NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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10:46 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, Jr., Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order.

I ask the members to find their places, staff to find their places.

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

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

ACTING PRESIDENT KUHL: We're very pleased to have the Reverend Donald R. Carney with us, from the Stapleton Union American Methodist Episcopal Church in Staten Island, for the invocation.

Reverend Carney.

REVEREND CARNEY: Let us pray.

Father God, in the mighty name of Jesus, Lord, we just want to say thank You for this day and thank You for this experience.

And, Lord, we just want to thank Senator Gentile for allowing me this opportunity to be here.

And, Lord, let that mind that be in Christ Jesus also be in these men and these

women that have come to represent the government. And, Lord, let it be done in decent and in order that Christ may be glorified through their lives.

In Jesus' name, amen.

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, April 9, the Senate met pursuant to adjournment. The Journal of Monday, April 8, was read and approved. On motion, Senate adjourned.

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

Senator Skelos.

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

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nominations.

As a judge of the Family Court for the County of Niagara, David E. Seaman, of Lockport.

ACTING PRESIDENT KUHL: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

It's my privilege to rise and move the nomination of David E. Seaman, of Lockport, as a judge of the Family Court for the County of Niagara. We received the nomination from the Governor for Assemblyman Seaman. His credentials were reviewed.

Of course, as a member of the Assembly, he's well known to us in the Senate Judiciary Committee. He's been very active on issues in which we have been involved in.

His credentials were approved, and

within the past hour he appeared before a meeting of the Senate Judiciary Committee and was unanimously moved to the floor for consideration at this time.

And it is with great pleasure I yield to my colleague who, any time he ever gets involved with trying to move a judicial candidate, is always very thoroughly involved. And that, of course, is Senator George Maziarz.

ACTING PRESIDENT KUHL: The chair recognizes Senator Maziarz on the nomination.

SENATOR MAZIARZ: Thank you very much, Mr. President. I appreciate the opportunity and thank Senator Lack for all the courtesies extended to Assemblyman David Seaman and to the members of his family.

It's with mixed motions, Mr. President, that I rise here today to second this nomination of Governor Pataki to the Niagara County Family Court. I was elected to this body the same day and served for the last seven years with my very good friend, David Seaman, although I've known Dave for many years longer than that.

I know that the challenges that he is going to face as judge of the Family Court in Niagara County he is eminently qualified for, having graduated from Notre Dame, Georgetown Law School. But more importantly, Dave has worked in the trenches, worked in the Niagara County district attorney's office. He's worked in the public defender's office. He was a law clerk for former and retired Judge Aldo DeFlorio.

And certainly for the last seven years, as a member of the Assembly, where he served as the ranking member of the Assembly Codes Committee, he dealt with a great deal of criminal justice legislation which I'm sure is going to be used very well during his term as -- hopefully a long term -- as a Family Court judge in Niagara County.

We all know, of course, that Family Court is probably the most challenging aspect of the judiciary, dealing with child custody issues, adoption issues and families in stress. But, Mr. President, I can assure you, having known Dave for many years, having worked with him very closely for the last

seven years, that David has the personality, the temperament to be, I think, an excellent Family Court judge, to make those decisions affecting children's lives.

And I want to congratulate Dave in what I know will be an overwhelming vote of confidence by this State Senate. I know that Dave's wife, Bonnie, wanted to be here today, but because of the scheduling conflicts, with yesterday not being a session day, she was unable to be here.

And I know that his very good friends Bill and Rosie Brown, Mike Norris, Cindy and Mike Miele, Mary and Dale Donovan, Tom Landrigan and Shirley Lipp are also here.

So, Mr. President, I highly recommend to my colleagues that they give a vote of confidence to somebody that although I'm going to miss working with him on a direct basis, somebody that I look forward to, especially this year, in a very vigorous campaign for the children of Niagara County.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator McGee, on the nomination.

SENATOR McGEE: Thank you, Mr. President.

Mr. President, seven years ago a young gentleman came into the New York State Assembly, and I was given the honor and the privilege and somewhat questionable attitude as to what I was going to do with this young man, because he was assigned to me as I was his big sister. At that point I told him I was not going to be his mother, I was going to be his big sister.

And throughout those years that I served in the Assembly with David, he has shown his support, his concern, his conscientious movement and helpfulness for the people of the county and the people that he represented. David is an excellent individual, and he's served his people very well.

And I'm very proud and privileged, I feel proud and privileged to certainly support the nomination of David as the Family Court judge of the County of Niagara, and I know that he will do a fine job there too.

Congratulations, David. It's been

great serving with you.

ACTING PRESIDENT KUHL: Senator Alesi, on the nomination.

SENATOR ALESI: Thank you, Mr. President.

Like many of my colleagues, I also come from the Assembly, and that's where I first met David Seaman. But I got to know him even better through my very good friend Senator Maziarz.

And over the years, I can't help but reflect back on that very first week when we went to dinner and tried to bring David Seaman into the fold and get to know each other. And I suggested that he might park in a particular place, and he suggested that that didn't look like the right place to park. He was right. Unfortunately, the results weren't very happy for him. And I always thought that David had a rather bad streak of luck as a result of that particular evening, and always kidded him about that.

But I also knew David as someone who was so completely thorough in his efforts in the Assembly. We've heard reference

through Senator Maziarz that he was the ranking member on the Codes Committee, which we all know is a very important committee. But we also know that David was probably one of the best ranking members that have ever served in that capacity, actually having asked not only questions but questions that the Majority came to him to seek answers out on.

So in his thoroughness, he has established himself as someone who is eminently well qualified in the law. And I am very happy to see today that his streak of luck has changed for the better.

And again, it is with mixed emotions that I say goodbye to David Seaman and congratulate him and wish him all the very best.

I think, as Senator Maziarz correctly said, Family Court is not an easy court. But if there's anybody who can handle that particular position with the thoroughness that David Seaman had shown in everything he has done and with the incredible intellect that he has, it will be him. And that will be better for the people of his county and for

the people of the State of New York.

Congratulations, David.

ACTING PRESIDENT KUHL: Senator Brown, on the nomination.

SENATOR BROWN: Thank you, Mr. President.

I also rise to support the nomination of Assemblyman David Seaman to the Family Court of Niagara County.

I've had the pleasure of being part of the Niagara County state legislative delegation, with Assemblyman Seaman and Senator Maziarz and Assemblywoman Francine DelMonte, and I have really been impressed with Assemblyman's Seaman's passion for service to others. He speaks about that passion as he goes about his work in the Assembly. Every day of the week, he demonstrates that passion.

I, like Senator Maziarz, feel this is a little bit bittersweet, because I've really enjoyed working with him, I've enjoyed getting to know David Seaman better, I've enjoyed being able to be in forums with him and listen to his reasoned approach to

legislation, his reasoned approach to service.

He is a person who is very strong in his convictions. But even with his strength of convictions, he is willing to listen to the opinions of others. And I think that is a quality that will serve David Seaman well as a Family Court judge.

He has also, in our discussions and some of the forums that we've been able to participate in in Niagara County, talked about his concern for the families of Niagara County. And I know he has an intense interest in making the lives of families better. And I am very pleased that he has been put forward for this very important position, and I know that he will serve very well in this capacity.

Thank you.

ACTING PRESIDENT KUHL: Senator Stachowski, on the nomination.

SENATOR STACHOWSKI: Mr. President, I too would like to rise to add my comments to the seconding of Dave Seaman.

I had the opportunity to work with him as he was an Assemblyman in the Western New York delegation. And he was a hard

worker, and he showed up at meetings even if he didn't agree with the people that were holding the meeting.

And as a lot of times some of us will be quiet on that and just listen at the meeting; well, David always said what his opinion was on the matter. And it was always interesting to see the reaction. But I think that's a real suit that will serve him very well on the bench.

And he's extraordinarily reasonable for a guy with a Notre Dame background. So I think that he'll make a great judge.

And I congratulate David. I will miss him in the delegation. But he'll be going on to bigger and better things, helping people with the problems that they face in Family Court, and I think he'll be an excellent Family Court judge.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination?

Senator Volker.

SENATOR VOLKER: Mr. President, I was out doing some things that we were doing.

And I just want to say that I will particularly miss Dave Seaman, who has been a very productive member of the Western New York delegation. He's a bright, insightful guy. I know he'll be a great Family Court judge. But we will certainly miss him.

And I wish him the very best. When we get people of the caliber of David in the delegation, we like to keep them. But of course we realize that this is the real world. And I think Governor Pataki couldn't have made a better pick than Dave Seaman for Family Court in Niagara County.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the nomination?

Hearing none, the question is on the nomination of David E. Seaman, of Lockport, New York, as a judge of the Family Court of the County of Niagara.

All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Those opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The nominee is unanimously confirmed.

We're very happy to have Assemblyman Seaman, now Judge Seaman, in the chamber with us.

Judge, congratulations and do good work.

(Applause.)

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

SENATOR LARKIN: Mr. President, there will be an immediate meeting of the Higher Education Committee in the Majority Conference Room, Room 332.

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

The Secretary will continue to read.

THE SECRETARY: As a judge of the Lewis County Court, Scott R. Nortz, of Lowville.

ACTING PRESIDENT KUHL: Senator

Lack, on the nomination.

SENATOR LACK: Thank you, Mr. President.

I rise once again to move the nomination of Scott R. Nortz, of Lowville, as a judge of the Lewis County Court. We received the nomination from the Governor, the candidate's credentials have been examined, they have been found to be excellent. He appeared before the committee earlier this morning, was unanimously moved to the floor.

It's a great privilege to have the nomination of Scott Nortz on the floor today for this tri-hat judgeship. I will yield to Senators Meier and Wright.

But before I do, it's a particular pleasure for me because of the years that I have served with his father, Assemblyman Bob Nortz, who of course is in the audience and for whom this day obviously is very special as well.

But now, for purposes of a second, I will yield to Ray Meier, Senator Meier.

ACTING PRESIDENT KUHL: The chair recognizes Senator Meier on the nomination.

SENATOR MEIER: Thank you, Mr. President.

I'm very proud to second the nomination of someone I have known as a friend and a colleague at the bar for some 15 years, Scott Nortz. As Senator Lack said, this is an institution that we have in upstate New York, the three-hat judge. The County Court judge in Lewis County sits in County Court, Family Court, and Surrogate's Court. And it's really sort of a metaphor for what the life of a lawyer practicing small-town law is in the North Country. We get to do it all, and we get to see it all.

And if you look at Scott Nortz's resume, that's been his career at the bar. Small-town lawyers in the North Country are there during happy and hopeful times for families, during tough times, are there when people adopt their children and start their businesses. They're there when there's difficulty in the family. They're there through the ins and outs of life.

That's the kind of law practice Scott Nortz has had, and I think it prepares

him well to approach the bench. But there's something that is much more impressive about Scott than maybe what you see on a resume. This is a lawyer who understands that when we're called to the bar, this is more than the way we make our living.

And I think Scott will excuse me if I make this observation to people in this chamber. It is popular to beat lawyers up. It is popular to make fun of them. But let me tell you something, this is a lawyer who's representative of a good many people who come to the bar, who has spent a lot of his time doing things for people who couldn't afford lawyers because he believes justice is for everybody, not just for people who have the money for a retainer.

This is a lawyer who has spent time representing indigent clients when he could have been putting a little more on his family's own table. But he takes his responsibility seriously.

And that comes as no surprise, because most of us who engage in public service learn it someplace. He had a great

teacher: his dad, Assemblyman Bob Nortz. This is someone who is well-rounded and prepared to go to the bench.

Scott, I always like to remind friends who become judges that judges find the law in books; they find justice, humility, and mercy in a wide experience in life and in wide contact with people. I have every confidence in seconding your nomination, because you have those qualities.

Good luck, Judge.

ACTING PRESIDENT KUHL: Senator Wright, on the nomination.

SENATOR WRIGHT: Thank you, Mr. President.

First I'd like to extend my appreciation to Senator Lack, as chair of the Judiciary Committee, with the courtesies that were extended to myself this morning. And it's an honor to join my colleague Senator Meier in moving and seconding the Governor's nomination of Scott Nortz.

As has been noted, Scott is Bob Nortz's son. No secret there. And anyone who knows the Nortz family knows that there are

three things that are synonymous with the Nortzes. The first is an abiding love of Lewis County. The second is a close but not equal love of the Ford Motor Company. And the third is an unparalleled commitment to public service.

This nominee for the Lewis County Court judge this morning has those values that have been demonstrated by previous generations of Nortzes. In fact, he is the fourth generation of Nortz going into public life in Lewis County, following his great-grandfather and uncle and of course his father.

But that public service is not new to Scott Nortz. He has served his community throughout his adult and professional career -- as a member of the school board, as a village attorney, most recently as the regional attorney for the State Department of Environmental Conservation.

Likewise, he has been committed to his community, having served the Association for Retarded Citizens, the Red Cross, Public Television, as well as his school and church throughout the community.

Senator Meier invoked the image that I think we all still have of that hard-working, Jimmy-Stewart-like country attorney. They have a wide variety of experiences, they deal with a wide complexity of cases. And in fact, that's exactly what Scott Nortz has done. And when you look at the tasks that are before him as the Lewis County judge, he will be facing that wide diversity.

But he comes well prepared for that, having served with two very experienced, very well recognized jurists from Lewis County, Supreme Court Justice Lynch and Supreme Court Justice McGuire.

So it should be no surprise to anyone that Scott has been found highly qualified to serve as a judge, a testament to not only his judgement, his integrity, and his character, but a testimony to the experience that he brings to the bench.

From a personal perspective, it seems I've known the Nortz family most of my adult life, having shared many family experiences with them, not the least of which

has been hunting camp. And I'm still here to tell those stories.

Nonetheless, Scott also had the occasion to serve as my counsel here in the Senate for two terms. And he of course shows the good judgment to pursue a judicial career as opposed to a legislative career. I think nothing speaks more volumes of his ability to serve the people of New York.

Let me simply conclude that, as has been pointed out by my colleagues, Scott Nortz, like his father, puts people first. He has never forgotten that throughout his personal and his public life. There is no question in my mind he will not forget that as he is serving on the bench. I think he will make an excellent judge for this state.

I want to commend the Governor for his selection and his recommendation. I want to congratulate Bob and Bev on the job they've done bringing this young man to where we are today.

And I want to extend my personal congratulations to Scott and Linda. You should enjoy the moment, you should enjoy the

day with your family. You've certainly earned it. May God bless you throughout a long tenure, Scott.

ACTING PRESIDENT KUHL: Senator Breslin, on the nomination.

SENATOR BRESLIN: Thank you, Mr. President.

I rise as the ranking Democrat on the Judiciary Committee and applaud the Governor for this nomination. When you look at Mr. Nortz on the plus side, having been a village attorney, having been a partner in a major law firm, having worked for Environmental Conservation, having been involved in so many civic and community areas -- and then on the negative side, of course, his work for Senator Wright.

(Laughter.)

SENATOR BRESLIN: That's said in a facetious tone.

But the wealth of experience possessed by Mr. Nortz in and of itself commands the Governor to make this appointment.

But added to that, from my

experience, there is no one in this entire Legislature who has been more courteous to everyone he meets than Bob Nortz. And I'm sure he will -- if his son treats those people who come before his court with half of the compassion and understanding, he'll do a marvelous job.

Thank you very much, Mr. President.

ACTING PRESIDENT KUHL: Senator Volker, on the nomination.

SENATOR VOLKER: The one problem that sometimes I have is I went to Judiciary today and I looked at the resumes of all three people, and they were much better than mine. It's a little jarring.

But one of the things I think that -- one of the legacies, and I just want to say this of George Pataki, and you can debate all you want, is that those of us who have been on Judiciary a long time can tell you the caliber of judges that we have seen over the years has been enormously great. In fact, I think the judiciary has been improved immensely. And the three nominations today are classic examples of that.

And I want to say to Scott that you do jar me a little bit, though, again, because I remember you when you were, let's say, very little. I've known Bob since my Assembly days. And looking at your resume, it's hard to believe that you could have accomplished all that.

But there's no question he'll make a great judge. And as far as Bob is concerned, we call him "the baron of the North Country." There hasn't been a finer legislator, frankly, in my opinion in the Assembly since I've been here than Bob Nortz.

And I'm sure that you will make the best judge in Lewis County that's ever been there.

ACTING PRESIDENT KUHL: Senator Farley, on the nomination.

SENATOR FARLEY: Thank you, Mr. President.

We nominate a lot of judges -- or at least the Governor does, and we confirm them. I'll tell you, this morning there were three spectacular resumes there. All three of these gentlemen that are here, their resumes

were outstanding.

But I have to say something about Bob Nortz's son Scott. They are a legend in Lewis County, that family. And what a job they have done. And, you know, Bob Nortz's career has spanned mine. And this has to be a tremendously proud day for the father to see his son doing so well.

You know, Senator Meier said an awful lot for those of us that are lawyers, that to see somebody that has done so much pro-bono work, contributed so much to his community -- that's why you're here today, and that's why we're so proud to nominate you, Scott. We're proud of you.

Good luck and God bless.

ACTING PRESIDENT KUHL: Senator Maziarz, on the nomination.

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

One would get the impression from listening to this confirmation that we are confirming Bob Nortz and not Scott Nortz here today for the judiciary.

But, Scott, that's because of the

admiration and respect that we have for your dad. And we know that you will be following in his footsteps, and we know that he will always, like he is today, be just over your right shoulder there to give you a lot of advice.

Mr. President, I second the nomination. Thank you.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the nomination?

The question is on the nomination of Scott R. Nortz, of Lowville, New York, as a judge of the Lewis County Court. All those in favor of the nomination signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The nominee is unanimously confirmed.

We're very pleased to have Scott in the chamber with us. Scott.

(Applause.)

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Albert Lorenzo, of Armonk.

ACTING PRESIDENT KUHL: Senator Lack, on the nomination.

SENATOR LACK: Thank you, Mr. President.

Again I rise, to move the nomination of Albert Lorenzo, of Armonk, as a judge of the Court of Claims.

We received Dean Lorenzo's nomination from the Governor. His credentials have been examined by the staff of the committee. They were found to be excellent and referred to the full committee. At our meeting earlier this morning, he was unanimously moved to the floor for consideration at this time.

And I'm very happy to yield for purposes of a second to Senator Balboni.

ACTING PRESIDENT KUHL: The chair recognizes Senator Balboni on the nomination.

SENATOR BALBONI: Thank you, Mr. President.

The most we can ask for of any judge is to have the ability to have

displayed, on a daily basis, experience, temperament, and education. The three individuals who came before us this morning have those qualities.

Al Lorenzo has an additional quality. He began from the street, literally, as a patrol officer in the New York City Police Department. He rose through the ranks, earning his law degree from St. John's Law, after graduating St. John's University undergraduate magna cum laude, being in the top 7 percent of his law class in 1990, and then worked with the Manhattan DA's office, New York State Attorney General's office, and then went to academia, where he taught as an adjunct professor of law as St. John's.

His job at St. John's: to give others a start in their legal careers, to help them with placement, finding work, to take their law degree and put it to something useful.

Al Lorenzo is a Latino. Proud of his heritage, proud of his community, he has given much back. He is a man who, when the toughest cases will come before him, he will

handle them with sincerity, understanding, and intelligence, and he will also handle them with the experience of having lived the lives of so many other New Yorkers that he will be protecting and working with.

Mr. President, this candidate comes to us well qualified. But perhaps the most important aspect is his genuineness. As Dale Volker just said to me: "Give me a judge who's genuine rather than intellectual." Mr. Court of Claims Judge Al Lorenzo has both. I strongly urge this candidate be confirmed.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination?

Hearing none, the question is on the nomination of Albert Lorenzo, of Armonk, as a judge of the Court of Claims. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The

nominee is confirmed.

We're very, very happy to have Judge Lorenzo, his wife, Faith, their son, Jack, and his parents, Albert and Josephine Lorenzo, in the chamber with us today.

Judge, congratulations.

(Applause.)

ACTING PRESIDENT KUHL: The Secretary will continue to read reports of standing committees.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following bills:

Senate Print 2695, by Senator Spano, an act to amend the Family Court Act;

And Senate Print 4585, by Senator Saland, an act to amend the Domestic Relations Law.

Senator Libous, from the Committee on Mental Health and Developmental Disabilities, reports:

Senate Print 3149, by Senator Libous, an act to amend the Mental Hygiene Law;

3577, by Senator Libous, an act to

amend the Mental Hygiene Law;

3667, by Senator Libous, an act to amend the Mental Hygiene Law;

And Senate Print 5511, by Senator Libous, an act to amend the Mental Hygiene Law.

All bills ordered direct to third reading.

ACTING PRESIDENT KUHL: Without objection, all bills are ordered directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

SENATOR LARKIN: Mr. President, are there any substitutions at the desk?

ACTING PRESIDENT KUHL: Senator Larkin, we have a couple of substitutions at the desk.

The Secretary will read the substitutions.

THE SECRETARY: On page 7, Senator Marchi moves to discharge, from the Committee on Corporations, Authorities and

Commissions, Assembly Bill Number 9264C, and substitute it for the identical Senate Bill Number 5160D, Third Reading Calendar 112.

And on page 30, Senator Bonacic moves to discharge, from the Committee on Housing, Construction and Community Development, Assembly Bill Number 10408 and substitute it for the identical Senate Bill Number 6556, Third Reading Calendar 494.

ACTING PRESIDENT KUHL: The substitutions are ordered.

Senator Larkin.

SENATOR LARKIN: May we at this time adopt the Resolution Calendar, with the exception of Resolution Number 4818.

ACTING PRESIDENT KUHL: The motion is to adopt the Resolution Calendar, with the exception of Resolution 4818. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The Resolution Calendar is adopted.

Senator Larkin.

SENATOR LARKIN: Mr. President, Senator Hoffmann has Resolution 4818. She's not here.

But could we please read the title and move for immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read the title of Resolution 4818.

THE SECRETARY: By Senator Hoffmann, Legislative Resolution Number 4818, memorializing Governor George E. Pataki to proclaim April 2002 as Child Abuse Prevention Month in the State of New York.

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

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Larkin.

SENATOR LARKIN: Mr. President,

Senator Hoffmann would like to open the resolution for cosponsorship. So if anyone does not want to, they should notify the desk.

ACTING PRESIDENT KUHL: We'll follow the normal procedure, Senator Larkin. We'll place all members on the Resolution 4818 unless they wish not to be on the resolution. In that case, please notify the desk.

Senator Larkin, that brings us to the -

SENATOR LARKIN: May we now go to the noncontroversial calendar, please.

ACTING PRESIDENT KUHL: The Secretary will read the noncontroversial reading of the calendar.

THE SECRETARY: Calendar Number 264, by Senator Kuhl, Senate Print 6236, an act to amend the Education Law, in relation to including.

SENATOR LARKIN: Lay it aside for the day, please.

ACTING PRESIDENT KUHL: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 286, by Senator LaValle, Senate Print 1103A,

an act to amend the Education Law, in relation to establishing.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 373, by Senator Kuhl, Senate Print 4268A, an act authorizing the City of Canandaigua to impose.

ACTING PRESIDENT KUHL: There is a home-rule message at the desk.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 376, by Senator Libous, Senate Print 5697, an act to amend the Highway Law, in relation to certain purchases.

ACTING PRESIDENT KUHL: There is a home-rule message at the desk.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 389, by Senator Wright, Senate Print 2950A, an act to amend the County Law, in relation to the electronic recording.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 412, by Senator Trunzo, Senate Print 1564A, an act to amend the Education Law, in relation to scholarships for academic excellence.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 414, by Senator Volker, Senate Print 137, an act to amend the Penal Law and the Criminal Procedure Law, in relation to the offenses of bail jumping.

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

SENATOR GENTILE: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 427, by Senator Saland, Senate Print 4234, an act to amend the Penal Law, in relation to establishing.

SENATOR GENTILE: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 428, by Senator Saland, Senate Print 4235, an act to amend the Penal Law, in relation to custodial interference.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 434, by Senator Morahan, Senate Print 5596, an act to amend the Penal Law, in relation to penalties for assault and manslaughter.

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

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

SENATOR GENTILE: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 438, by Senator McGee, Senate Print 6301, an act to legalize, validate, ratify and confirm certain actions of the Franklinville Central

School District.

ACTING PRESIDENT KUHL: There is a local fiscal impact note at the desk.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 440, by Senator Bonacic, Senate Print 6458, an act to amend -

SENATOR GENTILE: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 449, by Senator Velella, Senate Print 4278, an act to amend the Alcoholic Beverage Control Law, in relation to photo identification cards.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 454, by Senator Balboni, Senate Print 6169, an act to amend the Tax Law, in relation to exempting.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 494, substituted earlier today by Member of the Assembly Lopez, Assembly Print Number 10408, an act to amend the Private Housing Finance Law, in relation to an increase.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR LARKIN: Mr. President, now may we have the controversial reading of the calendar.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: On page 23, Calendar Number 414, Senate Print 137, by Senator Volker, an act to amend the Penal Law and the Criminal Procedure Law, in relation to the offenses of bail jumping and failing to respond.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT KUHL: Senator Larkin, an explanation of Calendar Number 414,

sponsored by Senator Volker, has been requested.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Volker, a request for an explanation of Calendar Number 414 has been requested by your friend and neighbor Senator Dollinger.

SENATOR VOLKER: This is a bill that has passed this house on several occasions. And I believe, yeah, it was introduced or sent to me from the City of New York. And one of the reasons that we waited a little bit is to make sure that the present administration wanted this bill.

And what it does is that it is an increase in the penalty and changes the grace period during which a person who doesn't respond to an appearance ticket -- and it eliminates the so-called 30-day period currently for those who fail to appear in court on the required return date for the appearance ticket. And especially this course obviously relates to the issue of bail jumping.

And this bill was requested by the

city because they have such an enormous number of people who fail or refuse to appear, and it has become an administrative nightmare. And as a result, they have asked for this bill.

And in my opinion, and knowing the way the operations of the city do it, and having gone down to the city and done some studies or some hearings, it is pretty obvious that the situation is virtually out of control. And it just seems to me that this legislation makes sense in just from the administrative side of it.

And I would think -- we've had some difficulty with the Assembly, because obviously anytime you're doing this you're going to impact on some of the constituents in New York City or in the environs. But the truth is that this is a bill that attempts to control -

ACTING PRESIDENT KUHL: Senator Volker. Senator Volker.

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: Could I interrupt you just a minute. We've got a lot of conversation in this chamber, and it's a

little difficult to hear you even up here.

So if we can just take a minute and maybe get some of the Senators in the back of the chamber to sit down and some of the staff to quiet down, take their chairs. And get the sergeant-at-arms to shut the door.

Thank you for allowing the interruption, Senator Volker.

SENATOR VOLKER: Let me get right to the heart of what the problem is in the Assembly. There is a -- as I've said on this floor before, that the city specifically, and there are places upstate where that is true, bail jumping in the third degree, for instance, is a Class A misdemeanor. Which comes to, in the City of New York, be something like an appearance ticket for a violation, because nobody pays much attention to misdemeanors in New York City.

And this would increase the penalty to a Class E felony for bail jumping, which is the real thing that has created such havoc in the city, which is there are so many people out there failing to appear on bail. It would increase it to an E felony, so as to give it

at least some status for not only failing to respond to an appearance ticket but then, even when they post bail, disappearing into the woodwork.

So I think if you really look at it, it makes good sense to do this.

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

SENATOR DOLLINGER: Will the sponsor yield to a question?

ACTING PRESIDENT KUHL: Senator Volker, do you yield to a question from Senator Dollinger?

SENATOR VOLKER: Yes, I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Thank you, Mr. President.

I understand the volume of problems in the city of New York. But my question is, Senator, do you have any sense of how big a problem this is elsewhere in the state?

SENATOR VOLKER: I don't think it's near -- but it's a problem -- I know the city of Buffalo has a pretty substantial

problem also. But -- and some of the smaller communities at times kind of lose track of people, because, you know, obviously they're not going to be pursuing people. They don't have the ability to do it.

I used to serve some of the criminal summonses and so forth in these cases. And the problem was what usually happens to people, once you get to them, then they'll come back in and take care of it. But what's silly about it is that the manpower and cost and time that's involved in pursuing the people is just kind of ridiculous.

And if you have some sort of reasonable penalties to make these people appear, and to keep them from jumping bail - because the bail is usually very low, because nobody is going to charge high bail on these sorts of things.

So it just seems as if it's more of a major-cities problem -- New York, Buffalo, Rochester, Syracuse. I don't know about Albany. But I know it's a problem in some of the bigger cities.

SENATOR DOLLINGER: Through you,

Mr. President, if Senator Volker will continue to yield.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to another question from Senator Dollinger?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Senator, do you have any sense of how the problem breaks down vis-a-vis actual bail jumping where someone has been arraigned, bail has been set? I agree with you: as you know, oftentimes the bail is nominal, $300, $400. In many cases these are misdemeanor cases for which the defendant has been charged.

But do you have any sense of how big a problem that is -- that is, where they've actually been arraigned and been a part of the process -- versus how much of the problem relates to appearance tickets? Which, as you know, can stem from anything from loitering to traffic tickets to a whole host of violations and other problems.

SENATOR VOLKER: Well, according

to the New York City Police Department, they have 281,000 -- this was obviously some years ago -- 281,624 warrants in their warrant master file. They claim that, I believe, as many as a quarter of them -- and I'm not sure, but I think as many as a quarter of them will be bail jumpers.

So that I think the attitude here is that although the initial -- here, I'm just looking. According to the administration, for the calendar year 1995 they said that 43,020 defendants, 43 percent of the persons issued desk appearance tickets did not appear on their designated return dates. Many of them then, when they finally did come in, were issued bail. And then a high percentage of them didn't come back even after that.

So -- but they don't have definite numbers on exactly how many bail jumpers there were, because I guess those numbers are kind of fluid. Because they are more likely to pursue people who are bail jumpers. But the problem is that the vast majority of them apparently they never catch up with.

ACTING PRESIDENT KUHL: Senator

Dollinger.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Volker will continue to yield.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to another question?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Senator, outside of the cities, do you know how many of the people who failed to appear for traffic tickets actually came in within the 30-day volunteer period?

SENATOR VOLKER: Senator, I really don't, for outside the city.

In fact, you know, you make a good point, because we were using the city. We'll check on that, by the way. That's the only thing I can say. We do not have numbers here on that. And I was just looking -- the memo is a little old, to tell you the truth. But we'll check on that and see what we have, what numbers we have.

But I really don't -- I know that

there is a significant number of people who do not appear for tickets. Probably not as many as in the major cities, though, jump the bail. Because I think once you can get them, you probably have a better chance of holding them.

SENATOR DOLLINGER: Thank you, Mr. President. Just briefly on the bill.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Senator Volker described how in his prior life he may have been involved in serving some of these warrants and citations when people failed to appear for the tickets. I have a confession to make, Mr. President. I was one of those perps.

I was 18 years old and issued an appearance ticket for, of all places, Senator Volker, the village of Castile. I had driven down a one-way street the wrong way in Letchworth State Park. A week later, I'd gotten the ticket, I was driving around in my car, and one of my high school friends reached in the glove department, rolled it up in a ball, and threw it into the Erie Canal.

I did what every 18-year-old I think does in those circumstances. I of course went home and prayed -- not that the sheriff wouldn't visit my door, but that my parents wouldn't find out. And sure enough, about three weeks later a Monroe County sheriff arrived at the door of my house asking where I was. My mother knew I wasn't home.

But quite frankly, the penalty invoked by my mother and father was far more severe than going to the village of Castile, being told by the village justice that I had to be there at 6 o'clock. I arrived at 6 o'clock. He told me "Sit in that room over there, because court doesn't start till 7:00." It's only when I realized, after they closed the door, that it had little bars on the outside of the door, that that was their holding cell.

I sat there for an hour, I came out, the judge assessed me a fine for both the ticket and not responding, gave me a great lecture.

I of course, Senator Volker, as you probably imagine, as you've known me for a

decade, I said to him: "Could you give me the original arrest warrant with the little stamp down in the corner? I'd like to take it back to my college dorm and put it up on the wall."

The village justice was not at all amused and suggested that if I continued to insist on wanting the warrant, I could go back and sit in the cell for a little bit longer. Even at 18, I came to the conclusion that was not the right place to be.

Mr. President, the reason why I rose on this bill is that I understand the problem that Senator Volker mentions, but I do think that many of the people who fail to appear for traffic tickets are similarly situated as the person I was when I was 18, 19, and 20. They're generally young people who don't understand the consequences of failing to appear, who don't bother to read the back of the ticket.

And we're about, through this bill, at least in the upstate communities, where oftentimes the violations can be relatively minor, we're going to make them Class B misdemeanants when we do that.

I think that this bill has a huge impact on teenagers and young people. I believe that there's a real serious question about eliminating the 30-day volunteer appearance period for many of those young people. I don't want them to be disrespectful of the law, but I just think that in many cases they're not fully aware of the consequences of failing to appear in response to a traffic ticket.

I voted for this bill last year. I'll continue to vote for it. But my hope is that, Senator, you'll go back and look at the problem in New York City -- which in my opinion is drastic and perhaps out of control, as you describe it -- and that we would attend to that problem.

But let's take a more careful look at the upstate rural and suburban communities that may not have a significant problem. Let's look at the urban communities and see how much of this is young people who fail to understand, who don't have the assistance of counsel and don't see the consequences of it.

I would just suggest, as a caution

to Senator Volker in going forward, I'm not opposed to increasing the penalty. I do think that eliminating the 30-day voluntary period may have a very disproportionate impact on young people.

And with that, Mr. President, I'll vote in favor of it, with those cautionary words in mind.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to see if Senator Volker would yield to a question.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to a question from Senator Montgomery?

SENATOR VOLKER: Sure. Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Okay, thank you.

Senator Volker, it appears to me that without your legislation it is already in law that you can spend up to seven years in

prison based on the actions that you're trying to deal with, bail jumping and ignoring your desk warrants and whatever have you.

SENATOR VOLKER: Well, only in the very severe cases. The normal case, right now it's an A misdemeanor. So you can only spend the maximum for an A misdemeanor, which is one year. And by the way, a B misdemeanor is essentially 30 days.

But I think what you're talking about is the more severe cases of bail jumping, repetitive bail jumping and things of that nature. Traffic summonses and all that sort of thing will never get to that point. This is for people in much higher crimes and so forth.

So an E felony, for instance, is - the maximum, I believe, on an E felony is, what is it, three years? I don't remember now. I think it's generally three years. So it -- and this is in the very severe cases that it would occur.

SENATOR MONTGOMERY: Through you, Mr. -

ACTING PRESIDENT KUHL: Excuse

me, Senator Montgomery.

Senator Larkin, why do you rise?

SENATOR LARKIN: I'd like to call an immediate meeting of the Finance Committee in Room 332.

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

Senator Larkin.

SENATOR LARKIN: To be followed by a meeting of the En Con Committee in the same conference room, and a Health Committee meeting to follow that at 12 o'clock in the Majority Conference Room.

ACTING PRESIDENT KUHL: There will be an immediate Environmental Conservation Committee meeting following the Finance Committee in the Majority Conference Room, Room 332. And then there will be an meeting of the Health Committee at 12:00 noon in the Majority Conference Room, Room 332.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: All right, thank you. Mr. President, through you, I'm just trying to clarify what the bill means, if Senator Volker will yield.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to another question from Senator Montgomery?

SENATOR VOLKER: Sure, yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: So, Senator Volker, you are essentially changing the level of the violation.

SENATOR VOLKER: Exactly.

SENATOR MONTGOMERY: From a what to what?

SENATOR VOLKER: Well, bail jumping in the first degree, which we are - we're not talking about -- these are major people with major charges against them.

What Senator Dollinger was talking about, traffic tickets, the highest penalty now is a Class A misdemeanor. Bail jumping or whatever, we would raise the bail jumping in those kinds of cases to an E felony, assuming

that someone failed to appear, posted bail, runs away again or refuses to come in, the penalty then would go from an A misdemeanor to an E felony.

Nonappearance would not get you any felony. Nonappearance just obviously gets you bail. And the highest, I believe, that you would get for nonappearance would be a B misdemeanor, which is about the most minor offense -- well, it is the most minor offense, other than the violation, that we have.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Thank you.

Mr. President, just briefly on the bill.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I take the opposite position of my colleague Senator Dollinger. I think I don't have as much problem with the 30-day, changing the - making the 30-day limit more strictly imposed.

But I certainly would not like to see that we are now going to have a number of

people serving up to 15 years in prison under his law just because they did not appear or the whole issue of bail jumping.

I just think that, you know, the ultimate result of this legislation is to extend the length of time, it doubles the length of time that a person can spend in prison. And I think that, for all practical purposes, it costs the state much more per year to house an inmate than it would to have some other means of requiring people - increasing the bail or having some other means of having people respond to their appearance requirements.

So I think this is really one of those cases where we're simply changing the sentencing, increasing the time in prison, raising, in fact, increasing the amount of the cost to the state. And I'm not sure it's going to make any difference, because we already have legislation. There is law which covers this, and I don't see the need for this legislation.

Thank you.

ACTING PRESIDENT KUHL: Senator

Volker.

SENATOR VOLKER: Very quickly, let me -- I think there's a little confusion. No one goes to jail for failing to appear for an appearance ticket. Those higher degrees of bail jumping are for felons, and they're for people who post bail, for instance, on felony charges or on more severe charges -- it could be even burglary, robbery, and so forth.

That's where the -- for instance, the number, first. Because you wouldn't give them a higher sentence than the sentence they could potentially get. And if they jump bail, they wouldn't get a higher sentence than they would get in the first place. So when you're talking about 15 years, you're talking about somebody that could be sentenced to 25 years to life.

So I just want to make that clear. This is not for the appearance ticket. We're talking about the lower end, because that's where the major problem is.

In fact, I was going to say to Senator Dollinger, being stopped in Castile is not a -- it happens quite a bit. I was

stopped there myself when I was a young person. I didn't get a ticket, but I was stopped there. And I pretty well know what that one-way street is, because I believe there's only two one-way streets in all of Castile. So I have a pretty good idea of where that is.

But I will say this about the local judges. You have to realize that these are peace justices; that is, town justices or village justices. They don't -- I mean, all they want is the power to make sure that these things are disposed of. They're not going to send anybody for a jail on an appearance ticket or whatever. First of all, the jails are really not adequate to do it, in all honesty. What they want is they want to get rid of these tickets.

So when you're talking about the local situation -- that is, in these small towns -- and I used to appear before these justices. They just want the ability to make sure that people just don't ignore them, and they want a penalty that's enough higher so that, for instance, they can post enough bail

so that they don't just run away until they find them.

The city of New York is a much different problem, though. Remember, these are minor offenses that we're primarily talking about. We're not talking about crimes here.

We're talking about traffic summonses, failure to appear for driver's license violations. And some people have 30 of them or 40 of them. And they don't track each other. So finally they take bail. Finally, after maybe 20 or 30, they figure out this person is obviously a scofflaw. They take bail and the person runs again.

And if you don't increase the penalties, the problem is just holding them to get them back in again, and the person probably gets released on another bail.

So what we're trying to do here is give some authority that the person potentially could go to jail. Because what will happen in virtually all these cases, the guy or the woman is going to end up paying what he has to pay, his license will be

revoked, and that will be it.

But they need this additional penalty to make sure that these people stand up to the law.

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

Hearing none, the debate is closed.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Those recorded in the negative on Calendar Number 414 are Senators Andrews, Hassell-Thompson, and Montgomery. Ayes, 55. Nays, 3.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read the controversial reading of the calendar.

THE SECRETARY: Calendar Number 427, by Senator Saland, Senate Print 4234, an act to amend the Penal Law, in relation to establishing a presumption.

SENATOR ONORATO: Explanation.

ACTING PRESIDENT KUHL: Senator Saland, an explanation of Calendar Number 427 has been requested by the Acting Minority Leader, Senator Onorato.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill is a companion bill with a bill passed earlier on the noncontroversial calendar, Calendar 428.

What this bill does is it creates a rebuttable presumption that the person who takes a child in violation of a court order establishing custody or visitation knows that he or she is taking that child wrongfully, and provides that substituted service under CPLR 308 shall constitute actual knowledge - again, subject to a rebuttable presumption which a respondent or defendant would have the ability to rebut.

What the data shows us is that

there's some 350,000 child abductions by parents every year. That's national data that the most recent, I believe, is '98 or '99. There's another 25 percent more than that which is abductions by third parties.

New York's law unfortunately makes it extremely difficult to avail ourselves of the FBI's resources, because the FBI will not get involved unless there's a felony warrant that has been issued. And if you can't get the court order -- and currently you can't get it without, in effect, actual knowledge -- you don't have the ability to get the FBI involved.

And that's an enormous resource that is of great assistance to families who are attempting to find their abducted children or to the custodial parent who is attempting to find his or her abducted child.

Similarly, the National Center for Missing and Exploited Children will not become involved and make use of their advertising mechanism -- and many of you have seen the kinds of advertisements that they provide, picture profiles of missing children -- unless

there's an outstanding felony warrant.

So this basically would enable us to more readily avail ourselves of the additional capacities that are out there, both by way of law enforcement, the FBI, as well as the Missing and Exploited Child Registry, which has been an enormous success in trying to track down children who have been abducted.

Abduction is just absolutely horrible. It's not only traumatic for the children, it's often a very vengeful act by one or the other of the parents. And it's something that we really should not tolerate.

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

Hearing none, debate is closed.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 434, by Senator Morahan, Senate Print 5596, an act to amend the Penal Law, in relation to penalties for assault and manslaughter.

SENATOR ONORATO: Explanation.

ACTING PRESIDENT KUHL: Senator Morahan, an explanation of Calendar Number 434 has been requested by Senator Onorato.

SENATOR MORAHAN: Thank you very much. I'm happy to give an explanation.

This bill is entitled Mathis' Law, as a result of an incident that occurred in the city I believe it was last year. This amends the Penal Code by adding a new section which defines a Class E felony of manslaughter in the third degree. A person is guilty of this new offense if he or she intends to cause physical injury to another person and causes death to that person or a third person.

It also moves from an A misdemeanor if someone is just having a normal fight or a

small fight without the intent of doing serious harm but does do serious harm, that would move that up to an E felony.

None of the sentencing is mandated.

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

Hearing none, debate on the bill is closed.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 440, by Senator Bonacic, Senate Print 6458, an act to amend Chapter 447 of the Laws of 2001.

ACTING PRESIDENT KUHL: There is a local fiscal impact note at the desk.

An explanation has been requested by Senator Onorato, Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

This legislation amends legislation that we did last year, Chapter 447 of the Laws of 2001. It allows the Delhi School District to repay the state an overpayment over a six-year period.

It was a $2 million overpayment given to this school district that was involved in a new building for its school. The state aid was based on the estimate and not the actual cost. Last year we passed a bill allowing the school district to repay the state, and that is now law.

When the bill went before the Governor, the Governor asked for two technical corrections. One was to state the year the overpayment was made -- and in this case the overpayment occurred in the year 1998-1999 - and the Governor wanted the exact amount specified as to the overpayment. And last

year's law did not specify the overpayment amount, and that was for $1,956,634.

We're passing the bill at the request of the Governor.

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

SENATOR ONORATO: Mr. President, will the sponsor yield to a question.

ACTING PRESIDENT KUHL: Senator Bonacic, do you yield to a question?

SENATOR BONACIC: I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ONORATO: Senator Bonacic, why are we extending a tax-free loan to the school district? Wouldn't it be better for them to take a loan out over a period of a few years rather than go through this here?

SENATOR BONACIC: You know, I pulled the minutes of last year's debate, and I think at that time it was Senator Dollinger asked a similar question. He said why doesn't the school issue a new bond to cover the overpayment rather than do it with a taxpayer increase over six years.

And I checked Section 11 of the Finance Law. And usually, to increase a bond, you're supposed to do it on the actual cost, not on the estimate. So it may not be appropriate to float a bond in this case. Section 11 talks about a bond for judgments and claims, which don't apply here.

So I think the appropriate remedy was to help the school district stretch it over six years. This is a small school district with a limited tax base. It's still going to be a high, double-digit property tax increase on the school taxes to repay this overpayment over six years.

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

Hearing none, the debate is closed.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record

the negatives and announce the results.

THE SECRETARY: Those recorded in the negative are Senators Gentile, L. Krueger, Onorato, and Stavisky. Ayes, 54. Nays, 4.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 454, by Senator Balboni, Senate Print 6169, an act to amend the Tax Law, in relation to exempting certain tangible personal property.

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

THE SECRETARY: Section 3. This act shall take effect December 1, 2002.

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

SENATOR BALBONI: Can we lay this bill aside temporarily while we await the arrival of Senator Dollinger?

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

Senator Skelos, why do you rise?

SENATOR SKELOS: Can we return to

the report of the standing committees. I believe there's a report of the Rules Committee at the desk. I ask that it be read.

ACTING PRESIDENT KUHL: We will return to the reports of standing committees. There is a report of the Rules Committee at the desk. I ask the Secretary to read.

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

Senate Print 6796, by Senator Skelos, an act to amend the State Law.

ACTING PRESIDENT KUHL: Senator Skelos.

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

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

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The Rules

report is accepted.

The bill is before the house.

Senator Skelos, we have the report from the Higher Education Committee, if you want to report that out at this point.

SENATOR SKELOS: If we could take up the report, please.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Senator LaValle, from the Committee on Higher Education, reports the following bills:

Senate Print 6449, by Senator DeFrancisco, an act to amend Chapter 414 of the Laws of 1887;

6615, by Senator LaValle, an act to amend Chapter 453 of the Laws of 2001;

6685, by Senator LaValle, an act to amend the Education Law;

And Senate Print 6686, by Senator Seward, an act to amend the Education Law.

All bills ordered direct to third reading.

ACTING PRESIDENT KUHL: Without objection, all bills are ordered directly to

third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, please call up Calendar Number 454, by Senator Balboni.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 454, by Senator Balboni, Senate Print 6169, an act to amend the Tax Law, in relation to exempting.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT KUHL: Senator Balboni, an explanation of Calendar Number 454 has been requested by the Minority Leader, Senator Connor.

SENATOR BALBONI: Thank you, Mr. President.

This bill is an attempt to bring New York State's Tax Law into the 21st century, and also an attempt to keep New York's film industry here in New York, particularly in New York City.

Section 115(a)(12) of the Tax Law currently provides an exemption for state and

local sales and use tax for receipts from the sale of machinery or equipment purchased for the use or consumption directly or predominantly in the production of tangible personal property for sale.

Essentially, what this is is that when you make a film, you have a canister full of film, and you take the celluloid film and you transfer it to the person who is buying the film. That transfer, and all of the energy utilized in producing that film, are exempt from sales and use tax.

But what has happened today, Mr. President, is that we've gone from a res, as it were, something of a tangible nature, to the digital age, where now films are done on digital equipment and the film in its entirety is e-mailed to the individual who's purchasing the film.

Therefore, there was a question, if you didn't have the canister of film, whether or not it still was exempt from sales and use tax. This bill would clarify that so as to keep the industry here.

It is a recommendation of a study

that was done, "Building New York's Visual Media Industry for the Digital Age: A Recent Economic Impact study of Film, TV, and Commercial Production." And it stated that this industry brings $5 billion a year of spending and can be attributed with 70,000 jobs in the New York economy in the year 2000.

I move for its adoption, Mr. President.

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

SENATOR DOLLINGER: Will the sponsor yield to a question, Mr. President.

ACTING PRESIDENT KUHL: Senator Balboni, do you yield to a question from Senator Dollinger?

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

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: As I understand this bill, it will exempt from sales and use taxes the motion picture film; is that correct?

SENATOR BALBONI: Yes.

SENATOR DOLLINGER: And what happens -

ACTING PRESIDENT KUHL: Senator Dollinger, are you asking Senator Balboni to yield again?

SENATOR DOLLINGER: I am, Mr. President, if he will yield to another question.

ACTING PRESIDENT KUHL: Senator Balboni, do you yield to another question from Senator Dollinger?

SENATOR BALBONI: Mr. President, I do yield.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: And, Senator, if the film, as we call it -- because it really wouldn't be a film if it were shot in digital format. But the product of the digital production, would that also be exempt from sales and use taxes?

SENATOR BALBONI: Yes, it would.

SENATOR DOLLINGER: Senator Balboni -- through you, Mr. President, if he will yield to another question.

ACTING PRESIDENT KUHL: Senator Balboni, do you yield to another question from Senator Dollinger?

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

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: At the time the film is produced, actually manufactured and then sold as motion picture film, is it subject to sales and use taxes currently?

SENATOR BALBONI: Mr. President, for a point of clarification, I would direct Senator Dollinger to subsection -- let's see, this is 6, of Section 1101 of the Tax Law that defines tangible personal property. And specifically, it currently states "corporeal personal property of any nature."

Now, that exemption of tangible personal property is the basis for the elimination of the sales and use tax on the transfer of the film -- not necessarily its ultimate sale, but the transfer of the film. Which, as I state, is currently exempt.

So remember, it's not the end

product, Senator Dollinger, it is the actual transfer through production.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Balboni will yield to a question.

ACTING PRESIDENT KUHL: Senator Balboni, do you yield to another question?

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

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Senator Balboni, I understand that it deals with the transfer. My question is when you originally buy the film for production in a motion picture film -

SENATOR BALBONI: No, I'm sorry. Mr. President, may I get a clarification?

When you say "buy the film," Senator, do you mean buy the film after it's been produced or actually pick up the celluloid material that is utilized to put the film on?

SENATOR DOLLINGER: Is he asking me to yield, Mr. President, just so we -

SENATOR BALBONI: Yes, for a point of clarification.

SENATOR DOLLINGER: I'd be glad to yield, Mr. President.

Yes, that's what I mean. When the film producer, the director goes out to buy the film at the start of the process, is that film subjected to sales and use taxes even though it may or may not eventually end up in a motion picture film, it may be utilized, it may not be utilized? Do you know whether it's subject to -

SENATOR BALBONI: I do not know.

SENATOR DOLLINGER: Okay. Through you, Mr. President, just briefly on the bill.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I appreciate what Senator Balboni is doing to maintain the motion picture industry in the state of New York.

Senator Balboni, I represent about 20,000 people who work for the largest manufacturer of motion picture film in the

world. And of those jobs that you describe related to motion pictures, I'll bet you they don't even include the people that work for Eastman-Kodak Company that live in the 54th Senate District.

And what I would suggest, Mr. President -- I'm going to vote in favor of this bill. This is a good idea. But I would just suggest, Senator Balboni, that anytime anyone buys film, motion picture film that could in any way be used in the television industry as you describe it -- the feature films, documentary films, short television films, television commercials, and similar productions -- that all of that film should be exempt from sales and use taxes.

And that especially you can even tailor it further, Senator Balboni, that if the motion picture film is manufactured in the state of New York, as it is by Eastman-Kodak Company, that it would be exempt from sales and use taxes at any time in the process.

So that we could actually look at this bill and say not only will it keep film production jobs in New York City, but it will

keep film manufacturing jobs in Rochester, New York, where they contribute to the upstate economy.

With that proviso, Mr. President, my hope is that Senator Balboni's bill, which is a good idea, will be transformed into a much better one by a little bit of work with the pen and the amendment process. With that to Senator Balboni, I'll vote in favor of the bill, Mr. President.

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

Hearing none, the debate is closed.

The Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect December 1, 2002.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: 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 it be read at this time.

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

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

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations.

As a member of the State Board of Parole, Robert Dennison, of Eastchester.

ACTING PRESIDENT KUHL: The question is on the nomination of Robert Dennison, of Eastchester, to become a member of the State Board of Parole. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The nominee is confirmed.

We're very pleased to have Mr. Dennison in the gallery to your left.

Congratulations.

(Applause.)

ACTING PRESIDENT KUHL: The Secretary will continue to read.

THE SECRETARY: As a member of the Workers' Compensation Board, Agatha Edel Groski, Esquire, of Cobleskill.

ACTING PRESIDENT KUHL: Senator Stafford.

SENATOR STAFFORD: Move the nomination.

But before moving it, I certainly would want to yield to the senator -- Senator Seward.

ACTING PRESIDENT KUHL: Senator Seward, I wasn't sure -- there was some question about whether you represent Cobleskill or not. But -

SENATOR SEWARD: Mr. President, I probably represent Cobleskill.

ACTING PRESIDENT KUHL: I know you do.

Senator Seward, on the nomination.

SENATOR SEWARD: And I probably represent Agatha Edel Groski as well.

And I just wanted to rise in support of her reconfirmation. Because when we think in terms of what makes an excellent and effective member of the Workers' Compensation Board, a couple of things come to my mind. Number one, someone who is interested in people, and someone who knows the law. And Ms. Groski has both of those characteristics.

Her background, professionally, she was a nursing home administrator, a very people-oriented, service-oriented individual. And since that time she has entered the profession of law and has had a very distinguished career, in most recent years as a member of the Workers' Compensation Board.

She's an outstanding member of the Cobleskill and Schoharie County community as

well as an outstanding member of the Workers' Compensation Board. And I'm very, very pleased to rise in support of her reconfirmation.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the nomination?

The question is on the nomination of Agatha Edel Groski, Esquire, of Cobleskill, for a term as a member of the Workers' Compensation Board. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The nominee is confirmed.

We're very, very pleased to have Ms. Groski with us in the gallery to your left.

Congratulations.

(Applause.)

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President,

if I could interrupt, there will be an immediate meeting of the Environmental Conservation Committee in the Majority Conference Room.

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

The Secretary will continue to read.

THE SECRETARY: As a member of the Workers' Compensation Board, Karl A. Henry, of Buffalo.

ACTING PRESIDENT KUHL: Senator Stafford, on the nomination.

SENATOR STAFFORD: These three nominees are just three fine nominees, Mr. President. They're all reappointments. I can't say anything but good about everyone.

And I would just move the nomination of Mr. Henry in complimenting all three. Thank you so much.

ACTING PRESIDENT KUHL: Any other member wishing to speak on the nomination?

Hearing none, the question is on the nomination of Karl A. Henry, of Buffalo, for a term as a member of the Workers' Compensation Board. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The nominee is confirmed.

We're very, very pleased to have Mr. Henry in the chamber, to our left in the gallery, with us.

Congratulations on your work, and continued good luck.

(Applause.)

ACTING PRESIDENT KUHL: The Secretary will continue to read.

THE SECRETARY: As a member of the Correction Medical Review Board, Scott S. Coyne, M.D., of Huntington.

As director of the Municipal Assistance Corporation for the City of New York, Kenneth Bialkin, of New York City.

And as a member of the State Home for Veterans and Their Dependents at St. Albans, Maxwell H. Phillips, of Valley Stream.

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

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The nominees are confirmed.

The Secretary will continue to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bills:

Senate Print 1050, by Senator Seward, an act to amend the State Finance Law;

2280, by Senator Bonacic, an act requiring;

2383E, by Senator Marcellino, an act to amend the Education Law;

2392, by Senator Rath, an act to

amend the Executive Law;

2670, by Senator Nozzolio, an act to amend the Correction Law;

2841, by Senator Farley, an act to amend the Education Law;

3680, by Senator Volker, an act to amend the Executive Law;

3706, by Senator Volker, an act to amend the Executive Law;

5848, by Senator LaValle, an act to amend the Executive Law;

6174, by Senator Maziarz, an act to amend the Executive Law;

6367, by Senator Saland, an act to amend the State Finance Law;

6375A, by Senator Morahan, an act enacting;

And Senate Print 6409, by Senator Marchi, an act to amend Chapter 759 of the Laws of 1973.

All bills ordered direct to third reading.

ACTING PRESIDENT KUHL: Without objection, all bills are ordered directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 498.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 498.

THE SECRETARY: In relation to Calendar Number 498, Senator Skelos moves to discharge, from the Committee on Rules, Assembly Bill Number 11014 and substitute it for the identical Senate Bill Number 6796, Third Reading Calendar 498.

ACTING PRESIDENT KUHL: The substitution is ordered.

The Secretary will read the title.

THE SECRETARY: Calendar Number 498, by the Assembly Committee on Rules, Assembly Print Number 11014, an act to amend the State Law, in relation to creating Assembly and Senate districts.

ACTING PRESIDENT KUHL: The bill is before the house.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT KUHL: Senator Skelos, an explanation of Calendar Number 498 has been requested by the Minority Leader,

Senator Connor.

SENATOR SKELOS: Thank you, Mr. President.

On behalf of the Legislative Task Force on Demographic Research and Reapportionment, I'm very pleased to present this sound and responsible reapportionment legislation to the full Senate for its review.

This legislation passed the Assembly last night by a vote of 109 to 28, with two "no" votes from the Assembly Democrat majority.

Ten years ago, I first came before this body as chair of the task force to request your consideration and support in support of legislation redrawing the district boundaries for the State Senate and the Assembly. While then, as now, minor disagreements as to the exact provisions of the bill existed, I believe that our underlying support for the fundamental principles of the reapportionment process - ensuring that all New Yorkers receive the representation to which they are entitled, and expanding the voice of minority communities in

our elected chambers -- remains universal.

Following the 1990 census, the task force offered a plan that met the needs of our state citizens and increased the number of minority districts in this house. This year we have again developed a plan that ensures the continuity of representation for the vast majority of our constituents while establishing a new district in Brooklyn with a 59 percent African-American voting age population and a new district in Queens with a 54.2 percent Hispanic voting age population.

This increase increases the overall percentage of minority districts in the Senate from 18 percent to 21 percent. As we all know, the population of the state has increased. To reflect this growth, the task force proposal includes the creation of a new 62nd State Senate district to be located in the New York City.

As many of you may be aware, the New York State Constitution includes language providing for an increase in the Senate size. With the advice of counsel in our review, we believe that our creation of a 62nd seat is

based upon calculations expressly endorsed by the courts and best reflect both the spirit and the letter of the State Constitution.

Like the 1990 redistricting plan, which was upheld by the New York State Court of Appeals and U.S. Justice Department, this plan fully adheres to both requirements and the spirit of the U.S. Constitution, the State Constitution, and the Voting Rights Act.

Further, it complies with all laws requiring substantially equal population in state legislative districts, preserves the cause of existing districts and current representation across upstate and on Long Island, and enables districts across upstate New York to remain relatively compact and reflect the needs of traditional communities of interest.

As we developed our initial proposal, Senator Dollinger and I traveled, with our colleagues on the task force, across New York State conducting a series of 11 public hearings to solicit the input of residents, representative organizations, and local officials. Subsequently, we held

another eight public hearings to provide all New Yorkers with an opportunity to respond to the draft plan that we released on February 15th.

To ensure the success of these public forums, the task force spent over $169,000 to place 46 advertisements in multiple languages for the first round of hearings. As a result, 319 people registered to speak at these 11 sites. In addition, hundreds of others submitted written statements and letters, and many individually patiently waited until all of the registered participants had finished to express their views.

Following the release of the draft proposal in February, the task force again spent in excess of $169,000 to publicize our second round of public hearings. We ran 42 advertisements, also in multiple languages, to ensure that everyone had an opportunity to participate in this process.

At the second round of hearings, over 600 individuals registered to testify before the task force. And the volumes of

written submissions and walk-up speakers truly exemplified democracy in its finest.

Speaking on behalf of my colleagues on the task force, I would like to publicly thank all those that participated in this process and the individual members that worked with us to develop a better plan.

Specifically, I would like to offer my gratitude to the representatives of New York State's African-American, Hispanic, Asian, and all other ethnic minority communities that volunteered their time and insight at each of these public hearings. Through this involvement, we made numerous changes to ensure that the needs of local areas and communities were properly addressed in the legislation that I present for your consideration today.

I would also like to specifically recognize the contributions of the many members of the Senate Minority with whom we partnered throughout the development of this comprehensive plan. You were an invaluable part of this process and a tremendous resource for the task force.

I'd like to thank Mark Bergeson, who worked on the drafting of the lines, as he did 10 years ago; Steve Boggess, who I work very closely with; and all of my colleagues. We tried to accommodate your needs and the needs of your constituents as best we could. And certainly we've tried to treat each and every one of you with the respect that you deserve as a member of this great Senate body.

As ten years ago, we did try to meet with individuals and work with them so that we could make sure the districts again best represented your constituents. Ten years ago we did this, and we tried to treat all with respect. And I point out at that time Senator Nolan voted for the legislation because he indicated that Albany County was intact and he was delighted with that. Senator Stachowski, whose district has not dramatically changed, voted yes. Senator Connor voted yes, because he was concerned about his district. And we accommodated Senator Connor, and he voted yes ten years ago. Senator Mendez, Senator Solomon, and Senator Ada Smith.

In this redistricting, the task force had the opportunity on numerous occasions to meet with individual members at their request, and certainly no individual, whether a member of the Majority or the Minority, was denied their opportunity to speak either with me, with Steve Boggess, with Senator Bruno, with Mark, meet at the task force. We made all our resources available.

And a number of members attended these meetings and met with us: Senator Mendez, Senator Gonzalez, Senator Sampson, Senator Carl Kruger, Senator Gentile, Senator Santiago, Senator Malcolm Smith, Senator Toby Stavisky, among others. So I thank you for your participation.

That is essentially my explanation, and I'd be delighted to take questions.

ACTING PRESIDENT KUHL: Senator Dollinger, why do you rise? To yield to Senator Connor.

Senator Connor, why do you rise?

SENATOR CONNOR: Mr. President, just if I may open.

And I appreciate Senator Skelos's

reference back to history. But as he pointed out, the plan ten years ago was approved by the Justice Department, was never challenged on the basis of a voting rights violation under Section 2, and therefore didn't have any civil rights problems with it ten years ago.

Mr. President, this year is a different story.

I would yield to Senator Dollinger.

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

SENATOR DOLLINGER: Thank you, Mr. President.

I rise today to evaluate the end of a long and critical process, the reapportionment and redistricting of the New York State Senate.

As everyone in the chamber knows, I served as Senator Connor's appointee to the task force during the last two years. I want to thank, and I sincerely mean this, Senator Skelos for his courtesies that he extended to me during the reapportionment process. We have our differences of opinion in the past, Lord knows we'll have them in the future, we

have them today. But I appreciate the professional courtesies that you extended to me.

In addition, I want to thank Vinnie Bruy, Senator Bruno's original appointee, and Mark Bonilla, his successor appointee, for their work on the task force. I also extend similar thanks to Assemblyman William Parment, the Legislature's most amazing harmonica player; Chris Ortloff, from the Assembly Minority; and Roman Hedges, from the Assembly staff.

And lastly, on behalf of the Democratic conference, I want to thank Debra Levine and the remainder of the staff - Mark -- who worked with us during the reapportionment process.

I offer a special thanks to Todd Breitbart, Senator Connor's chief staff assistant during this process. Todd has done yeoman's work, there's no other way to describe it, for our conference. I thank him.

But sadly, this process has resulted in an unsatisfying and, in my opinion, sad conclusion. I am convinced both

as a lawyer and a legislator that this plan is conceived in bad faith and constitutionally flawed.

More importantly, this plan denies New York's growing African-American, Hispanic, Asian, and other Latino populations their rightful share of chairs in this room -- right here, right here where they, by virtue of their numbers alone, are entitled to have a seat in this, the public parlor of New York State, where we debate the future.

To understand my complaints, I'd ask you to simply follow the history of the task force during the time I've served on it. In March 2001, New York got the census numbers from the federal government, our starting point in the process. At that time, many New Yorkers were concerned that there might be an undercount, especially in the growing immigrant populations in New York City.

However, the task force, without examining or discussing the breadth of the undercount, accepted the census numbers, even though estimates showed that the population in New York City alone might have been

undercounted by as much as a quarter of a million.

Armed with these numbers, the task force went on the road, inviting public input on new Senate lines and Assembly lines. To encourage public input, and in the face of repeated demands for increased public access to the process, we went, in turn, to the 21st century: we opened up a website, we provided detailed information for the public, we invited them to draw plans, and we encouraged them at every stop to submit plans for Senate lines.

At the public hearings in 2001 we heard from a wide array of New York's voices, requests for maintaining communities of interest and repeated demands that the growing populations in New York City in particular have districts drawn for them that reflected the population changes during the last decade.

However, to my dismay, those hearings were all held during the day, precluding many working people from participating and forcing interested persons to sacrifice a day of work to attend and

testify.

Two voices were the loudest that we heard: the voices of African-American and Hispanics on Long Island to end decades of racial gerrymandering and create a new majority minority district in Long Island, and the urgent appeal of Dominicans and other Latinos to create a new majority minority district in northern Manhattan and the Bronx.

Why did we hear those voices? Why were they so loud? Because the populations in those communities were growing. They wanted the same treatment that every New Yorker is entitled to: a chance to vote together and elect a candidate of their choice who embodied the characteristics of their communities.

After 11 hearings throughout the state that ended in August, the task force adjourned and Senator Skelos and his staff began the process of drawing the districts. The process continued through the fall and winter of 2001 and into the first six weeks of 2002.

During this time, as a member of the task force, I was often asked "What's

going to happen?" I said I wasn't sure. But there was one thing that was certain, one thing. During this entire time, from March 2001 until February 14, 2002, the Senate reapportionment site contained one unchanged fact. It said that the proposed population in each Senate district, the target population, was 311,089. That number constitutes 1/61st of the entire population in this state.

Anyone looking at that site, anyone who tried to get information about what the Senate would look like post-reapportionment this year, could draw only one conclusion: That the new Senate plan in 2002 would have 61 seats. That's what we told the public.

Everybody that testified during 2001 took us at our word. To my recollection, every single speaker that discussed the Senate during the first round of hearings said explicitly or implied that the Senate post-2002 would have 61 seats. No one, to my recollection, on the task force ever said that the Senate would have more than 61 seats. To my understanding, no one ever suggested to the hundreds of speakers that there would be more

than 61 seats in the Senate in the year 2002.

And it appears that everyone, everyone who took the time to truly participate, took us -- the Senate at its word. And they proposed plans that had 61 seats, the number we told them that we would have. The Puerto Rican Legal Defense and Education Fund, the New York State NAACP, the African-American Political Action Committee of New York, the Nassau County Caucus of Black Democrats, the Suffolk County Caucus of Black Democrats, and the Hispanic Democratic Club of Brentwood submitted plans for new districts. The new plans, the plans submitted by those groups contained 61 seats.

I should point out I've learned one unmistakeable thing. These plans are difficult to draw. I learned a lot about VTDs and black on border rules that I thought were almost unfathomable. They are part of the complications of reapportionment.

But the message from these groups was simple. They did what the Senate wanted them to do. They took their time, they drew their plans, they submitted the plans that

were configured with 61 seats in mind.

However, in what I can only describe as bad faith, it appears that all this public effort, all this public involvement was in vain. Because on February 14, after 11 months of leading the public to think that there would only be 61 seats, the Majority unveiled a proposal for 62 seats in the Senate, in a move that in essence mooted all the work of these community groups.

In my judgment, the Senate Majority deceived the public, repeatedly asking for 61-seat plans while, in my judgment, knowing all along that it would unveil a 62-seat plan for consideration in this house.

The Senate action by the Majority was unprecedented. It wasn't until March 7, three weeks later, that a legal memorandum was posted on the website which sought to justify the 62-seat plan.

In my judgment we, the members of the Senate, owe an apology to all the New Yorkers who we misled regarding the proposal for the Senate. In my opinion, you cannot in

good faith ask the public for their input on an issue as critical as reapportionment and then without notice, and apparently without any public discussion, change the fundamental ground rules.

In my opinion, the process is tainted by deception and bad faith. The groups that had submitted plans were left without meaningful access to the process because there was no time to redraw new 62-seat plans that reflected those new and powerful voices that we had heard through the public participation process.

I note that there is a 62-seat plan which does reflect the testimony we heard at the hearings regarding a fair share of seats in the New York State Senate for New York's African-American and Hispanic residents. I presented that plan to the task force this week. It is a benchmark that proves beyond doubt that the yearnings of all New Yorkers for a seat at the table -- or, in this case, a desk in this chamber -- is not only possible but easily accommodated along with the remaining traditional redistricting criteria

that govern the plan that we must vote on.

Apart from bad faith in the process in deceiving the public about the size of the Senate, I also believe there is no legitimate legal basis to increase the size of the Senate as this plan envisions. In this regard, the State Constitution governs what the Senate can do by statute to increase its size. We have no choice. The people, through their constitution -- through their constitution - took the choice away from us. We can only do what Article 3, Section 4 permits. Simply put, it does not permit us to draw another seat and increase the total number from 61 as to 62.

Since 1972 -- Senator Marchi has been here through this entire process -- the Legislature has undergone four redistricting cycles. In each of the prior three instances, the Legislature complied with a formula for Senate seats set forth by the Court of Appeals in Schneider versus Rockefeller, the last and certainly the most powerful interpretation of Article 3, Section 4.

If the Legislature used the same

formula approved by the Court of Appeals and used in 1972, 1982, and 1992, then the right number of seats in this chamber is 61, not 62.

Why are we abandoning our fealty to an established formula and its court-approved interpretation? To make a bigger government. When the people of this state, by their constitution, have dictated a smaller one. I don't understand. I believe that this increase is constitutionally unacceptable.

But in closing, it seems that this year, the Legislature, and in particular the Senate, has decided to embark on a new course for reapportionment. It has misled the public regarding the size of the Senate and ignored our State Constitution's restriction on its size.

The process leads to a conclusion that the majority of this house who devised this plan have actually sought to thwart public participation on the most important principle that rests with us to decide: the size, the scope, and the representation in the people's government and the preservation of the importance of every resident and their

power to vote.

I urge everyone in this chamber who believes in our democracy, in our state democracy, and in the underlying fairness for all that we pledge allegiance to, who believes that, in the words of Emma Golden [sic] those yearning to breathe free should also have a voice with that same breath, and that everyone who believes that the charting of our future demands that every single voice be heard and that it be given the same weight, that's the only way that we can establish the harmony and unison necessary to chart a new direction for this state -- if you believe that, you must vote no.

Thank you, Mr. President. I'll yield to Senator Paterson.

ACTING PRESIDENT KUHL: Senator Dollinger, it's not the common practice to yield from one member to another. The chair has a list of members who have asked to be recognized, and we'll follow that. I'll put Senator Paterson next on the list, at the bottom.

The chair recognizes Senator

Espada.

SENATOR ESPADA: Well, thank you, Mr. President.

And firstly let me also thank the Legislative Task Force on Demographic Research and Reapportionment. As I'm sure all of us know, we represent one Senate district. To transverse the whole state and to hold the public hearings and to put in the nights and the days that you did deserves special commendation from all of us, I'm sure.

Indeed, I think the fruits of your labor are before us today, after a draft plan, after I think rather massive input by not only members but the community at large. This plan that sits before us for adoption today is responsive, does meet the needs not only of minorities throughout this state but the residents of the entire state, Mr. President.

And I applaud the task force. I applaud the task force as a senator, I applaud the task force as a Puerto Rican senator, I applaud the task force as a person that represents over 180,000 Latinos, a person that represents over 90,000 African-Americans and

over 20,000 people of diverse backgrounds.

You know, not only does this plan do justice in enhancing minority representation, we talked about -- Senator Skelos talked about the creation of two new Senate districts, one in Queens, majority Hispanic, one in Brooklyn, majority African-American, particularly from the Caribbean.

And let me just say that every day when I walk in here and I see three other Puerto Rican state senators, it is a source of great pride. And when I see eight other African-American senators, it is a source of great pride. Not only do they represent their districts and their particular constituencies, they contribute to the public good statewide.

We vote here to promote the public interest of the residents of the entire State of New York. This plan does justice to that when it not only enhances minority representation from 12 to 14, or 21 percent of the state Senate districts going to racial and ethnic minorities, but indeed, this is a minimum.

This is a minimum, Mr. President and colleagues, because as I look at this plan, I identify five other Senate districts that are majority minority districts. And the fact that they're represented by Democrats does not change the fact that they are majority minority districts not represented by a racial minority.

We've been taught -- through the doctrines of the Democratic Party, mostly, that there's something wrong with that, that there's something inherently wrong with that. And much of the language of empowerment that we're hearing from nonminorities on behalf of minorities doesn't take this issue into account.

Indeed, in my own borough of the Bronx there are five Assembly seats occupied by nonminorities in clearly minority majority Assembly districts, yet we don't hear a word about that.

Now, Mr. President and colleagues, this plan builds on the basic foundation of minority representation and offers new opportunities not only to minorities but also

to New York City as a whole when it adds a new district and a new powerful voice, come next year, from New York City. It recognizes the population increase, it measures the need for that additional voice. Indeed, we will get that additional voice.

After 25 years, Mr. President and colleagues, of being a public servant in the Bronx, and most particularly in the South Bronx, I had a personal political transformation. I sit in the Senate Majority conference now. That was not just one person's political transformation, Mr. President, that was reflective of the fact that there is a new political paradigm, that minorities and particularly Latinos will no longer count on other folks to tell them what is empowering to them.

We recognize throughout this whole country now that we need to form new political patterns and expectations, that in fact the products of our participation and our ability to reassess that participation anytime we want is true empowerment. That we can go against the expectations created by others about our

political participation is true empowerment. That we can say we have political capital and political wealth that can be distributed any way we want to is political empowerment. We see that in California, in Texas, in Michigan, in Florida. Throughout the United States we see this happening.

It's not welcome in certain quarters, just like my own personal political transformation is not welcome in certain quarters. It's welcome in my district. We will prove that, Mr. President. It's welcome in our districts because we reserve that right, we reserve that right to act in our own interests, to define our time frame interests.

The diversification of our political capital is up to us. We won't find that in data, we won't find that in charts, we won't find that in reports. We will find that when we are brave enough and bold enough to speak truth to a very basic power, and that is that is there is a monopoly. Let's break through the rhetoric and get to the bottom line. This is not about minority empowerment, this is about Democrat versus Republican

politics.

And the truth is that when I visit this question and when I hear the rhetoric - and some may say: You're newborn here? Sometimes it takes a long time to leave abusive relationships.

And let me just say that the Latino and African-American community has been taken for granted far too long. Others have spoken about its dreams and expectations and defined political participation far too long.

And we need to demystify this. This is not some mystical trip here. Latinos and African-Americans, in my view, in my humble view, are no different than anybody else. When it comes to wanting a public health system that is accessible, that provides quality health services, we're no different. When it comes to the education of our children, we're no different. Public safety, we're no different.

And so those political outcomes, if they're to be had and shared in every community, requires by our very number, I think, to form new political coalitions, new

political pathways. Because that, my colleagues, is true empowerment.

We want economic equity. We want a full participation in the American dream. The Constitution speaks to that. Many, many people have spoken to that. But yet our political participation, our voting patterns have been preordained for us by very, very powerful, powerful advocates, advocates that speak for us, advocates that are well-paid to continue to speak for us. I think we need to break that trend with the adoption of this proposal.

And so there's been a lot spoken about the Long Island corridor, the nine State Senate Majority districts there, where we have as political entities 30,000, 40,000, 50,000 residents that may be Latinos or African-Americans. Who among us would take that for granted? Do we cluster? Do we presume that we all want to be together and that we will vote together and that we belong in one district?

I just ask, in this new political paradigm that I'm speaking to, that we give

equal weight, if not some consideration to the fact that if there were Republican Latinos and African-Americans spread out through nine districts, wouldn't they get some respect? Wouldn't they get some recognition? Wouldn't the products of their political participation be rewarded also? Couldn't we see one of them, many of them sit on this side of the aisle after some time?

I think so. I think so. I think many people move throughout the city and the state not to be clustered, but to be mainstreamed, to have full participation in their new locale and residences.

And so I don't think the Constitution or any political lobby can preordain how these people should vote. The free exercise of their franchise is their business. We shouldn't interfere. We shouldn't block that, we shouldn't vote-block that.

And so I call, Mr. President and colleagues, upon all of us, particularly after the post-9/11 tragedy, I call upon us to set aside political affiliations, to really be

true to why we're here, and to cast a vote in favor of this well-thought-out, constitutionally sound plan.

I thank you, colleagues. I thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I represent Harlem, the Upper West Side, and Washington Heights in the Senate, but I actually grew up in Long Island. I grew up in Nassau County, in the town of Hempstead, in the village of Hempstead. I went to primary school there, junior high school there, I went to high school there.

And I remember a lot of things very fondly about living in Long Island, and I remember a few things not so fondly. And it had to do with the fact that in spite of a growing African-American and Hispanic population, in a compact and contiguous area that encompasses the regions of Freeport, Roosevelt, Uniondale, Hempstead, West Hempstead, South Hempstead, Baldwin, and Lakeview, these communities have always been

fractured by the drawing of reapportion lines every ten years.

There are lines that go this way, there are lines that go that way. But the one thing that is constant is a line that goes right through those areas that cuts those members of the African-American community and now a growing number of members of the Hispanic community from each other.

As a result of that, if I were still living in that area, in Hempstead in Long Island, there is really no way that I could be in the Senate.

Now, although that might provide a lot of comfort to many of you, the fact remains that there are a number of individuals of great ability and intellect who live that region who cannot exercise their right to participate in the process because, just in the way those districts are divided, they could not run or be victorious in a New York State Senate election.

When you look at this reapportionment plan, I have to agree with Senator Dollinger and urge my colleagues to

vote against this plan -- if nothing else, just to ensure the integrity of the voting cycle and to save us from what I think will be an embarrassing situation when we have to go to court and try to defend it.

How are we going to go into court and try to explain a plan that has so many situations as the one that I just described? The fact is that this plan violates Section 2 of the Voting Rights Act. Section 2 of the Voting Rights Act is permanent, and it extends nationwide. It protects minorities from the lessened opportunity to participate in the process, and it allows for members of minority groups to be elected to public office.

Section 2 is probably the most strict section of the Voting Rights Act because of its preventative technique of making sure that people who are African-American or whether they are Puerto Rican, whether they are of other Hispanic descent, whether they are of Asian descent, get that opportunity to be a part of the political process.

The problem with this

reapportionment plan is very interesting, because it is not only not in compliance with Section 2, it contradicts itself. When you look at the area in Long Island that I just described, it actually fractures the voters from each other, particularly voters from contiguous, compact areas such as the one I described of African-Americans. When you get to the Bronx, it does the reverse. It packs Hispanic members of our society so as to preserve another seat.

Both the packing and the fracturing are not in compliance with Section 2. Yet you have to wonder who drew up the plan, because it's actually contradicting itself. This also has a different name, a name many of us know all too well. We call it racial gerrymandering.

When you look at the Bronx, the 34th Senate District in the proposed plan, this is especially unique. It goes block by block, fusing together non-Hispanic whites in the Bronx, in Westchester, and then back into the Bronx, until it winds up with a 59.5 percent non-Hispanic, white district.

And the only way it can accomplish that is to pack larger and larger percentages of African-Americans and Hispanics with each other.

Which is exactly what Senator Espada was pointing out, that in this society these days you can't do that -- not only because it violates Section 2, but because it's just plain wrong.

So when we go back to Long Island and we look at the nine Senate districts drawn for three decades, where the one consistent thing is the denial of the opportunity of the minorities in those particular areas to elect individuals, this plan fails in that respect. It's not in compliance with Section 2. In my opinion, it couldn't withstand any type of challenge.

What we should do is vote against this plan and sit down, if we want to work out some workable, sensible, achievable ways of bringing ourselves in compliance and not violating the census, the Constitution of the State of New York, the Constitution of the United States, and the Supreme Court of the

United States.

It is certainly a product of a lot of hard work, and I certainly respect and congratulate those who performed that work. I'm just here to tell you that there's more work to do and we really should act now so that we can always understand that we have tried to erase decades of denial of these opportunities in the past.

If we're all in this new millennium and this new spirit of cooperation, then let's sit down now and draw some districts with the full understanding that one of the problems in civil rights all over this land has always been that the only way -- and it's a tragic reality -- that the only way to provide equity and equality is going to be to have to take some things from those who may have had it in the past. The problem was that it was unjustified in the past. So in doing so, we will at least understand that we are now acting together to move into that new freedom and justice for all.

ACTING PRESIDENT KUHL: The chair recognizes Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. President.

Let me first thank Senator Skelos, Senator Dollinger, and all the members of the task force, who really performed a yeoman's job spending many hours putting all of this together.

But today I want to tell you what reapportionment means to real people, real people in the state of New York. Reapportionment is about giving people a sense of power. Because when people can come together and use their power, we can see how great things can happen and lives may be improved.

Unfortunately, this reapportionment plan is not about making sure that all people's lives are improved, it is about keeping power away from certain minority communities. It is about keeping power focused on the few rather than the whole. Today's bill continues an unlawful plot to keep certain black and Latino communities at a population disadvantage.

By deliberately splitting these

communities among multiple districts, it weakens them deliberately. It weakens them purposefully. It weakens them in order to concentrate power among a few and deny a majority of minorities the right to select a representative of their choice.

This bill splits several neighborhoods where minority populations live in order to dilute an emerging power, that power base in certain growing Long Island communities. Redistricting that splits minority populations denies representation to communities defined not just by race but by actual shared interests.

Education is the best example of such a shared interest. Education is the largest single category of government expenditure in New York State. Funding for local school districts is the second largest item in the state budget. And the education aid formula is the most contentious issue the Legislature addresses each year.

Yet in Nassau and Suffolk counties, certain school districts with large minority populations tend to be less affluent and less

able to finance public education than their local tax base. This has limited these school districts' ability to meet the sound, basic educational requirement provided by our State Constitution.

In fact, last year State Supreme Court Justice Leland DeGrasse ordered the Legislature to address the shortcomings of the current system and to ensure that every school district has the resources necessary for providing the opportunities for a sound, basic education.

As we set out to deal with education funding, we need everyone in New York State at the table. This bill systematically splits these minority neighborhoods to keep powerful and informed groups from coming together to advocate effectively for a fair share of state education funding. This allows those currently in office to limit their response only to voters who have a stake in maintaining the status quo.

Splitting these minority communities also discourages interracial

coalition building. It has been long known that racially polarized or segregated politics have a corrosive effect on democracy. Interracial coalition building should be encouraged, not discouraged.

As we see here in this plan, redistricting has been done to dilute minority-group voting power by drawing districts in which black or Hispanic voters are not just a minority but also the smallest possible minority. This bill reduces their value as coalition partners and makes it easy and very tempting for candidates to win election without appealing for their support or even addressing their needs or representing their interests.

We can do better. We must do better. We in the State Senate should vote no. Let us uphold the Voting Rights Act.

ACTING PRESIDENT KUHL: Senator Lachman.

SENATOR LACHMAN: Mr. President, I rise today to express my concerns with regard to the Senate redistricting plan and its effect primarily on the people of Borough

Park but also on the people of Williamsburg. And I do not mean Williamsburg, Virginia.

Borough Park and Williamsburg, Mr. President, are both vibrant and vivid places that represent a community of common interest, values, and beliefs. These citizens read the same newspapers, they attend the same houses of worship, they go to the same schools and hospitals, they utilize the same social services, and they buy their groceries and other food at the same kosher stores. And they frequent, therefore, the same merchants.

Undoubtedly these communities constitute a community of interest. They therefore were satisfied -- indeed, they were quite happy that the initial redistricting plan showed that their communities would not be divided.

The redistricting plan as currently constituted fractures the Borough Park community, replacing the current representation with five disparate districts in which the unique concerns of these people could be lost. Similarly, Williamsburg is split into two parts. However, no other

community in the State Senate besides Borough Park has been so severely impacted by this Senate's redistricting plan.

Borough Park, Mr. President, as you know, is an incredibly civic-minded community. Had the initial plan shown this five-part neighborhood split, these citizens of all ages, from 9 to 90, would have attended public hearings and made their concerns known in the thousands if not the tens of thousands, by foot, by train, by bus, by car, and by bicycle.

Compounding the problem is the fact -- and this is an important fact that cannot be denied -- is the fact that this division in representation was finalized on the Jewish holiday of Passover, when Orthodox Jews do not work and do not answer their telephones. It was only confirmed when the information appeared on websites two days ago. Many therefore believe that this plan is insensitive to their beliefs as well as to the integrity of their communities.

As a matter of principle and as a matter of conscience, I dare not, I care not,

I cannot, I will not support this flawed plan.

Thank you.

ACTING PRESIDENT KUHL: Senator Kruger.

SENATOR KRUGER: Thank you, Mr. President.

I guess February 15th, when the initial plan was proposed by the task force, represents in my judgment a tale of two cities, the best of times and the worst of times -- the best of times for many members of this Legislature, as basically their districts were either virtually left intact or so conceived that they were politically whole and compact.

In my particular case, my communities were virtually torn asunder. And when that happened, there was an outcry from our neighborhoods. That outcry was heard at a series of public hearings where over 200 people testified, where over 5,000 letters of support for redefining my district were submitted to the task force. Over 800 people came by bus and by car to participate at that Brooklyn Borough Hall hearing. Literally

hundreds of phone calls were made in support of reviewing that particular set of lines.

And out of that shared community voice, the task force recognized its obligation. And unfortunately, in recognizing that obligation, we will find that this is a political document. And within a political document, there are going to be deficiencies.

But what we were able to see as a by-product of that community support was that the neighborhoods of Brighton Beach, and its Russian community, and Manhattan Beach were joined together with the shorefront communities of Sheepshead Bay and Plumb Beach, along with Mill Island and Mill Basin, and Bergen Beach and Georgetown and the Futurama community, along with Flatbush, Borough Park, and Bensonhurst.

And out of that shared plan we were able to look at the composite picture that the task force presented and recognize that the voices of those communities were heard.

As Senator Lachman pointed out, in every plan there is a deficiency. I think we all recognize that the ripple effect as

districts are joined together causes some fracturing of neighborhoods. But I for one am somebody that never tripped over a district line. I view our totality, as Senator Espada and others pointed out, as a community of interest, as a community of concern, as a state working together in partnership for the good of all the people.

So today I intend to support this plan, recognizing that my obligation does not end at a district line. The same way when I went to Nassau County, not more than several months ago, to fight for an indigent baby which was being denied medical care -- because her family lived in my district -- and we were successful in cutting through bureaucracy and red tape and delivering that care. Certainly my district did not end at the Nassau County border, but my concerns followed that same pathway.

Well, today this Legislature has an opportunity to embrace not one section of any one community but to talk about communities as a whole, to recognize that yes, we have obligations to move forward with an agenda

that deals with safety in the streets, with educating our children, with developing and delivering quality health care for all New Yorkers.

And if we're able to do that and put aside petty politics, if we're able to do that and recognize that we have an obligation, an obligation that says that as elected officials and as New Yorkers that yes, we have to represent all segments of our community, that the by-product of this plan truly embodies the voices of so many different neighborhoods.

And it isn't perfect and it is deficient, but nevertheless it's the best plan that I believe that could be enacted to represent all of the interests of all of the people of this state.

And as I go back to my district today and as I have meetings in Flatbush and, interestingly enough, tomorrow morning in Borough Park, in a piece of Borough Park that will no longer, under this plan, be part of my district, I pledge my support to all elements of those communities, that we will work in

partnership. That this is not so much necessarily the idea of losing a daughter, but it's like a marriage, it's like gaining a son.

Because together we are partners. We are partners in good government, we are partners in good politics, and we're partners in representing all of the people of the State of New York.

Thank you.

ACTING PRESIDENT KUHL: Senator Volker, on the bill.

SENATOR VOLKER: Mr. President, I guess Ronnie and I are two of the only people who have been here through four reapportionments -- '72, '82, '92, 2002. It's kind of frightening. I came in the 1972 election that had a double primary, Conservative and Republican. John Daly, the late John Daly, came with me. He had a double primary too, but he was coming from the outside. I was from the inside. I got the nomination.

The reason I mention that is, you know, a lot of people really don't understand reapportionments. And I want to tell you

something, I've watched a lot. I was directly involved in one in particular when Senator Anderson sent me to the Assembly to sort of negotiate. And I've been involved in this, like most of the members have.

Senator Skelos has done a super job, and his staff, Senator Bruno. I think Senator Connor and his people I think have worked very, very hard. And it's their place, by the way -- so that everybody knows, it's their place to make objections.

And you find out the best way to do it, and it -- because the Civil Rights Act is the most difficult one, it's always been certainly a good place to launch. The problem with that issue is that it's gotten more difficult because of the numbers of minorities there are and all the conflicted issues that have come before us.

It's my opinion -- and I've been a lawyer for 35 years, and I've watched all those reapportionments -- that this reapportionment plan is legal, that it follows the proper way in which reapportionments are supposed to be done.

Of course there's some objections. I mean, the Minority is supposed to object. The Minority is supposed to say "Hey, we could lose a couple of districts here." So they're going to be concerned.

But the thing I have to say about it, where the media doesn't have any clue about this, this is democracy. And in a sense it's lowest common denominator. Those people that want to say we'll have independent people do reapportionments don't quite understand American democracy. They tried that in Canada. It really hasn't worked very well.

And it's one reason why this country still is so much stronger than many of the other countries. And this state really has done a better job than most of the other states have.

Oh, I know that you're supposed to say the right things to people and say: Well, you know, we want to be fair to everybody. We do. But we're politicians. We want to do what is proper to do within the guidelines of the Constitution and of the federal law. One of the reasons I'm saying that is everybody

realized that what's being said here today - and one of the reasons the statements have been read, so everybody understands -- will be part of the record. And it's part of what's going to go to a federal judge, ultimately. Because no matter what we do here, that's going to happen. You don't even have to make an argument, because it will end up getting there, it just depends on the forum.

So all I can say to you is -- and I can speak for Western New York in particular. And frankly, in looking at the maps and the calculations, I don't agree with Senator Connor, I don't agree with Senator Dollinger. I think this does comply with the Voting Rights Act.

I think you could make arguments all over the place about dividing communities. There's no way you can avoid, to a certain extent, dividing communities. It's part of the landscape, particularly when we had a situation here, in my humble opinion -- and I have warned Senator Skelos and Senator Bruno that my district probably has 50,000 to 75,000 more people than the census people counted.

We were undercounted all over this state, there's no question about it. But there's nothing we can do about it. I mean, we have the numbers. They're there.

If you think New York City is undercounted, upstate probably is a lot worse, in my humble opinion. The suburbs around Buffalo and all of those places. We have one town that we political people are convinced is bigger than the town of Amherst -- the town of Cheektowaga -- and yet they claimed we lost population.

The reason I'm saying that is that a lot of the fiction that is going around - now, there's nothing we can do about it. You can complain, you can say anything you want. But don't kid yourself from the fact that New York City is undercounted. We're all undercounted. But we have to take the numbers that we get from the census people.

As Dean has pointed out, and as the leader and all of us have pointed out, we have no choice. That's the law. And under the law, the reapportionment people have divided this state up and I think done the proper

ratios in Western New York, as an example. And there were some people who were pushing hard to merge Democratic districts and all that sort of stuff. We ignored all that.

And Senator Brown's district is the most minority district in all of upstate New York, without question. Senator Stachowski's district is, I think, a district that is surrounded by areas that he's extremely familiar with. And I think all the people in Western New York have what I call regular districts that run out toward the east, given our numbers and given what we had to work with with the Census Bureau.

If we had real numbers, in my opinion -- that is, if the census numbers had been proper -- we'd have bigger numbers, but that's beside the point. So there's nothing we can do about it.

The reason I mention that is that I don't think any of us quite realize the enormity of such an undertaking as doing a reapportionment in this state. And I think that Dean and his people and the Majority Leader have done a job that I certainly know I

couldn't do. And I think they've restrained themselves politically to the point where I think they've done a job which I'm not so sure that other legislators in this country would do.

Now, Senator Connor is looking and smiling. I'm not saying that there wasn't any politics involved in this reapportionment. Of course there was politics involved in the reapportionment. But what I'm pointing out is that I think that if you look at it generally, both minorities, majorities, and all the new minorities I think have an equal standing to be able to vote for candidates of their choice.

You know, one of the things I think we have to be careful of is not to think somehow we have to put everyone in their proper place. That's not the way America works. Just because maybe you don't have enough people to elect the candidate that you want doesn't mean that there's something irresponsible about that, or illegal. You can't possibly do that in every case.

It just seems to me that we better

all understand that we had better get together and understand that all of us better help each other or ultimately we're going to be in an even bigger problem than we're already in.

ACTING PRESIDENT KUHL: Senator Alesi, on the bill.

SENATOR ALESI: Thank you, Mr. President.

I'd like to make a brief statement, as my colleagues have done, to thank those people who have worked so hard on this plan. There are countless exhausting hours that have gone into this, meetings all across the state seeking public input, the priceless, valuable public input, not just from members of this body but from members of our respective communities all across the state, whether it is from the South Bronx or whether it is from Monroe County.

With respect to Senator Dollinger's comments about the State Constitution, I expect that that will not be answered here today, but it will be answered further down the road in what is part of this whole process, and that will be a judicial review, a

review by the federal government.

But our job here today is to say how acceptable is this plan, this very comprehensive plan, to this body, to this very diverse collection of people who represent a very diverse population in New York State, whether it is from the very rural areas of upstate or the heavily populated, concentrated areas of the New York City area.

I'd also like to thank my colleagues in this body for the passion that I have seen displayed here today. Very often we stand on the floor, we debate bills, we debate them mechanically, we debate them for what legalistically might be in them or not in them -- but we don't necessarily always debate bills with the passion that we have seen here today. Because what we have seen here today does truly have such a direct impact on what we do as representatives of the people that we know at home and the people that we understand at home, the people that we work for.

And with regard to that passion, Senator Espada has given us his views on how he sees his role as a representative,

referring to his political transformation. Senator Smith has given her passionate response. Senator Paterson, referring to racial gerrymandering, certainly no lack of passion in those comments. Senator Kruger as well, and others. This is a very passionate issue for all of us.

But there's also a complexity here, and it is something that should not escape us. And that is that in the year 2002 we are drawing lines for the next ten years that will represent districts that will continue to change dramatically. And if these districts had not changed over the last ten years, there would be no need for redistricting. But there is a need for redistricting.

And five years from now, I submit -- not necessarily in my area, but in many of the other areas, in the metropolitan area especially -- you will see continued changes, especially with the influx of immigrants. And five years from now anybody who says that their district doesn't do justice to their ability to represent their people will be able to say it didn't do it

five years ago, it doesn't do it today, and it won't do it in another five years when the next redistricting plan occurs. That is the complexity of this.

But it is also the simplicity of it to understand, that we're dealing with a snapshot that was provided us by the census dealing with today's data. And in the relatively short period of time since we've had that, the people that have undertaken this project on both sides of the aisle, and in fact in both houses, have had to come up with a plan that serves the people of this state as well as possible.

And, yes, it is not perfect. Very little if anything that we do here is perfect, and I think that we can all agree to that.

And in my own case, I'd like to offer the opposite view. An area that I represented for seven years and am invested in is no longer in my district. It's an area where tremendous economic activity is expected. The Governor referred to it in his State of the State, the "fast ferry" project.

It is an area that has seen racial

tension in its schools because urban students are moving into that area and there is a resistance to that. The result was racial tension in the Charlotte schools.

The CSX railroad just recently derailed on Christmas Eve, spilling tons of poisonous chemicals along that whole area that is no longer going to be in my district.

I have worked there and will continue to work there. Why? Because we have a delegation. We have members of the Assembly, we have members of the Senate on both sides of the aisle that do work together that don't necessarily represent a particular area just defined by lines. We recognize in a region that we work together to represent these people regionally.

And we recognize or should recognize as we sit here today that when we leave, what we have to do is represent the people of the state as well as the people in our own district.

What I will receive in return for losing that particular area that I mentioned that I have invested time in is much more of

the city of Rochester in the central urban area, in an area that is served by the Rochester City School District which, more than any other school district per capita in this state, is suffering from a tremendous financial burden because of undisclosed financial problems and a deficit that was undisclosed.

And this gives me an opportunity now, with this new population in my district, to serve them. And I'm looking forward to that. And we should all look forward to serving the new people that are in our district. We should show the dedication and devotion to the new people that are in our district.

And in my case, yes, there will be more minority people that I will be representing. And I will work just as hard to represent those minority interests as I have done to represent everybody in my district in the last seven years that I've been here.

And so the charge as we leave here is really a simple one, that there will be new lines, there will be new people. We will miss

some of the old people. But our responsibility is to do the job that we were elected to do and that we will be elected to do under these new lines. It's a matter of the devotion and dedication that we imply that we will exercise when we run for office.

And so although I will miss the people that I have worked for, in regard to those charges that there will be some political gerrymandering, in my district I will enjoy the benefit of serving a more racially concentrated area of my district. And hopefully they'll enjoy the benefit of my commitment to them -- assuming I win the next election -- to serve them with as much vigor and as much devotion to their needs as I have to my constituents in the past seven years.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The chair recognizes Senator Connor, to close for the Minority.

SENATOR CONNOR: Thank you, Mr. President.

And, Mr. President, let me say, as Sam Ervin used to say, when it comes to this

stuff, I'm just a country lawyer. But in 1978, Senator Ohrenstein appointed me to the task force. And if I learned nothing else, I learned how much work was involved.

And so I do want to thank Senator Skelos, Senator Dollinger, Vinnie Bruy, Vinnie's replacement on the task force, as well as their Assembly colleagues. It is a lot of work sitting through those hearings.

To the staff of the task force, Debra, Lou, and their staffs, I recognize and appreciate their professionalism. They are thorough professionals and certainly always treat everyone they deal with with the utmost courtesy.

One of the smartest things I've ever done in the State Senate was when Senator Ohrenstein appointed me, I'd only been here a few months, and he replaced Senator Halperin with me, because I was an election lawyer, on the task force. And by the next year, things had -- we were preparing for the census and so on. And by the way, I had virtually no staff.

And I went and I said "Will I get a staff?" And through the task force I was

entitled to some staff allocation. And someone who I'd known for a few years, met him in some political campaigns where he was the, quote, numbers guy, unquote -- Todd Breitbart. And I hired Todd. I hired Todd in 1979, and he's been with us ever since.

Sometime in '81 he got into a dispute with Senator Ohrenstein's then chief of staff, who, you know, as these things happen threatened to fire Todd. We were in the middle of drawing -- or maybe it was '82. We were in the middle of drawing districts. And I called Fred at home and he said, "Well, Todd Breitbart will have a job for as long as I'm leader and he's alive." And Todd certainly knew when I became leader he was our person.

He works night and day. I've seen him go three-day stretches without a bit of sleep. He's really a one-man -- you know, reality is such that the Minority doesn't get the resources the Majorities get in this process. That's the way things are. Todd makes up for it by doing the work of three people at least.

So I do want to thank him publicly and tell him on behalf of all of my colleagues we -- and, you know, the nature of the work is that he has members that yell at him. And that's his job, and he knows it. But he does a tremendous job for us, and we all do appreciate and love him.

I do want to, for the record, note that we have before us a bill with metes and bounds. The task force had that before them on Monday. The task force, in voting on Monday, had this document which we have called "Proposed Senate and Assembly District Lines 2002, Revised Effective April 7." This is what every member of the Assembly, when they voted last night, had in front of them. This is what we have. It has maps in it and charts in the back. This is what every member of the Senate has before us today.

We have no other information before us but the maps, the bill, and the data in this document. I note it's all racial data. There is nothing in that report concerning communities of shared interests, nothing in the report concerning politics.

And I do want to say to Senator Volker I wasn't for a minute suggesting that any partisan considerations went into this plan. I was just turning to get to listen better.

That said, every member of this body has a vote on this. It's the Legislature that adopts the plan, not the task force. The task force merely recommends. That's true, of course, in the Assembly.

Justice demands, Mr. President, that I speak against this plan, because what's at stake is the future of New York and many, many New Yorkers. This plan quite plainly violates Section 2 of the Voting Rights Act in grossly malapportioning the state between a region of New York City, Westchester and Rockland, and upstate. Long Island, in terms of apportionment, Long Island fairly gets nine seats.

What's happened in this plan, though, Mr. President, is if you do the apportionment, that region of New York City/Westchester/Rockland is entitled to 29.69 seats, and upstate is entitled to twenty -- I

had the number in front of me -- but it's twenty -- 24.3, am I correct? Or 23.3 percent, 23.31 percent of the number of seats.

And what this plan does is it rounds that 23.31 up to 24 and rounds the 29.69 down to 29. Mr. President, don't tell my 12-year-old, who's struggling with math, that that's how you do rounding. It defies logic.

And if all it did was defy logic and if all it did was award an extra seat to upstate, creating a total deviation of 9 point whatever it is, 73 or such, that would be one thing. But what it really does is it makes every single Senate seat in New York City, Westchester and Rockland larger in population than every single upstate Senate district.

What that means is it devalues the vote of an individual voter in every one of those downstate seats. Your vote is devalued if it takes more people to elect your state senator than if it took less people. That's what the 1960s one person-one vote cases were about.

But in doing that, we are devaluing the vote of a region that contains a disproportionate percentage of the minority population of New York State. In that region, where every single Senate seat has its voters' vote devalued, that region contains 76.6 percent of the state's black voting age population, 80.8 percent of the Asian voting age population, and 81.5 percent of the Hispanic voting age population of New York State.

I.e., we are devaluing not just every downstater's vote, but we are denying a substantial portion of New York State's minority voters. We're devaluing and diluting their vote.

The interesting thing is, Mr. President, if in a 62-seat Senate one were to round it the other way, round it the way my 12-year-old is taught in school -- 29.7 equals 30, 23.3 rounds down to 23 -- you could, in New York City, get not one but two additional minority districts.

Let me say, Mr. President, what a majority minority district is and what it is

not. The presently constituted Senate has 11 majority minority districts. We have 11 minority districts. We have 12 minority members, but that's not the issue. We have 11 minority districts.

Under the plan before us today, a new majority Hispanic district in Queens and a new majority African-American district in Brooklyn is created, raising the total to 13 majority minority districts.

And by the way, Mr. President, that doesn't equate necessarily with those districts will elect a person of color. The point, Mr. President, under the Voting Rights Act, is those residents will elect the person they choose to elect, be he or she white, black, Hispanic, Asian or whatever. This is about the voters, Mr. President. The Voting Rights Act is about voters. It's not about politicians, it's not about members of a legislature. It's about who the voters get to choose, about empowering voters.

Mr. President, Senator Paterson has addressed the historic division over 40 years, by virtually the same line, of the minority

population in Nassau County. We're not talking, Mr. President, in Nassau County about some sort of meandering, crab-shaped, claw/tail kind of district. We're talking about a very compact district where the people in it have more in common, more in common certainly than what racial or ethnic group they belong to -- where they live in the same towns and villages and own the same kinds of homes and send their kids to the same schools and have a real community of shared interest. Not forced together by race; put together by community, by shared interests. Whereas now they are divided by race.

Mr. President, we're just saying put them together. That's impermissible. Put them together. Put their neighborhoods, towns, villages together in a compact district. And what you get is not by design, but the result is a majority minority district.

In Manhattan, the Bronx, into Westchester, unpack minority voters, unpack them, and you get two more majority minority districts. Instead of 13, instead of going

from 11 to 13, you would go from 11 to 16 majority minority districts.

Now, I know somebody is going to say, gee, in the beginning I said what's all this stuff about race. This is not about race, Mr. President. This is about reflecting the population of New York State as found in the census. You don't have to imagine undercounted residents to get these new minority districts. We're going with the population as found by the census.

Frankly, the plan before you is an attempt to repeal the census. Create an extra district; you can say -- the extra district is in Brooklyn -- Brooklyn, New York City, is getting an extra seat by virtue of the census. New York City grew. The rest of the state upstate didn't. The 62nd seat is really, Mr. President, keeping a seat in upstate that according to the census it doesn't deserve.

The population of this state -- and I appreciate Senator Skelos noted, in adding two minority districts, that the percentage of minority districts in this body will go up. But the point is, Mr. President, it won't be

going up by the amount it ought to be. In the 2000 census, 30.7 percent of all New Yorkers, 30.7 percent of all New Yorkers identified themselves as black or Hispanic.

Now, I'm not suggesting proportionality here in the sense that now we have to figure out how 30.7 percent of the districts can be -- because you can't do that. Because, thank God, in America, Mr. President, people can live where they want to be. And they can choose their own neighbors. And they don't necessarily have to live in areas that when you're making compact districts any one group adds up to anything.

But the fact is, Mr. President, if we created the 16 compact districts, two things would happen. That population malapportionment between upstate and downstate would go away. Instead a 9.7 percent total deviation, which is unprecedented for this house, we'd be back around a 4 percent total deviation.

Which this Majority, Mr. President, in Wolpoff urged the State Court of Appeals to recognize as, while not required, the

consistent policy of this house. And the court in Wolpoff said: We recognize the plan divides counties more than is necessary, but it's justified by the desire of the Senate to keep its total deviation -- I think it was 4.25 or 4.26 percent at the time.

So why now suddenly, Mr. President, this house -- which ten years ago urged upon the Court of Appeals, Oh, we have to split up upstate counties because we know we can go to 9.7 or 9.8 or up to 10 percent deviation, but we want to keep it around 4, 4.5. The State Court of Appeals said, Okay, you can ignore the State Constitution because that's a good purpose -- now, suddenly, we want to go to 9.76 percent total deviation, virtually the maximum allowed, when the effect is to cheat the minority voters in Manhattan/Bronx/ Westchester of two additional Senate seats.

Two additional Senate seats there. At 16 out of 62 seats, that's 25.8 percent of the seats in this house will be controlled - not occupied by minority legislators, controlled by minority voters. That's better than what's in the Majority bill. That's a

higher percentage. Still not in the 30.7 percent of the population, but it's fairer.

And it's what, Mr. President, Section 2 of the Voting Rights Act requires. Because the test there is whether a plan has the effect of denying -- not intent, effect of denying minority voters their fair opportunity of participating in the political process.

Mr. President, I urge my colleagues to vote no.

Recently, in response to questions from a reporter about the task force plan, Senator Skelos' spokesman responded rhetorically: "It's legal. What more do you want?" I have an answer, Mr. President. It is not legal when malapportionment is based on race, it discriminates, it flies in the face of the census, it is shockingly unfair to all New Yorkers, especially minority voters.

It's tempting to view this, Mr. President, as a fight between Democrats and Republicans, but it isn't about Democrat and Republican. Indeed, none of the information in front of us as we vote on this

plan says it a word about Democrat or Republican enrollments, voting history, or whatever. It's all about race. It's racial gerrymandering to deny minorities their fair share.

Mr. President, I urge a no vote. This plan -- and a little history, Mr. President. Senator Skelos talked about 1992. I'm going to correct Senator Volker. There was a redistricting in '72, and there was a redistricting in '74 in this house. It may not have affected upstaters, it affected my part of town in Brooklyn. It resulted from an NAACP case that found that the Voting Rights Act applied to Kings, New York, and the Bronx.

And it undid a practice of what they used to do then of pie-ing the minority communities, dividing them; i.e., what they do in Nassau County. And as a result of that, we got our first minority districts in Brooklyn. Or -- not first, we got our second and third, as opposed to always having one in Central Brooklyn.

So we did do -- Senator Volker, we did redistrictings in '72, '74, '82, '92 and

now.

In 1982, most of the members on this side of the aisle, with one or two exceptions -- myself included, actually, even though I was on the task force -- voted yes. I voted no only because a colleague who sat next to me, then Senator Bartosiewicz, ended up in the same district as me. We both voted no because we had to go back to the voters and fight over who would have the seat.

Why was there such comity? The census showed New York City lost a seat. We lost a seat. After all the work I'd done on redistricting, I got the crunch. I ended up without a primary. But there was no overriding civil rights or voting rights issue.

We created new minority seats in Brooklyn, fairly well packed in those days because it was thought you had to to defeat white incumbents. And they were right, because Senator Babbush held one of them for the next 14 years, and Senator Markowitz held the other until December. But we created those new seats. There was nothing to fight

about. There was no significant court proceedings thereafter.

In 1992, there was no litigation in this house over voting rights or civil rights. The litigation was purely about a reading of a section of the State Constitution about dividing county lines. And that's what the Wolpoff case went to the court about. In fact, it was the Majority that interjected voting rights and racial considerations in defending against that lawsuit.

The court found the plan was okay. I voted for that plan. No one suggested it violated Section 2 of the Voting Rights Act then. Yes, New York City lost population again, and we lost a seat in Queens. We all bucked up because the census showed New York City was losing population, as it had in '82, and we took the hit.

Mr. President, New York City gained population, significant population, hundreds of thousands of more residents, and upstate lost. The way this bill attempts to duck the consequences of that census is illegal, because it does violate Section 2 of the

Voting Rights Act, as I have demonstrated. Because it fails -- in denying the New York City/Westchester region that extra seat, it's also denying the minority voters of that region the extra two seats they're entitled to.

I urge a no vote, Mr. President.

ACTING PRESIDENT KUHL: The chair recognizes Senator Skelos to close for the Majority.

SENATOR SKELOS: Thank you, Mr. President.

You know, now that we've heard political people in this chamber, and we've heard the election lawyers, I'd like to just talk a little bit about what some of the people have said at some of the hearings. And I think that's critically important.

Number one, in terms of Long Island, whether you were 61, 62, or 63 seats, there would be nine seats on Long Island. So whatever your concerns are there, Senator Connor, it would not be about the number of people, the number of seats on Long Island.

But let's listen -- and I listened

very closely to Senator Ada Smith concerning the representation on Long Island of the nine Senators in terms of the communities being treated properly and fairly. We should go to school aid.

School aid, in my home community of Rockville Centre, the state shares 11 percent. Elmont, it's 31 percent. Hempstead, it's 44 percent. Freeport, it's almost 41 percent. And Roosevelt, it's 57 percent. So I believe that we have done well by those communities in terms of school aid.

But let's put aside what Dean Skelos thinks. Let's think about what Lorraine Cortes-Vasquez said, who's a member of the Board of Regents and who is also president of the Hispanic Federation. And as I mentioned, a member of the Board of Regents elected by the -- basically by the Assembly, Democrats. I'm sure you all voted for her.

"The Hispanic Federation is resolute in its support of the state senatorial districts as proposed in the redistricting reports submitted by the Legislature and cochaired by Senator Skelos.

The numbers don't lie. The region's state senators are doing their jobs in fighting to ensure that disadvantaged communities receive the additional state aid these students need to escape the cycle of poverty. While I would certainly support even more aid for our schools, placing underprivileged school districts in a sprawling minority-concentrated district would effectively eliminate the potential for comparable advances in the future."

She also said, "Hispanics vote for candidates, regardless of party affiliation, who they feel support the issues that are important to our community."

She also stated: "By adopting the legislative task force's proposed lines for Long Island's nine Senate districts, we will further advance the vital and long-standing objectives of diversity and multiculturalism, while ensuring that the necessary resources are available to lift communities."

Pat Halpin, former Democrat Assemblyman, Democrat County Executive of Suffolk County: "Over the years I was elected

with the support of the Democratic Party, and I served with senators who were elected with the support of the Republican Party. Never once was there ever a consideration of an issue or concern where race was a factor. Gerrymandering aside" -- which he called the plans, the alternative plans that were submitted -- "such a district would weaken the ability of the Long Island delegation to advocate for resources to address the needs of minority communities. You would be creating a district where only one senator would bear the responsibility and the burden. The unintended consequence would be that the resources would be diminished, not increased.

"The logic is simple. Today there are six senators who have the responsibility of representing communities on Long Island with significant minority populations, and I believe it's being done well."

Ruth Gaines, regional coordinator for the New York State Public Employees Federation: "I prefer the task force plan. The alternative plan would destroy our carefully built relationships with the Senate

delegation and our effectiveness in Albany. I urge the task force to reject the alternative plan and maintain the current Senate district configuration to the greatest extent possible."

Florence Joyner, executive director of Opportunities Industrialization Center of Suffolk: "I see no need to isolate minority communities into one district and diminish our voice in the State Senate."

Gil Bernardino, founder and executive director, Circulo de la Hispanidad, which is a not-for-profit human service organization serving more than 10,000 families in two offices in Long Beach and Hempstead: "The underlying fallacy of the alternative proposal submitted by the Nassau County Caucus of Black Democrats, the Suffolk County Caucus of Black Democrats, and several other individuals and organizations is that the African-American and Hispanic populations vote together as a block. This is simply not the case." And he talks about how Senators Skelos and Hannon in his opinion probably receive over 50 percent of the Hispanic vote.

"It is obvious," he says, "to even the most casual political observer that the two districts created under this plan are intended merely to elect a Democrat."

Anne Briggs, vice president, South Shore YMCA: "I emphatically and explicitly support the task force plan."

Reginald Percy, an African-American: "I think we should look at each other as people and look at me as a man, not just a black man. Those factors are irrelevant, insulting to my intelligence, and defile the pillars that support our democratic form of government. I am opposed and I fully -- repeat, I fully support the Long Island senatorial legislative task force district plan."

We move on to other areas that were mentioned. I'd just like to comment: "In Brooklyn, as noted above, there are two new minority districts" -- this is my memo -- "in the Senate Majority plan. One is an open African-American seat in Brooklyn, SD21. This district is generally comprised of the neighborhoods of Flatbush and Kensington, and

it has a voting age population of about 59 percent African-American.

"In response to the testimony of numerous witnesses, the proposed 19th Senate district was reconfigured to include the neighborhoods of Canarsie wholly within the 19th" -- this is Senator Sampson's area -- "as well as to reunite the neighborhoods of Brighton Beach, Manhattan Beach, Mill Basin, and Bergen Beach with the neighborhoods of the majority of Sheepshead Bay and Midwood."

And I think Senator Kruger talked about a bit about his area of the Borough of Kings.

And additionally, the community of Williamsburg, which was proposed in a neighboring district, was returned to a district represented by you, Senator Connor.

Concerning testimony in Brooklyn, Rabbi Greenwald, rabbi of the Sephardic congregation in Manhattan Beach, a 30-year resident of Manhattan Beach: "I am requesting that the Manhattan Beach community be returned to its current Senate district. The way you are taking Manhattan Beach" -- and this is on

the proposed plan -- "and connecting it will be such a small part of this new district that you are creating that whoever will represent us will not be sensitive to our needs as is the present." Manhattan Beach was returned.

Avram Hecht, executive director of the Jewish Community Council of Canarsie, in requesting that the Jewish community of Canarsie be kept whole. Now it is totally within the 19th SD.

Hazel Younger, president of the board of directors of the Patrick E. Gorman Housing Company, in requesting several communities be returned to Senator Sampson: "I appear here today with a heavy heart" - and again, this is about the proposed plan - "and a great concern regarding the proposed redistricting, which would affect Brownsville, Canarsie, and East Flatbush. I pray that the task force will hear the voices of our communities. Let us keep our Senator, Senator John Sampson." It was done.

I'd like to move into the Bronx. Mr. David Burrell, African-American, resident of the North Bronx, which is served by Senator

Ruth Hassell-Thompson, says he is in full support of the task force Senate plan for the Bronx and Westchester. Agrees with Senator Skelos that the district should be kept the way it has been drawn.

Ms. Monica Berry, African-American and president of the Parkside Association, supports Senator Ruth Hassell-Thompson, agrees with Senator Skelos that the district should be kept the way it has been drawn.

Mr. Juan Palanco, Hispanic. He is not happy with the alternative plans that draw Senator Velella's district into Queens, thinks that it is a political gerrymandering, in response to Senator Dollinger's question. The Bronx does not share the same issues as Queens. Thinks it is acceptable to draw lines based on the relationships a community develops with their legislator.

Mr. Garth Merchant, African-American, former resident of the Bronx who now lives in Queens, does not support the Velella district going into Queens. The two counties have nothing in common.

Mr. Manny Sanchez, Hispanic,

believes that the Senate Majority plan is well-thought-out for the Bronx and Westchester, which are very similar in its composition.

Mr. Dwayne Jenkins, vice president of the Residents Council of Throgs Neck, supports the lines drawn for Senator Velella's district.

Mr. Joseph Thompson, African-American, member of the Community Board 11, he supports Senator Velella and Senator Hassell-Thompson's districts the way they were drawn by the Senate Majority. He hates to see everything equated along racial lines because he believes that his community and its present leadership works for all the residents of the Bronx.

These are but a few of the individuals that came and testified at our hearings, where I have some of the testimony. I'd like to go even further.

In Queens, the proposed 14th Senate district, Senator Malcolm Smith's district, reunites the Rockaway Peninsula, as indicated during the Queens hearing. And of course, as

I mentioned earlier, the Senate District 13 is a 54.2 percent voter age Hispanic district.

And northern Manhattan's neighborhood of Washington Heights was reconfigured to make it whole and within a single Senate district, indicated in testimony received from the Dominican Hispanic community. Incidentally, a single northern Manhattan Senate district was also advocated in the testimony from former State Senator Franz Leichter.

So, Mr. President, in conclusion, I believe the plan that is before the Senate, which passed the Assembly overwhelmingly, is constitutionally sound, follows the dictate of the State Constitution, follows the dictates of judicial precedence. And what's also, I think, extremely important, follows the testimony of hundreds if not thousands of individuals who testified at the meetings of the task force.

Mr. President, I move for the adoption of the legislation.

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

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

SENATOR CONNOR: Slow roll call.

ACTING PRESIDENT KUHL: Are there five Senators asking for a slow roll call? Please rise. There are.

We'll call the roll slowly.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Andrews.

SENATOR ANDREWS: No.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Aye.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Yes.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: No.

THE SECRETARY: Senator Brown.

(No response.)

THE SECRETARY: Senator Bruno.

(Senator Bruno was indicated as voting in the affirmative.)

THE SECRETARY: Senator Connor.

ACTING PRESIDENT KUHL: Senator Connor, to explain his vote.

SENATOR CONNOR: Thank you, Mr. President. I just want to correct something that Senator Skelos said, not by way of fighting but by way of what we call covering ourselves in the district.

I don't know whether by -- I know ten years ago there was a bill in a chapter to move the Hassidic community in Williamsburg back into my district. Senator Skelos, in his remarks, said that one of the changes they made was to return the Jewish community in Williamsburg to my district.

That's not quite true. It is literally divided in half. And half of the Jewish residents of that neighborhood have been moved back into my district, but the other half remain in the adjacent district.

I vote no.

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

Continue to call the roll slowly.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator

Dollinger.

SENATOR DOLLINGER: No.

THE SECRETARY: Senator Duane.

SENATOR DUANE: No.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Yes.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Yes.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: No.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: Yes.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hassell-Thompson.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson, to explain her vote.

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

I had not intended to speak; I was just going to cast my vote. But in the

reading by Senator Skelos, he read about the constituents who came forth to the committee to speak on behalf of the district that had been drawn on my behalf and to support that district. I thank them, and I also thank members of my colleagues who assisted in making this district look the way it looks.

But I cannot vote for it. And I cannot vote for it only because the selfishness with which I needed to keep my district together was what motivated me to accept this vote.

That is not a condemnation, that is merely a change of my position because one of the things that I forgot for a moment was how I got here. I got here because my district is a Voting Rights district.

And I cannot, in good conscience, if I do believe the findings that this is in juxtaposition to something that helped to bring me here, that I could vote against it.

So therefore, Mr. President, I have to cast a no vote on behalf of this plan.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson will be recorded in the

negative.

Continue to call the roll slowly.

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: No.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Aye.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator L.

Krueger.

SENATOR KRUEGER: No.

THE SECRETARY: Senator C.

Kruger.

SENATOR KRUGER: Yes.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: No.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Yes.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Aye.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Aye.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: Yes.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Rath, excused.

Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: Yes.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: No.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator A. Smith.

SENATOR ADA SMITH: No.

THE SECRETARY: Senator M. Smith.

SENATOR MALCOLM SMITH: Yes.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: No.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Aye.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT KUHL: Call the absentees.

THE SECRETARY: Senator Brown.

SENATOR BROWN: No.

THE SECRETARY: Senator Nozzolio.

(No response.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes, 40. Nays, 19.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there are several committee reports at the desk.

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

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

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

Senate Print 3772A, by Senator Maziarz, an act to amend the Environmental Conservation Law;

4467A, by Senator Marcellino, an act to amend the Agriculture and Markets Law;

4786C, by Senator Marcellino, an act to amend the Environmental Conservation Law;

6207, by Senator Marcellino, an act to amend the Environmental Conservation Law;

6209A, by Senator Marcellino, an act to amend the Environmental Conservation Law;

6567, by Senator Marcellino, an act to amend the Environmental Conservation Law.

6574, by Senator Marcellino, an act to amend the Environmental Conservation Law;

6575, by Senator Marcellino, an act to amend the Environmental Conservation Law;

And Senate Print 6576, by Senator Marcellino, an act to amend the Environmental Conservation Law.

All bills ordered direct to third reading.

ACTING PRESIDENT KUHL: Without objection, all bills are ordered directly to third reading.

Let's have a little order in the

house, please. Session is still in. Members take their discussions out of the chamber if you need to have them.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, with unanimous consent may I be recorded in the negative on Calendar Number 440.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Paterson will be recorded in the negative on Calendar Number 440.

SENATOR PATERSON: Thank you, Mr. President.

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

SENATOR DOLLINGER: Mr. President, like Senator Paterson, may I have unanimous consent to be recorded in the negative on Calendar Number 440.

ACTING PRESIDENT KUHL: Without objection, hearing -

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT KUHL: -- no objection, Senator Dollinger will be recorded

in the negative on Calendar Number 440.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I would like unanimous consent to be recorded in the negative on Calendar 427, 434, and 440.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 427, 434, and 440.

Senator Smith, why do you rise?

SENATOR ADA SMITH: Thank you, Mr. President. Having been in Finance, I request unanimous consent to be recorded in the negative on Calendar Number 427.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Ada Smith will be recorded in the negative on Calendar Number 427.

Senator Hevesi, why do you rise?

SENATOR HEVESI: Thank you, Mr. President. I rise to request unanimous consent to be recorded in the negative on Calendar Number 440, Senate Print 6458.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Hevesi will be recorded in the negative on Calendar Number 440.

Senator Skelos.

SENATOR SKELOS: Mr. President, during the debate we did not call any committee meetings. So there will be an immediate meeting of the Health Committee in the Majority Conference Room.

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

Senator Skelos.

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

ACTING PRESIDENT KUHL: We will return to the order of motions and resolutions.

There is a privileged resolution by Senator Meier at the desk. I'll ask the

Secretary to read the title.

THE SECRETARY: By Senator Meier, Legislative Resolution Number 4846, commemorating the 175th anniversary of the Town of Kirkland, to be celebrated April 13, 2002.

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

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, Resolution 4750, by Senator Spano, was adopted previously. It congratulates former Senator Flynn on his 90th birthday. So with the consent of the Minority, I'd like to put all members of the Senate on the resolution.

ACTING PRESIDENT KUHL: The chair will direct that all members be placed on the privileged resolution by Senator Spano. I'll

direct the Secretary to do that.

If there's any member who wishes not to be on it, they should notify the desk accordingly.

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Saland, I wish to call up his bill, Print Number 5131, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 245, by Senator Saland, Senate Print 5131, an act to amend the Family Court Act.

ACTING PRESIDENT KUHL: Senator Libous.

SENATOR LIBOUS: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT KUHL: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT KUHL: Senator

Libous.

SENATOR LIBOUS: Mr. President, I now offer up the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business, I move we adjourn until Monday, April 15th, at 3:00 p.m., the intervening days being legislative days.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until Monday, April 15th, at 3:00 p.m., intervening days to be legislative days.

(Whereupon, at 2:22 p.m., the Senate adjourned.)