NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 29, 2002

3:09 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order.

May I ask everyone present to please rise and join me in reciting the Pledge of Allegiance to the Flag.

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

ACTING PRESIDENT MEIER: The invocation will be offered by the Reverend Isaac Nyeayea, First United Christian Church of Staten Island.

Reverend.

REVEREND YOUNG: It's an honor for me to be here today, and I thank God for making it possible for us to be here.

I would ask that you please allow me to introduce to you our former president of Liberia, and he is here with me.

I'm going to read one scripture from the Book of Psalms, Section 33, Verse 12, which says: "Blessed is the nation whose God is the Lord, and the people whom He has chosen for His own inheritance."

Let us bow our heads and pray. Our

Father, our God, before You this afternoon we have assembled here to ask Your presence here among us in the person of the Holy Spirit. Lord, we thank You for making this assembly today possible.

And we pray that as our leaders get together to discuss and decide on issues that will affect us as a state, we pray that Your Holy Spirit will lead them to do and to say what is good for us and what is appropriate for us.

And we thank You, and we pray that You will bless them continuously, that they will be able to be governed by Your Spirit to do what You will have them to do.

We thank You and we bless You. In Jesus' name, we pray, amen. Amen.

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, April 28, the Senate met pursuant to adjournment. The Journal of Saturday, April 27, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MEIER: Without

objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

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

Senate Print 6, by Senator Bruno, concurrent resolution of the Senate and Assembly;

535A, by Senator Hoffmann, concurrent resolution of the Senate and Assembly;

834, by Senator Morahan, concurrent resolution of the Senate and Assembly;

2817, by Senator Volker, concurrent resolution of the Senate and Assembly;

2938, by Senator Lack, an act to amend the Surrogate's Court Procedure Act;

3181, by Senator LaValle, an act to amend the Real Property Law;

3339, by Senator DeFrancisco,

concurrent resolution of the Senate and Assembly;

5374, by Senator Volker, an act to amend the Court of Claims Act;

6181, by Senator Morahan, concurrent resolution of the Senate and Assembly;

6912, by Senator Lack, an act to amend the Estates, Powers and Trusts Law;

6934, by Senator Lack, an act to amend the Surrogate's Court Procedure Act;

7023, by Senator Saland, an act to amend the Family Court Act;

And 7318, by Senator Lack, an act relating to prohibiting.

Senator Hoffmann, from the Committee on Agriculture, reports:

Senate Print 534, by Senator Hoffmann, an act to amend the Agriculture and Markets Law;

1772, by Senator Kuhl, an act to amend the Agriculture and Markets Law;

2315, by Senator Kuhl, an act to amend the Agriculture and Markets Law;

6401A, by Senator Larkin, an act to

amend the Agriculture and Markets Law;

6432, by Senator Hoffmann, an act to amend the Agriculture and Markets Law;

And Senate Print 6526, by Senator Hoffmann, an act to amend the Agriculture and Markets Law.

All bills ordered direct to third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator McGee.

SENATOR McGEE: Thank you, Mr. President. Amendments are offered to the following Third Reading Calendar bills.

Sponsored by Senator LaValle, page 5, Calendar Number 37, Senate Print 4889.

Sponsored by Senator Morahan, page 15, Calendar Number 312, Senate Print 2457.

Sponsored by Senator Morahan,

page 15, Calendar Number 317, Senate Print 3951.

Sponsored by Senator Morahan, page 26, Calendar Number 522, Senate Print 350.

Sponsored by Senator Marcellino, page 36, Calendar Number 670, Senate Print 6072A.

Sponsored by Senator Saland, page number 40, Calendar Number 703, Senate Print 3216.

Sponsored by Senator Maltese, page number 44, Calendar Number 740, Senate Print Number 1849.

Sponsored by Senator Wright, page 45, Calendar Number 752, Senate Print 6230A.

Mr. President, I now move that these bills retain their place on the order of Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received and adopted, and the bills will retain their place on the Third Reading Calendar.

SENATOR McGEE: Thank you, Mr.

President.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator Skelos, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Print Number 738A, 5457, 5681.

ACTING PRESIDENT MEIER: So ordered.

Senator Skelos.

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

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

SENATOR SKELOS: Mr. President, if we could go to the noncontroversial calendar.

ACTING PRESIDENT MEIER: The Secretary will read the noncontroversial

calendar.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 355, by Senator Larkin, Senate Print 2653A -

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: Calendar Number 355, by Senator Larkin, Senate Print 2653A, an act to amend the Public Health Law, in relation to establishing.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 495, by Senator LaValle, Senate Print 6640A, an act to amend the Public Housing Law, in relation to establishing.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 515, by Senator Marcellino, Senate Print 6574, an act to amend the Environmental Conservation

Law, in relation to leasing of space.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 523, by Senator Farley, Senate Print 2841, an act to amend the Education Law, in relation to authorizing.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MEIER: The bill

is passed.

THE SECRETARY: Calendar Number 537, by Senator Morahan, Senate Print 1116, an act to amend the Agriculture and Markets Law, in relation to exempting.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 540, by Senator Hoffmann, Senate Print 6628, an act to amend the Agriculture and Markets Law, in relation to eliminating.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2 -

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 546, by Senator Stafford, Senate Print 6577, an act to amend the Public Officers Law, in relation to permitting.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 586, by Senator Saland, Senate Print 6748, an act creating the Hudson Area Public Library.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 605, by Senator Balboni, Senate Print 862, an act to amend the Civil Practice Law and Rules, in relation to prohibiting.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 660, by Senator Spano, Senate Print 4304, an act to amend the Public Health Law, in relation to exempting.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 688, by Senator Lack, Senate Print 1916, an act to amend the Real Property Tax Law, in relation to requiring the disclosure.

SENATOR DUANE: Lay it aside,

please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 693, by Member of the Assembly Gianaris, Assembly Print Number 7297, an act to amend the New York City Civil Court Act.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 698, by Senator Maltese, Senate Print 1842, an act to amend the Municipal Home Rule Law.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number

702, by Senator Stafford, Senate Print 3092, an act to authorize the County of Warren.

ACTING PRESIDENT MEIER: Read the last section.

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

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

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

SENATOR PATERSON: The bill is passed.

Senator Balboni.

SENATOR BALBONI: Yes, Mr. President. I'd like to call a meeting of the Finance Committee in the Senate Majority Conference Room.

ACTING PRESIDENT MEIER: There will be a meeting of the Finance Committee in the Majority Conference Room.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 706, by Senator Leibell, Senate Print 4943B,

an act to authorize the Town of Putnam Valley.

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

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 708, by Senator Meier, Senate Print 5397, an act to authorize the Town of Verona, Oneida County.

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

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 713, by Senator Skelos, Senate Print 6361, an act to authorize the assessor of the County of Nassau.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

SENATOR PATERSON: The bill is passed.

THE SECRETARY: Calendar Number 714, by Senator Skelos, Senate Print 6384, an act authorizing the assessor of the County of Nassau.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 722, by Member of the Assembly Tonko, Assembly Print Number 10383, an act in relation to sewer rent revenues.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 734, by Senator Nozzolio, Senate Print 6438, an act to amend the Highway Law, in relation to the New York State Scenic Byways System.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 735, by Senator DeFrancisco, Senate Print 6534, an act to amend the Highway Law, in relation to state highways.

ACTING PRESIDENT MEIER: Read the last section.

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

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

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 778, by Senator Leibell, Senate Print 6926, an

act to amend the Civil Service Law, in relation to providing.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

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

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

THE SECRETARY: Calendar Number 540, by Senator Hoffmann, Senate Print 6628, an act to amend the Agriculture and Markets Law, in relation to eliminating county legislative body approval.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Hoffmann, an explanation has been requested by Senator Paterson.

SENATOR HOFFMANN: Mr. President, this bill would eliminate the restrictions

that apply in a few counties right now that have prevented horse boarding from being treated as an agricultural activity.

We've gone to some lengths to codify all of our state laws, including our tax laws, to give horse boarding full agricultural recognition in New York State, but there remains, in a few cases, the unique exemption that does not allow horse boarding operations to be deemed as an agricultural production activity.

I think that those in this chamber recognize, from driving up and down Route 787, there's a large billboard that describes the importance of the horse industry, especially as it relates to thoroughbred racing for New York State. It is indeed a multi-billion-dollar industry in New York State. And clearly we want to do everything, especially during these difficult economic times, to encourage the horse boarding business.

It's a wonderful use of the land, it provides good environmental protection, it's a great way to promote New York State for

recreation purposes. And the horse boarding people have been most pleasant to work with during discussion of this bill.

I do want to point out that they are represented by New York Farm Bureau. In addition to the many different horse organizations in this state, the premier agricultural organization, Farm Bureau, strongly supports this measure.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. If the sponsor would yield.

ACTING PRESIDENT MEIER: Senator Hoffmann, do you yield for a question from Senator Duane?

SENATOR HOFFMANN: I'd be pleased to yield, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you.

Why would a county not approve of designating certain horse boarding operations as land use in agricultural production -- why would they not approve them being called

designated boarding operations as land use in agricultural production?

SENATOR HOFFMANN: Mr. President, Senator Duane is probably not aware of the fact that most counties do in fact approve of horse boarding operations and consider them an appropriate ag use. There are a few who don't. And apparently the Association of Counties decided that they interpreted this as some affront to their independence.

We think that, as every other ag activity is treated with state authority to be recognized as a viable ag use, we think horse boarding should be the same, notwithstanding the Association of Counties' desire to maintain this one archaic provision for themselves.

The reality is that virtually all counties with large horse boarding activities -- or small ones, for that matter -- have already ceded this issue. There remain only a few that have chosen not to.

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

yield.

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

SENATOR HOFFMANN: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Are there any counties that have not approved of this designation that the sponsor is aware of?

SENATOR HOFFMANN: Mr. President, I'm aware of one county in particular.

SENATOR DUANE: I'm sorry, Mr. President, the sponsor -- did the sponsor say the county?

ACTING PRESIDENT MEIER: Do you wish to ask Senator Hoffmann a question, Senator Duane?

SENATOR DUANE: Or to clarify, yes, Mr. President.

ACTING PRESIDENT MEIER: Senator Hoffmann, do you yield for another question?

SENATOR HOFFMANN: Mr. President, it might be easier, if Senator Duane is concerned about a specific county and its ag-use activities, if he indicated which

county and maybe we could reference that more specifically.

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

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

SENATOR HOFFMANN: Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: The sponsor said there was one county which had not approved of this designation. And I thought she had said the name of that county. But if she did, if she would repeat it. If she did not, if she would please let me know which one it is.

SENATOR HOFFMANN: Mr. President, I'm aware only of Ontario County that has any reluctance to embrace this provision.

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

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

SENATOR HOFFMANN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Does the sponsor have a concern that Ontario would be misusing its county sovereignty by not allowing for the approval of this designation?

SENATOR HOFFMANN: Mr. President, no.

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

ACTING PRESIDENT MEIER: Senator Hoffmann, do you yield?

SENATOR HOFFMANN: Yes.

ACTING PRESIDENT MEIER: Senator Hoffmann yields.

SENATOR DUANE: Has the State Association of Counties provided a memo in support of this legislation?

SENATOR HOFFMANN: Mr. President, the Senator from Manhattan is well aware of the fact that the Association of Counties has provided a memo in opposition to this. We're both reading from the same memo.

SENATOR DUANE: Thank you, Mr.

President.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the bill?

The debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 546, by Senator Stafford, Senate Print 6577, an act to amend the Public Officers Law, in relation to permitting.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: Mr. President, can we please lay this aside temporarily.

ACTING PRESIDENT MEIER: Lay the

bill aside temporarily.

SENATOR BALBONI: Thank you.

THE SECRETARY: Calendar Number 605, by Senator Balboni, Senate Print 862, an act to amend the Civil Practice Law and Rules, in relation to prohibiting.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Balboni, an explanation has been requested of Calendar 605.

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

This is a bill that has been passed by this house since 1998. It has been passed overwhelmingly. Unfortunately, due to the reluctance of the other house, this bill has never seen the light of day. And what's so dramatic is how we pass it every year and the bill on the other side just simply goes to Codes and dies there, in the graveyard of legislation.

This bill would prohibit individuals who commit a felony from suing for any injuries incurred as a result of the commission of that crime.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. Is Senator Balboni aware of the memorandum from the New York State Trial Lawyers Association?

ACTING PRESIDENT MEIER: Would you like Senator Balboni to -- interesting as that may be as it hangs in the air, would you like him to yield to a question?

SENATOR DOLLINGER: Yes, Mr. President. A week away dims the old habits.

ACTING PRESIDENT MEIER: Senator Balboni, do you yield for a question from Senator Dollinger?

SENATOR BALBONI: Yes, I do.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: Senator Balboni, are you aware of the memorandum from the New York State Trial Lawyers in opposition to this bill because of the consequences that it could have on certain plaintiffs and their relationship with governments and instances in which, like in McCummings' case, he was shot

in the back while running away from a police officer, and the excessive use of force against someone when it wasn't justified because of the threat of deadly physical force?

SENATOR BALBONI: Mr. President, yes, I am.

SENATOR DOLLINGER: And do you have any reaction to that, Senator Balboni, as to how your bill will affect that -

ACTING PRESIDENT MEIER: Excuse me, gentlemen. As much as I look forward to the time when the two of you debate this bill every year, if I could get in the middle and ask you to address the chair, please.

Senator Dollinger, do you wish Senator Balboni to yield for a question?

SENATOR DOLLINGER: I do indeed, Mr. President.

ACTING PRESIDENT MEIER: Senator Balboni, do you yield?

SENATOR BALBONI: Mr. President, I yield.

And I would just remark that you hide sarcasm better than anybody I know.

Mr. President, I would indeed like the opportunity or welcome the opportunity to comment on the Trial Lawyers memorandum in opposition.

As many people in this chamber know, memos in support or in opposition fly all across this Legislature from a variety of different aspects and perspectives. And oftentimes they contain information that is inaccurate. Well, I'd like to point out that there are a couple of points here that are blatantly inaccurate. And the first is the overall premise.

The Trial Lawyers memo -- and, by the way, they're great guys, a great group of guys and gals, really nice people. But what they say in this memo is just -- it stretches the envelope. Essentially what they say is that New York State already has a wrongful plaintiff rule.

And they cite the case of Barker versus Kallash, which I have discussed many times, a New York State Court of Appeals case in which the majority opinion essentially said that two kids making a pipe bomb that blows

up, one of the kids cannot sue the other kid for making the pipe bomb.

Well, the point of this statute is to codify -- that is, take the law that was enunciated by the court and put it into statute so that the courts will have clear direction as to how to apply the statutory law.

So right there they're making my case. In addition to which, they have three examples I'd like to go through.

The first is they say that suppose a teenager steals a car, the police apprehend the teen, who surrenders quietly and is handcuffed. They proceed to beat him with night sticks, leaving him brain damaged and crippled. That is the fact pattern that the Trial Lawyers set up. And they say under the bill the police would be immunized from civil liability.

Mr. President, nothing could be farther from the truth with this particular piece of legislation. This bill talks about being injured during the commission of a felony. It is physically impossible to be

committing a felony while in custody. The two of them are just completely -- that is a - I'm hearing -- I'm sorry, Mr. President, there is a chorus, there's a Greek chorus on this side of the chamber there, and it's kind of hard to concentrate. Perhaps you'll make a question about that when we stop.

The person is in custody, there is no felony. The felony has been stopped. The police then commit their own felony. They would be liable and responsible.

The next one. Suppose a shop owner drives past a jewelry store one night and sees a thief stealing a $5,000 watch. Since the thief is committing a felony, the shopkeeper could shoot him on the spot with no warning, no threat, and no civil liability. While the thief was stealing a watch, the penalty for theft is not the firing squad.

Again, complete and utter hyperbole. Nothing could be farther from the truth. The shop owner cannot use a weapon - and by the way, if the shop owner did use a weapon, they could -- depending upon how many people were injured or killed, they could

possibly face the death penalty. So I think that to say that there's -- an immunity from civil liability gives the shop owner the ability to do whatever they want to do is absurd on its face.

And lastly, the old spring gun. I went through this analogy last year with Senator Marty Connor. "Or consider a seasonal camp owner who decides to protect his property from burglary by setting up a spring gun. Again, under this bill, no civil liability would attach."

Absolutely untrue. None of these fact patterns would ever meet the test under this particular statute. And the Trial Lawyers know this.

So I believe that what we have here is, again, a lot of grandiose comments and an attempt to try to throw something against the wall and have it stick.

But what this bill represents is common sense, common sense that many of the members in this chamber have continued to recognize year after year after year. And again, if you go to the homeowner and you say

to him "Is it okay for someone for break into your house, put a gun to your neck, steal your money and then run down the stairs and as they're going out the door trip over your son's toy and then come and sue you?" they would say "Absolutely not, that's absurd." That's what this bill corrects.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if I might interrupt Senator Dollinger's questioning just for a moment to ask this question of Senator Balboni, if he would be willing to yield.

ACTING PRESIDENT MEIER: Senator Balboni, do you yield?

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

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, first of all, the colloquy was not in opposition to the bill. We were talking about how much we admire the tie you're wearing today.

But the question leads to -

leaving out the Trial Lawyers memorandum, what I don't understand, without any prompting from the Trial Lawyers, is how there is a proximate cause here. In other words, your bill, as I see it, does not establish the connection that would really be valid enough between the injury and the commission of a felony. The injury could take place at any point. I don't see the timeline really being measured in the legislation.

Now, I may be wrong, if you can clear that up for me. That's why I asked if I could ask a question right now.

SENATOR BALBONI: I would direct Senator Paterson to lines 9 to 12 of the bill: "and any action to recover damages for personal injury." So the plaintiff must be suing. The person convicted of the felony must be suing. They initiate the action.

Injury to property or wrongful death, any culpable conduct -- "culpable" meaning that the individual committed the act and is responsible for the act -- of the claimant or decedent resulting in a felony conviction. So the culpable conduct resulting

in a felony conviction, that is the precedent that must be achieved in order to have the complete bar.

So in other words, if an individual commits a felony and then sues as a result of the commission of that felony -- and obviously they would be suing for injuries -- then they would be barred.

So take the case of the person in handcuffs, they commit a felony. Now the police come and they put the handcuffs on them, put them back in the squad car, and a beating occurs. When was the felony committed by the individual who was culpable? Is it when they were in handcuffs? No. Is it when they are committing the actual felony? Absolutely.

That is what the bill does. And by the way, again, you know -- I want to make this point. People tend to lose sight of what we're talking about here. We are not talking about criminal penalties. We're talking about civil penalties. And when it comes to police brutality, that is the controversial aspect of this bill. People always say that this is

about police brutality. It is not.

I would argue that you have two remedies -- if this bill becomes law, without any question of the facts themselves, you have two remedies that are much better to deter a police officer from committing police brutality. Number one is criminal punishment and confinement. That is a much better deterrent against an individual officer.

The second is a federal civil rights lawsuit against the individual police officer and the department. A much better remedy. Because as a matter of course, there are statutes in this state that, from a statutory perspective, immunize police officers right now from conduct that occurs during the course of their duties.

SENATOR PATERSON: Mr. President, I won't belabor the point, but if Senator Balboni would be willing to yield.

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

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, I

just want to go back to the example you just gave me. There's a felony, there's an arrest and handcuffing of the defendant, the defendant is in a police van, there's a beating that occurs in the police van. And your statement was that that was not during the time of the felony, that's after the fact. That's what you said.

SENATOR BALBONI: That's correct.

SENATOR PATERSON: Okay. All I'm saying to you is I don't see in the bill where you actually define what you orally explained to us right here. If you can could just show me where it says that, I will -

SENATOR BALBONI: Mr. President, simplicity is something we should try to seek in the statute. Remember how this would be applied. This would be applied most often in a motion for summary judgment that would be brought at the outset of the civil action.

So the court would review the facts of the case on paper, not at testimony at trial. And that, by the way, should not be glossed over as an insignificant point. Preventing municipalities from having to go

through the practice of getting their attorney to go to court and hire witnesses and bring testimony and spend days in court is an expense that they shouldn't have to incur. This bill would prevent that.

So in the context of a motion for summary judgment, the court would say when was the felony committed by the culpable person, when did it end. You don't need witness testimony on that. That can be brought through the documents. And if you were in handcuffs, the felony is over. You're not committing a felony while you're in handcuffs. That's the point here.

And by the way, what we are doing now would provide for the guidance should any court decide that this is not the way to do this. Take a look at the case of Barker versus Kallash and find out -- read the majority opinion there and some of the opinions that follow. They specifically state what the common law is today. We're codifying that.

If there was no Barker versus Kallash and this was the first statute that we

ever took a look at in this context, I would agree with you, perhaps we should do something with a timeline. Well, first off, there's a very difficult drafting aspect in that, because the timeline changes with every case.

But since there already is the common law of this state, we are merely codifying that and bolstering that with this statute.

SENATOR PATERSON: Mr. President, I'm going to go back and look. I'm going to take Senator Balboni's word for it, because he has worked very hard on this, he comes prepared. He can actually quote the case law on this going back 108 years, Riggs versus Palmer, which was actually ten years before he and I started debating it.

(Laughter.)

SENATOR PATERSON: But all I'm saying -- on the bill, Mr. President -- is that I don't see how, let's say, the example that Senator Balboni gave, the beating in the van, can occur without the commission of the felony, where I think Senator Balboni separates it.

And that becomes important when we assess what the proximate cause is and very much really speaks to the heart of the issue here, which is what the timeline is with regard to the actual suit.

Which is why generally, in cases like this, we often are legislating the exception, like the McCummings case. It's horrible. And when I first read it, I think I wanted to go to a typewriter and write the same type of bill that Senator Balboni did. And I think collectively in this chamber we all feel the same way about that kind of thing.

But I would think that our courts would be responsible enough to close the doors through summary judgment when we see a perpetrator convicted of a felony trying to use our statutes or use the comparative negligence statute that we have on our law the way they do.

ACTING PRESIDENT MEIER: Senator Dollinger.

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

question?

ACTING PRESIDENT MEIER: Senator Balboni, do you yield?

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

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: A hypothetical question no less, Mr. President.

Will you yield to a hypothetical question?

SENATOR BALBONI: Yes, I will.

SENATOR DOLLINGER: Thank you.

Senator Balboni, in a darkened hallway in the city of New York, a man is cornered by the police. The police say to him: "You're under arrest, put your hands up in the air, and don't attempt to flee." At that point he is under arrest and they interpret his action as resisting arrest. When he reaches into his pocket, and they proceed to then shoot him 38 times, under your bill does he have a claim against the police or the City of New York?

SENATOR BALBONI: Yes.

SENATOR DOLLINGER: Even though he's involved in the culpable conduct of resisting arrest and failing to follow the directions of a police officer?

SENATOR BALBONI: Well -

SENATOR DOLLINGER: Excuse me, Mr. President. Will Senator Balboni yield to another question?

SENATOR BALBONI: Mr. President, I'd like to respond.

SENATOR DOLLINGER: I'm not sure I asked a question, Mr. President.

SENATOR BALBONI: I'm never really good at being the witness in a cross-examination on the floor of the Legislature.

Senator Dollinger, was the individual convicted of the felony of resisting arrest? That's the first inquiry you must make, and that's absent from your scenario.

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

ACTING PRESIDENT MEIER: Senator

Balboni, do you yield?

SENATOR DOLLINGER: Is it not a felony to resist arrest from a police officer and, when you're under arrest, to fail to follow the lawful direction of a police officer in this state?

SENATOR BALBONI: Mr. President, as we know, the conviction of a felony means that a jury of his peers has found that in fact he didn't resist arrest. So was he convicted of a felony? If he was, then that sets up this direction, this bar.

But it does not -- again, it does not stop the ability after the individual if it is in fact police brutality from, number one, going to a prosecutor and having a grand jury go after the police officer or bringing a civil rights action lawsuit.

As you and I both know, it is a much better venue to bring an action against a police officer as a federal civil rights case than it is in the state court. As a matter of fact, it's been -- in the Nassau County courthouse, at least, it's always been considered malpractice to go to the state

court when you have the federal courts right across the street, supposedly.

SENATOR DOLLINGER: Thank you, Senator Balboni.

Just briefly on the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I think the case that I'm talking about actually may bear some relationship to fact. Someone gets shot 38 times in the vestibule of a building when he's told he's under arrest and he eventually reaches into his pocket. The officers, of course, assume he's reaching for a weapon; he's not. It turns out he's not. But nonetheless, the question becomes would that person have a claim.

This bill is written so broadly as to say any culpable conduct. Senator Balboni says, Well, it would only apply if he were convicted. Of course, if you've been shot 38 times and you don't survive, nobody is ever going to, quite frankly, charge you with a crime or convict you of a crime.

So the question becomes -- he uses the phrase "decedent." And my question, my guess is if someone dies because of police excess, they're never going to be convicted of a crime. And Senator Balboni's goal of somehow insulating the police doesn't work.

I've debated this bill before. It is way, way, way too broad. Frankly, Barker against Kallash, which I'm very familiar with -- Senator Balboni and I have had a number of discourses about this bill in the back aisle of the Senate, Mr. President -- one of the worst decisions ever from the New York Court of Appeals, holding an 11-year-old who takes fireworks from someone's house, tries to put them in to create a big cherry bomb, blows off his fingers, can't bring an action against the guy who owned the fireworks in the first place.

He wasn't making a pipe bomb, Senator Balboni. He was making a firecracker. It's something that kids do. Terrible decision from the Court of Appeals. It shouldn't be codified into law.

This statute is way, way, way too

broad. It goes far beyond what's necessary. We have this debate every year, Mr. President. Senator Balboni keeps coming up with new pitches in an attempt to get my vote. But frankly, they're well outside. And I'm going to pass and take no swing at this one. I'll be voting in the negative.

ACTING PRESIDENT MEIER: Does any other member wish to be heard on the bill?

The debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 605 are Senators Andrews, Brown, Connor, DeFrancisco, Dollinger, Duane, Hassell-Thompson, L. Krueger, Paterson, Sampson, Santiago, Schneiderman, A. Smith, M. Smith, and Stavisky. Also Senator Montgomery.

Ayes, 42. Nays, 16.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 660, by Senator Spano, Senate Print 4304, an act to amend the Public Health Law, in relation to exempting dentists.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 688, by Senator Lack, Senate Print 1916, an act to amend the Real Property Law, in relation to requiring.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: Can we please lay this bill aside for the day.

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

THE SECRETARY: Calendar Number 698, by Senator Maltese, Senate Print 1842, an act to amend the Municipal Home Rule Law, in relation to punishment.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT MEIER: Senator Maltese, an explanation has been requested by Senator Duane.

SENATOR MALTESE: Mr. President, this is an act to amend the Municipal Home Rule Law, in relation to punishment for the violation of a local law.

State law prescribes the type of punishment which may be imposed by a local legislature for violations of local law. Current law allows punishment of a civil penalty, fine, forfeiture, or imprisonment.

This legislation would actually liberalize the law, in that it would allow the punishment of community service as an option for the violation of a local law.

As we know, there are certain

violations for which the punishment of community service would be much more suitable, either on its own or in conjunction with another of the currently described penalties. For instance, so-called graffiti vandals would be punished perhaps by community service of cleaning graffiti.

This bill has been before us since 1997, when I was asked to introduce it. The last time the bill moved in the Senate was in '98, when it passed unanimously. It's sponsored in the Assembly by Assemblywoman Audrey Pheffer and is currently in the Assembly Local Governments Committee.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. I was wondering if the sponsor could just provide me with a couple of other examples of local laws where -- a municipal law where the -

ACTING PRESIDENT MEIER: Do you wish Senator Maltese to yield?

SENATOR DUANE: Yes, if -

ACTING PRESIDENT MEIER: Senator

Maltese, do you yield for a question?

SENATOR MALTESE: Yes, I do.

SENATOR DUANE: If I may just finish.

-- where the punishment would be jail time.

SENATOR MALTESE: Mr. President, I assume it would provide the alternative punishment of community service where a local law that was not inconsistent with state legislation would provide for punishment.

Article 10 of the Local Government Law provides that the only place local law would govern is where the law was not inconsistent with or conflict with any state law. I'm looking at the case citations for local law and looking for specific transgressions.

I imagine they would probably apply to zoning, violation of zoning laws, violation of some local traffic laws, violation of local trespass laws, and so on.

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

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: Senator Maltese continues to yield.

SENATOR DUANE: Thank you.

At what point does a zoning violation become an act punishable by time in prison?

SENATOR MALTESE: Mr. President, it wouldn't necessarily apply, for instance, to a misdemeanor. This may very well apply to something that could be a violation.

For instance, you may have something to do with having a local village ordinance, perhaps, that you weren't allowed to put the produce beyond a certain point in the sidewalk or that you weren't able to open the -

ACTING PRESIDENT MEIER: Senator Maltese, excuse me just a second.

Can we have a little quiet in the chamber, please.

SENATOR MALTESE: I think where you would have situations, for instance, that

restaurants wouldn't put tables outside blocking a sidewalk or something like that.

I'm not saying they would necessarily provide for imprisonment. I'm saying that it would provide an alternative punishment.

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

ACTING PRESIDENT MEIER: Senator Maltese, do you yield?

SENATOR MALTESE: Yes. Yes. Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: If, under that example, a restaurant or a store was putting its produce out beyond a certain point, would not the better remedy for a business like that be to pay a fine than it would be for the owner to do community service? Why would we want to allow the owner to get off without paying a fine in a matter like that?

SENATOR MALTESE: Mr. President, in this theoretical case perhaps what they

could do is open after hours and provide a gathering place for local use or provide coffee and doughnuts, perhaps, to clubs or organizations that might want to meet there or something.

I think if the situation would occur, we could come up with community service that might be more appropriate than a fine.

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

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: I'm concerned that the genesis of this bill and the reasons for that bill are hazy.

Again, I think that the reason that we put fines into place, for instance, against businesses is that they have to pay back into the local coffers for violating the licenses or the consumer affairs laws which that company has been allowed to have.

And, you know, just to give -- you know, for a store owner to rake leaves, first of all, would probably displace WTW workers. But beyond that, why should, you know, a

certain youth group or a group like that get the largesse of someone else breaking a local law? I think that what they should do is pay into the public treasury in a case like that.

Now, if any of these crimes - well, they don't really seem to be crimes. But if any of them were punishable by time in jail, then I think community service would be a good idea. But I haven't really heard of the kinds of municipal laws that would be broken that would require time in jail.

So I don't really think that this is an appropriate remedy in lieu of paying a fine. But as I say, I may just not be understanding exactly what this bill is. But in order to err on the side of caution, I'm going to vote no on it.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard?

The debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 778, by Senator Leibell, Senate Print 6926, an act to amend the Civil Service Law, in relation to providing.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Balboni.

SENATOR BALBONI: Yes, can we please lay aside the Stafford bill for the day.

ACTING PRESIDENT MEIER: Calendar

Number 546 will be laid aside for the day.

Senator Balboni, that would complete the calendar.

SENATOR BALBONI: Could you please return to the reports of standing committees. I understand there are several committee reports to be accepted.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill direct to third reading: Senate Print 7306, by Senator Bruno, concurrent resolution of the Senate and Assembly.

ACTING PRESIDENT MEIER: Senator Balboni.

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

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed,

nay.

(No response.)

ACTING PRESIDENT MEIER: The report of the Rules Committee is accepted.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bills direct to third reading:

Senate Print 7, by Senator Bruno, an act to amend the State Finance Law;

And Senate Print 1585, with amendments, by Senator Stafford, an act to amend the State Finance Law and the Legislative Law.

ACTING PRESIDENT MEIER: Without objection, the bills will be reported to the Third Reading Calendar.

Senator Balboni.

SENATOR BALBONI: Yes, could we please take up Calendar Number 795 at this time.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 795.

THE SECRETARY: Calendar Number 795, by Senator Bruno, Senate Print Number 7306, concurrent resolution of the Senate and

Assembly proposing amendments to the Constitution.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator Maltese, an explanation has been requested by Senator Dollinger.

SENATOR MALTESE: Yes, Mr. President. This is a proposal that, while very dramatic and far-reaching, is a proposal whose time has come.

Initiative and referendum is very popular with the people of the entire United States. It is a proposal that in varied forms has been passed by the vast majority of states across our nation. Those legislators that would seek to keep the legislative process only to themselves I think are shortsighted. I think there should be a reexamination.

Senator Bruno has come forth, working together with Governor Pataki, as a Governor's program bill, together with many good government groups that have long advocated for these proposals, and come up with legislation that, while far-reaching, seems to answer every possible objection and

seems to comply with every good government approach to enlarge enlarging the elective franchise and giving the people an opportunity to participate directly in the government.

This particular legislation gives citizens a more direct role in the legislative process. Over half the states in the United States have initiative and referendum.

To clarify for the purposes of some students who, after this legislation is passed, will be studying it long after we're gone, initiative is a proposal placed on the ballot for a public vote. The referendum is the ability of citizens to reject or approve laws enacted by the Legislature.

This can be a method to enact budget reform, which we can all agree as we sit here is long overdue, implement tax cuts that are desired by the vast majority of people, and certainly for criminal justice reforms that could go directly to the people for approval.

This particular bill, this particular legislation, would require about 250,000 signatures, 5 percent of the statewide

voters who voted in the last gubernatorial election, just under 5 million. So those that would say that it is too dramatic, too innovative, how can you argue with a proposal that requires a quarter of a million people to affirmatively sign a petition.

Further, within that quarter of a million votes, it would require at least 5,000 signatures from at least three-fifths of the state's Congressional districts -- that would require 16 Congressional districts -- so that you would have a broad spectrum of support to have a minimum of 5,000 votes, so that you wouldn't be able to gather the quarter of a million votes from any one population center.

In addition, the constitutional amendments can only be voted on in elections when state legislators are on the ballot, and they must be approved in two separate elections.

What makes this I&R even more dramatic is the fact that the Governor's program bill and our bill, which is well supported by the Senate Majority, also permits initiative and referendum on city, town, and

village level.

As far as the petition process itself, it would be done by the same petition process that now puts all our candidates on the ballot. The jurisdiction would be conferred on the State Board of Elections and, for those local elections -- village, county, and town -- the jurisdiction would be conferred on the County Board of Elections. The signature requirements would remain the same as for legislative office.

Mr. President, the further protections are that a referendum measure rejecting all or part of a statute cannot be amended or otherwise reconsidered by the Legislature for a period of two years. Thus we can't have a Legislature projecting or forcing its own will on the electorate that has decided to implement referendum, initiative and referendum.

In addition, for the municipalities, the lesser of 5 percent of those voters who have voted in the last gubernatorial election or 30,000 signatures are needed to put initiative and referendum on

the ballot for the village, city or town.

Mr. President, this is a measure that here in New York, for the first time, is on the floor of the Senate. It is not the first time that it has been proposed by a variety and a vast number of legislators in both houses.

As I mentioned at the beginning, it is a measure whose time has come. And we should encourage voters to participate in the electoral process. This is a reform measure that should be supported by all parties and indeed will undoubtedly be supported by voters of all parties.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. If the sponsor would yield, please.

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: With the

exception of Maine, I was wondering if the sponsor could provide me with any other states in the Northeast that have initiative and referendum.

SENATOR MALTESE: Mr. President, I'll go beyond that. Thank you very much for the question.

We have initiative and referendum in the state -- while not in the Northeast, in the state of Alaska, where initiative was adopted in 1959 -

SENATOR DUANE: Through you, Mr. President, I'm only interested in the Northeast.

SENATOR MALTESE: -- in Arizona, where initiative was adopted in 1910; Arkansas, 1909; California, 1911; Colorado, 1910; Florida, 1972; Idaho, 1912; Illinois, 1970; Maine, 1908; Massachusetts, 1918; Michigan, 1908; Mississippi, where we're following in their footsteps, 1992; Missouri, 1906; Montana, 1904; Nebraska, 1912; Nevada, 1904, North Dakota, 1914; the great state of Ohio, 1912; Oklahoma, 1907; Oregon, 1902; South Dakota, 1898; Utah, 1900; Washington,

1912; Wyoming, 1968.

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

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: So the answer would be Massachusetts.

Not that I don't think we should follow Mississippi's lead. Of course, I do. Although we're going in that direction on our school funding, the way that Mississippi has gone.

But anyway, I do recall now that Massachusetts has referendum and initiative. That's how they eliminated rent control in that state, usurping local control in, for instance, the cities of Boston and Cambridge, where even though those municipalities had tenant protections, the state through referendum and initiative eliminated tenant protections in those municipalities, thereby depriving both the local governments of their sovereignty as well as the ability of people to stay in protected housing and to protect their housing stock.

I raised Maine because I've personally gone to Maine on several occasions to defend what the legislature has done there, which is to provide equal rights for lesbians and gay men in that state. And the legislature bravely -- which is something which our Legislature has not done -- but their legislature bravely passed civil rights protections based on sexual orientation. But unfortunately, the people in the state of Maine, because of a very well funded campaign by the religious -- or I shouldn't say the religious, the conservative right, overturned that protection.

So I'm well acquainted with the impact of referendum and initiative in Maine and now also, since my memory has been refreshed, about the impact of referendum and initiative in Massachusetts as well.

Of course, we could just pass a sexual orientation nondiscrimination act here in the State of New York. But as with so many other issues that our Legislature is unfortunately not brave enough to tackle those issues, we're going to call upon the people to

do our job for us.

Not just would it be on protections for people based on sexual orientation, but also tort reform, affirmative action, right to work, death penalty, legalization of marijuana, medical marijuana, death with dignity, ballot access, clean money/clean elections, campaign finance reform, maybe even the quarantining of people with HIV -- because from what I've seen in this body, there continues to be a terrible misunderstanding of how it is that HIV is contracted and spread - choice, the Equal Rights Amendment for New York State.

Of course, maybe if we had a hearing on some of these issues, we wouldn't really have to leave it up to people to make the decisions based on referendum and initiative. Perhaps, instead of waiting for everybody in the state of New York to be educated on every one of these issues -- which would be a terrific thing, but I actually thought that we were being elected to be educated on these issues and make hard decisions based on the people we represent and

what we believe would be good for the people of the State of New York.

Now, I understand the purpose of initiative and referendum. It's "oh, please, please, we can't do it on our own, make us do it, please. We can't do it. Make us do it through a referendum. We cannot do it." However, actually I think maybe we should take up some of these tough issues and make the decisions on our own.

It's interesting that there seems to be such broad support for this legislation from upstate communities, because it seems to me that on an issue like, oh, the dairy compact or that horse legislation that Senator Hoffmann just brought up, that actually upstate New York would be at a great disadvantage.

Downstaters were very concerned about the dairy compact. And, you know, in order to get something like not approving the dairy compact on the ballot, you would just have to get, what is it, 5 percent of the signatures of two-thirds of the Congressional districts, which would be all of downstate and

the suburbs and Long Island.

And I bet that if this were to go through and people were to go into the suburbs and to New York City and Long Island and get 5 percent of the voters in each Congressional district to sign a petition about not signing onto the dairy compact, the dairy farmers in upstate New York would be in very, very big trouble.

So I don't think this is particularly good for the upstate folks either. And I think if we're going to talk about keeping the state together, I thought that was the job of us legislators, to decide what was best for the state as a whole and to not just focus on our own parochial interests.

Now, one of the favorite initiative and referendum issues is term limits. So maybe we could just save the people the trouble of voting on it and vote in term limits for ourselves. As many of you know, I have a bill on this, which bill I would withdraw if we had any decent campaign financing in this state.

But we don't have any decent public

campaign finance in this state, and so once again I guess we'll have to leave it up to the people to impose that upon us, because we are unable to do it on our own.

You know, one of the states that I believe has this referendum and initiative is Texas. And they're so smart in Texas that they have referendum and initiative -- and you know what else? Their legislators only meet for six months every two years. And they get paid a heck of a lot less than us. They have a much smaller staff than we do.

And so if you think about it, maybe that's what we should do. We should get paid less, have less of a staff. Because what do we need it for? The people are going to decide, and there's really no need for us to get that involved in all of that.

Mississippi, Alaska, Missouri, Texas -- North and South Dakotas, or just one Dakota? I don't remember what was said.

Anyway, I understand that we want people to have a say in government. I do. But I was always under the impression that they did that by voting for us. Of course,

once they vote us in they can't get rid of us. But again, that's a matter of campaign finance reform more than anything else.

But if we go ahead and pass this and we admit that we want downstate to have even more power than upstate, if we want to admit that really we're not that necessary for these jobs, that we don't have to meet for very often, that we don't really need to get paid, that we don't really need to have staff -- I mean, since we're basically admitting that we can't do our jobs, then, you know, maybe that is the big reason to vote for initiative and referendum.

Anyway, I guess -- well, I'm going to vote against it. But I do see the point. Because if we're not able to take positions on things, if we're not able to really have hearings and to make the hard choices and to impose campaign finance reform on ourselves, then maybe what we should do is say, you know: "We can't make these hard decisions, you're going to have to make them for us."

Thank you.

ACTING PRESIDENT MEIER: Senator

Nozzolio.

SENATOR NOZZOLIO: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Nozzolio, on the bill.

SENATOR NOZZOLIO: Mr. President, my colleagues, I rise in support of this legislation. Clearly, because we are a government of the people, not a government of the government, and that we have nothing to fear from this legislation, in providing the opportunity for our citizens to decide measures for themselves.

One of the first measures I sponsored when I was elected to the State Senate was a measure that called for the establishment of initiative and referendum in New York State. The first cosponsor of this legislation was then-Senator George Pataki. Senator Pataki then, Governor Pataki now supports this legislation and believes, as I believe, that initiative and referendum is the very core of democracy, ensuring that all people have a voice in the democratic process.

That in spite of my colleague's

protestations to the contrary -- and I appreciate Senator Duane's newfound concern for upstate New York. But, frankly, New York State is the largest state in the union that does not have initiative and referendum.

There are other, larger states - California, Texas, Florida -- that have initiative and referendum. There are other states that have population disparities or projections like New York, with an upstate area and a downstate area. The state of Illinois, with its upstate being its urban area, its downstate being its rural area, Illinois has had initiative and referendum.

Illinois is a diverse state, as New York is. Illinois is an agricultural state, as New York is. Illinois has had initiative and referendum now for 32 years. The sky is not falling in Chicago. It's not falling in Springfield. It's not falling in East St. Louis. It is a situation that the people of Illinois and California and Florida and Texas have this right. It's time for New York to have this right. New Yorkers should have the right of this process.

It's a process, as Senator Maltese has indicated -- and I applaud Senator Maltese for sponsoring, being the lead sponsor of this legislation -- that one cannot walk up and down one city street and obtain the appropriate signatures to place a measure on the ballot. There is a requirement of diversity, a requirement of going around the state in a diverse area of the state, so that there is a check in the petitioning process to put a measure on the ballot, that it will have more than a localized impact, in the sense that it must be supported by a number of counties across New York.

And after initiative and referendum is established, I believe, it will be a reform that will serve much as a Damocles sword over the heads of the senators and assemblymen in this Legislature, that sword to be utilized by the people of this state, a clear message to the Legislature that as we now languish on issues of budget reform, particularly, where one house has over 76 sponsors for budget reform, yet we do not see in the New York State Assembly a measure for budget reform

coming to the floor because the Speaker of the Assembly has budget reform locked in, away from a vote, even though there are more cosponsors on a particular measure than is needed to pass that measure.

It's time that the voters, the citizens of this state had the opportunity of initiative and referendum. It's time because it needs certainly to send a clear signal to those legislators that if they do not reform state government, the citizens of this state will.

That's why, Mr. President, I support this measure, I'm proud to have been a cosponsor, a sponsor of this legislation through the years, and I'm very pleased that it has finally come for a vote in this body.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. It's an unusual occurrence when I stand up and find myself agreeing with my colleague from Monroe County, Senator Nozzolio, and disagreeing with my colleague from Manhattan, Senator Duane.

But, Senator Nozzolio, I do have one criticism of your comments. When you were talking about Illinois has survived initiative and referendum, and you talked about Chicago, I thought you would mention that one city of Republican fame, Peoria. Remember the place where Richard Nixon said "Peoria is still there," Senator Nozzolio. And sure enough, it hasn't been affected by initiative and referendum either. So on behalf of our departed president, Republican president, Mr. Nixon, I just had to mention that.

Mr. President, I rise today because I think initiative and referendum is all about reinvigorating New York's democracy. The effect of initiative and referendum in this state -- and it's pretty well proven -- is that the voter turnout, because it's driven in part by initiative and referendum, actually goes up about 5 to 8 percent in the states that have initiative and referendum. Senator Maltese mentioned that this will get people involved in their government. But it actually gets them to go to the polls more frequently. There's more discussion about the issues.

I believe one of the great things missing in New York's democracy is that it's very difficult for us to translate the debate that occurs on the floor of this building, either in this chamber or across the way, to get that discussion going out among the voters, for them to analyze the components of a difficult issue, for them to weigh what's really important, look at their own values, deal with the practicality of what the future of this state would be, and come to a reasoned decision.

I believe that initiative and referendum will trigger a renewed interest in the important issues of the day.

And, Senator Duane, I couldn't agree more that initiative and referendum poses risks. There's no question there are important things that I believe in that are subject to the risk of having to go before the voters.

But I hope one of the things that happens if we someday get initiative and referendum is that those of us who believe strongly in those issues, the ones you

described, whether it's choice or rights for gays or whatever those issues are, that we'll have the courage to stand up and go to our voters and say "This is the right thing to do. You ought to vote yes. You ought to be opposed to the phobias that oftentimes inhibit the political process. You ought to have the courage to stand up and say this is about justice and fairness." I believe that that debate would be good for the State of New York.

The other thing that I think is important to realize is the way that initiative and referendum works. Everybody looks at initiative and referendum as purely a choice between the referendum proposition and nothing else. That isn't what happens, as a practical matter.

If you look at the states that have initiative and referendum, there is a budding process that leads to an initiative, whether it's on automobile insurance rates or other issues. And what usually happens is that the legislature gets wind of the fact that there will be a referendum or initiative on an

issue, and it passes a series of changes or it tries to take care of the issue on its own.

So that when the vote on the initiative and referendum proposition comes up, it's not a vote between dismantling the insurance system and eliminating automobile insurance rates, it's usually a comparative vote between the proposition on the ballot and what the legislature has already done on an issue.

An effective legislature, working hand in glove with the initiative and referendum process, tends to temper the excesses that initiative and referendum may be disposed to. I think that that process can work.

One other thought. We in this state actually have initiative and referendum, we've already got it, except it only happens once every twenty years. It's called the constitutional amendment call. Senator Marchi shakes his head. He was here, I'm sure, when the 1957 call was on the ballot.

Then there actually was a constitutional convention called in the wake

of the reapportionment difficulties in the 1960s. That led to a constitutional convention in which people proposed many propositions for the restructuring of New York's government. Unfortunately, they agreed to put all of those propositions in a single ballot question, and it failed.

In 1977, and then five years ago in 1997, there were two referendum propositions where we asked the voters: Do you want to charter a constitutional convention to meet and redesign your government? I daresay I think I was the only person in this chamber who strongly campaigned for a yes vote because I thought that was the chance to get New Yorkers involved, much like initiative and referendum will get them involved in the future of their state. Unfortunately, the constitutional convention failed in 1997 as well.

But, Mr. President, I believe this is the right measure. I salute the fact that the Governor is backing this measure. I only regret that he didn't bring it forward in 1993. It might be a matter of our law right

now had he done so.

And I actually salute Senator Bruno for bringing it forward. I don't think there's any secret as to why that's happening, Mr. President. The polls clearly show that initiative and referendum is favored by about 75 percent of New Yorkers. They want a bigger say in their government.

And, Senator Nozzolio, you're correct that budget reform hasn't made its way from this chamber across to the Assembly, but there are also scores of bills that have been in the Assembly that have been tied up there that haven't made it to the floor of the Senate. We pass hundreds of one-house bills.

Initiative and referendum might force both houses to come to the table and to negotiate reasonable compromises. Because the danger is that if they don't, the voters will take up the petition process and once again force the Legislature to act. I don't think that's a bad process.

Mr. President, I'll conclude with one other thought. This is a good bill. It could be even better. And let me suggest how.

I think if we're going to be serious about initiative and referendum, we need to add a campaign finance portion to the initiative and referendum process. We should have the ability to restrict expenditures by those who are attempting to influence referendum and initiative propositions.

I think since we're creating that right as a matter of the constitution, we could create a constitutional restriction on the ability of anyone to pour their money into a single initiative and referendum question and therefore dramatically influence the outcome.

I think the thing to do is to use this opportunity to set up a campaign financing system that will apply to initiative and referendum propositions so that we make sure that big money doesn't unduly influence the initiative and referendum process. I think that would that would make this a better bill.

But nonetheless, I'm still prepared to vote for it, Mr. President, because I think this is all about energizing New York's

sclerotic democracy. And the only way to do that is to wake it up and to say to the people of this state: Now is your chance, we trust you, we trust you to make the right decisions about who to elect to office, we trust you to make the right decisions about issues that affect you.

My personal opinion is, Mr. President, if this becomes law, four or five years from now issues as diverse as automobile insurance, fair housing issues, affirmative action -- you name it -- all those issues will be part of the conversation at every dinner table in New York.

And that, Mr. President, is what the vision of democracy was all about, people reasoning among themselves as to what the best ideas are for their democracy. This bill gives us a chance to get there.

ACTING PRESIDENT MEIER: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. President. Would the sponsor yield for a copy of questions?

ACTING PRESIDENT MEIER: Senator

Maltese, do you yield for a question?

SENATOR MALTESE: Yes, Mr. President.

ACTING PRESIDENT MEIER: Senator Maltese yields.

SENATOR ADA SMITH: To get a fair understanding of this legislation, I'd like to ask you a couple of questions about the portion that deals with the municipalities and the cities. Let's use New York City as an example.

If a group wanted to put something on the ballot, I believe you said it was 30,000 signatures necessary?

SENATOR MALTESE: It would be lesser of 30,000 or the 5 percent of the people who voted in the last gubernatorial election.

SENATOR ADA SMITH: Thank you.

No county restrictions, no restrictions as to the boroughs?

SENATOR MALTESE: The section that it's in, Senator Smith, is page 5 - you're right, Tom -- it would be starting at line 42: "Signatures of registered electors

of such municipality equal in number to at least 30,000 or 5 percent of the votes cast in said city, town, village, or county for all candidates for governor at the last gubernatorial election, whichever is less."

SENATOR ADA SMITH: So in essence -

SENATOR MALTESE: You could gather them all in your Senate district, Senator Smith.

SENATOR ADA SMITH: Well, I was going to suggest that since you and I and probably Malcolm, we get about 8,000 to 10,000 signatures for our reelection, that if we had a referendum idea, the three of us could get it on the ballot easily.

SENATOR MALTESE: Mr. President, I have no doubt that there are many issues that we are in agreement with that we could put our heads and our petition gatherers together and be able to comply with the requirements of this legislation.

SENATOR ADA SMITH: The point that I'm attempting to make is that I'm in favor of this legislation, but it would be

very easy, you are making it easy for people to be able to participate in government. And that is what it should be about. Am I correct?

SENATOR MALTESE: Yes, that is correct, Senator Smith.

SENATOR ADA SMITH: Thank you, Senator Maltese.

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. Would the sponsor please yield, or would Senator Maltese please yield?

SENATOR MALTESE: Yes.

SENATOR HEVESI: Thank you, Mr. President. Just briefly.

Presumably, under this bill, when the petitions are circulated they would have to have on them the initiative or referendum wording on them as they're being circulated?

SENATOR MALTESE: Yes. Mr. President, the wording would be submitted to the Attorney General and the Attorney General would come up with a 100-word limitation to putting it into the proper form.

There's a safeguard here that even if the Attorney General didn't come up with the 100 -- the proper wording for the 100 words, that the wording that would be on the referendum or on the petition itself would be judged to have complied as long as it came up with a substantial compliance with the law.

SENATOR HEVESI: Mr. President, would the sponsor continue to yield?

ACTING PRESIDENT MEIER: Senator Maltese, do you yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you, Mr. President.

I wasn't going in this direction, but based on your last answer, you're not suggesting that the Attorney General is going to word the initiative and referendum, the Attorney General would be responsible for ensuring that it is of a certain size and the actual wording would still be left to whatever entity decided to attempt to place the initiative or referendum on the ballot; is

that correct?

SENATOR MALTESE: Yes. I think we're in somewhat an uncharted terrain.

At the same time, Mr. President, I don't believe that any Attorney General would seek to thwart the will of the people where you have a substantial number of the electorate wishing to put a question on the ballot.

SENATOR HEVESI: Thank you, Mr. President. Will the sponsor continue to yield?

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: He yields.

SENATOR HEVESI: Thank you.

Is there any process for a public hearing or discussion prior to the Attorney General attesting that this is the language we're going to use, or subsequent to the petitions being circulated, to change the language in conjunction with public discourse that arises out of the circulation of

petitions in a campaign to achieve the objectives of the entity that brought this initiative or referendum?

SENATOR MALTESE: Mr. President, no. The answer is no.

But I think that any sponsors of initiative and referendum would be guided by the past actions of the some 27 or 28 states that have varying forms of it.

In addition, any provision, any proposed ballot or petition wording it would seem to me would have to have a substantial amount of support. And in that gathering of people of like minds, you would have, I think, enough not only lawyers but enough people, public-spirited citizens that would come up with wording that would seem to accomplish the purpose of the initiators and at the same time be in accordance with the vast majority of the supporters of the proposal.

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

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you, Mr.

President. I thank the sponsor for -- or Senator Maltese for his patience and explanation.

I just took the rather circuitous step of drawing out arguments against this, though I am actually going to support this legislation. The reason I do that, and I'm taking a strange route in order to do it, is that I don't like initiative, I don't like referenda. There are a slew of problems with it.

One of them is the one I just articulated where, you know, you can have a proposal to have the government hand out $20 bills on the street corner, and I guarantee you I can come up with a way to word that that people vote against it. And we've seen this all the time.

And what we also have seen is in other states that have referenda and initiative, that those populations pass separate and directly conflicting referenda and initiative. It's happened. Where you cap the amount that you can be taxed and then you provide a certain tax for a certain particular

service to be provided.

So I don't like them. Notwithstanding the fact that it is -- it sounds democratic, and it is. I mean, this is true democracy. Referenda and initiative is true democracy, as in ancient Greece. What we do is here is representative democracy, and we actually don't do a very good job of that. Which is the reason why I'm going to ultimately support this bill.

But lots of problems with initiative and referenda. And I would suggest that if we are fortunate enough to pass this -- and I'm going to articulate the reason why I support it -- that Senator Dollinger's comments, which is the first I heard anybody articulate this, of campaign finance for this, is absolutely essential. It's a brilliant idea. I don't throw that out lightly.

Because one of the main problems with putting things on the ballot for everybody to vote on is that the limited, narrow interests that control the wording, they control the flow of information, that because they are generally well financed, that

influence needs to be compensated for by other entities who may not have the financial wherewithal and resources to do that.

So if we do this, and I hope we do it, I hope that somebody would listen to Senator Dollinger. It's a good idea.

Now, having said all of the problems that I have with initiative and referenda, Senator Duane stood up on this floor not too long ago and articulated a whole slew of reasons why this is a bad idea. And I agree with him on almost everything except the conclusion.

This broken system of government in Albany has to change. This legislative system is absolutely horrible. It is not a representative democracy, or it is only in name. This is a process that is constitutionally driven here in the Legislature. The reason why we don't have the campaign finance legislation that Senator Duane articulated which would, as has been replicated on the federal level -- and I believe the recent federal legislation on campaign finance reform will facilitate more

reforms federally. But the reason we don't have that here in New York State is the same reason why we don't have a slew of other reforms that more adequately and accurately reflect the will and beliefs of people in this state.

This process is broken. And though members of the majority in both houses -- and this is not just an indictment of the New York State Senate, this is an indictment of the New York State Assembly and the process that has evolved over the years that is -- I'm not going even going to lay blame at the legislative leaders. Because the legislative leaders here in Albany are operating within the confines of a system that is defined in the State Constitution.

If you believe in and understand and appreciate the precepts of how political entities will behave, people being political entities, the way our system of government works here in Albany is logical. It is also horrible public policy, a horrible public policy mechanism. This is bad government we do here. And I'm not casting blame on Joe

Bruno or Shelly Silver or anybody else. I'm casting blame on a process which is ironclad, dictated by the State Constitution.

And I'll tell you, Mr. President, in 1997, as Senator Dollinger brought out before, we had the option of having a state constitutional convention. I was wrong, Mr. President, in 1997. I spoke out against it, fearful of the changes that Senator Duane and some of my other colleagues have articulated that we will open up the State Constitution to potentially malevolent changes.

I have since, being a member of this house, being a part of this Legislature for the past three and a half years, completely changed my opinion on this. I'm willing to risk all of that. We must change the structure and the process.

If I could have my way, Mr. President, we would only have initiative and referenda to make constitutional changes to the legislative process of the State of New York. We can't do that. I understand why we can't do that. But I'm willing to go ahead and take the risk. Because if we are able to

make those fundamental changes, we, interestingly, won't need to have the system that we are going to put in place today.

Because then we would have true representative democracy. Then the voices of the people who this legislation presumes to speak for would be properly articulated by their representative officials in state government. That's us.

We can't do it now, as much as we'd like to, as much as we try to. And so as a last resort, I embrace this legislation, with the caveat that I want Senator Dollinger's financing of it.

But having said that, Mr. President, I don't think this is going to ultimately become law. So I use this position now as a bully pulpit because, short of making that change -- because again, I don't think we're really going to go ahead and do this - short of making that change, something has got to give. This is bad government we are practicing here in Albany. And no one person is to blame. The process is to blame. Let's fix it. This is one way to do it.

I'll be voting in favor, Mr. President.

ACTING PRESIDENT MEIER: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

I'm somewhat bemused here in the chamber listening to pieces of speeches that I've given over the years going back many, many years. Some people here who have served for 18 years will remember a few of the things that I talked about a long time ago from the other side of the aisle, about reform.

And I'm invigorated and encouraged to see this piece of legislation before us today because it makes such an indication of the change in the mood here in the Capitol over the last few years.

Certainly since Senator Bruno became the leader of this chamber we have seen many, many attempts at meaningful reform. And I know Senator Nozzolio spoke about the failures of other house to enact some of the other reforms that we have enacted. And I'm not going to dwell on those, because I would

like to focus instead upon the hope that I think this measure offers.

I was proud to put my name on this as a sponsor, along with Senator Bruno, as the prime sponsor, Senator Maltese, my distinguished colleague to my right, Senator Padavan, Senator Nozzolio, Senator Bonacic, Senator Seward, Senator Spano, Velella, Meier, and Kuhl.

And I recognize that this particular measure may go through a number of changes before it is ultimately adopted, and I suppose there is the possibility that it may never become a constitutional amendment in the State of New York. But the mere fact that we are standing here today debating it signals a milestone in the history of open government and the need for debate about reforms in this state.

I've carried bills that dealt with open meetings, that dealt with accounting of political contributions, that dealt with disclosure. And everything that I ever introduced in the area of open government was designed to bring greater accountability.

But in the end, it is the ability of the people themselves to enact change that would create the greatest presence for accountability in this state and would force this and all subsequent legislatures to remember to whom we are ultimately responsible.

I just particularly love Article 20, under initiative and referendum, on page 3 that reads, from line 19, Section 1, "Notwithstanding any other provision of this Constitution, the people reserve to themselves the power to propose laws and to propose amendments to the Constitution and to adopt or reject the same at the polls independent of the Legislature, and also reserve the power, at their own option, to so adopt or reject any act or section or part of any act passed by the Legislature."

Should this become law, it serves as a new check and balance upon the Legislature of the State of New York. And what I hear from my constituents in Central New York, in the 48th -- soon to be the 49th -- Senate District, is that they feel

this Legislature is woefully out of touch, lacks accountability, lacks a sense of responsibility to the people who send us here.

We read the editorial analyses, we see the letters to the editor, and people on the street say "You all just stay there forever, we don't even have the ability to defeat you, and what are you doing for us if you can't even pass a budget on time." And in fact, they're right, most of the time.

With initiative and referendum as the law of the land in this state, people who sit in this chamber and people who sit in the other chamber would no longer have the same kind of imperial attitude that we have seen in far too many instances.

It's not across the board. Much of it, as was described from across the aisle not too long ago, is because the system itself has become so moribund. It's time for it to wake up. And if this is the mechanism to wake it up, then let us go boldly in that direction.

Now, I recognize the risks along with everyone else. And let me say for the record that I worry -- as a representative of

many rural areas, I worry that some of the issues that affect my constituents could suddenly be demonized and be cast to the public in a totally unfair light, be subject to referendum, and be outlawed in this land.

I have already heard from friends who are in the New York State Food Harvesters Association because they realize that in other states initiative and referendum has caused a tremendous handicap on the activity which they, in a licensed and lawful way, engage in.

I also understand that people who hunt face some risks, I among them. As a licensed hunter in New York State, I would worry that people who suddenly characterize hunting in an unfair and inaccurate way could capture the limelight and momentarily take attention way from the reality of proper management of wildlife in this state and hunting could in fact be outlawed, or some portions of it could.

I want to be sure that we prevent those types of inappropriate use of referendum and initiative should it become law. Can I anticipate all of them? No, I don't think so.

But this is the beginning of a magnificent debate that this state has needed for years, and I'm proud to be part of it.

I thank Senator Bruno for having the courage to bring this chamber into the right century by putting initiative and referendum before it today.

ACTING PRESIDENT MEIER: Senator Krueger.

SENATOR LIZ KRUEGER: I rise to speak on the bill.

When I ran for this office, I was still undecided about whether I could support I&R because of many of the issues raised before us today -- the concerns about some of the states that have moved down that road and have resulted in conflicting legislation where, as one person said today, they can pass a cap on taxes and then mandate expenditures.

But it's only taken me eight weeks in this body to realize that in fact I do support I&R legislation and I do believe that it is critical to open up the debate in New York State to allow the public more say in the decisions that are made here.

I urge that we do follow through on campaign finance reform, and if we don't attach it to this legislation, that I will push for it to be one of the first issues brought to the ballot in I&R. Because this state cannot go forward unless we address the issues of campaign finance reform.

I am also optimistic that voters in this state will do the right thing. I am encouraged by the research that shows more people will come out to vote. I am excited about the possibility that the voters might determine that by the time we have redistricting ten years from now, it will be an independent commission that makes the decisions about redistricting.

I believe that the people of this state, in initiative and referendum, would support choice, would support fair education funding formulas for our schools, would support health insurance and other insurance reform, and that in fact it will force us to be a better Legislature.

So I am not only voting for this bill today, I am telling you that while some

people took years to come to the conclusion that the way we fix government is to explore greater voter participation through initiative and referendum, I like to believe I'm a quick learner, it took me eight weeks in this house to come to that conclusion.

And I will vote yes.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: Liz is a lot quicker learner than I am. And I like that you scribbled your notes on a napkin, which shows how conservative you are.

Let me say that in the past I have been against I&R. And I was against it because I come out of a good government group. As many of you know, I was the president of the League of Women Voters. And I felt that I was elected to take those hard votes.

And I also felt that too often we have seen that I&R has been influenced, very much so, by big money, by corporate America. We have seen some pretty catastrophic things happen in some of the other states in our union. That is not New York.

And I feel that I could take the hard votes. I feel that I, you know, have enough direction and understanding to do that. But they just -- we don't seem to get many of the hard votes here. They just don't come up. I would like them to come up, and they haven't.

And that's why I am changing my opinion too. But it took me a lot longer than eight weeks to arrive at this.

I feel, as many of you, that our government is really not functioning. I think we are dysfunctional. The fact that we haven't passed a budget on time in the 18 years I'm up here is an embarrassment to me. I go home and I hardly know what to tell my constituents, because I firmly believe it is possible.

I believe very, very strongly in campaign finance reform, but we can't seem to get that moving here. I believe in legislative reform. There's so many things that I would like to see happen that hasn't happened.

And while I am somewhat concerned

about what will happen if the people of our state do have their say, I am encouraged by the fact that our population is not the population of some of these other states that had me very concerned by past I&Rs in those states. And I think our state is more progressive, its population is interested in many of the things that I'm interested in that I would like to see happen in our state government.

And I guess because I am inherently an optimistic person, I'm going vote in favor of this and hope that it will come up also in the other house and that maybe, through our good offices, we can also influence what happens through the I&R process.

So I will be voting yes.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the resolution?

Debate is closed.

The question is on the resolution. All those in favor -- Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Just to

explain my vote, Mr. President.

ACTING PRESIDENT MEIER: Well, let me start the roll call.

The question is on the resolution.

The Secretary will call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Thank you, Mr. President. Just two quick comments on some of the things that were said.

One is Senator Oppenheimer talked about big money in the initiative and referendum process. Senator Oppenheimer, I'd just suggest that big money is already a huge part of what goes on in this state, except those contributions all come through some other door. They don't come through the front door where it's easily recognizable, they all come through the back door, through party committees, through soft money, through contributions to candidates.

If we had initiative and referendum, you'd at least know that the tobacco industry is pouring millions of

dollars in, and that could be a factor in your judgement about tobacco legislation. I think at least it would be upfront and aboveboard.

And with respect to Senator Hoffmann's comment about the Legislature being woefully out of touch, the perception that somehow the Legislature is woefully out of touch, I agree, Senator Hoffmann. The problem we have in this state is that that's what the people think about the Legislature, but they don't think about their legislator that way. That's the problem.

All of us that win elections, we keep coming back and yet we don't do what the people want -- and they still send us back. That would suggest that they don't believe they have any other alternative.

By opening the door to initiative and referendum, Mr. President, we would give them some alternative for them to take their frustrations, come to government, petition us for change. If we don't do what they want, give them the ability to put it in place themselves.

Mr. President, I hope this becomes

law. I don't want to debate it any longer. I'd like to act under it. I will lead the initiative and referendum process for campaign finance reform. When we get it, we'll have all the changes we need and this Legislature will do the job it's always been sent here to do. We will build bipartisan coalitions, we will govern the way the people want, and we won't ever need to do it again.

If we get that, I will start it, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger will be recorded in the affirmative.

Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I am voting in the affirmative because I think the general concept here is perfectly valid.

I do want to note, however -- and I think this is consistent with the fact that I think this particular bill is more political than legislative in intent and has more to do with the Governor's other needs than with any

actual effort to change the law -- I want to note that there's a fundamental flaw in this legislation that, if we ever get serious about passing initiative and referenda, I hope will be corrected.

And that's the section of the law that prevents us, as a Legislature, from correcting any problems with initiative and referenda for a period of two years.

In the City of New York, we have initiative and referenda. That's how we got term limits. But the legislature can act. It's a law like any other law. The legislature may face the wrath of the voters if they try and undo an initiative, but they have the power in case something comes up.

This would tie our hands for two years. And I would urge that as we bang this issue around -- because it's not going to get resolved this year -- we take that provision out of it as we move forward. I'm hopeful we can pass a better bill at some point in the future.

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

SENATOR STAVISKY: To explain my vote, Mr. President.

I think that Robert La Follette and the people from the progressive era would be very proud of us today. And I wish to vote in the affirmative.

Thank you.

ACTING PRESIDENT MEIER: Senator Stavisky will be recorded in the affirmative.

Senator Duane, to explain his vote.

SENATOR DUANE: Thank you, Mr. President.

I'm going to reiterate my no vote. And I do want to say that I would make a - well, I guess I can't make a wager, because I'm not sure that's legal. But in my head I'll make a wager with myself that those that vote in the affirmative on this, even after initiatives and referendums get passed, will not be cutting back on their salaries or the time they spend in Albany or their staffs, even though their work load will be greatly diminished because actually they won't have to make that many hard decisions.

And interestingly, the one hard

decision which everyone here seems unable to make, regarding the budget, is not something which will probably be covered by initiative and referendum.

So, you know, I'm not sure why it is that those of you who are voting for this really think that there's of the role for you to be here at all, except to get the budget done, which you don't seem able to get it done.

So I'm voting no, Mr. President. But I'll see whether I beat myself in this wager. Thank you.

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

Senator Bonacic, to explain his vote.

SENATOR BONACIC: Back in 1992, I cosponsored this legislation of initiative and referendum with Assemblyman Nozzolio.

And I am a cosponsor of this again, for the simple reason that I believe in the intelligence and wisdom of the people we serve.

When we first ran for office, we

said we will be their voice, we will be their servant, and they will be our master. This is the most powerful weapon you can give your constituents. It gives the people a voice and it strengthens democracy.

For those simple reasons, but very powerful reasons, my vote is in the affirmative. Thank you, Mr. Speaker.

ACTING PRESIDENT MEIER: Announce the results.

THE SECRETARY: Ayes, 57. Nays, 3. Those voting in the negative are Senators Duane, Hassell-Thompson, and Montgomery.

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Balboni.

SENATOR BALBONI: Mr. President, can we go back to motions and resolutions.

I believe there's a privileged resolution at the desk by Senators Marchi and Gentile, and I would ask that the title be read.

ACTING PRESIDENT MEIER: Motions and resolutions.

The Secretary will read the

privileged resolution.

THE SECRETARY: By Senators Marchi and Gentile, Legislative Resolution Number 5232, honoring John Bruno of Staten Island for his long and distinguished service to his profession, his community, and his church.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: Move to adopt the resolution, please.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Balboni.

SENATOR BALBONI: Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: No, there is not.

SENATOR BALBONI: There being no further business, I -- whoops.

Mr. President, please recognize Senator Dollinger.

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

SENATOR DOLLINGER: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar Number 713 and 714, Mr. President.

ACTING PRESIDENT MEIER: Without objection, Senator Dollinger will be recorded in the negative with regard to Calendars 713 and 714.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: Now, there being no further business before the body, I move that we adjourn until Tuesday, April 30th, at 3:00 p.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Tuesday, April 30th, at 3:00 p.m.

(Whereupon, at 5:05 p.m., the Senate adjourned.)