NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 14, 2003

11:05 a.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 repeating the Pledge of Allegiance to the Flag.

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

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

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

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, May 13, the Senate met pursuant to adjournment. The Journal of Monday, May 12, 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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator McGee.

SENATOR McGEE: Mr. President, on page 72 I offer the following amendments to Calendar Number 449, Senate Print Number 608, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR McGEE: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Thank you, Senator.

Senator Skelos.

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

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

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there are substitutions at the desk.

ACTING PRESIDENT MEIER: Yes, there are.

SENATOR SKELOS: Could we make them at this time.

ACTING PRESIDENT MEIER: The Secretary will read the substitutions.

THE SECRETARY: On page 5, Senator Maziarz moves to discharge, from the Committee on Racing, Gaming and Wagering, Assembly Bill Number 6217 and substitute it for the identical Senate Bill Number 2626, First Report Calendar 801.

On page 6, Senator Hannon moves to discharge, from the Committee on Health, Assembly Bill Number 6907 and substitute it for the identical Senate Bill Number 1817A, First Report Calendar 816.

On page 6, Senator Rath moves to

discharge, from the Committee on Health, Assembly Bill Number 2800 and substitute it for the identical Senate Bill Number 2045, First Report Calendar 817.

On page 10, Senator Leibell moves to discharge, from the Committee on Finance, Assembly Bill Number 490 and substitute it for the identical Senate Bill Number 1677, First Report Calendar 849.

On page 13, Senator Velella moves to discharge, from the Committee on Transportation, Assembly Bill Number 3039 and substitute it for the identical Senate Bill Number 2985, First Report Calendar 884.

On page 14, Senator Maltese moves to discharge, from the Committee on Transportation, Assembly Bill Number 608 and substitute it for the identical Senate Bill Number 4106, First Report Calendar 889.

On page 15, Senator Flanagan moves to discharge, from the Committee on Codes, Assembly Bill Number 7048B and substitute it for the identical Senate Bill Number 3061A, First Report Calendar 901.

On page 16, Senator Volker moves to

discharge, from the Committee on Codes, Assembly Bill Number 7003 and substitute it for the identical Senate Bill Number 4853, First Report Calendar 911.

On page 16, Senator DeFrancisco moves to discharge, from the Committee on Environmental Conservation, Assembly Bill Number 1957 and substitute it for the identical Senate Bill Number 4190, First Report Calendar 917.

On page 19, Senator Marcellino moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 6927 and substitute it for the identical Senate Bill Number 2101, First Report Calendar 940.

And on page 22, Senator Nozzolio moves to discharge, from the Committee on Local Government, Assembly Bill Number 1812A and substitute it for the identical Senate Bill Number 2236A, First Report Calendar 971.

ACTING PRESIDENT MEIER: Substitutions ordered.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you,

Mr. President.

On behalf of Senator Parker, I'd like to move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Bill Numbers 4268, 4270, 4272, 4273, and 4274.

ACTING PRESIDENT MEIER: So ordered.

SENATOR LIZ KRUEGER: Thank you.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, there's a privileged resolution, 1663, at the desk by Senator Krueger. Could we have the title read and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read the title.

THE SECRETARY: By Senator L. Krueger, Legislative Resolution Number 1663, honoring Donald Meyers upon the occasion of his designation as recipient of the Life-Time Achievement Award on May 15, 2003.

ACTING PRESIDENT MEIER: The

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Skelos.

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

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

Senator Skelos.

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

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

THE SECRETARY: Calendar Number 37, by Senator Bonacic, Senate Print 422, an

act to amend the Penal Law, in relation to establishing.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 214, by Senator Balboni, Senate Print 525, an act to amend the Insurance Law and the Public Health Law, in relation to the confidentiality.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 120th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 224, by Senator Hannon, Senate Print 2351, an act to amend the Public Health Law, in relation to extended certification.

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, 37.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 325, by Member of the Assembly Tokasz, Assembly Print Number 1874A, an act to amend the Civil Service Law, in relation to resolution of disputes.

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, 39.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

415, by Senator Kuhl, Senate Print 2974A, an act to amend the Vehicle and Traffic Law, in relation to permits.

ACTING PRESIDENT MEIER: 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, 38. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 524, by Senator Velella, Senate Print 4378, an act to amend the Labor Law, in relation to the registration of agents.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 543, by Senator Leibell, Senate Print 2937, an act to amend the Retirement and Social Security Law, in relation to the employment of retired persons.

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, 39.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 628, by Senator Skelos, Senate Print 2842A, an act to amend the Judiciary Law, in relation to the prohibition against attorneys sharing compensation.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 633, by Senator LaValle, Senate Print 2749A, an act to amend the Highway Law, in relation to the designation of the "Jack Austen Highway."

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

634, by Senator Farley, Senate Print 3411A, an act to amend the Highway Law, in relation to the designation of a portion of the state highway system.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 636, by Senator Little, Senate Print 3790, 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 4. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 637, by Senator Flanagan, Senate Print 3803, an act to amend the Highway Law, in relation to the designation of the Pearl Harbor Memorial Bridge.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 642, by Senator Maltese --

SENATOR HASSELL-THOMPSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number

764, by the Senate Committee on Rules, Senate Print Number 4967, an act to amend Chapter 266 of the Laws of 1986.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR SKELOS: Mr. President, if we could go to the controversial reading of the calendar.

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

THE SECRETARY: Calendar Number 37, by Senator Bonacic, Senate Print 422, an act to amend the Penal Law, in relation to the establishing the vehicular assault.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Bonacic, an explanation has been requested of Calendar 37 by Senator Schneiderman.

SENATOR BONACIC: Thank you, Mr. President.

This bill would amend Section 120.04 of the Penal Law by making a person guilty of vehicle assault in the first degree when a victim is a provider of emergency services. And the bill defines who may be a provider of such emergency services.

ACTING PRESIDENT MEIER: Does any other Senator wish to be heard?

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42. Nays, 3. Senator Andrews, Hassell-Thompson, and L. Krueger recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 642, by Senator Maltese --

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: If I could just interrupt for a moment, there will be an immediate meeting of the Local Governments Committee in the Majority Conference Room.

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

The Secretary will continue to read.

THE SECRETARY: Calendar Number 642, by Senator Maltese, Senate Print 403, an act to amend the Penal Law, in relation to unborn victims of violence.

SENATOR HASSELL-THOMPSON: Explanation.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator

Maltese, an explanation has been requested of Calendar 642.

SENATOR MALTESE: Mr. President, all of us in this chamber have heard this debate in the past. We've heard the pros and cons. This chamber, at least, has been enlightened enough to pass this legislation overwhelmingly, bipartisan votes included, both Democrat and Republican.

Unfortunately, the daily press has brought forth a situation in another state that brings added attention on this very sad situation. And that is the Laci Peterson case in California.

Laci was a mother who very, very much wanted a child. And without going into the details of the case that are well known to all of us, she had named the child Conner. Upon her disappearance, people wondered whether the child had been born and what other unknown facts were that had bearing upon that child.

The stark reality of finding, at separate places, two bodies, bodies of two persons, added to the tragedy for the family

of Laci Peterson.

But it brought to us again a vivid picture, perhaps across the country, of a situation that cries out for remediation here in New York, the fact that in order to prosecute an interloper, a third party, a person who intrudes on the family relationship between mother, father in most cases, and child, we must pass this legislation.

This legislation is simple. It's not a fifty-page piece of legislation. It's been vetted. Twenty-six states have similar legislation seeking to remedy this wrong, this intrusion between a mother and a child.

We've seen the press reports, and we've talked about them in prior years. Those press reports had a case in the Bronx where a philanderer, where a doctor who should have known better and had taken a sworn oath to protect life, sought out the woman with whom he had an affair and who wanted to carry that child to life and tried to inject her with an abortion-inducing drug, not to harm her but to kill the child, to kill that unborn child.

We had similar situations in

Buffalo, in this state, where fathers -- I hesitate to use the term -- sought to end the pregnancy by assaulting the mother, the vessel, the sacred vessel that carried this child, to kill the child.

And yet time and time again, upon a search of the law and the inadequacies of the law in this state, they found that they could not prosecute for the killing of the child and that the most they can do in most cases is charge the perpetrator with assault.

This bill seeks to change that. This is a bill, by the way, that has 18 cosponsors in this house, Democrat and Republican. It is a bill in the Democratic house of the Assembly where they went contrary to custom, permitted members of both parties to go on. It is carried by Assemblyman Rivera. And they have 26 sponsors in the Assembly, Democrat and Republican.

And I'd like to simply read -- it is a slim bill, less than two sides of a piece of paper. But what it would do is confer a right to life -- and I use that term in this context -- on an unborn child that has a

right, an absolute right to life.

The definition speaks of "person" when referring to the victim of any assault, aggravated assault, or vehicular assault, means a human being who has been born and is alive. And that is the common law, and that is the law that has been superseded and changed and corrected in 26 states of this union. And we seek to add "or an unborn child at any state of gestation."

Now, there are those -- some well-meaning, but many not -- in the pro-choice movement that seek to identify this bill as an abortion bill.

This chamber, the members of this chamber, my constituents, my colleagues know that I am pro-life. I say it unashamedly. I am proud of that position. But this is not an abortion bill. This bill accepts Roe versus Wade, which has been recently affirmed in the year 2000 by the Supreme Court. So that is a red herring.

This does not seek to change Roe versus Wade. It would not diminish whatever holding, whether I feel it erroneous or not,

that Roe versus Wade prevails.

And this states very clearly -- and by the way, this bill has been amended over the years to take corrections, to take changes, situations that have arisen in others of the 26 states.

"Nothing in this article shall be construed to permit the prosecution of any person for conduct relating to a justifiable abortional act" -- that "justifiable" is defined elsewhere in the criminal law and in our statutes as basically an act within the first 24 months [sic] of life of that unborn child.

And I have a definition of "justifiable" which, if I find it, I'll read.

But "Nothing in this article shall be construed to permit the prosecution of any person -- any person -- for conduct relating to a justifiable abortional act for which the consent of the pregnant woman has been obtained."

In addition, of any person -- and this was a change that we made two years ago because we consulted with medical authorities

who were concerned about liability or blame for treating or for performing an abortion. And "this cannot be construed to permit the prosecution of any person for any medical treatment of the pregnant woman or her unborn child."

And speaking of unborn children, we know now, we have medical science advanced to a degree that there are all manner of medical treatment, medical surgery performed in utero on children. We had in this house at various times medical people come to us and tell us about the miracles that they could perform while a child was still less than the size of my hand, totally in the mother's womb, and we were able to change and prolong and give life.

In addition, this indicates that nothing in this article shall be construed to permit the prosecution of any person for conduct relating to a justifiable abortional act for which the consent of the pregnant woman or a person authorized by law to act on her behalf, in those cases where you have comatose or someone unable to give consent, or a person authorized by law to act on her

behalf -- another change that we made in response to suggestions -- has been obtained for which consent is implied by law.

And we then have, absolute clear, "any person for any medical treatment of the pregnant woman or her unborn child."

Now, I could go over and recite the horror stories. And I don't want to do that because I think to a great degree the Laci Peterson case has done that.

This, as we indicate, is not a case of attacking Roe versus Wade. Nowhere in the body of this statute or in any material that we have distributed are we diminishing in any way that private, personal relationship between a mother and a child.

And for those women that elect to terminate the life of the child, to terminate their pregnancy before the 24 weeks, the women who decide that for whatever reason that the child, the life of the child would be ended, this does not interfere with that.

This is speaking, in most of the cases, of complete interlopers, usually not even the alleged or the real father of the

child. This addresses in many cases the criminals who deliberately attack a woman for whatever reason and kill or seriously cripple the unborn child.

This covers all the ramifications of assault, homicide, the various portions of the law.

In previous debate, there was a point, I believe, attempted to be made by the opposition to the bill that we don't speak of knowledge; the person in some cases isn't aware that the mother is pregnant. I submit it has absolutely nothing to do with that.

Some of you know in a previous life I was an assistant DA and deputy chief of the homicide bureau in Queens. And I believe I know something about the law as it stands -- stood then, a long time ago, and now. And every variation of intent or reckless indifference, they're carried over from those portions of the homicide and assault law to this. That's why this bill is such utter simplicity.

We have a situation here that cries out for remediation. It's very narrow, within

the phraseology of this statute. The statutes in some of those 26 states -- I'm advised it's at least 12 -- have been attacked on various grounds, and every single one has stood the test of law and the test of time and has not been overruled by appellate courts.

We have, just recently, in Stenberg, Attorney General of Nebraska, versus Carhart, we've had Roe versus Wade affirmed by the highest court in this land.

This seeks to punish an intruder who's intruding into a relationship between a mother and a child. This seeks to protect an unborn person so that when a prosecutor, for whatever reason, wants to prosecute for injury, assault or the death of a child, this enables that prosecutor to do so.

I submit to my colleagues -- and most of them, I believe, in looking into this legislation, believe that this does not intrude on that personal relationship between mother and child. Indeed, it enhances it, it perfects it, it protects both the mother and the child.

I submit, Mr. President, that this

bill should be passed, if not unanimously, overwhelmingly.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, I concur with my friend Senator Maltese that violence against women is a very serious and a very tragic occurrence, a problem which we see quite a bit in our state.

But I think this bill fails to focus on the problem of violence against women. Instead, I think it shifts the focus away from the woman and focuses instead -- and they are the ones who are truly the victims here -- and focuses more on the fetus, which my colleague calls a child. Which in no way do I understand that a fetus is a child.

And I don't think we should be looking at the horror of the Peterson case to undermine what I understand are the rights of all women.

I think, rather, New York should increase protection for abused women through

more effective intervention and more commitment of resources.

I think the best way to protect a fetus is to better protect women from violence. Fetuses are protected when abused women are protected.

I think if the Senate truly, truly wished to focus on violence against pregnant women, I think this could be effected by taking a look at expanding the hate crimes bill to have a protected class which would be the pregnant woman.

By recognizing an embryo or a fetus as a person that has separate legal rights equal to that of a woman, this legislation is clearly trying to establish what you've already discussed, Senator Maltese, and that's fetal personhood.

It's hard for me to understand this, since the fetus is totally dependent on the woman until the time of its birth. They're connected. They are one being.

Establishing fetal personhood would contradict the Supreme Court's Roe v. Wade, where the court ruled specifically that the

person, using the word "person" as used in the 14th Amendment, does not include the unborn. The court stated that the rights, life and health of the pregnant woman are always held supreme to any government interest in the fetus.

In Roe v. Wade, it also held that the fetus was not a person with rights separate from and equal to that of the woman. The court stated that rights, life, and health of that pregnant woman will always be held supreme. Even when the fetus is viable, the court said, it is not a person.

So I think this bill, I think, is misguided. And I think it's misguided both as a matter of law and also as a matter of the public policy that we want to promote in our state and indeed in our country. And I think we should be rejecting this bill.

And if you look at the people who -- historically the organizations that have supported and opposed this bill, I think it says a great deal. Supporting it is the New York Conservative Party and the New York Catholic Conference. But opposing this bill

is the Coalition Against Domestic Violence, the obstetricians and gynecologists, the Civil Liberties Union, the League of Women Voters, the Republican Pro-Choice Coalition, Family Planning Advocates, Planned Parenthood. I think that speaks volumes about this bill.

And I hope we will reject it.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

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

There's an amendment at the desk.

ACTING PRESIDENT MEIER: Yes, there is, Senator. Do you wish to explain your amendment?

SENATOR HASSELL-THOMPSON: Yes, I would waive the reading and wish to explain my amendment.

ACTING PRESIDENT MEIER: Reading is waived, and you're recognized to explain the amendment.

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

Violence against women continues to be a significant problem in the state of

New York and across this country. But this bill fails to shift the focus to where the problem really belongs. It shifts it away from women, who are truly the victims of violent crimes, and places it and refocuses it on the fetus.

You say, Senator, that you and your supporters are pro-life. I think all of us are pro-life. But I think that the important thing is this bill is about pro-choice. It is unconscionable to use the horror of the Laci Peterson case to undermine the rights of women, and it is equally unconscionable to imply that those of us who oppose this legislation in any way condone acts of violence against women.

The loss of a wanted pregnancy is a tragedy whatever the circumstances. There is no question about that. We support bills that are designed to protect women. But this measure is a first step, no matter what may be said to the contrary, toward denying women their right to choose.

This legislation under consideration separates a woman from her

pregnancy for no useful purpose. Until such time as birth occurs, a fetus is a part of a woman; hence the term "pregnant woman."

By recognizing an embryo or a fetus as a person that has separate rights equal to that of a woman, this legislation clearly is trying to establish fetal personhood.

Now, that's not a word that speaks to the law. This contradicts the Supreme Court decision in Roe v. Wade, because Roe v. Wade says where -- the court rules that the person -- that the word "person," as used in the 14th Amendment, does not include the unborn. In 1973, Roe v. Wade held that a fetus was not a person with equal rights separate from and equal to that of a woman. And even in the amendments of 2000, that has not changed.

The legislation before us makes a pretense of being a pro-woman measure while, in fact, it is a proposal that advances the antichoice movement and attempts to divert the focus from the victim of assault to that of the fetus.

It redefines "fetus" in a way which

contradicts even the medical definition of the term. With this language, the bill's sponsor seeks to undermine a woman's constitutional right to choose an abortion as established in Roe v. Wade.

The Supreme Court holds that a fetus, again, is not a person for the purpose of the 14th Amendment and has never been recognized in law as a person in the whole sense.

This legislation -- Roe v. Wade legislates when life begins. We recognize the importance of passing stronger antiviolence laws which protect pregnant women. And a better approach than S403 would be to support this amendment that increases penalties for persons knowingly injuring a pregnant woman with the intent to harm her health.

This approach would serve to place additional penalties on persons who harm pregnant women without opening the doors to constitutionally flawed approaches that seek to elevate the status of a fetus.

Entering into a contentious debate regarding the status of the fetus rather than

the crime against women also serves no purpose. The best way to protect the fetus is better to protect women from violence. And unfortunately, assaults on women, pregnant or otherwise, are often not considered severe enough. And that's where the problem lies.

You look to resolve the issue of the fetus. If we strengthen the laws against pregnant women and women, we will do a greater job toward reducing violence toward women.

Too often the elements of crime are underprosecuted or fail to be prosecuted at all, as you so rightly say. By giving the fetus the same rights as the woman under this legislation, in practical terms it is tantamount to giving the fetus more rights than a pregnant women. And that would be a grave injustice to abused women everywhere and a step backward in our campaign to end domestic violence.

There is no evidence that the existing criminal statutes fail to provide adequate sanctions for crimes seeking to enhance the safety of pregnant women. But if, however, the sponsors of this bill would truly

seek to enhance the safety of a pregnant woman and her fetus, this interest would be better served by enacting legislation that provides for more effective intervention by police, district attorneys, and social service agencies in matters of domestic violence, one of the single greatest causes of injury to pregnant women.

The amendment that I propose is entitled the Protection of Motherhood Act of 2003. It does three things. It increases penalties for assaults against pregnant women --

ACTING PRESIDENT MEIER: Excuse me, Senator Hassell-Thompson.

Can we have a little quiet in the chamber.

Go ahead, Senator.

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

It increases penalties for assaults against pregnant women, it provides a civil course of action for gender-related violence, and it provides treble damages for any assault against a pregnant woman resulting in a

miscarriage.

Under increased penalties for assaults against pregnant women, this amendment provides enhanced penalties for any person who assaults a pregnant woman and who knows or should know that the woman is pregnant. Three new offenses are created, each one -- each of which is one felony degree higher than if she were not pregnant.

Assault on a pregnant woman in the second degree would be a Class D violent felony; assault on a pregnant woman in the first degree, a Class C violent felony; and aggravated assault on a pregnant woman, a Class B violent felony.

The best way to protect the fetus from violence is to protect the woman from violence. This legislation would increase protections for abused women who are pregnant.

And the second thing that it does is it establishes a civil cause of action for gender-based violence. This amendment also provides a civil cause of action for damages due to violence based on the gender of the victim and provides for treble damages where

the assault results in a miscarriage. Prevailing plaintiffs may also recover reasonable legal fees and expenses incurred in pursuing such an action.

In May of 2000, the United States Supreme Court struck down the portion of the Violence Against Women Act that allowed victims of gender violence to recover civil damages in federal court. Despite Congressional findings as to the prevalence of gender-based violence, the serious impact on victims and their families, and pervasive bias in various state justice systems against victims of gender violence, the Supreme Court held that Congress had exceeded its constitutional authority to enact the act's civil remedy.

Notably, however, the court went on to say that no civilized system of justice could fail to provide a remedy to the victims of gender-based violence, and such a remedy must be provided by states, not federal government.

This amendment would fill the void left by the Supreme Court decision by

providing a state civil remedy for the victims of domestic violence, rape, and other forms of gender-based violence that plague our society.

This amendment would better protect women than the Unborn Victims of Violence bill because it does not further the interests of the unborn child at the expense of the mother.

It is my hope that it is our intent in this chamber to pass legislation that will protect pregnant women. By accepting this amendment, you will take a giant step -- we will take a giant step toward the mutual goal of reducing gender-related violence to women in the state of New York.

Thank you, Mr. President.

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

The question, then, is on the amendment. All those Senators in favor of the amendment signify by raising their hands.

Please keep them up so the Secretary can tally them.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Dilán,

Duane, Hassell-Thompson, L. Krueger, C. Kruger, Lachman, Mendez, Montgomery, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, A. Smith. Also Senator Andrews.

ACTING PRESIDENT MEIER: The amendment is lost.

We are now on the main bill.

Senator Hoffmann.

SENATOR HOFFMANN: Thank you.

I would like to compliment the previous speakers, including Senator Maltese, because I think he deserves some special recognition for having spoken fairly dispassionately about the issue which causes the greatest emotional reaction of any other issue that is debated in this chamber and many other chambers across the nation.

The minute one talks about the origin of life, freedom of choice, the right of a woman to choose, Roe v. Wade, you can feel the tension in a legislative chamber accelerate.

My own feelings on this are very mixed, along with many other people. And obviously we're all subject to a great deal of

recent sensational media attention because of the Laci Peterson case.

So it is predictable that there will be a higher level of intensity on this issue while people are reacting to the very real and highly dramatized pain of a family in California that so looked forward to the birth of a child. And now that they have lost the opportunity to have that child, along with the death of the mother, it has been elevated to a status that is very different from medical reality.

And we have to avoid the temptation when we are talking about these issues to rewrite medical fact. The medical and physiological realities that we must focus on deal with a fetus, not a child. And we must focus our attention where it is most appropriate, and that is the protection of the mother who would be carrying a fetus presumably to full term and then giving birth to a child.

There are many ways that we can protect the lives of mothers without starting that slippery slope that would erode the right

of a woman to choose whether or not to be pregnant. And I must emphasize that this measure, like so many other measures that have come before us, is carefully calculated to begin that process. This, ladies and gentlemen, is a toe in the door to eliminating the freedom of choice guaranteed under the 14th Amendment.

Under the 14th Amendment, it is very clear that the word "person" cannot be used to describe a fetus. And we must remember that to be responsible, our laws must bear appropriate correlation to previous laws and certainly to the Supreme Court's decision in the matter of Roe versus Wade.

And I know that that is painful for some people who would like to find a way to roll back Roe versus Wade. I think it's also painful for people who are watching the Laci Peterson story unfold or thinking of another situation like that, and it's easy, it's easy to get caught up in the emotion and say: Oh, what is the harm here?

There is a great deal of harm in supporting this measure, because it would

begin that process of redefining what is medically known as a fetus and giving it rights superior to the rights of the woman who is carrying the fetus.

Regrettably, I can't support this measure. I am very intrigued with the amendment that just came up. I hadn't heard about it before today. But I'm willing to take a careful look at that amendment and have talked with others about the possibility of incorporating some aspects that were discussed in Senator Hassell-Thompson's amendment in other legislation sometime down the road.

Because I believe we must continue to do everything humanly possible to protect the women of this state. Be they pregnant or nonpregnant, mothers or no intention of motherhood at all, they deserve to be the focus of our intention. And the issues of domestic violence and violence directed against women must continue to be a major concern for this chamber.

I'm proud of the work that we've done in this area. I welcomed the support of Senator Maltese when I authored the Abandoned

Infant Protection Act, because I knew, after more than twenty years of studying that issue, that there were young women -- girls, sometimes, barely beyond puberty -- who became pregnant, carried a fetus all the way through term, and then delivered in secret, sometimes in complete denial of that pregnancy even to themselves, and then, in their rush to hide the evidence of that pregnancy, the life of a newborn infant was lost.

And I thank all the members of this chamber and the other house and the great Governor of this land for signing into law the most compassionate law in the nation that agrees to meet a woman under those circumstances on her own terms, whatever they may be. Absurd as it is, we know that these women will sometimes take an infant to a supermarket or a dry cleaner or a laundromat, leave it at a police station or someplace where they know it will be found -- leave it on the doorstep of a neighbor who they understand may care for children -- because they are so terrified of ever being discovered.

So our law, which is the only one of its kind that does not list specific locations where a newborn must be taken, is unique in this chamber.

And I believe that together we continue to address the issues that affect women when they are protect and the needs that they have as pregnant women and their right to carry their fetus to full term, to deliver a healthy baby into a wanted home.

And I will continue to work on this issue. But I cannot, I cannot be party to a piece of legislation that would begin that slippery slope to erode the right of women to choose.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Meier.

SENATOR MEIER: Thank you, Madam President.

With all due respect to much of the debate and to my colleagues who have been on the other side of this bill today, so much of the information that's been relied upon is simply not true. And, frankly, so much of the

position that has been taken today puts us on a slippery slope.

You know, we constantly hear this argument made that an unborn child is totally dependent on the mother. Those of us who have had children, and I think that includes just about all of us, understand that that condition continues for some time after they're born.

And I would also suggest that those of us who have dealt with relatives and have to go through the painful experience of helping to care for relatives who have entered advanced age and infirmity surely don't want to argue that somehow people are less worthy of consideration for protection because they're totally dependent on somebody else.

The argument's also been made today that an unborn child is part of the mother. That, simply put, is scientifically not correct. Now, we can argue about, if you want to, under Roe v. Wade whether it's a person entitled to protection, and I suppose reasonable people can conduct that legal debate.

But a part of the mother? It is a separate being, genetically separate and genetically distinct. Genetically distinct. If you examine the DNA from the mother and the DNA from the fetus, if you want to call the unborn child that, they are genetically, identifiably distinct.

This is not about the subject matter of Roe v. Wade. Senator Maltese has carefully crafted a piece of legislation that does what we frequently do when we amend the law. You have to be careful when you amend a body of statutes to track the language that is in that law, that has been used by the courts to develop that law, and not tear it apart.

What he has carefully done is to take the body of the Penal Law in this state that defines assaults and homicides which speaks in terms of "person," and, for the purpose of only those statutes which define assault and homicide, included "an unborn child at any stage of gestation." It has no effect whatsoever on any other area of the law.

This is not about the subject

matter of Roe v. Wade, which speaks in terms of whether the state has a legitimate interest in protecting an unborn child -- or a fetus, if you will. This is not about the government's interest. This is about that mother's interest who has decided to carry her child to term and deliver it who has that decision violently invaded and interrupted. That's what this is about.

Now, let me throw something that's inconvenient out here for this debate. I brought this up last year, I'll bring it up again, and this time I'm going to develop it a little further.

Two years ago we all patted ourselves on the back for passing Buster's Law. We made it a felony to commit animal cruelty under certain circumstances in this state. Now, here's the inconvenient part. Under the common law, animals are chattels. And the penal law provides adequate protection and adequate remedies to prosecute someone when you destroy someone else's chattel.

Why did we pass Buster's Law, then? Because something in our humanity recognizes

that animals are more than chattels. Something in our humanity recognizes that, that they are more than animated pieces of tissue. And so we passed Buster's Law.

And the inconvenient fact that hangs over this debate, the big elephant in the room that nobody wants to talk about, is you can debate all day about Roe v. Wade, it's not about Roe v. Wade today. It is about -- and this is undeniable scientifically -- an unborn child is more than a blob of tissue. It is genetically distinct from the mother. It has value, certainly at least to that mother who has decided to carry that child to term.

And oh, by the way -- this is scientifically undeniable also -- physicians who practice in this area will tell you that the nervous system is sufficiently developed by at least 20 weeks of gestation, and perhaps much earlier, to experience pain.

And so I must tell you I find it incredible -- and I will say this even though I said it last year, and I know most of you don't take notes, so I'll say it again -- I

know I don't -- I find it incredible that we accord, in this state, more protection to an animal owner who loses a dog or a cat to an act of cruelty and violence than we do to a mother who has chosen to carry her unborn child to term.

I find it incredible and unbelievable. And I admire Serph Maltese for having the courage to introduce this bill and to fight for it.

Thank you, my colleagues.

ACTING PRESIDENT McGEE: Senator Lachman.

SENATOR LACHMAN: On the bill.

Frankly, I would have preferred had the bill achieved its objective without defining a fetus at any stage of gestation as a person. Candidly, the definition proposed in this bill seems unnecessary to me and treads upon very, very sensitive religious territory that would probably best be left to theologians rather than to legislators.

Nonetheless, we all have to make difficult decisions -- or choices -- in our life as legislators. And after a careful

reading of the bill, and a similar bill that this was patterned after that was introduced in the U.S. House of Representatives in the year 2001, I do believe that the bill has been changed and carefully drawn to limit that definition to the specific context of this legislation.

Now, in the year 2001, a similar and much more eloquent definition was raised by Representative Charles Rangel, who voted both for an amendment to this bill similar to the excellent one proposed by Senator Ruth Hassell-Thompson and to the bill that Senator Serph Maltese has brought to the surface.

Senator [sic] Rangel, in voting for both, said that this is neither a pro-life or pro-choice bill and we would be confusing the issue if we brought extraneous issues into a discussion of a bill such as this.

I believe that a pregnant woman does deserve extra protection. Again, and perhaps more forcefully, I will support this bill because I believe that acts of violence against pregnant women should be punished much more severely than similar acts against other

people.

Thank you.

ACTING PRESIDENT McGEE: Senator Diaz.

SENATOR DIAZ: Thank you, Madam President.

Before I say anything, I would like to refer to and commend my colleague Senator Lachman. And I would like to say that there is nothing wrong by electing theologians to the body, to this body. There's nothing wrong with that. We have elected all kinds of people before that.

And this is the beauty of living in America. In America, everyone is entitled to their opinion. And everyone is entitled to have that opinion respected. So by electing theologians to this body or to legislative bodies, there's nothing wrong with that. I hope you elect more of them.

And talking -- referring to the bill, I am not a lawyer. So when people say that the Supreme Court has decided that an unborn child is not -- the fetus is not a living being, well, that's the Supreme Court.

The wrong with that is that there is a higher Supreme Court that says differently.

And I would like to say that I'm new here, only five months. I was a City Council member in the City of New York. And in the City Council of the City of New York, when we were supposed to vote, there always was a roll call.

And I have learned here that this body gives you an easy way out when controversial issues come. You just come to the door, show your face, the Secretary puts you present, and when the controversial bills come to be discussed, you just walk out. And that's an easy way.

Last night I have been lobbied, by my son, by many different people who tell me: Just walk out. You don't have to express your opinion. You know, you just show your face, get yourself be present, and walk out, and they will count you yes.

But to me, that's a cowardly way out for me, because I was not elected to walk out when controversial issues come. I got elected to fight for what I believe and to

represent to the best of my ability the people that elected me.

And there are two cases here that I would like to read. One such case occurred in Suffolk County. A driver traveling well in excess of the posted speed limit crashed head-on into an oncoming car driven by a woman who was six to seven months pregnant. The child died, and nothing was done to the guy, to the driver.

The other case was in Queens County. A man armed with a handgun demanded money from three teenagers. He shot one of them. She was pregnant, seven months. The baby -- the unborn child died, and nothing was done to the gunman.

There are reckless driving, drunk driving, reckless behavior, shooting a weapon during a robbery attempt -- all those kinds of acts committed by criminals should be punished.

And I am here in support of this bill. And I think that by reading the names of the members that are supporting the bill -- Senators Maltese, DeFrancisco, Farley,

Flanagan, Golden, Johnson, Larkin, LaValle, Marchi, Maziarz, Meier, Morahan, Nozzolio, Onorato, Padavan, Rath, Robach, M. Smith, Trunzo, Velella, Volker, Wright -- I feel bad that my name is not there. Is there any way that my name could appear there too? I would love to have my name there.

So I congratulate you, Senator Maltese, and come with my vote on this precious piece of legislation.

ACTING PRESIDENT McGEE: Senator Krueger.

SENATOR LIZ KRUEGER: Madam President, if the sponsor would yield to a question.

ACTING PRESIDENT McGEE: Senator Maltese, will you yield for some questions?

SENATOR MALTESE: Yes.

ACTING PRESIDENT McGEE: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

Senator Maltese, in your presentation earlier in your explanation of the bill, you stated that this was a bill about the right to life of unborn children.

And yet you also said it didn't conflict with Roe v. Wade.

So I ask you, in your bill, a fetus has the status of a person under your bill, is that correct?

SENATOR MALTESE: Yes. Within the confines of this bill, "person" would include the fetus, yes.

SENATOR LIZ KRUEGER: Madam President, if, through you, the sponsor would continue to yield.

SENATOR MALTESE: Yes, Madam President.

ACTING PRESIDENT McGEE: Senator Maltese continues to yield.

SENATOR LIZ KRUEGER: So further, Senator, under your bill an embryo would have the status of a person?

SENATOR MALTESE: Madam President, the bill clearly indicates that the -- it would cover, within the definition of "person," an unborn child at any stage of gestation. So it would include any stage of gestation.

ACTING PRESIDENT McGEE: Senator

Krueger.

SENATOR LIZ KRUEGER: Madam President, if the sponsor would yield to one more question.

ACTING PRESIDENT McGEE: Senator Maltese, for one more question?

SENATOR MALTESE: Yes.

ACTING PRESIDENT McGEE: The Senator yields for one more question.

SENATOR LIZ KRUEGER: Thank you. Just to clarify the record.

So, Senator, under your bill a zygote would have status as a person?

SENATOR MALTESE: Madam President, the term "any stage of gestation" I assume would include any stage of gestation.

I don't -- somebody earlier mentioned something about delving into philosophy. And while we cover a great deal of that, this is the question of when life begins, I assume. And the question itself would include, you know, at what stage the -- what stage this zion [sic] or embryo or fetus is entitled to this definition of personhood.

This bill speaks for itself. It's

very clear. It would include, as we had indicated in the bill, an unborn child at any stage of gestation. So without going into anything further, if it covers an unborn child, if a zion is considered an unborn child at a stage of gestation, that would cover that zion, if you would.

SENATOR HOFFMANN: Zygote.

ACTING PRESIDENT McGEE: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. On the bill.

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

Senator Meier said in his statements a few minutes ago that this was a carefully crafted bill. I would agree. It is a carefully crafted bill to do one thing. It is not a new bill to establish legal protections for women who are the victims of crime who are pregnant at the time they are the victims of crime.

Because our previous senator who's no longer with us, Senator Dollinger, and

whose, I suppose, debate I don't want to repeat for the record -- I will just highlight -- that he has constantly debated this bill when he was in this chamber to reference the fact that under criminal law, Penal Code 125, Section 45 and 40 and 05, we've already established that you can have criminal charges against -- excuse me, you can have criminal charges in the State of New York for harming a pregnant woman and having the result being an abortion, against the woman's will, of her pregnancy.

So we have established that under state law we already have criminal prosecution options for people who commit such violent acts. And it's also clear under state and federal law that we have, under Roe v. Wade, the right to protect a woman's right to choose and to not, I repeat, not recognize that a fetus or an embryo or a zygote has separate legal rights, and that that does contradict the decision of the Supreme Court in Roe v. Wade, who has said that using the word "person" as defined by the 14th Amendment of this country does not include the unborn.

And so I agree that this is a carefully crafted piece of legislation. It is not carefully crafted to protect women, it is not carefully crafted to increase assurances that there will be less violence against women or protect women, and it is not needed under our penal code to allow our courts to appropriately prosecute people who do cause harm to women, pregnant or otherwise.

It is intended to be a piece of legislation to establish, as Senator Maltese just said -- right? -- the fact that an unborn has legal status as a person in New York state law at any stage of gestation -- zygote, embryo, fetus.

This bill is crafted to be the slippery slope that Senator Hoffmann talked about in her comments. I agree with her.

I also want to say I agree with Senator Diaz. It is too easy to escape controversial votes in this house because, as he pointed out, you walk in, you sign in, and you are voted yes.

This is the kind of legislation where, one, we should make it very, very clear

to the public what this does. It attempts to undermine a woman's right to choose and the Supreme Court decisions of Roe v. Wade. It is not designed to accomplish any additional protections for women that don't already exist under state law. And we should all go on record with our position in favor or in opposition to this legislation.

I am opposed to this legislation. I hope my colleagues will vote no with me.

Thank you, Madam President.

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

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Very briefly on the bill.

I have to acknowledge what's been said on both sides of this debate. This is an extremely difficult area. I think Senator Maltese and Senator Meier have raised the fact that this is an issue that pulls many people in many directions.

Listen, I am unapologetically pro-choice. I respect that there are people who are pro-life, and I respect people who are

consistent in their pro-life stance to some degree more than I do people who move around on the issue for political convenience. If you're pro-life, you're pro-life; if you're pro-choice, you're pro-choice.

But I have to say there is a distortion on behalf -- by some of my colleagues, and I don't know that it's intentional, about what it means to be pro-choice.

This is not easy. No one likes abortions. Being pro-choice doesn't mean you think that, as Senator Meier said, an unborn child is a blob of tissue. No one believes that. It is a horrible, painful act.

Many people here know I worked in a family planning clinic. I've been with many, many women going through this. It is a traumatic, terrible thing.

What being pro-choice is about is very simple. It means the recognition that a woman who cannot control her body is not free, that being pregnant is different than being seriously ill and dependent on medical support for your life. Pregnancy is something that I

believe a woman has to deal with according to her own conscience; if she's a believer, according to her own religion. But that the ability to control her own body is a fundamental element of freedom.

And I respectfully suggest that this legislation is not something that is separate from Roe v. Wade, is separate from the issue of freedom of choice. And I would like to cite for that proposition, for my assertion, a Republican official who recognized that if you make it illegal, if you make it murder to unlawfully terminate a pregnancy by a third party, how in the world can you intellectually have a coherent argument that it is not murder for the mother to terminate the pregnancy?

And after California passed a statute allowing some of the same provisions as the law before us, a public official, prominent Republican, cited a California feticide law as support for regarding abortion as murder, stating: "Isn't it strange that the same woman could have taken the life of her unborn child and it was abortion, not

murder, but if somebody else does it, that's murder?" This statement was made by Ronald Reagan.

This law is about criminalizing abortion. This law is about identifying the termination of a pregnancy as an unlawful act. And it is intellectually incoherent to argue that a third party doing it makes it different in a moral sense from the woman doing it.

I'm pro-choice. I recognize this is a hard issue. I recognize that this is something that is difficult for everyone to deal with. I appreciate honest debate on the issue. And it is very hard to have honest debate on the issue. Reverend Diaz was correct when he said a lot of people like to walk out -- although I wish he was here to hear me.

But this is an issue that we do have to try and grapple with, not just here in these debates but in our own consciences. Those of us who are pro-choice do take very seriously the gravity of what an act of abortion is. But for me it's about freedom.

This law is something that you

can't separate from the issue of abortion rights. I would urge that Ronald Reagan was right, it is intellectually incoherent -- I know, you're not going to hear that from me a lot. But Ronald Reagan was right, it is intellectually incoherent to say it is murder for a third party to terminate a pregnancy but not for the woman to do it.

I vote no. I urge everyone to vote no.

ACTING PRESIDENT McGEE: Senator Brown.

SENATOR BROWN: Thank you, Madam President. On the bill.

ACTING PRESIDENT McGEE: Senator Brown, on the bill.

SENATOR BROWN: I'm going to try to take pro-life and pro-choice out of the discussion for a moment.

I know that this is a very passionate issue. I know that Senator Maltese feels very passionate about this issue.

But I feel that the most effective way to protect a fetus is to protect the mother. We must protect women in this state.

A fetus can't be the victim of violence unless the woman carrying it is the victim of violence. We must protect women in this state.

There should be additional punishment when someone tries to terminate a pregnancy by injuring the mother. We must protect women in this state.

Just recently, I had the opportunity to have a meeting with the Erie County Coalition against Domestic Violence, and they cited a statistic that really alarmed me. And that statistic is that one in four women in this country at some point in their lives will become the victims of violence. One in four.

We must protect women in this state.

We talked about the Laci Peterson case. And I'll tell you, every time I think of that young woman and what she went through, it brings tears to my eyes. I can only think about the horror that Laci Peterson must have felt as she was being murdered. We talk about the baby that the very pregnant Laci Peterson

was carrying. That baby would not have even been visible outside of Laci Peterson's body if her body wasn't dumped in a body of water.

We must protect women in this state.

I don't think this bill does that. I don't think this bill gives the added protection to women and pregnant women that they deserve. And for that reason, I'll be voting no to this piece of legislation. And I urge all my colleagues to vote no as well.

Thank you.

ACTING PRESIDENT McGEE: Senator Sabini.

SENATOR SABINI: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Sabini, on the bill.

SENATOR SABINI: I fully respect the motives and hard work of Senator Maltese. I think he's been one of the most effective elected officials my county has had in many years. And he feels very passionately about this issue.

But I really believe that if we

wanted to address the goals that this bill purports to advance that we would amend the hate crimes bill in this state and protect the women who are the victims of the violence.

Now, I was visited recently by someone supporting this bill, and I said, "There are those that argue that this bill, if it were passed into law, would open the door to litigation that at some point would criminalize a woman's right to abortion or criminalize a doctor performing abortion." And the person lobbying the bill said: "Let us hope so."

So while that may not be the intent, the fact of the matter is that most of the supporters of this bill do not support Roe v. Wade and would like to see it overturned. And while this bill doesn't do that, obviously, doesn't overturn a Supreme Court ruling, the fact of the matter is that it goes in the direction that takes us into a dangerous position.

We heard recently, in a meeting I had with some other legislators, from a minister from Rockland County who was

advocating for this bill because of a botched procedure that his wife's obstetrician conducted, and that he felt he couldn't achieve civil damages.

This bill doesn't talk about civil damages. This bill only talks about criminal acts. So that argument really doesn't wash here either.

And in fact, throughout the bill there are protections for doctors. But perhaps what worries me the most is that just last week -- and I understand that there are protections for the medical community in the bill. But just last week, Mr. Kopp, who was convicted of the murder of Dr. Slepian, right here in this state, as he was carted out of court said, "I'm just protecting the people from weapons of mass destruction. That's why I was going after a doctor's office."

And I must tell you that if this bill were to become law, that gives aid and comfort to that kind of thinking. And while doctors are exempted from the bill, the fact of the matter is that the warped minds of people like James Kopp will then continue to

justify in their minds the violence that they commit against members of the medical community who are just trying to do their jobs.

So for those reasons -- and as I say, I respect Senator Maltese's fervor on this issue -- I'll be voting in the negative.

Thank you.

ACTING PRESIDENT McGEE: Is there any other Senator who wishes to speak on the bill?

Senator Stavisky.

SENATOR STAVISKY: Madam President, I too am a member of the Senator Maltese fan club.

However, without repeating the arguments that my colleagues have noted, I have one additional concern. And that is the fact that when an individual attacks a woman, I don't -- I was going to say I can't conceive, but I guess that's not the right word -- I could not understand how he could know that the woman is pregnant.

Madam President, I urge that this bill be rejected.

Thank you.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

SENATOR MONTGOMERY: Madam President.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: I'd like to explain my vote.

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

SENATOR MONTGOMERY: Thank you, Madam President.

I think the arguments have been made here. And in addition to the arguments that we've made, I'm looking at the memos in opposition from groups that we certainly recognize: the League of Women Voters;

Concerned Clergy for Choice, who give us a quote from Exodus regarding this issue to consider; the Family Planning Advocates; the Planned Parenthood; NARAL; NYCLU; the American College of Obstetricians and Gynecologists; the Coalition against Domestic Violence; the National Organization for Women. And, I am also happy to add, the Republican Pro-Choice Coalition is certainly opposing this legislation.

I think that statement in and of itself is enough to say that we really are not doing what we need to be doing today, and that is protecting the interests of women and not trying to divide a woman from her pregnancy.

So I'm voting no.

ACTING PRESIDENT McGEE: Senator Montgomery, in the negative.

THE SECRETARY: Those recorded in the negative on Calendar Number 642 are Senators Andrews, Breslin, Brown, Connor, Dilán, Duane, Gonzalez, Hassell-Thompson, Hoffmann, L. Krueger, C. Kruger, McGee, Mendez, Montgomery, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, A. Smith,

Spano, and Stavisky. Ayes, 36. Nays, 22.

ACTING PRESIDENT McGEE: The bill is passed.

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

SENATOR SKELOS: Madam President, if we could return to motions and resolutions, there is a privileged resolution at the desk by Senator Leibell. I ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 1664, honoring Captain Richard Randall Ozmun upon the occasion of his retirement from the United States Navy.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The

resolution is adopted.

Senator Skelos.

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

ACTING PRESIDENT McGEE: There is no housekeeping at the desk.

SENATOR SKELOS: I'd like to announce, on behalf of Senator Bruno, there will be an immediate conference of the Majority in the Majority Conference Room.

ACTING PRESIDENT McGEE: There will be a conference of the Majority in the Majority Conference Room immediately following session.

Senator Smith.

SENATOR ADA SMITH: Thank you, Madam President.

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

ACTING PRESIDENT McGEE: There will be an immediate conference of the Minority in the Minority Conference Room.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam

President. I would like unanimous consent to be recorded in the negative on Calendar 415.

Thank you.

ACTING PRESIDENT McGEE: The Secretary will note.

SENATOR SKELOS: Madam President.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business to come before the Senate, I move we stand adjourned subject to the call of the Majority Leader.

ACTING PRESIDENT McGEE: The Senate stands adjourned subject to the call of the Majority Leader.

(Whereupon, at 12:30 p.m., the Senate adjourned.)