oversimplify a complicated process, it disturbs me. We've worked far too hard and far too long to make sure that access and affordability and quality have become the hallmarks of our health care system.

Much of what I have -- I have some excerpts as to the use of copays and deductibles in the process from a major study

that was done by the Center for Disease Control and Prevention under President Clinton. It's called "Reaching Women for Mammography Screening." I'm not going to get into the arguments there, but the study itself was quite thick because there are a lot of different considerations that have to go through it.

I would be dismayed, I would be saddened if you were to pursue these arguments that you have and say: It's that simple, we can make a major wand fly through the air and things will change.

Yes, we want everybody to access it. And that's why we went through the Healthy Women's Partnerships. These are existing, ongoing programs in each of the counties and boroughs of this state. We're trying to expand it. We're trying to expand so they'll not just be Healthy Women Partnerships but Healthy Men and Women Partnerships that will go from mammography and cervical to include prostate and other testing. Hopefully we'll even get into questions of cardiology health, because that's

the leading killer in the state.

So I don't think to make these claims is accurate, nor does it do a good service to our constituents. I think what we've tried to do, and the mandate on us, was get results. And what we've done is do the results through this bill.

Thank you.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Madam President, will Senator --

THE PRESIDENT: On the amendment, Senator?

SENATOR ONORATO: Yeah.

THE PRESIDENT: You may proceed.

SENATOR ONORATO: I would like Senator Hannon to respond to a question on some of the remarks he just made, if he would yield.

Senator, you mentioned a fund of $12 million to provide for the women who might feel that they cannot afford to do it. I don't see it anywhere. I've been looking high and low for that number in this bill. Is it part of this bill, or is it a separate bill

that's going to provide the $12 million?

SENATOR HANNON: I'm glad you asked that question, Senator. It's part of the ongoing health care program of this state. It's part of the budget of this state.

It's a separate fund in the sense that it's a program that's a part of the whole Health Department, and it's part of what they do in regard to reaching out for each of the counties and boroughs in this state who provide these services. It's ongoing.

And when we're referring to numbers, we're referring to what we did to add to that program. That support has continued. And we would be -- we are, through the process of this legislation, saying we'll go back and, wherever there are problems with that program, strengthen it.

But it's not here because what we've just done is to clarify, because I think a lot of it's being done already, that if anybody has problems with a deductible, whoever it is, wherever they are, they can access this program.

SENATOR ONORATO: What I'm

getting at is have we passed that part of the budget yet to provide those funds, or is that going to follow?

SENATOR HANNON: No, it's in current budget law. It's continued in the proposed budget for the next fiscal year, just in the same way it's been there for several years past.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: Mr. President, on the amendment.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson, on the amendment.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

Senator Hannon has expressed his concern with our efforts to simplify or oversimplify something that is a very complicated process. And believe me, all of us here understand the complexity of that process.

But the objective should not be to make it complicated for the women who are

going to access services. The objective of this amendment, in my opinion, is to simplify it and clarify that all women are entitled to mammograms, cytology screening, and other critical services.

And I don't understand -- if the objectives that were so articulated, particularly by Senator Bonacic and by Senator Hoffmann, are to be proven to be true, that it should be our objective to make it as simple as possible so that at the point of examination there is no question.

The complication for this bill resides with us. But it should not reside with the women who go to seek services.

Simplicity is the hallmark. We mystify things because it makes us feel better. Simplicity is what we should be seeking. Therefore, I urge that we support this amendment.

ACTING PRESIDENT KUHL: Those Senators in agreement with the amendment please signify by raising your hand.

The Secretary will take the count.

THE SECRETARY: Those recorded in

agreement are Senators Breslin, Brown, Connor, Dollinger, Duane, Gentile, Hassell-Thompson, Hevesi, Lachman, Onorato, Oppenheimer, Paterson, Sampson, Schneiderman, A. Smith, M. Smith, and Senator Stavisky.

ACTING PRESIDENT KUHL: The amendment is lost.

Senator Morahan, on the bill.

SENATOR MORAHAN: Thank you, Mr. President.

Last week in this chamber I said there was no such thing as a perfect bill, and today I can repeat that statement. However, I want to congratulate Senator Bruno, Senators Bonacic and Rath for working so diligently to move us to the point that we have come to today.

As pointed out by Senator Bruno and the sponsors, this matter, this critical issue concerning women's health in the state of New York has been debated here for at least two years, perhaps even longer. And I guess the question is, today, can we continue to debate or is it time to move in the interests of the women of this state.

Notwithstanding Senator Schneiderman's objections or criticisms or amendments, it seems to me and it's apparent to me that great concern was given to that issue when the bill provided for the $12 million that Senator Bruno spoke about earlier and Senator Hannon defended so eloquently.

It is also equally apparent to me that there is no compelling reason why we cannot in the future look at these matters and these bills and work towards making the bill better, never perfect.

Those Senators who wish to wait for the perfect bill can wait for that bill. The question is, can the women of New York wait until we get that perfect bill? It comes to my mind, I wonder just how many women who were here in New York, alive and well, when this debate had started several years ago who are not here today. It comes to my mind if we wait for the perfect bill how many women in New York who are with us today will not be with us when we reach the final end toward that perfect bill.

It seems to me that it's time to take action. The conscience clause is -- not that we're trying to overcome, has been modified, has been narrowed. It is not the same expanded conscience clause that we saw before. But it shows that Senator Bruno and this conference and members of this Senate have moved and are willing to recognize the concerns of others.

But it is not right to run roughshod over the religious beliefs of some organizations -- not a minor belief, but a very deep-seated tenet of the Catholic religion, and maybe others that I'm not aware of.

I say that the women of New York can no longer wait until this Legislature, Assembly and Senate, come to that point where all 61 or 62 or 69 Senators are happy with it. I don't believe we'll ever reach that stage.

So those who want to procrastinate, those who want to hold out can do that. But you have to say, in good conscience, to the people -- the women, especially -- in the state of New York that we're going to wait,

we're going to work to perfect. In the meantime, somebody will be crippled by osteoporosis, someone will face agonizing pain and death because we are not doing what we ought to do.

Mr. Chairman, a lot of us sucked it up on the conscience clause. I think everybody here has to move in the right direction. Therefore, I'm going to vote yes on this bill.

Thank you, Mr. President.

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

THE SECRETARY: Section 17 --

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

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Thank you, Mr. President.

I just want to clarify a couple of things that have been said during the course of the debate that I think warrant comment.

I'm going to vote in favor of this bill. With all due respect to Senator Morahan, those who have been waiting for the Senate to move -- to the best I can tell, I've just been waiting. Because I haven't moved at all.

I'm exactly where I was a year ago, I'm exactly where I was two years ago when Senator Connor stood up and argued that the conscience clause should only apply to religious organizations in their ecclesiastical duties, eloquently argued it. A position similar to what California and other states have done. We put an amendment almost identical to that on the floor of this house a year ago, and it didn't happen.

I kept waiting. I didn't move. I wanted mammograms freely available. I wanted osteoporosis, like Senator Hoffmann spoke. I wanted those things, and I didn't move either. I stood here and waited.

And I would suggest that the people of this state have been waiting for an awful long time for this bill, Senator Morahan. But the movement that occurred was not a movement

on behalf of most of the colleagues on this side of the aisle. They've been waiting for something else to move.

And it seems to me that the delay, if there is a delay, is not chargeable to those of us on this side of this house who stood here a year ago and argued for modifications in the conscience clause. That delay has to be chargeable some other place, but not with those of us who have not moved. Some of us are standing firmly exactly where we stood a year ago and where we have stood, quite frankly, throughout our political careers.

Secondly, I always am dismayed to hear people say that those who haven't moved, who have been standing still on this issue, who have stood up for rights for women, who have stood up for health care for women, that we have politicized this issue by standing on the floor of this chamber, by talking about this bill, by advocating for changes in the conscience clause a year ago -- that we are the ones who have politicized this issue.

I would suggest that no one need

look any further than the calendar and realize that the politicization of this bill, this whole issue, occurs for one reason. One reason alone. We're seven days away from a special election in Manhattan in which this issue is a critically important issue.

I would suggest to those who say we are the people who have politicized this issue, I would go back to a simple Sherlock Holmes and Watson. Watson, put together the following facts: They do nothing for a year, they sit on the bill, nothing happens, and then all of a sudden it becomes a critical issue in a special election. And the very last day that you could do this bill to influence that election, you then do the bill in basically a take-it-or-leave-it fashion for the Assembly.

I would say: Dear Watson, what conclusion do you draw? What would be your deduction, Mr. Watson?

Elementary, my dear: It's politics.

Those who accuse those of us who have never moved on this issue, who are in the

same position we've been in for the last four or five years -- or, in some cases, and I'll include myself, for our entire political careers -- we have not moved. I would suggest the movement and the timing of the movement would suggest that there is a politicization of this issue. It does not rest with the Democrats in this house. It rests some other place.

I applaud the fact that there's been movement. I applaud the fact that we're getting this done. I'm deeply dismayed, Senator Morahan, that it took two years to do it, because the women of this state have been waiting a long, long time for someone to move. I don't know, Watson, who could that someone be?

I'm going to stand right where I always was. I would have voted in favor of this two years ago, I would have voted in favor of it a year ago, I would have voted in favor of it in 1993 when I first came here, because it's the right thing to do. My principles haven't changed. Where I stand hasn't changed. I vote aye.

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

SENATOR SCHNEIDERMAN: On the bill.

ACTING PRESIDENT KUHL: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: Mr. President, I rise to follow my distinguished colleague and expert in detective fiction, Senator Dollinger -- not to further debate any of the issues that have been debated, but I urge two things.

First of all, I recognize and I acknowledge -- and many of you know that long before I was in the Senate, I was a part of the prochoice movement. I would have been one of those advocates that would have received praise from Senator Hoffmann had I not been in the Senate. And perhaps that would have been okay with everybody over there.

But -- and I think it is important to praise the advocates. Although I would urge also, Senator Hoffmann, I've never heard of A606. There is the American College of Obstetricians and Gynecologists, ACOG. And I

don't want them to feel disrespected here, because we all make slips.

But I would like to suggest again to Senator Bruno that there are some other slips in this legislation, that this can be made better. And again, I call attention to the point about the lack of clarity that the riders will not cost anyone anything that Senator Connor and I mentioned earlier.

And that we should not go forward in this session with the attitude that we won't go to conference committee, we won't negotiate any further. I hope we will. And I know Senator Bruno has a good record of doing those things as we get closer to the end of the session. I hope that will be true in this case.

I would also like to add some other people who deserve praise to the list of people who have been mentioned today, because this has been a collective effort for a long time. And I realize that we have great pride in our abilities in this house, but certainly without the work of Assemblywoman Deborah Glick organizing the Women's Health and

Wellness Coalition, I don't think we would have come to this point.

And I'd also like to mention someone -- Senator Dollinger mentioned an election. I don't want to talk about that election, because that would be too political. But I want to mention someone else whose name hasn't come up, and that's Senator Roy Goodman, who dealt with this issue extensively in last year's campaign when he debated it with an extraordinarily articulate and brilliant opponent who put it in her literature and put it on her ads. And Senator Goodman kept this issue alive. And I think he does deserve mention as well before we do this.

I think I'm going to vote yes for this bill, but I'm voting yes and urging that we do send this to a conference committee and that we come back with an even better bill before the end of the session.

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

THE SECRETARY: Section 17. This act shall take effect on the first day of

January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator DeFrancisco, to explain his vote first.

SENATOR DeFRANCISCO: Yes. You know, there's been a lot of accusations about what held this bill up. In my law practice, I do a lot of cases dealing with women who have had cancer not diagnosed on a timely basis. We've had family members that have had many of these diseases.

This bill could have passed in one day by both houses if the health issues dealing with breast cancer, cervical cancer, and osteoporosis had been the bill. Those are the things that are killing people. People have no choice over that. You get the disease, you need health care. That's what the health care bill is about.

This could have passed two years ago, and the people that we've been saying may have died two years ago or may die two years from now, that could have been prevented if we

separated the one issue that clearly is the issue dividing everyone, concerning contraception.

And all I'm saying is that a health bill like this is extremely important. We could pass it in both houses. We have not got the concurrence from the Assembly yet.

I have a problem, very simply, and people know about this problem. And that is we make exemptions for religious organizations all the time. There's a bill right now where you don't have to wear a helmet on a bike if you're a kid of a certain religion and you have to wear a certain headgear. We do it all the time. There's all kinds of bills; I could go through many of them.

The fact of the matter is the conscience-clause bill that we passed that I supported was a bill that protected 99 percent of the women. And the only ones that it didn't protect -- it protected 100 percent of the women on the diseases. Maybe 1 percent were not covered under the conscience clause that we passed before.

And now we're requiring the

Catholic Church simply to, against the basic tenet of the church, to allow for the dispensation of contraceptives. I just think it's wrong. Everybody has their own opinion. And that's the only reason I'm voting no. Don't anybody ever accuse me of not voting for this bill because of the cancer protection and the osteoporosis protection, because that is not my intent whatsoever.

And hopefully this bill will come back in a different form that would separate the two bills at a later date.

ACTING PRESIDENT KUHL: Would the negatives raise their hands again.

Senator Stachowski, to explain his vote.

SENATOR STACHOWSKI: Mr. President, to explain my vote.

Along with Senator DeFrancisco, I also have that same problem with the religious part.

And it's even more than that. And it's that the Buffalo bishop claims that he is going to have to go to court, spend a lot of money on legal fees, besides having to offer

the coverage, which -- the rider he doesn't mind, but in this particular conscience clause that's in this particular bill, he's going to have to prove that his schools are Catholic, that his hospitals are Catholic, and his nursing homes, if he has any, are Catholic. And that's kind of a problem when you're adding another expense to go through a bunch of legal fees.

And as much as I would love to take Senator Bruno's word, because I trust him all the time on things he says, but a lot of times the things that are said on the floor that the bill will do and that everybody will have money to cover the copays, and that we'll advertise it in our ads -- well, heck, the Governor is on TV all the time in ads for Family Health Plus, and they don't have enough people signing up.

So my fear is again we're going to have too many women that, when faced with the choice of paying $20 up front or not getting the test, they are not going to get the test. So it's a big problem still.

And for those couple of reasons,

I'm voting no.

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

Senator Marchi, to explain his vote.

SENATOR MARCHI: Yes, thank you, Mr. President.

The old Latin invocation of carpe diem, seize the moment. I don't question anybody's motivation on either side of the aisle, why we're here and what we are considering. We know specifically we have this bill.

I remember 60 years ago I was a young ensign -- it's difficult for anybody to believe that anybody 60 years ago was an ensign. And at that time, the distribution of contraceptives was promiscuous. And I don't recall now whether there was a slight charge or whether they were distributed gratis. But much was made, and I remember speaking to a chaplain 60 years ago, because I felt challenged on my own convictions on the subject. And they said, "Well, the loss of life, this is worse than being bombed out

during the war."

We have 41,000 casualties that could be materially reduced. That's over 850 a week. This is a tremendous number of people who are paying a price for something that we can address directly. Does this mortgage or put a lien on us about future legislation? I'm sure that some of these provisions will be addressed in the future.

But we have a bill before us that promises major savings. And I remind you that we go to pharmacists, and many of them are Catholic, many of them are not. But they are available, and the services are available.

So the arguments that have been made are not futile. They have their appeal, and they strike a certain resonance even with myself. But on the other hand, with the heavy death toll that we have, the fact that we have a vehicle for supplying substantial intervention and assistance to the women of this state in reducing that number, and doing it in a sane and sensible fashion, does not foreclose ameliorative amendments in the future or joinder in the issue.

I voted to abolish the death penalty, and it was abolished. I remember Eddie Lentol, Senator Lentol made a very passionate appeal and convinced us. I remained with that position even after that, when it was reinstated.

But we have an obligation today on voting on specific legislation that holds major promise to be activated and to be responded to positively. So I congratulate Senator Bruno and Senator Bonacic or anybody else on either side of the aisle who feels that, on balance, we are making progress in an area where we have not been.

So I vote yes on this bill, not to waive any of my feelings on other aspects that I have not joined.

ACTING PRESIDENT KUHL: Senator Marchi will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 138 are Senators DeFrancisco, Farley, Maltese, Maziarz, Meier, Padavan, Stachowski, and Volker. Ayes, 49. Nays, 8.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT KUHL: Immediate meeting of the Transportation Committee, immediate meeting of the Transportation Committee in the Majority Conference Room, Room 332.

Senator Skelos.

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

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

There is a report from the Finance Committee at the desk. I'll ask the Secretary to read.

THE SECRETARY: Senator Stafford,

from the Committee on Finance, reports the following nominations:

As members of the Adirondack Park Agency, William H. Kissel, Esquire, of Lake Placid; Frank L. Mezzano, of Lake Pleasant; Deanne Rehm, of Bolton Landing; and James T. Townsend, Esquire, of Rochester.

As a member of the New York State Bridge Authority, David Teator, of Mellenville.

As a trustee of the Power Authority of the State of New York, Louis C. Ciminelli, of Buffalo.

As a member of the State Environmental Board, Kevin Bowman, of Rexford.

As a member of the Empire State Plaza Art Commission, J. Stanley Yake, of Rexford.

As members of the Medical Advisory Committee, Russell Nicholas Ake Cecil, of Amsterdam; Dennis P. Norfleet, M.D., of Oswego; Elena Padilla, of New York City; Michael P.M. Pond, M.D., of Saranac Lake; and Roger W. Triftshauser, D.D.S., of Batavia.

As director of the Municipal

Assistance Corporation for the City of New York, Jonathan A. Ballan, Esquire, of New York City.

As a member of the Board of Directors of the Roosevelt Island Operating Corporation, Joan O. Dawson, of New York City.

As members of the Advisory Council on Alcoholism and Substance Abuse Services, Theodore T. Nevills, of Adams; John W. Russell, Jr., of Staten Island; Charles F. Schewe, of Saratoga Springs; and Veronica A. Uss, of Livingston Manor.

As members of the Advisory Council to the Commission on Quality of Care for the Mentally Disabled, Anna Marie Lusins, of Oneonta, and Dimitra Risueno, of Park Slope.

As a member of the New York State Office of Science, Technology and Academic Research Advisory Council, Brian Ruder, of Scarsdale.

As members of the State Camp Advisory Council, George G. Coleman, of Bellmore; Judith H. Reilly, of Utica; and Robert C. Scheinfeld, Esquire, of New Rochelle.

As members of the Board of Visitors of the Brooklyn Developmental Disabilities Services Office, Virginia Casey, of Brooklyn, and Era Fischetti, of Brooklyn.

As members of the Board of Visitors of the Broome Developmental Disabilities Services Office, Joseph F. Abissi, of Johnson City, and Mary C. Weidman, of Oxford.

As members of Board of Visitors of the Capital District Psychiatric Center, E. Bernice Danks, of Averill Park, and Marcella B. Ryan, of Hudson Falls.

As members of the Board of Visitors of the Central New York Developmental Disabilities Services Office, Eleanora L. Collins, of Rome, and Henry F. Miller, of Barneveld.

As a member of the Board of Visitors of the Bernard M. Fineson Developmental Disabilities Services Office, Charles Naroff, of Flushing.

As a member of the Board of Visitors of the Hudson River Psychiatric Center, Marion Ostrander, of Kingston.

As a member of the Board of

Visitors of the Kingsboro Psychiatric Center, Robert Mayo, D.D.S., of Brooklyn.

As a member of the Board of Visitors of the South Beach Psychiatric Center, Robert S. Flanzer, D.D.S., of Brooklyn.

As a member of the Board of Visitors of the Staten Island Developmental Disabilities Services Office, Frank L. Tellefsen, of Staten Island.

As a member of the Board of Visitors of the Sunmount Developmental Disabilities Services Office, Gilbert A. Duken, of Plattsburgh.

And as a member of the Board of Visitors of the Taconic Developmental Disabilities Services Office, Theresa Sgrulletta, of Mount Kisco.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Move the nominations.

ACTING PRESIDENT KUHL: All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The nominations are confirmed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to the calendar and please take up Calendar Number 91.

ACTING PRESIDENT HOFFMANN: The Secretary will read Calendar 91.

THE SECRETARY: Calendar Number 91, by Senator Kuhl, Senate Print 4388, an act to amend the Vehicle and Traffic Law, in relation to exempting.

SENATOR PATERSON: Explanation.

SENATOR SKELOS: Madam President.

ACTING PRESIDENT HOFFMANN: Senator Skelos.

SENATOR SKELOS: If we could have the last section read at this time for the purposes of Senator Stachowski voting.

ACTING PRESIDENT HOFFMANN: Read the last section.

THE SECRETARY: Section 12. This

act shall take effect immediately.

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

SENATOR STACHOWSKI: No.

SENATOR SKELOS: Senator Stachowski will be recorded in the negative, and please withdraw the roll call at this time.

ACTING PRESIDENT HOFFMANN: The roll call is withdrawn.

Senator Kuhl, an explanation has been requested.

SENATOR KUHL: Senator Paterson, this is a bill that is really very single-purposely intended. It's a bill that has been introduced before and has passed this house with, I think at most at any time, four negative votes.

Back in 1994, this Legislature saw fit, with the Governor's approval, to pass a bill aimed at providing safety to those children under the age of 14 who were riding bicycles by requiring them to and mandating that they wore safety-approved helmets.

What has occurred is that we have become aware that in fact that there are some circumstances where the wearing of a helmet interferes with the wearing of certain religious clothing apparel, and it creates a conflict in some children under the age of 14.

So this bill essentially allows for an exemption when it is inappropriate, in accordance with the maintenance of a religion, to wear a headpiece that becomes essentially impossible to wear a helmet with, and allows for that exemption to occur without creating a violation for the person if they choose to do that. A very simple process here.

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

ACTING PRESIDENT HOFFMANN: Senator Kuhl, will you yield for a question?

SENATOR KUHL: I'd be happy to yield to Senator Paterson.

ACTING PRESIDENT HOFFMANN: Senator Kuhl yields to Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

I know that Senator Kuhl will stand with me, particularly at home, where I'd like people to know that I'm more flexible, because I've voted against this bill for three years, and Senator Kuhl's persistence and articulate way of explaining this legislation has prevailed upon me.

But I would like to ask him to reflect on the value of protection, particularly for children at that age, and the fact that this is the type of law that is quite often violated by those who, for any reason that they might think of, might wish to ignore the law, not understand the public safety element, and not wear the helmets.

And while trying to accommodate the specific problem that exists in Senator Kuhl's district and in some other places as well, how do we at the same time make sure that what we accomplished in 1994 by passing the legislation is really enforced and is understood to be very serious? Because there have been serious accidents sustained by young people, one in my family, years ago, where there was no helmet being used.

SENATOR KUHL: Senator Paterson, I think you, being the experienced legislator that you are, have often experienced that this body is really -- and I don't necessarily imply this to the Senate by itself, but also the Assembly, and I think legislatures across the country, we depend to be reactionary bodies. And when in fact we see a problem, we tend to react to that.

And oftentimes a problem is really manifested in not a hundred percent of the population. We might find that only 2 percent of the population really are in need of direction, whether it's wearing seat belts, whether it is some sort of a violation of the civic code, or whatever it happens to be.

And in this particular case, the safety issues as it relates to bicycles, it is my position and my belief that not every child needs to actually wear a safety helmet to be safe. That in fact you're talking about instances of maybe 1 or 2 or 3 percent of the actual population that uses bicycles that might put themselves at jeopardy.

And I think if you start to look at

the reasons why people -- in this particular case, children -- use bicycles, you'll see that for the most part it's for their amusement. It's one of those things that they get some great benefit out of riding around here or there.

Now, the population that we're addressing primarily is a Mennonite community out in my area who does not use bicycles for amusement. They use them for actual transportation. They have one-room schoolhouses that are located in the general vicinity of their homes, but this is how they get back and forth to school, for the most part, or walk.

And so they have a tendency to be trained in the use of bicycles. They're not out there doing frivolous kinds, fun kinds of things in an amusement way. It's not recreation for them. It is -- if you know anything about the Mennonite community, they are generally very serious people. They go about the living of life in a very serious way. And that is not to demean them, it's just saying they do what their tasks are, what

their jobs are. They grow up, they're trained in that sort of thing. But they use bicycles to get back and forth. It's a means of transportation.

I have not, in the course of my representation in my area, heard of one Mennonite child having an accident that would have -- even having an accident, number one, much less having an accident that a helmet would have saved any kind of injury.

So what this proposal is meant to do is to deal with a very small, almost finite percentage of the population, and deal with people who really don't need to be forced or mandated to wear safety helmets, because they're already safe.

But there is definitely an interference with the carrying on of their religious tenets. So that is the reason for the bill. If I thought that we were balancing safety as opposed to religious belief, well, I might not propose the bill. But I don't sense that's the situation here, Senator.

ACTING PRESIDENT HOFFMANN: Senator Lachman.

SENATOR LACHMAN: Yes, Madam President, on the bill.

This morning one of my colleagues approached me and asked me the same question another colleague asked me yesterday: Why don't they take off their black caps and use skullcaps, or yarmulkes? The problem is we're not talking about the Hasidim, we're talking about the Mennonites of upstate New York, and they usually don't wear skullcaps.

This is a very difficult bill to vote on because it pits two major, positive issues together on this issue. In my opinion, it pits the issue of public safety, which is really very, very important, and it pits the issue of freedom of religion, which in my eyes is also very, very important.

America's great contribution to the world is the First Amendment to the U.S. Constitution, written by James Madison, that spells out separation of church and state. But it spells it out in such a way -- it says Congress shall make no law respecting an establishment of religion, part one, or prohibiting the free exercise thereof, part

two of the First Amendment to the U.S. Constitution.

Now, I believe that Senator Kuhl's bill falls under part two.

But I think, because of our general separation of church and state, America has become a veritable greenhouse for religions. Just think of it. The Disciples of Christ, the Mormons, the Christian Scientists all started here. The Baptists, the Methodists, who were small groups in Europe, blossomed here because of this First Amendment. Why? Because there was no prohibition against the free exercise thereof.

And why did the Mennonites come to America? They could have come to my district, they could have come to Senator Kuhl's district. They came to Senator Kuhl's district. But because there were discriminatory acts that prevailed against Mennonites and people of the Amish faith.

Now, a similar bill in terms of freedom of religion, going against the constitution of a state, reached the Supreme Court in the year 1972. It was called Yoder

versus Wisconsin. Now, the state constitution of Wisconsin said that every child must attend a school until a certain age, and every child must attend a high school. In a precedent-setting decision, the U.S. Supreme Court ruled by six to one, with two abstentions -- I think the new Supreme Court Justice Rehnquist, today U.S. Chief Justice, recused himself because he was assistant attorney general when the case was in the courts.

But the case brought together the liberals of the court and the conservatives. The chief liberal of the court was Justice Brennan at that time, and the conservative chief justice was Justice Burger. And they held that there can be exceptions for state law that mandate education if the religious groups feel that that education is against their religious beliefs and the need for their religious growth and maturity, as did the Amish and the Mennonites.

So now in the state of Wisconsin they don't have to attend public school after a certain age, and it is given into the hands

of the parents to do what they can in terms of educating these children.

Madam President, I believe that this bill is a major aspect of what is unique to America, and that is the aspect of not denying or prohibiting the free exercise of thereof. For these young men to take off their hats, for these teenagers to take off their hats and put on helmets would be a diminution of the free exercise of their religion.

Now, from our perspective we might disagree. From their perspective, we cannot disagree. And if we set a precedent against the religious beliefs of one religion, regardless of how small and where it exists in upstate New York, I'm very, very wary and afraid that there will be other precedents in the area of religion set by the United States.

So in upholding the decision of Wisconsin versus Yoder, I support my distinguished colleague, Senator Kuhl, in this bill.

ACTING PRESIDENT HOFFMANN: Senator Stavisky.

SENATOR STAVISKY: I wonder if Senator Kuhl would answer one very brief question.

ACTING PRESIDENT HOFFMANN: Senator Kuhl, will you yield for a question?

SENATOR KUHL: I would be happy to.

ACTING PRESIDENT HOFFMANN: Senator Kuhl will yield.

SENATOR STAVISKY: Your bill refers to children under the age of 14, if their religious tenets, et cetera.

Would this affect or can we assume that people who wear turbans, such as the Sikh community, would not be affected by this legislation?

SENATOR KUHL: It only affects children under the age of 14.

SENATOR STAVISKY: Children. And it's my understanding that children under the age of 14 do not wear the head --

SENATOR KUHL: Then it would not affect those people.

SENATOR STAVISKY: Then it would not affect them. Thank you.

And I would also -- excuse me, if the Senator would yield.

ACTING PRESIDENT HOFFMANN: On the bill, Senator Stavisky?

SENATOR STAVISKY: No, if he would answer one more question.

ACTING PRESIDENT HOFFMANN: Senator Kuhl, will you yield for an additional question?

SENATOR KUHL: Yes.

ACTING PRESIDENT HOFFMANN: Senator Kuhl yields.

SENATOR STAVISKY: I assume that this would not affect those people wearing the skullcap or yarmulke.

SENATOR KUHL: Not at all, unless it interferes with the actual implementation of wearing of the helmet. And I don't think that would.

SENATOR STAVISKY: I don't either. Thank you, Senator Kuhl.

ACTING PRESIDENT HOFFMANN: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. Would the sponsor please yield?

ACTING PRESIDENT HOFFMANN: Senator Kuhl, will you yield for a question from Senator Hevesi?

SENATOR KUHL: Yes.

ACTING PRESIDENT HOFFMANN: Senator Kuhl yields.

SENATOR HEVESI: Thank you, Madam President.

I know that you didn't advance the argument that Senator Lachman advanced, but I'm curious to know whether you agree with Senator Lachman that the current law is -- the law we have on the books right now is unconstitutional.

SENATOR KUHL: I don't know as the current law in its totality, Senator, is unconstitutional.

I do think, however, that a court could seriously consider the provision as it relates to children under the age of 14 as being unconstitutional, as we have noted in this bill.

I did not take the same tack as Senator Lachman, because he is much more versed in constitutionality along these lines,

and he does a much better job, quite frankly, in that presentation than I could possibly ever think of.

So, yes, I support his position and welcome his support.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield?

ACTING PRESIDENT HOFFMANN: Senator Kuhl, will you yield for another question?

SENATOR KUHL: Yes.

ACTING PRESIDENT HOFFMANN: Senator Kuhl yields.

SENATOR HEVESI: Thank you.

The reason I asked that question is because there seems to be a problem in the Assembly with passing this legislation. And my understanding, from looking at the legislative history, is that this bill has been brought in this house every year -- with the exception of last year, I believe -- since 1995.

And so it seems unlikely, unless something new is about to happen, that this is

going to become law, because the Assembly obviously shares some of the objections that some of my colleagues here share.

My question to you is, why have the Mennonite community that you represent not gone to court to try and have the current law returned, or at least the exception that they have noted?

SENATOR KUHL: Senator, I would welcome you to come visit my district and visit with the Mennonite community. And I think that if you had the opportunity to do that, you would know and very quickly be able to figure out what the answer to your question is.

And what you will find -- and I explain this to you just so that you know and can anticipate, and that is that this particular religious community really does not rely on much in the way of governmental control, nor do they look to support or degrade or not support. They just do not participate in the governmental nor the court structures.

They tend to do that -- and they're

really kind of a self-contained community. They tend to deal with their problems within the community and rely solely upon the support amongst themselves.

So for them to go to court to challenge this kind of thing would be really very, very, very out of context with what they are and who they are. Let me give you a for-instance.

We have had, as a result of legislation that was passed back in, I think, 1981, when we created the New York State Building Code -- there are provisions within that that require, for instance, running water in all public restroom facilities. Well, in the public facilities that they have, known as a one-room schoolhouse, they don't have running water in that schoolhouse. They still operate with outdoor facilities. And to have outdoor facilities with running hot and cold water, you have to have heat, which they don't, and that's a whole additional expense.

And so when they came into that conflict, they found it very obtrusive to have to go to any kind of a hearing to look for a

variance. So on their behalf, we went to the state and asked for a variance on a statewide basis, which they were granted.

But for them to participate in something so insignificant as that -- not that they weren't taking care of their own public health, because they had water, fresh water inside for the children to take care of washing their hands, and on and on and on -- was very obtrusive to them, and they would not participate in it.

They do not vote. So is there something for me to be gained by bringing this legislation?

SENATOR HEVESI: No, that wasn't --

SENATOR KUHL: The answer is no. And I know that you weren't inferring that, I'm just simply saying they don't vote, they don't participate in it, because they're a separate community who really don't want to be -- do they file workers' compensation claims? The answer is no. But do they pay taxes? Yes, they do. So they participate by paying what's required of them, but they don't

utilize the services that we provide for them.

So I'm kind of -- and this particular provision, I don't want some Mennonite child to face the real trauma that they would face for being cited for a violation of this section because they choose to wear their hat rather than a safety helmet on their way to school. I think that that's an inordinate burden that we place on them, an unnecessary burden that we place on them, and I think it's just unfair and has been from the very beginning, since 1994.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield?

ACTING PRESIDENT HOFFMANN: Senator Kuhl, will you yield?

SENATOR KUHL: Yes.

ACTING PRESIDENT HOFFMANN: Senator Kuhl continues to yield, Senator Hevesi.

SENATOR HEVESI: Thank you.

What have the Mennonite children been doing since 1994? They're not allowed, under state law, to ride their bicycles

without a helmet. Have they been complying with that law?

SENATOR KUHL: No. We've made criminals out of them, essentially. But they haven't been cited as criminals, because that's been overlooked.

SENATOR HEVESI: Thank you.

And one final question, if the sponsor would continue to yield.

ACTING PRESIDENT HOFFMANN: Senator Kuhl, will you yield for one final question?

SENATOR KUHL: Yes.

ACTING PRESIDENT HOFFMANN: Senator Hevesi, Senator Kuhl yields.

SENATOR HEVESI: Thank you.

I'm not terribly familiar with the Mennonite religion, but I'm curious as to why the religious leaders in that community would not have seen fit to make an exception in this case, where it seems pretty apparent that wearing a helmet is conducive to the safety of children. If it's good for the rest of the children in the state, it's good for their children too.

Understanding that there is a religious purpose to requiring children to wear the headgear, it would seem to be fairly consistent that they would wish to protect the children in the Mennonite community, even though under ordinary circumstances they would require the wearing of the headgear. So why have they not made that exception?

SENATOR KUHL: I can't answer that, Senator. I don't know that it's even been discussed. I would doubt that it's been discussed, just knowing the basic, overall approach that they take to carrying on life.

SENATOR HEVESI: Okay. Thank you.

Madam President, on the bill.

ACTING PRESIDENT HOFFMANN: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you.

I thank the sponsor. I know why he's bringing this legislation. We had a large debate, a lengthy debate and discussion about this last year.

I guess I'm somewhat upset to hear that the children of the Mennonite community

are not wearing helmets now, because it is the law of the land. And I understand that there is a religious compulsion to wear the headgear, which seemingly would preclude the wearing of the helmets.

I disagree with Senator Lachman and the others who have suggested that we are not free to regulate the conduct of those who reside within our state under any circumstances. And if ever there was a compelling circumstance, it would seem to me that in the course of trying to protect a child who is clearly more at risk to harming themselves -- that was the purpose of the 1994 law -- if they were to have an accident, particularly a head trauma, while riding a bicycle, their chance of escaping with less of an injury if they're wearing a helmet is increased tremendously.

And so I don't understand why the religion wouldn't allow, as other religions allow -- for example, in the Jewish faith, on Yom Kippur, though you are supposed to fast, if you don't feel well you are allowed to drink and you are allowed to eat.

It would seem to me that we are sending the wrong message. And it does not violate any constitutional provision. And if the -- I'm sure if the Mennonite community felt so strongly about this, I'm sure there's a nonprofit organization that would, on their behalf, even if they didn't request it, would bring a suit to challenge the current law. But I don't think that the current law is susceptible to such a challenge, because we can regulate that conduct.

So I'm going to be voting against this bill, notwithstanding the fact that I very much appreciate what Senator Kuhl is trying to do in representing his constituents.

Thank you.

ACTING PRESIDENT HOFFMANN: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes, Madam President. Through you, I would like to ask Senator Kuhl a question for clarification.

ACTING PRESIDENT HOFFMANN: Senator Kuhl, will you yield for a question from Senator Montgomery?

SENATOR KUHL: Yes.

ACTING PRESIDENT HOFFMANN:

Senator Kuhl yields.

SENATOR MONTGOMERY: All right. Thank you.

Senator Kuhl, I'm just trying to understand the extent of the coverage in this legislation. It says that it's applicable -- it exempts any child under the age of 14 if the religious tenets of such child's established form of religion necessitates the wearing of religious headwear.

Now, there -- and then I have a note from staff where it seems that -- well, maybe this is from you. I don't know. It seems that you were trying to specifically address a particular group in your district.

But what I want to ask you is, there are other religious groups that wear this kind of headgear. Now, does this bill also exempt -- does this -- every child in the state and every religious tenet and every group that wears these kind of hats, because there are other groups that wear headgear of various sorts, different religions, are all of those children exempt from wearing helmets?

SENATOR KUHL: Under this bill, yes, Senator. It's all-inclusive.

SENATOR MONTGOMERY: It covers everyone?

SENATOR KUHL: Yeah. Quite frankly, I don't know how it would exclude one religious group from another.

SENATOR MONTGOMERY: I wouldn't think so.

SENATOR KUHL: In terms of fairness, I don't see how you can treat one differently than another.

SENATOR MONTGOMERY: Absolutely. Okay, that's clear.

One last question.

ACTING PRESIDENT HOFFMANN: Senator Kuhl, will you continue to yield?

SENATOR KUHL: Yes.

ACTING PRESIDENT HOFFMANN: Senator Kuhl yields, Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Madam President.

Senator Kuhl, you know, I think that we have tried to do legislation to require helmets for children who ride

bicycles, do scooters, do those kinds of things where they are moving fast and they could sustain a head injury if they should fall as they are moving.

So those other aspects, whatever children are using, are also exempt under this bill? In other words, the children whose -- who are required to wear headgear of some sort are exempt from having to wear helmets no matter what they're doing, in terms of whether they're using a bicycle or a scooter or a motor scooter or any of those kinds of things?

SENATOR KUHL: This only applies to bicycles.

SENATOR MONTGOMERY: Only bicycles. Okay. Thank you. Thank you.

Madam President, just briefly on the bill.

ACTING PRESIDENT HOFFMANN: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes. I have voted no in prior years to this legislation. And I just want to be very clear that, one, there are a number of groups that wear headgear. You know, some Muslims use headgear

quite extensively. I know of some religious Jewish groups that wear headgear, and so forth and so on.

So what we're doing, essentially, is exempting a very large -- potentially large segment of our children from using headgear to protect them from the possibility of serious brain injury if they should fall while using a bicycle or any other form of equipment similar to that, simply because they are born into a family that practices certain religion, they're required to wear certain gear in a certain way, and they're really not able to make those decisions.

So I am voting against this, because I think it goes against the obligation of the state to protect children no matter what their religion and no matter what their parents require them to wear. Our role is to protect them.

So I'm going to be voting no on this.

ACTING PRESIDENT HOFFMANN: Senator Padavan.

SENATOR PADAVAN: Yes, Madam

President. I'm going to vote for this bill.

And I might, just as a matter of information, advise Senator Kuhl and others that there is a large Sikh community in the city of New York, over 350,000 of them. They have large families. And young Sikh boys are required to wear headgear that would preclude helmets. So we're talking about more than Mennonites.

However, I do believe, as Senator Kuhl apparently does in this instance, that when we have a significant religious conviction that would be undermined as a result of a state law, that the law must give way. And that's what that bill does. With all the pitfalls that you talked about, Senator.

Regrettably, in a prior piece of legislation we passed in this house today, we didn't take that stand into consideration. Somewhat of a dichotomy.

Nevertheless, I think this bill makes sense and I will vote for it.

ACTING PRESIDENT HOFFMANN: Read the last section.

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

ACTING PRESIDENT HOFFMANN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT HOFFMANN: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 91 are Senators Hevesi, Libous, Montgomery, and Stachowski. Ayes, 54. Nays, 4.

ACTING PRESIDENT HOFFMANN: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, may we return to the reports of standing committees. I believe there are reports at the desk.

ACTING PRESIDENT HOFFMANN: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 106, by Senator Marcellino, an act to amend the Vehicle and

Traffic Law;

419A, by Senator Skelos, an act to amend the Vehicle and Traffic Law;

4673, by Senator Trunzo, an act to amend the Highway Law;

5082, by Senator Leibell, an act to amend the Highway Law;

5271, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

5364, by Senator McGee, an act to amend the Highway Law;

And 5670, by Senator Libous, an act to amend the Highway Law.

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;

1158, by Senator Morahan, an act to amend the Military Law;

1733, by Senator Morahan, an act to amend the Education Law;

And Senate Print 3720B, by Senator Morahan, an act to amend the Civil Service Law and others.

All bills ordered direct to third reading.

ACTING PRESIDENT HOFFMANN: Without objection, all bills will be reported direct to third reading.

Senator Fuschillo.

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

ACTING PRESIDENT HOFFMANN: Yes, Senator McGee has a motion.

SENATOR McGEE: Madam President, on behalf of Senator Balboni, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: 6262A.

ACTING PRESIDENT HOFFMANN: So ordered, Senator.

SENATOR McGEE: Thank you, Madam President.

SENATOR FUSCHILLO: If you would please recognize Senator Montgomery.

ACTING PRESIDENT HOFFMANN: The chair recognizes Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you, Madam President. I would like unanimous consent to be recorded in the negative on Calendar 72.

ACTING PRESIDENT HOFFMANN: Without objection, Senator Montgomery will be recorded in the negative on Calendar Number 72.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT HOFFMANN: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, there being no further business to come before the Senate, I move we adjourn until Monday, February 11th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT HOFFMANN: On motion, the Senate stands adjourned until February 11th at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 1:26 p.m., the Senate adjourned.)