NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 15, 2005

1:31 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT WRIGHT: The Senate will come to order.

I ask everyone present to please rise and repeat with me the Pledge of Allegiance.

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

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

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

ACTING PRESIDENT WRIGHT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 14, the Senate met pursuant to adjournment. The Journal of Sunday, March 13, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT WRIGHT: 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 Skelos.

SENATOR SKELOS: Mr. President, I believe there's a substitution at the desk. If we could make it at this time.

ACTING PRESIDENT WRIGHT: The Secretary will read.

THE SECRETARY: On page 4, Senator Padavan moves to discharge, from the Committee on Finance, Assembly Bill Number 2928B and substitute it for the identical Senate Bill Number 1591B, First Report Calendar 282.

ACTING PRESIDENT WRIGHT: Substitution so ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, I move that we adopt the Resolution Calendar.

ACTING PRESIDENT WRIGHT: All in favor of adopting the Resolution Calendar

signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT WRIGHT: Opposed, nay.

(No response.)

ACTING PRESIDENT WRIGHT: The Resolution Calendar is adopted.

Senator Skelos.

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

ACTING PRESIDENT WRIGHT: The Secretary will read.

THE SECRETARY: Calendar Number 60, by Senator Maziarz, Senate Print 120, an act to amend --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 156, by Senator Winner, Senate Print 1712A, an act to amend the Penal Law, in relation to operating a controlled substance establishment.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 35.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 159, by Senator Golden, Senate Print 2212, an act to amend the Penal Law, in relation to aggravated loitering.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

SENATOR HASSELL-THOMPSON: Lay it aside.

ACTING PRESIDENT WRIGHT: The

bill is laid aside.

THE SECRETARY: Calendar Number 164, by Senator Skelos, Senate Print 2452, an act to amend the Penal Law, in relation to establishing the offense of unlawfully residing.

ACTING PRESIDENT WRIGHT: Read the last section.

THE SECRETARY: Section 2 --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 171, by Senator Morahan, Senate Print 706, an act to amend the Military Law, in relation to extending certain benefits.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 35.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 179, by Senator Rath, Senate Print 1518, an act to amend the Vehicle and Traffic Law and the Penal Law, in relation to suspension.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 179 are Senators Duane and Sabini.

Ayes, 33. Nays, 2.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 277, Senate Budget Bill, Senate Print 553D, an act making --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 278, Senate Budget Bill, Senate Print 554D --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 279, Budget Bill, Senate Print 990B --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT WRIGHT: The bill is laid aside.

THE SECRETARY: Calendar Number 280, Budget Bill, Senate Print 991B --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT WRIGHT: The bill is laid aside.

THE SECRETARY: Calendar Number 281, Senate Budget Bill, Senate Print 992B, an act to amend the Public Health Law.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT WRIGHT: The bill is laid aside.

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

SENATOR SKELOS: Mr. President, would you please have the clerk ring the bell to indicate that we're on the controversial calendar.

ACTING PRESIDENT WRIGHT: The Secretary will ring the bell.

We will commence the controversial calendar.

Senator Skelos.

SENATOR SKELOS: Mr. President, we're about to commence the controversial calendar, so I would urge all members of the Senate to please come over and sit in their seats so they can listen to the debate and also vote accordingly.

If we could go to the controversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 60, by Senator Maziarz, Senate Print 120, an

act to amend the Environmental Conservation Law, in relation to reducing.

SENATOR LIZ KRUEGER: Explanation.

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

SENATOR SKELOS: Lay it aside temporarily.

THE PRESIDENT: The bill will be laid aside temporarily.

THE SECRETARY: Calendar Number 159, by Senator Golden, Senate Print 2212, an act to amend the Penal Law, in relation to aggravated loitering.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: As we go to each bill on the controversial calendar, could we please ring the bell. And we'll pause

temporarily so that members can come into the chamber.

THE PRESIDENT: The Secretary will ring the bell.

Senator Skelos.

SENATOR SKELOS: Madam President. Would you please urge the members to find their seats so that we can proceed with the controversial calendar.

THE PRESIDENT: Will the members please take their seats so we can proceed with the calendar.

Thank you, Senator.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: I believe we're on a roll call now on Senator Golden's bill. If we could proceed with the roll call.

THE PRESIDENT: The Secretary will read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary

will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 159 are Senators Duane and Gonzalez.

Those absent from voting on Calendar Number 159: Senators Little, Maltese, Montgomery, Oppenheimer and Stavisky.

Ayes, 48. Nays, 2.

THE PRESIDENT: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 164, by Senator Skelos, Senate Print 2452, an act to amend the Penal Law, in relation to establishing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 164 are Senators Montgomery and Duane.

Those Senators absent from voting on Calendar Number 164 are Senators Brown, Little, Maltese, Oppenheimer and Stavisky.

Ayes, 49. Nays, 2.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, I believe commencing at 2 o'clock there are going to be two joint conference committee meetings: General Government and Local Assistance, which is Senators Farley, Little, Robach, Wright, and Stachowski; and Agriculture/Environment, Senators Marcellino, Bonacic, McGee, Rath, Trunzo as an alternate, Valesky and Liz Krueger.

For those members who are attending those joint conference committees, and this will carry through the next few days, when you return to session, the Journal Clerk will have a form for you to fill out and make a motion that you were attending a joint conference

committee meeting so that you can register your vote.

When your conference committee is over, I would urge you to come back to the chamber, and certainly before 5 o'clock.

So if we could now continue with the controversial calendar.

THE PRESIDENT: There will be a joint conference committee meetings at 2:00 o'clock, General Government and Local Assistance, and Agriculture.

The Secretary will read Calendar Number 60.

THE SECRETARY: Calendar Number 60, by Senator Maziarz, Senate Print 120, an act to amend the Environmental Conservation Law.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR MAZIARZ: Thank you, Madam President.

This legislation lowers the age from 14 to 12 that is required to obtain a

junior archery license. By lowering the age, we are keeping the minimum age consistent with obtaining a small game license. A junior archery license allows a holder to hunt with a longbow during both the archery and regular hunting season.

An individual who has a junior archery license must, according to this legislation, be accompanied by a parent or legal guardian or by a person 18 or over who has had at least one year's experience in hunting with a longbow and such person holds a license to hunt.

There are numerous criteria that an individual must pass before becoming eligible for a junior archery license, including the successful passage of a hunting safety and responsibility course.

Thank you, Madam President.

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

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President.

Hello, sponsor.

SENATOR MAZIARZ: It's a shame that you have to leave by 2 o'clock for that conference committee.

(Laughter.)

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

SENATOR MAZIARZ: I do, Madam President.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

Sponsor -- Senator, what penalty are we paying in the state now for not allowing children this young to be hunting deer and bear?

SENATOR MAZIARZ: The penalty --

SENATOR LIZ KRUEGER: Why is it so important to lower the age from 14 to 12?

SENATOR MAZIARZ: The penalty, I think, that -- oh, I'm sorry, Senator, I didn't mean to --

SENATOR LIZ KRUEGER: No, that's okay.

SENATOR MAZIARZ: I think the penalty that we are paying, Senator, is that

we're giving young children an opportunity to go out and to enjoy an activity with their parents in one particular area of hunting that we're not giving them in another particular area of hunting.

SENATOR LIZ KRUEGER: On the bill, Mr. Chair.

ACTING PRESIDENT MEIER: Senator Liz Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

We've had this debate now several years, and actually I get reports back afterwards that it entertains some people that I feel so strongly about not lowering the age of hunting bear and deer for children with crossbows.

So for the record, but without spending too much time on this busy budget day, I don't see this as an anti-hunting bill, I see this as a protecting children bill.

Deer are large. Bear are larger. 12-and-13-year-olds tend to be small, sometimes exceptionally small. My research into hunting is that hunting with bows and arrows actually have the highest likelihood of

not actually killing the animal immediately, but rather causing them to be maimed and in pain and more likely, in fact, to respond by attacking the hunter.

And so without making comment on hunting in general, again, I urge my colleagues to consider the points that I have made, more extensively in previous years, and that are on the record, that the statistics for hunting accidents is highest among young hunters; that bow and arrow hunting is not a guarantee of actually an immediate kill of the animal, increasing the risk to the child; that in New York State, according to the Department of Environmental Conservation, 18 New York State big-game hunters have been mistaken for deer or bear and killed in the state between '92 and 2001; that a third of hunting injuries are self-inflicted and, in most other cases, a friend or relative of the shooter is injured; and the maturity level of 12-and-13-year-olds handling dangerous weapons in a situation in the woods, even though the Senator pointed out, the sponsor pointed out that they must be accompanied by an adult when they are hunting,

that the dangers from hunting are highest among those who are least experienced.

We're talking young children. We're talking about scenarios where these children are facing a violent sport. And while I agree that parents and children should be spending as much time together in activities that are educational and bonding and pleasurable and include sports, I have to ask the question in this day and age why we want 12-and-13-year-olds to be in a dangerous situation in the woods at risk of, in fact, being the victim of another hunter or a victim of a maimed animal when in fact there are so many other wonderful activities and sports available for parents and children to participate in without the necessity of going into the woods and hunting animals with bows and arrows at the age of 12 and 13.

The law now is 14. And surely that is young enough to still learn about the sport of hunting without being put at such great risk at such a young age, when, again, they are immature, they are small, they can be mistaken for game, they can harm themselves,

they can harm others.

And again, particularly if we're talking about bear -- and I've said it before on the floor, so I'll say it again -- it's perhaps the one category of hunting where the animal stands as good a chance of harming the hunter as the hunter does of harming the animal.

I see this as both a bill that goes against common sense for parents with children who -- although I know we are usually hesitant to want to dictate our rules about how parents treat their children, but also a bill that would increase the likelihood of young, small, immature children being harmed when in fact the goal of the day was to have a pleasant sports experience.

And that there are so many other sports that parents and children can participate in, and that 14 is young enough, and that this house should not support and encourage younger children from hunting in dangerous situations.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator

Stavisky.

SENATOR STAVISKY: Mr. President, if the sponsor would yield for one question.

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

SENATOR MAZIARZ: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STAVISKY: Through you, Mr. President, I understand how young people can bond with their parents, the mother or the father or somebody, a father figure, in quotes.

Can you explain to me why they have to -- why they can't bond when shooting against a bull's-eye in target practice rather than bonding in the killing of a deer? Or bear or whatever animal.

SENATOR MAZIARZ: Well, the answer to that question is they can and they do.

SENATOR STAVISKY: Thank you, Mr. President.

SENATOR MAZIARZ: Thank you, Mr.

President.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Very briefly on a bill. Actually, on this bill. On the bill. On the bill, thank you. My counsel advises me I should speak on the bill.

I find this to be a sort of a baffling exercise in one-house legislation that we go through every couple of years. And I just have to say I'm going to vote against this bill again.

I think Senator Krueger has enumerated absolutely reasonable safety concerns, unassailable facts and figures relating to the potential for young children to be injured in these situations.

I actually have a 12-year-old. And I assure you, she would be at great risk were she in the woods. She is short, she is not that strong, and she would have trouble operating the bow in this sort of situation and would be vulnerable to all the things Senator Krueger cited, which are documented

facts of injuries.

I have to add, though, for the sponsor -- because I guess we're going to be seeing this bill again -- any parent who brings their 12-year-old child into the woods to shot at a bear with a longbow is not just a bad hunter but a lousy parent. Because that's just likely to produce an annoyed, irritated, angry animal charging your 12-year-old.

If I'm hunting a bear, I'm not going with a longbow, I'll tell you that right now. Deer is one thing, but bear is something else. So maybe as we're going forward you could limit this to animals that are less likely to claw, maul, or bite your 12-year-old after you attempt to shoot at it with a weapon that is really virtually impossible to kill a bear with.

I'm going to be voting no, and I respectfully recommend to the sponsor some reconsideration of the animals at issue in this exciting ongoing debate on public policy.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. If the sponsor would yield for a question.

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

SENATOR MAZIARZ: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Yes, thank you, Senator Maziarz.

I don't have a copy of a memo in support of this legislation. But I note that the Farm Bureau somehow supports it, your bill. Is there any reason that they give as to why it's important to them, the farmers?

SENATOR MAZIARZ: Well, for the Farm Bureau -- I don't have the memo in front of me, but I think that the overpopulation of deer is a problem. You know, particularly with fruit and vegetable farmers, where the deer will come in and destroy the crops.

SENATOR MONTGOMERY: I see. So if I may just pursue that one a little further.

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

SENATOR MAZIARZ: Yes, I do.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR MONTGOMERY: Senator Maziarz, then there is a presumption vis-a-vis the Farm Bureau's understanding of the legislation that it sort of targets the deers as opposed to bears and other large animals, is that --

SENATOR MAZIARZ: I think that's one of the reasons that they gave in their memo.

SENATOR MONTGOMERY: And perhaps squirrels and -- perhaps some squirrels, the squirrels?

(Laughter.)

SENATOR MAZIARZ: I don't have the memo in front of me. I don't think they mention squirrels in their memo, Senator.

SENATOR MONTGOMERY: Okay. Thank you. That was -- I just wanted to know that. Thank you.

ACTING PRESIDENT MEIER: Does any

other member wish to be heard?

Senator Volker.

SENATOR VOLKER: Mr. President, I have to say here we go into the other cultural issues here.

Senator Krueger, I don't think anybody has ever shot a bow and arrow in your district; that is, in Manhattan. But there are thousands of people who shoot --

SENATOR SCHNEIDERMAN: You've never heard of the Robin Hood Killer, famous case?

(Laughter.)

SENATOR VOLKER: Well, I'm talking about legally.

(Laughter.)

SENATOR VOLKER: Let me just say this. The problem here is the Humane Society is opposed to any kind of hunting at all. In most of New York State, and I say most of New York State, young people start hunting at a very early age. Twelve is not really as low as it could be. But we're talking about 12 for legal hunting, and where parents are with the children.

A very short season, by the way. You have to realize that when you're talking about bear hunting, there's only a couple of places in this state you can hunt bear. And that's mostly in the Adirondacks. We don't have, thank God, bear in Western New York. Once in a while one ambles in, but you can't shoot it.

So you have to understand what this is all about. This is really about rural life. Ninety-nine percent of this is about young people who are more than capable of handling bow and arrows. They couldn't handle crossbows. Of course, it's not legal to use crossbows in most of this state.

But I think the problem here is we think in terms of criminals, because it's hard for us to understand that the tradition of this state is that young people are able to hunt and are able to be responsible with their parents. If you don't do that, you're going to create problems. Criminal problems also, by the way, because people are going to do it, they're going to do it illegally, and you're going to have problems.

I realize -- and I don't mean to be difficult about this, but there is a huge difference in the mindset of New York City and of upstate New York. I mean, the fictitious nonsense about the canned hunt was the -- people look at canned hunts and say, Oh, this is terrible, because there's one group that does a bad job with the canned hunt in this state.

The truth is that much of this is totally misunderstood. And there are small groups of people who don't like society in this country, by the way, and who would prefer to have us believe that kids of 12 and 14 years old are totally immature unless they murder somebody. Because that's happened, by the way. And we have to realize that there is a certain responsibility we have to develop with young people.

You're going to have hunting in most of New York whether you like it or not. The question is, is it going to be legal hunting and are parents going to guide their children, or is it going to be done in a way in which we prefer not to?

Now, if you want to do what so often happens, and that is ban all hunting in New York City, which is -- it is banned now anyways. And if you want to say you can't use a crossbow, a hand -- anything you want, that's up to you. I think it's silly, but if you want to do that, because almost nobody does it, they come up to my region. And we keep an eye on them, because usually they -- they're not the most -- you know, they're sometimes a problem.

We always say out in my area, and I live outside the admitted urban areas, that some of the Buffalo hunters -- and by Buffalo, I mean Buffalo people -- come out, because they don't do much hunting. And you got to keep an eye on them, because sometimes they are a little reckless. But you know why they are? Because they don't have any experience the way young people do in the suburbs and in the rural areas with not only handling guns, but handling things like bow and arrows. It's part of their education.

And you can say all you want -- and I don't mean to denigrate. I think you

probably have many people in your region that could do it and could do it well. The only trouble is that there is a bias against the normal people who in this state want to hunt, want to fish, and want to do all those things, because there are people that consider that to be cruel and inhuman.

Well, that's fine, except that's the way we all grew up in this country. And I mean all, meaning our parents and our families and so forth.

So it just seems to me that because the Humane Society, which is opposed to any kind of activity that protects animals as well as hunting -- it just seems to me that I think that the Farm Bureau and a lot of the hunting groups are much more capable of understanding the issue of archery.

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

Debate is closed, then.

The Secretary will ring the bell, please.

Read the last section.

THE SECRETARY: Section 5. This

act shall take effect on the 90th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR BALBONI: Mr. President, I supported this measure last year and am constrained not to do so this year. And the reason for the change is that I have begun a great discussion with Senator Volker about the nuances and complexities of hunting in New York State.

And I think some of the arguments that we have back and forth are going to be resolved. But until they do, I'm going to err on the side of not allowing for this expansion at this current particular time.

Thank you, Mr. President.

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

Senator Skelos.

SENATOR SKELOS: If I could explain my vote.

ACTING PRESIDENT MEIER: Senator

Skelos, to explain his vote.

SENATOR SKELOS: I'm going to support this legislation because I'm concerned that Senator Schneiderman and some of my colleagues from the city -- and I know everybody is just waiting for this comment -- are confusing hunting bear and bare hunting.

(Laughter.)

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

SENATOR SCHNEIDERMAN: I don't want there to be any dispute as to my record on this issue. I support bare hunting.

(Laughter.)

ACTING PRESIDENT MEIER: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 60 are Senators Andrews, Balboni, Diaz, Duane, Klein, L. Krueger, LaValle, Montgomery, Morahan, Onorato, Oppenheimer, Padavan, Parker, Schneiderman, Serrano, A. Smith, M. Smith and Stavisky.

Those absent from voting on Calendar Number 60 are Senators Bonacic,

Farley, Little, Marcellino, Robach, Stachowski, Trunzo, Valesky and Wright.

Ayes, 32. Nays, 18.

ACTING PRESIDENT MEIER: The bill is passed.

Lions and tigers and bears, oh my.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 277, Senate Budget Bill, Senate Print 553D --

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, if it would be possible, at this time we're going to be discussing different budget bills. And perhaps we can tone things down in the chamber a little bit and members can come into the chamber that are not at a conference committee.

ACTING PRESIDENT MEIER: Could we ask members to come into the chamber.

We ask members in the chamber to refrain from conversation so that we can get

our business done.

Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: Mr. President, this is the Education, Labor and Family Assistance bill, and something we'd like to adopt today.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to ask the sponsor to yield to a couple of questions.

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Yes. Senator Johnson, can you give me some idea of exactly what is in this budget in terms of the education funding?

SENATOR JOHNSON: The Senate has added an increase, a school-year increase of $626 million, according to the formulas.

That's above the amount that the Governor proposes, which was $201 million. Flex aid, full funding of BOCES aid, special services aid, public and private excess cost aid, and also additional money for public libraries, public broadcasting, et cetera.

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

SENATOR JOHNSON: Yes, Mr. President.

SENATOR MONTGOMERY: Mr. President, I would like to, through you, ask Senator Johnson what is the percent of increase in this budget for the CFE specifically.

SENATOR JOHNSON: As you know, Senator, it does not deal with CFE at all, since the Governor is appealing that decision. And until that's resolved, we're not appropriating the money for that.

SENATOR MONTGOMERY: Do you have -- is there some targeted number that our budget, as we're looking at this budget, your budget, reflects as it relates to an attempt

to address CFE, even though we have not come to an agreement?

SENATOR JOHNSON: The school year increase of $626 million, which I mentioned to you, would cover all schools according to the present formula. We haven't changed the formula.

Okay. This money is going to be dispensed according to the present formula, period.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. If the sponsor would rise for --

ACTING PRESIDENT MEIER: Senator Johnson, do you yield to a question from Senator Schneiderman?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

Just to clarify what this does to

the Governor's proposal, this Senate Budget Bill eliminates the $325 million Sound Basic Education fund that the Governor proposed and provides a pot of $400 million distributed according to the current formula; is that correct?

SENATOR JOHNSON: Yes.

SENATOR SCHNEIDERMAN: Thank you. Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: We will be discussing this bill. We'll be seeking to amend this bill. But I think that the one central point that we have to focus on as a house is the fact that we are eliminating a proposal.

And again, I guess it's the second day in a row I've got something good to say about the Governor. The Governor, to his credit, proposed a Sound Basic Education fund that would distribute school aid primarily based on need.

What we're doing here is taking a step backwards. Because while the Senate

proposes $400 million instead of $325 million, which is a small increase, we're going back to the same old formula which it has been clearly stated and documented by the Court of Appeals and by the trial court, in excruciatingly detailed findings of fact, that the City of New York and other high-needs school districts are shortchanged under this formula.

So I think this is an issue that we should address. There are a great many improvements that were made in the Senate's budget bills over the Governor's Executive proposal. Unfortunately, when it comes to what many of us view as one of the most central issues before the state today, the adequate and fair funding of our public school system, here the Senate is taking a step backward.

So we will seek to address this issue. And, Mr. President, I believe there's an amendment at the desk. And I ask that the reading of the amendment be waived, and I ask to be heard on the amendment.

ACTING PRESIDENT MEIER: The amendment is at the desk. The reading is

waived, and you're recognized to explain the amendment.

SENATOR SCHNEIDERMAN: Thank you very much.

The Campaign for Fiscal Equity decision is not something that, as some would have it, was originated by what are called "educrats." It was initiated by parents in School District 6, in my district, in Washington Heights. It was initiated because they realized that their children were getting inadequate educations throughout the district and throughout the City of New York, that there were hundreds of thousands of children being inadequately educated.

It is incomprehensible to me that we are here now passing a budget in 2005 that does not address the issues raised by the CFE case. And I realize that there is a certain attitude that prevails among some members of the Legislature that if we can avoid this problem as long as we can, that should be an acceptable way to deal with the problem.

That is unacceptable, and it should be unacceptable to every member of this house

on both sides of the aisle. We cannot allow children to lose the opportunity for a decent education. If there is one thing that should be sacrosanct in our civil society, in our secular government, it should be a public school education of high quality for every child. That is the key to the American way of life, that is the key to opportunity, that is the key to economic success -- not just for individuals, but for us as a state.

We cannot compete with other states. We certainly can't compete internationally with Germany and Taiwan and other places with great public school systems if we do not provide a sound, basic education for all of our children.

The Court of Appeals in the CFE case simply said we had a constitutional obligation to provide it. It had been demonstrated by the plaintiffs that there are schools all over the City of New York -- and in fact, we know that there are schools in other parts of the state too -- that were not providing a sound, basic education. And they said, fix it. It's our constitutional

obligation.

Last year we had the latest budget in history. Some members of the Assembly, it has been charged, held out specifically to get money for CFE. After the latest budget in history, the longest holdout in the history of the state, New York City, which had been receiving 37.15 percent of the state's school aid, received some new money. And because we added a little bit of money, New York City received 37.23 percent of the new money. That is an increase of .08 percent over a formula and a distribution that was found to be unacceptable, unconstitutional and that leaves hundreds of thousands of our children in inadequate schools.

We are not asking for luxury. But there are ways to provide this money. This amendment would add, to the Governor's $325 million that he proposed for a Sound Basic Education fund, $562.4 million. And we have -- this would add to the SBE fund. We follow the same distribution formula the Governor would.

This would result in the Buffalo

school district receiving $26.3 million in aid more than they received last year. This would provide, for the City of New York, 62.2 percent of the total Sound Basic Education aid, which is in line with the Zarb Commission and every other commission that has examined the need to revise the funding formula.

And this would serve as a message to the people of the State of New York and the City of New York that we're not ignoring our constitutional responsibilities, that the Senate of this state is not saying, You know what, we have all these findings of fact that children are getting inadequate education, that there are children being taught in bathrooms, in closets, that there are lunchrooms that are running, because of the overcrowding in those schools, on a schedule where kids have 20 minutes for lunch and they are running from 9:00 in the morning till 2:00 in the afternoon.

If you had a school system in any other district -- and we've been accused of wanting too much money for the city -- where

73 percent of the children were eligible for the federal free lunch program, because that's how poor they are, you would want more money, you would vote for more money. If you had a school district where 442,000 children came from families receiving Aid to Families with Dependent Children, you would vote for more money for that district. When you have a higher portion of the children who are not native English speakers, as we have, where you have 135,000 children enrolled in special education programs, this is a school district in New York City that deserves and needs more money so we can have a sound, basic education for every one of our children.

And the Court of Appeals has recognized that, experts that have looked at this have recognized that, and yet the Senate in the budget this year has walked away from its responsibility.

If you support this amendment, if we go back to the Governor and say, Resubmit this, we will have the money for it. We do not raise taxes to generate this money. We adopt three commonsense proposals to close

corporate tax loopholes.

We eliminate a loophole that allows corporations to use intersubsidiary transactions to shift incomes into states and counties that have no corporate tax. So a corporation in New York could shift income to a Delaware subsidiary and not pay tax. We close that loophole. That will generate $400 million. Combined reporting is done in 17 other states; we should do it here.

We also can reform New York's corporate alternate minimum tax, which had many loopholes added to it over the last decade that specifically favor multistate corporations. We should have the same rules for those big corporations as we do for small businesses. That would generate another $200 million.

And if we reform the Empire Zone program and have oversight tying the provision of tax breaks and resources to the creation of jobs, we could save another $175 million.

That's simple common sense, good public policy, treating like transactions alike, treating all businesses fairly. And

that would generate the money we need for the $562 million.

This is not a one-shot. This is recurring revenue. Let's put a down payment on CFE. Let's add the $562 million to our school funding formula, in accordance with the distribution system proposed by Governor Pataki. He did the right thing on the distribution formula this year. Let's get rid of this $400 million mystery pot of money that's in the Senate bill, and let's go back to a formula where we can tell the voters of this state that we are voting to distribute based on need and we are going to provide a down payment on the CFE decision.

I urge everyone to support this amendment, Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: I'd like to speak in support of this amendment.

This morning I was at a wonderful discussion, the Warren Anderson Lecture Series. And I think perhaps I was the only Senator there, which is unfortunate, because

it really was a very interesting discussion.

And one of the things that I came away thinking this was really the heart of it, was when Michael Rebell, who was the leader in the CFE case, said we really have to make a choice in this state. Either we are going to keep the same amount of money and lower our Regents standards, or, if we are going to keep the higher Regents standards, we have to add the money in order to help our kids to meet the higher standards.

And that seems to be the crux of it. Where do we want to go here?

Obviously we feel that the Regents standards are very important and produce students who can meet them to graduate and perhaps, more likely than not, go on to college. We know large numbers of our Hispanic students and our black students are not meeting the standards. And therefore, that is why we're saying if we are keeping the higher standards we must provide additional funding to help these children that need that extra effort in order to meet the standards.

Many, many states have faced the

same problem. We are not alone in New York State. But it's interesting that in most of the states where this case -- a similar case has come up, that in most of the states, the courts have decided for the plaintiffs. And the various states are doing their best to try and meet the needs of the students and the decision of the courts.

I guess I didn't want to say too much more on this subject. I do want to talk on the next amendment, which will concern itself with capital construction.

But I think it's up to us to decide what it is we really want for all the kids in this state. Do we want them to meet the higher standards? We have to provide more funds. It's not just money, we know that. But money is an essential piece of it.

Thank you.

ACTING PRESIDENT MEIER: On the amendment, those Senators in agreement please signify by raising your hand.

The Secretary will announce the results.

THE SECRETARY: Those recorded in

agreement are Senators Breslin, Brown, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, Klein, L. Krueger, C. Kruger, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Sampson, Savino, Schneiderman, Serrano, A. Smith, M. Smith, Stachowski, Stavisky. Also Senator Andrews.

ACTING PRESIDENT MEIER: The amendment is not agreed to.

Senator Saland.

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

I listened certainly very carefully to both Senator Johnson as well as Senator Schneiderman and Senator Oppenheimer.

This proposal that the Senate has advanced certainly is a proposal that enriches considerably the amount of funding that the -- in excess of the amount of funding the Governor had proposed for the education K-12 portion of his budget.

As you will recall, the Governor's budget proposed some $201 million in one or another operating aid formula and some $325 million in his SBE, Sound Basic Education

fund.

We have preserved that $325 million, in effect, setting it aside for a couple of reasons. Number one, there is no negotiated agreement between us and the Assembly and the Governor, notwithstanding the great desire of this majority to have such an agreement.

Unfortunately, the politics of the issue being what they are, the bottom line is that the referee's decision or report incorporated by Judge DeGrasse in his decision has set what for the Assembly is a floor, a floor which to the Senate, this majority, is a ceiling -- and an unattainable ceiling, because spending $14.6 or $14.8 billion five years out, coming off this budget with $15.5 billion in the highest per capita aid of any state in this nation, is simply a bit unrealistic, at least unrealistic in my opinion.

And the simple fact of the matter is that that's without dealing with the needs of the rest of the state. This majority has consistently expressed its desire for a

statewide solution. We have expressed our willingness and interest to try and negotiate. But the position of the court has basically created a political climate in which the Assembly dare not negotiate down.

So I fear, notwithstanding the fact that we're willing to set aside some money to deal with SBE -- can I have some quiet, please, Mr. President? I'm having a difficult time hearing myself.

ACTING PRESIDENT MEIER: Can we have some order in the chamber.

SENATOR SALAND: Thank you, Mr. President.

In the absence of that agreement, what we have is a Supreme Court decision. Not a Court of Appeals decision, a Supreme Court decision. A Supreme Court decision which some if not many believe is on very shaky ground in terms of directing this Legislature, which isn't even a party to the action, to appropriate some 14-plus billion dollars some five years from now.

When you read the referee's report, when you read the decision that was rendered

by Judge DeGrasse, you look at a couple of precedents. One, which the referees offered, which was truly so weak that, in one of the rare occasions I agreed with Judge DeGrasse, he was too embarrassed to include it as one of his precedents, where the court relied on some relatively inconsequential Supreme Court case coming out of the City of New York setting the fees for 18B attorneys, a stretch beyond the imagination of any reasonable thinking person. And to Judge DeGrasse's credit, he elected not to go there.

The other case upon which he relies upon, quite candidly, other than the desire of Judge Kaye to drive policy in this state, probably would not stand muster with many lawyers who would look at this objectively either as a constitutional issue or an issue of interpretation.

But that being said, this is a Supreme Court decision. And you can't pick those decisions that you like and those decisions that you don't like as a matter of governance. And it is a matter of governance. You can't let some judge in Manhattan or some

judge in Watertown or some judge in Plattsburgh or some judge in Poughkeepsie who's a lower court judge, which is basically a trial court, drive state policy.

If the Court of Appeals wants to be the arbiter of social policy, for better or worse -- and, in my opinion, worse -- they have the ability to do that. They've done it in family law, they've done it on the death penalty, they've done it with regard to the powers of the Governor, they've done it with regard to education, they've done it hither and yon, and they've done it really over the course of the past several years just about to a fare-thee-well.

Now, the comment was -- I think earlier I heard Senator Schneiderman say something about avoiding the problem as long as we can, in the context of dealing with CFE.

I believe that our position is really tempered by reality, tempered by the fact that, as I mentioned earlier, in the absence of an agreement, which may well prove unattainable, it would be a sorry state of affairs to let a Supreme Court judge determine

that we have to appropriate billions of dollars -- regardless of what the cause may be, whether it be for public protection, whether it be for education, whether it be for health care, whether it be for any service you can name.

That is not within the domain of a trial court judge. For that matter, I don't believe it's within the domain of the Court of Appeals and threatens a grave constitutional crisis if it gets there. But that's something for a little later.

One other comment. And perhaps I misunderstood the context of the comment or the comment. Again, in Senator Schneiderman's remarks, he made some reference to the formula being found unconstitutional. Let me assure you that the Court of Appeals has not found the formula to be unconstitutional. Lacking in transparency, yes. Cumbersome, yes. But they have not found the formulas to be unconstitutional.

Can we do better? Perhaps we may well be able to do better. And we should welcome the opportunity to do so. But that's

not the context within which we're dealing now.

To set aside money to deal with CFE when we don't know what the outcome of this process is going to be and have no idea what the consequences in the outyears will be, to arbitrarily pick a number -- or less than arbitrarily pick a number, if you want to consider it to be a rational exercise -- still does not deal with a multitude of issues, particularly the costs associated with outyears.

So this proposal is the proposal that we will take to the table. It's a proposal which I believe is fair, it's a proposal that addresses the situation with which we are currently confronted that exists today. It doesn't deal in the realm of the hypothetical. We're dealing with the status with which we are presented.

I urge my colleagues to vote in favor of this measure.

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

Senator Stavisky.

SENATOR STAVISKY: Mr. President, I would just like to comment on one aspect of Senator Saland's comments.

I agree that it is the responsibility of the Legislature in our State Constitution in Article XI, where the Legislature shall provide for a system of -- I think it's free common education, common schools where all the children of the state may be educated.

However, when we fail to do that, then we have to rely upon the courts. And it seems to me that if we didn't rely on the courts in the past, then we would still have separate but equal schools.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. On the bill. There's so much in this bill.

I appreciated my colleague's comments on public education and the CFE lawsuit and respect my colleague Senator Saland and his point of view. But I suppose

my point of view is slightly different. It's what a shame that the courts are telling us what to do, and the shame is ours because we failed to do what we needed to do for public education for so many years.

Well, my colleagues have spoken eloquently on that. So I'd like to talk about the section of this bill that perhaps is a similar theme, what we failed to do in higher education and what we may continue to do if we move forward as this bill proposes.

Why are we in so much trouble in the New York City school system and other underserved districts in this state? Because we failed to make the investment in public education and we failed to ensure that our children K-12 could get the education that they need to become citizens and compete in our labor market.

And what is the path we seem to be walking down over the last decade in the State of New York when it comes to higher education? We're also failing to follow through on the commitments that we know work in public higher education. We know that the great State of

New York is a state that is dependent on having an educated workforce; that the labor market demands more and more of us and our children and the next generation; that we are a high-tech state -- we are striving to become even more of a high-tech state, in fact, investing state monies in research and development and technology and the next generation of science.

But we won't keep those jobs and no one will come here to start businesses and they certainly won't stay here if we're not producing young people out of our public education system that have the skills that they need.

So the fact that there's research showing that between '94-'95 and 2004-2005 state spending on higher education decreased by 3.2 percent and support for SUNY and CUNY decreased by 17.5 percent, if you adjusted it for inflation; the fact that during that same period, tuition costs in SUNY have jumped by 29 percent, in CUNY by 28 percent, adjusted for inflation; the fact that the combination of declining state support and increasing

tuition has led to students and their families having to take on an increasingly larger share of funding the cost for higher ed; the fact that our commitment to higher ed pales behind almost every other state in the country; the fact that as we make it more expensive to go to our universities in New York State, we find that it's taking our students longer, they are having to balance out working longer hours with trying to get through their classes, making it impossible for them to in fact excel in their educational endeavors as they ought to; and that while this year I suppose we can all feel a little good that we've reversed some of the Governor's proposed cuts to TAP, that's the game we play here every year.

The Governor attacks the TAP program and several other programs we all know and all care about -- HEOP, EOP, SEEK -- and then we feel victorious that we put them back. And in this bill, I don't believe we even completely put TAP back. And so we make no progress, and we technically continue to fall further behind in our commitment to higher education. And yet we go: Well, we saved TAP

and we saved HEOP and we saved SEEK.

That's not the assignment. The assignment is to make sure that we continue our commitment to higher education.

Certainly if we hope that our state will have jobs in the future and will have businesses who want to stay here and not flee to other states, there is, as my colleagues said when they talked about K-12 education, there is no more important commitment that the state has -- and I believe, despite our arguments on CFE, I believe that Senator Saland agrees with me, there is no greater commitment than our commitment to public education.

But that is not just K-12, that is for college students as well. And the proposal this year to somehow pretend that we're not continuing our plan to cut our commitment to higher education by proposing this frozen tuition with each freshman semester -- with each incoming freshman class, excuse me, is also, please, a game of smoke and mirrors.

You need to look at the findings

from other states that went down the road of claiming they were indexing annual tuition increases only for incoming freshmen. And each of those states have in fact violated that commitment. And we will violate that commitment when we find ourselves short of money next year or the year after.

So we should not be starting out our plan for SUNY and CUNY by actually proposing that we're going to freeze in annual increases. We have to look at the ground that we've lost and make the commitment to make up on that. We are going to be dependent on this year's college students when we are senior citizens and need to make sure that others have taken responsibility for our state, and yet this budget bill goes the wrong direction on higher education.

This budget bill also -- a complex bill, education, labor and family assistance -- in addition to what I don't believe are the right answers for higher education, also raises some serious questions about what we're doing in social services and the Office of Temporary and Disability

Assistance.

Because while I had hoped that this house would join in arguing against the Governor's proposal for a flexible funding block grant of a billion dollars in federal TANF money, we do not reject that proposal in this bill. But we should. We should reject this because your localities, if they talk to you, may have told you they want to reject it.

My locality, the City of New York, is opposed to this. They see this as a shift from state responsibility and authority to the local level. We claim it offers flexibility; it actually offers less money, even in the short run, and no money if the federal government, through reauthorization of the federal TANF bill, does away with these monies.

We hand the responsibility to our counties without the money, but it would give us an out when the federal government doesn't move that billion dollars to us.

That is also a dangerous precedent for us as we continue to complain, because we hear from the localities about unfunded

mandates, we continue to complain about each other, about the other house, that we pass these responsibilities, without the money, over to our counties. And this is a billion-dollar smoke and mirror trick that the Governor is proposing, and we should not be moving forward with that proposal this year.

If in fact the federal government changes the rules of TANF, as I think most of us suspect they will, then we should reevaluate how the State of New York applies its own rules, maneuvers with its own legislation and its own options to maximize federal dollars and best-case scenarios for our districts and our counties. We should not, in the final moments of federal reauthorization of the TANF law, suddenly try a new experiment with a billion dollars that may not in fact be there for your counties, having given them the responsibility for it.

It's a dangerous time to try such a very, very high cost experiment. And there's not one of us who would go back to talk to our districts who might not find, as I have, that in fact their districts are opposed to this

gift from the State of New York and, rather, see it as a Trojan horse. And we should not continue down that road.

I am going to vote against this bill, although I would like to say there are some good things in this bill and I am glad that we are making some improvements over the Governor -- but not at the price of so many other mistakes we make in this bill and not at the price of so many issues. We should discuss in detail among ourselves, in committees, in hearings, with the public before we vote on this legislation.

But I'll be voting no. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: I just want to make one brief comment on the K-12 education budget, and that's just to clarify a potential misunderstanding which I heard today come up in the Warren Anderson lecture.

And that is that wealthier districts are opposed to what is occurring under CFE. I can only speak from the

knowledge that I have. I do represent probably the wealthiest group of school districts in the state. And I have spoken in Scarsdale, in Chappaqua, in Armonk, in Briarcliff Manor -- very wealthy districts, and they are all supportive of the CFE findings, the court findings.

Because they feel that the state is more than just them, that the issue is more than just their school district, that in order for this state to move ahead in the next decade and after, all of our children need the same education or as close as it can get to the quality education that those districts are now providing for their students.

Thank you.

ACTING PRESIDENT MEIER: Senator LaValle.

SENATOR LAVALLE: Thank you, Mr. President.

I was not going to speak, but after Senator Krueger spoke I just wanted the record to be clear that we did restore TAP in this budget.

And I think the higher ed budget

continues to provide opportunities for the students of our state, not only through the Tuition Assistance Program, which was very, very important -- the Opportunity programs, money was restored, increases in the base aid for our community colleges in both SUNY and CUNY, and I think to meet the operating needs of both the State University system and the City University system.

I think this is probably one of the most balanced approaches. And we added $243 million to where the Governor was in his budget. So I think that I am, you know, very, very pleased. And I think after we get done with conference committees and so forth, I think what you see in this budget for higher education and even the language in the language bills will be very close to where we will be.

But I just wanted to make that clarification on TAP.

ACTING PRESIDENT MEIER: Senator Parker.

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

I'm glad to hear our chairman on Higher Education give a vote of confidence to this legislation. But I'm still disturbed by the fact that I think we have one of the most anti-education governors in the history of the United States, somebody who has consistently not provided the kind of funding that this state needs, has not provided the kind of funding for education that the people of my district need in the 21st Senatorial District in Brooklyn, of Flatbush and East Flatbush, Midwood, Ditmas Park, Kensington and Borough Park.

We have several public schools and a CUNY college that, quite frankly, depends both within the context of employment but, as well, for the educational needs. This is a university system that, you know, despite being underfunded, you know, produced two Rhodes Scholars. And, you know, they joked last week that they can do more with less, imagine how much they could do with nothing. And I think that we are trying to get to that point.

I think that despite the

improvements that we've made beyond the Governor's original suggestion, that we still don't go far enough in terms of providing the kind of support that we need for CUNY, for SUNY. And certainly we have not met the basic educational needs under CFE.

I have been appalled, mostly by the lack of respect for the appellate court that I've heard from members of this house, that I've heard from others. And I was happy to hear Senator Saland express the fact that that's exactly right, that we cannot pick and choose what we're going to enforce and what we're not going to enforce. We have a court order that we still have not enforced in this state.

And in this legislation, we are still not meeting the funding requirements that are going to ensure a sound, basic education for the children of New York City. And I think that we should continue to talk about it. I think that, you know, we can come up with something that it continues to not just deal -- as I said last year, that not just deals with New York City but also extends

to, you know, other high-needs districts around the state.

And for that reason, I'll be voting no.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I just did not want the opportunity to pass to mention one of the small but very, very important issues that I have a problem with in this legislation, in this proposal, budget proposal.

And that is the language that would transfer the State Library, Museum and Archives to a public-benefit corporation and call it the New York State Institute for Cultural Education.

Cultural -- the cultural institutions in our state are indeed educational institutions. They belong, I believe, in State Ed. They should be viewed as part of the continuum of education, from early childhood education right up through and including adult education, that these are not separate but a part of.

And it's very unfortunate that the Governor has chosen to attempt to separate out our cultural institutions so that they do not continue to be partnered, in a very close and real sense, with education.

I note that the Senate rejected the attempt to take VESID out, and I'm very happy to hear that. But I am sad to know that we did not fight, as we always have, to maintain the cultural institutions as part of State Education.

So that saddens me, because I think this is very shortsighted. And certainly it goes in the opposite direction of where we are trying to take youngsters, and that is we would like for the cultural institutions to support schools and not separate themselves out.

And I'm being given a signal that I'm wrong, and I'm happy to be corrected. So, Mr. President, if Senator Johnson would yield to answer whether or not my assumption is true as I'm reading it in my notes here.

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

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

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR JOHNSON: I just wanted to tell you, Senator Montgomery, that we have rejected, the Senate rejected restructuring the Education Department and keeping the cultural education programs where they are in the Education Department.

So I didn't want you to be upset about that.

SENATOR MONTGOMERY: Thank you. I stand to be corrected, and I'm very happy.

Thank you, Senator Johnson.

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

Debate is closed, then.

I'm sorry. Senator Little.

SENATOR LITTLE: Thank you, Mr. President.

Just for a moment, I'd like to speak in the affirmative on the bill. I think there are so many good things in this bill that we were able to do as a result of New

York State being in a better economic condition and having some available resources that we can add money to education, to libraries, and to many of the proposals in this.

But there's one thing in this bill that I think is so important to families and to college students. We have rejected the proposal for the higher tuition increase at the SUNY system, but we have established a CPI. So the tuition increase this year for a SUNY student would be $121.

But the good part about this bill and this proposal is that tuition would remain the same for the four years that that student is attending a SUNY school. And then an increase would go to next year's student on a CPI, and they would have the same tuition for four years.

I think this is a wonderful program to institute, as the mother of six children, having put them through school, always getting that tuition increase each and every year. So that this way a family can plan, knowing the cost of a four-year education in advance, and

be able to have more children attend our SUNY system.

But it's a very good bill, and I vote in the affirmative.

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

Debate is closed, then.

The Secretary will ring the bells.

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 277 are Senators Andrews, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, Klein, L. Krueger, C. Kruger, Montgomery, Onorato, Parker, Paterson, Sabini, Serrano, A. Smith and Stavisky.

Those absent from voting on Calendar Number 277: Alesi, DeFrancisco,

Larkin, Leibell and Savino. Also absent from voting on Calendar Number 277, Senator Schneiderman.

Ayes, 37. Nays, 17.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I'd like to -- I can't ask unanimous consent anymore. What do I ask? I would beg your approval.

Under Section 9, thank you, I would like -- I had not been able to be in the chamber. I would like to be recorded in the affirmative on Calendar Number 164, please.

Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: With your approval, I withdraw my request.

ACTING PRESIDENT MEIER: It's withdrawn.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President. Pursuant to Rule 9, as required, I

was required to be at a public hearing, actually on the General Government Conference Committee, and therefore I would like to cast my vote on Senate Bill 120, Calendar Number 60. I want to vote aye.

ACTING PRESIDENT MEIER: The record will so reflect, Senator Farley.

Senator Little.

SENATOR LITTLE: Thank you, Mr. President. Pursuant to Rule 9, I was required to be at a public hearing or meeting of the General Government Standing Committee or conference committee and cast my votes as follows for bills on the controversial calendar: Senate Bill Number 120, Calendar Number 60, I vote aye.

ACTING PRESIDENT MEIER: You will be so recorded, Senator Little.

Senator Wright.

SENATOR WRIGHT: Mr. President, pursuant to Rule Number 9, I was required to be at a meeting of the General Government Conference Committee, and I am requesting to cast my vote on the controversial calendar, Senate 120, Calendar Number 60, and I vote

aye.

ACTING PRESIDENT MEIER: You will be so recorded, Senator Wright.

Senator Valesky.

SENATOR VALESKY: Mr. President, I was required to be at a public meeting of the Agriculture, Environment and Housing Budget conference committee. I'd like to cast my vote in the affirmative on Senate Bill Number 120, Calendar Number 60.

Also pursuant to the same rule, and for the same reason, on Senate Bill Number 553D, Calendar Number 277, on the canvass of agreement, I'd like to be considered voting in the affirmative as well.

ACTING PRESIDENT MEIER: So ordered.

Senator Trunzo.

SENATOR TRUNZO: Pursuant to Rule 9, I was required to be at a public meeting of the General Government Conference Committee, and therefore request that my vote be cast on the controversial calendar for Bill Number S120, Calendar Number 60. I vote aye.

ACTING PRESIDENT MEIER: So

ordered.

Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, pursuant to Rule 9, I was required to be at the meeting of the General Government Conference Committee, and I would like to cast my vote on the following bills from the controversial calendar: Senate Bill 120, Calendar 60, I vote aye.

ACTING PRESIDENT MEIER: So ordered.

Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

Also pursuant to Rule 9, I was required to be at a joint conference committee with EnCon and Housing, and I would like to cast my vote in the affirmative on Senate Bill Number 120, Calendar Number 60, of the controversial calendar.

ACTING PRESIDENT MEIER: So ordered.

SENATOR BONACIC: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator

Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President. Pursuant to Rule 9, I was required to be at a meeting of the Environmental, Housing and Agriculture Budget Conference Committee and cast my vote as follows: On the controversial calendar, Senate Bill Number 120, Calendar Number 60, I vote aye.

ACTING PRESIDENT MEIER: So ordered.

Senator Robach.

SENATOR ROBACH: Yes, Mr. President. Also pursuant to Rule 9, I was at the meeting of the General Government Conference Committee, and I would like to record my vote on the controversial calendar: S120, Calendar Number 60, in the affirmative, please.

ACTING PRESIDENT MEIER: So ordered.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 278, Senate Budget Bill, Senate Print 554D, an

act making appropriations for the support of government, HEALTH AND MENTAL HYGIENE BUDGET.

SENATOR LIZ KRUEGER: Explanation.

ACTING PRESIDENT MEIER: Senator Johnson, an explanation has been requested with regard to Calendar 278.

SENATOR JOHNSON: This is the Medicaid and mental health budget.

We have proposed an increase, fiscal year increase of $667 million for Medicaid restorations, hospital restorations, nursing homes, et cetera. It's a very good bill.

ACTING PRESIDENT MEIER: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor would please yield to some questions.

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

So, Mr. Sponsor, my understanding is that in the Governor's original proposed budget he proposed cuts of about $1.1 billion in health care funding, and that this bill is putting back, so to speak, approximately $600-and-something million of the cuts the Governor made.

But when we look at the questions for ourselves, since health care is so complicated, it would help me to understand how our dollars hold up against the Governor's proposal.

So, for example, in the Governor's budget he cuts, in state and then matching federal funds, $731 million to hospitals and $495 million to nursing homes, $32 million to home care providers, and $340 million to other health care providers.

In this budget bill, how are we putting that back? Or what are our cuts in comparison to the Governor's for hospitals, nursing homes, home care providers, and then other health care providers?

SENATOR JOHNSON: Would you

summarize your question so I may answer it properly.

SENATOR LIZ KRUEGER: Certainly.

In the Governor's proposed budget there were actual dollar cuts to different institutions for health care. We're not cutting as much as the Governor, we're actually restoring some of what he cut, but we would still have reductions in health care.

So if the Governor's budget was going to translate into $731 million reduced to hospitals, state and federal match, what would our bill do to reductions to hospitals? How much would they face as a loss under our bill in comparison to the Governor's bill?

SENATOR JOHNSON: I have some very interesting figures here you may like to be informed of.

The Governor cut, out of hospitals, $395 million, and we restored $370.9 million. On long-term care, the Governor cut out to nursing homes $247 million; we put back $240.8 million. And in home care, we restored the entire thing.

SENATOR LIZ KRUEGER: I'm sorry,

I didn't hear that last one.

SENATOR JOHNSON: In home care we reinstated everything that the Governor took out, we put it back in.

SENATOR LIZ KRUEGER: Got it. Thank you, Mr. Sponsor.

If, through you, Mr. President, the sponsor would continue to yield.

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

And I appreciate that these are complex questions, but these are big numbers. And I believe the sponsor was answering the state share, and the numbers I was giving were combined state and federal. So I do recognize the numbers you're giving me.

In this bill, Senator, do we continue the 0.7 percent tax on hospitals that the Governor had proposed, or do we not accept that proposal of the Governor?

SENATOR JOHNSON: We rejected that tax.

SENATOR LIZ KRUEGER: We rejected that. Thank you, that's very good to know.

And did we restore the benefits covered under Family Health Plus that the Governor had proposed? So he proposed eliminating mental health, substance abuse, dental and podiatry benefits.

SENATOR JOHNSON: We restored mental health benefits and dental benefits.

SENATOR LIZ KRUEGER: But not substance abuse and not podiatry?

SENATOR JOHNSON: Not everything, yes.

SENATOR LIZ KRUEGER: And in Medicaid, he also -- did we restore those categorical cuts in Medicaid as well? Or just in Child Health Plus -- Family Health Plus?

SENATOR JOHNSON: Yes, we did.

SENATOR LIZ KRUEGER: We restored it in Medicaid?

SENATOR JOHNSON: That's correct.

SENATOR LIZ KRUEGER: And the Governor had also proposed changing and

decreasing the dollar commitment to early intervention services for young children. Did we restore those, or do we support the Governor's proposals?

SENATOR JOHNSON: We rejected all cuts in those categories, yes.

SENATOR LIZ KRUEGER: We did. All right. Maybe -- Mr. President, excuse me, if, through you, the sponsor would continue to yield.

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

And again, it's a complex bill. Maybe I should ask the opposite question. If the Governor was cutting $1.1 billion and we're restoring $605 million in Medicaid and several other individual items, what did the Governor cut that we kept? What are the big cuts the Governor made that we continue to have as cuts in our budget bill?

SENATOR JOHNSON: There are quite a few items, large and small, Senator, that we have not eliminated which the Governor had proposed.

As far as the managed care premiums, Medicaid premiums, Medicare premiums -- well, Medicaid, yes, we picked up $75 million in additional drug rebates, $40 million in fraud savings -- fraud, crime, finagling, okay -- and various other smaller items.

SENATOR LIZ KRUEGER: Thank you.

Mr. President, if, through you, the sponsor would yield.

ACTING PRESIDENT MEIER: Senator Johnson, do you yield?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

Within this bill -- or perhaps it's the language bill, but it all ties together -- there's some concern about what we are doing in relationship to the bad debt/charity care

bill. The Governor had proposed reforming it within HCRA reauthorization, which I believe we're covering HCRA in this budget bill as well.

Are you familiar with the different proposals for the bad debt/charity care issue?

SENATOR JOHNSON: We have not affected that in any way. We have not cut that in any way.

SENATOR LIZ KRUEGER: So you have kept with the Executive's proposal on bad debt and charity?

SENATOR JOHNSON: No, we rejected the Governor's proposed changes.

SENATOR LIZ KRUEGER: You have rejected the Governor's proposed changes.

SENATOR JOHNSON: That's correct.

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

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

SENATOR JOHNSON: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: So again, with bad debt, with charity, it's complicated but affects uninsured patients who are covered who are in hospitals and they receive care, and then there's a question of what the policies of the hospitals are in, in fact, attempting to get the money in some way through the patient, as opposed to drawing down from the bad debt and charity pool.

So just again to reassure myself on this, since it's an important issue for me, under the plan that the Senate has proposed, either in this budget bill, 554D, or in the matching language bill, are we supporting that general hospitals serving indigent patients would be required to have actual financial aid policies and procedures for reducing charges to low-income individuals who don't have health insurance and for reducing or discounting the collection of copays and deductible payments from individuals who cannot afford to pay such amounts?

If Senator Hannon would like to answer, as the Health Committee chairman, that's fine.

SENATOR JOHNSON: The chairman of the Health Committee in the Senate would like to respond to that question.

SENATOR LIZ KRUEGER: Great, thank you.

ACTING PRESIDENT MEIER: Senator Hannon.

SENATOR HANNON: Mr. President, could I ask that the question be repeated.

ACTING PRESIDENT MEIER: Senator Krueger, Senator Hannon is asking you to rephrase the question succinctly.

SENATOR LIZ KRUEGER: Certainly.

It's my understanding that there's various proposals for clarifying the rules around bad debt and charity care and that in fact there is a proposal that would require general hospitals to have financial aid policies and procedures in place for reducing charges to low-income individuals without health insurance and for reducing or discounting the collection of copays and deductible payments from individuals who cannot afford to pay such amounts.

This has been a proposal within the

budget. I was wondering whether this bill or the matching language bill accepts that language and that concept or does not.

SENATOR HANNON: To respond fully to your question requires me to really say that the question combines two concepts that ought not to be combined.

First, it combines the concept of bad debt and charity care, which is something that's been embodied in our hospital financing system for a couple of decades.

And it combines an initiative of the hospitals themselves, which they initiated on their own to comply with the federal Hill-Burton mandate that the poor be served.

You cannot mix those two. They are separate and apart.

What this bill does is continue the bad debt and charity care as it has been. We do not accept the recommendation of the Executive that we give the ability to the commissioner to make changes in the bad debt and charity care in an undetermined way. So we reject that, and we leave the existing language.

The new initiative which was added by the Executive was to in some way ratify this initiative by the hospitals. But because that initiative was not done on a uniform basis, but within several bands of poverty range and geographic impact, we have thought it would be premature to embody that in statute. It is also the subject of many federal court actions, some applicable to hospitals here, some not. So it would be premature, so we do not accept that language.

But to go back to it, the bad debt and charity care, as it has been, continues.

SENATOR LIZ KRUEGER: Thank you for the clarification, Mr. President.

On the bill. Oh, excuse me. I have -- excuse me, Mr. President. I lost track of my assignment.

I believe that there is an amendment at the desk, and I'd like to ask that reading of the amendment be waived and to be heard on the amendment.

ACTING PRESIDENT MEIER: Your amendment is at the desk. The reading is waived, and you're recognized to explain the

amendment.

SENATOR LIZ KRUEGER: Thank you very much, Mr. President.

I'm proposing that we amend this health care bill. And while I didn't speak on the bill yet, I have serious doubts about voting against this bill because, by and large, while we haven't addressed the fundamental questions of health care, we've actually done a better job than the Governor when it comes to health care budgeting.

But I believe that in combining our goals to improve access to health care, to cover health care, to expand the potential for research into -- lifesaving research in the State of New York, that we should in fact commit ourselves to funding stem cell research, an extraordinarily promising source of scientific research and biotechnology development that in fact could save millions of Americans who are suffering from crippling economic and psychological burdens of degenerative chronic and acute diseases, including diabetes, Parkinson's, cancer, and other illnesses.

And that in fact there has been a good deal of discussion about stem cell research and the potential for its expanded uses in all types of health care delivery over the last year or two. And the fact is that the State of New York seems to be prepared to spend large amounts of money in less defined categories of high-tech research and bioresearch development. We went over some of those yesterday, where we have large pots of money that we're not exactly explaining how we propose to spend them.

But we're proposing an amendment to this bill that would use a hundred million dollars for a stem cell research initiative, which would be included in a 10-year, $1 billion funding stream, which would mostly come from revenues from the sale of general obligation bonds. I do believe, though, this doesn't have to be fully new money, but rather could substitute for any number of the less defined research and development and technology funding streams that we discussed during this budget debate yesterday.

That New York State is in fact

losing our best researchers, who are moving or planning on moving to other states because they are investing in this type of research.

That we've got the cluster capacity in our health care institutions and our universities to expand the programs that we're running to take advantage of our vast intellectual capital and to attract rather than lose leading scientists in New York.

And as I said, we have the potential to save perhaps countless numbers of lives over the next several decades and reduce the cost of health care for ourselves and others by moving forward with stem cell research.

And so our amendment today is in fact to provide a funding stream for stem cell research. And I actually have a companion bill, which is not the amendment today, that would explain how we would authorize and limit and define the use of stem cell research in the State of New York, so I refer my colleagues also to Senate Bill 433.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator

Diaz.

SENATOR DIAZ: Thank you, Mr. President. On the amendment.

Ladies and gentlemen, it seems that nowadays everyone is rushing to put together a stem cell research program. There are those that have called it the new California gold rush.

Last November, the people of California voted and approved Proposition 71. This is an initiative to obtain $3 billion in funding over ten years for embryonic stem cell research. This program will give out $300 million every year for the financing of stem cell research.

Many people have recognized and realized that this field of study has incredible potential for an economic tool. In other words, there is a lot of money to be made and a lot of people trying to get it.

Now, here in New York State, we have suddenly opened our eyes, and we don't want to be left behind and out of a pot of money from the project -- from the projected gold mine of stem cell research.

Some of the reasons that people are giving here in New York are the following. New York cannot stand to lose ground in the competition for some of the most valuable resources. Another one: We need to develop a strong stem cell research program in order for New York not to only maintain its current status with the medical profession, but also to begin to attract top doctors.

Another one, state funding for developing of stem cell research will nourish New York's vast intellectual capital and attract leading scientists to New York State.

Ladies and gentlemen, to make matters worse, and to be sure that we get into this gold mine, there are those arguing for and in favor of the embryonic stem cell research who have embarked on a campaign of misinformation, claiming that there are scientific reasons to believe that this research will lead to a cure for Alzheimer's disease. Nothing is further from the truth. But, as some people say, people always need a fairy tale.

The truth of the matter is that

scientists have allowed society to believe that stem cells will effectively cure Alzheimer's disease. Researchers have apparently known for some time that the embryonic stem cell will not -- and I repeat, will not -- be an effective treatment for Alzheimer's disease. During one of the United States' [sic] subcommittee hearings this past month of May, two researchers testified that Alzheimer's disease is a whole brain disease and not a cellular disorder such as Parkinson's.

This opinion has been kept out of the news, but now the Washington Post correspondent Mr. Rich Weiss has blown out the leak of a scam. He has written an article stating that Alzheimer's disease is the least likely to benefit from the stem cell research.

Ladies and gentlemen, embryonic stem cell research is another and more sophisticated way for the continued killing of unborn babies in America. I oppose the direct destruction of innocent human life for any purpose, including research.

As I said before, embryonic

research is simply another form of abortion in America. What is an abortion? Abortion is the termination of a pregnancy and the killing or the destruction of an embryo or a fetus. Before January 22, 1973, a day of infamy in American history, abortion was illegal in most states and in most states were only performed for extreme circumstances.

In 1970, ladies and gentlemen, Sara Weddington, a young lawyer from Texas, filed a class action lawsuit and behalf of a pregnant woman named Norma McCorvey. Ms. McCorvey not use her real name, she used an alias, Jane Roe. The purpose of this lawsuit was to overturn the State of Texas' antiabortion laws. The lawsuit charged that the laws were unconstitutional, that they violated a woman's rights under the 1st, 4th, 5th, 9th and 14th Amendments of the United States Constitution. Dallas district attorney Henry Wade was the defendant in the case. Jane Roe against Henry Wade. Therefore, the case is known as Roe versus Wade.

Since that day of infamy, January 22, 1973, every year there are

approximately 1.5 million abortions in America. In 32 years, at the rate of 4,000 abortions each day, we have killed and slaughtered 48 million unborn citizens.

Ladies and gentlemen, abortion is the American Holocaust. I want to compare Adolf Hitler and the Holocaust to what happens here in America. The comparison is plain and simple. Six million Jews were exterminated by Hitler in Germany. Abortion here in New York [sic] has killed almost 48 million babies. We simply have been in the killing for a longer period of time than Adolf Hitler.

Hitler believed that Jews were not human beings. In America, abortionists believe that a fetus and an embryo are not life. Hitler killed Jews in masses. America is killing babies at the rate of 4,000 per day. Hitler used ashes, used the ashes of the Jew to make bars of soap. In America, we are selling human tissues to be used in the manufacture of cosmetics as well as for medical research.

What is the difference? Do not point the finger at Hitler. We are worse. Do

not look at Joseph Mengele medically experimenting on the Jewish children and say that you are shocked. Our abortion clinics are doing worse and more extreme things than that.

Ladies and gentlemen, why am I opposed to stem cell research using the embryo? Simply because there are other ways to do stem cell research without using embryonic cells. For example, there is stem cell research using adult tissues, blood from the umbilical cord and other sources such as bone marrow, blood, muscle, fat, nerves and even the pulp of the baby teeth.

Today adult stem cell research has been used to help people with Parkinson's disease, spinal cord injuries, sickle cell anemia, heart disease, corneal damages and dozens of other conditions.

Ladies and gentlemen, there has to be a fundamental commitment to protect and preserve the value and sanctity of human life. We are crossing a fundamental moral line by supporting, promoting and providing taxpayer funding to encourage the further destruction

of human embryos. That is simply the killing of innocent human life.

Here in America we like to be politically correct, so we just don't call it abortion, we call it pro-choice. Well, let me tell you something, to all of you that would like to listen. Hitler was pro-choice. He chose the Jews -- he chose to send the Jews to Auschwitz. That was not Jewish choice, that was Hitler's choice. Murderers and assassins and criminals are pro-choice. They choose to put a gun to your face and blow your head off. That is not your choice, that is the criminal's choice.

The baby in a womb of a woman don't choose the saline solution that will burn his skin away, nor will he choose the forceps that will crack his little head off. That is not his choice, that is your choice.

Finally, ladies and gentlemen, one of the goals of embryonic stem cell research is to be able to clone, create or manufacture another human life in a laboratory with the sole purpose of killing him or her to be able to use their parts for experiments. This,

ladies and gentlemen, is the ultimate degradation of a fellow human life.

Therefore, Mr. President, I am voting no in this issue, in this amendment, and ask my fellow Senators to join me in stopping this madness, this gold rush, this disrespect for human life. Ladies and gentlemen, stem cell research is the reincarnation of Dr. Joseph Mengele's experiments, this time on the unborn, the innocent, and the defenseless human beings.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: On the amendment, those Senators in agreement please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Dilan, Duane, Gonzalez, Hassell-Thompson, Klein, L. Krueger, C. Kruger, Montgomery, Oppenheimer, Paterson, Sabini, Sampson, Serrano, A. Smith, M. Smith, Stavisky and Valesky.

ACTING PRESIDENT MEIER: The amendment is not agreed to.

Does any other Senator wish to be

heard on this bill?

Debate is closed, then.

Ring the bells.

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.)

ACTING PRESIDENT MEIER: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 278 are Senators Andrews, Dilan, Duane, L. Krueger, Parker, Paterson and Serrano.

Those absent from voting on Calendar Number 278 are Senators Alesi, DeFrancisco, Larkin, Leibell, Savino, Schneiderman and Volker.

Ayes, 46. Nays, 7.

ACTING PRESIDENT MEIER: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: In relation to

Calendar Number 278, Senator Hassell-Thompson voting in the negative.

Ayes, 45. Nays, 8.

ACTING PRESIDENT MEIER: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 279, Senate Budget Bill, Senate Print 990B, an act to amend the Penal Law and others.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT MEIER: Senator Johnson, an explanation has been requested with regard to Calendar 279.

SENATOR JOHNSON: Mr. President, this is the Article VII or language bill on public protection and general government, which is the language bill for S550D, which was passed yesterday.

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

Debate is closed, then.

The Secretary will sound the bells.

SENATOR MONTGOMERY: Mr. President.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: We appreciate that thorough explanation from Senator Johnson. We are satisfied.

(Laughter.)

ACTING PRESIDENT MEIER: Thank you.

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.)

ACTING PRESIDENT MEIER: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 279 are Senators Montgomery, Parker, Paterson, A. Smith and Stavisky.

Those absent from voting on Calendar Number 279 are Senators Alesi, Balboni, DeFrancisco, Larkin, Leibell, Savino, Schneiderman and Volker.

Ayes, 47. Nays, 5.

ACTING PRESIDENT MEIER: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 280, Senate Budget Bill, Senate Print 991B, an act to amend the Public Authorities Law and others.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT MEIER: Senator Johnson, an explanation has been requested with regard to Calendar 280.

SENATOR JOHNSON: Mr. President, this is the Article VII or language bill which implements the provisions of S553D, which we passed a short while ago.

Thank you.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: I would like to propose an amendment. I believe it's at the desk.

ACTING PRESIDENT MEIER: Do you waive the reading of the amendment?

SENATOR OPPENHEIMER: Yes.

ACTING PRESIDENT MEIER: Okay. Your amendment is at the desk, the reading is waived, and you're recognized to explain your amendment.

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

This amendment would provide for a $10 billion capital construction program for school districts and libraries, both inside and outside of New York City, to address the CFE decision.

In February of this year, State Supreme Court Justice Leland DeGrasse affirmed the recommendations of the panel of judicial referees and ordered the Governor and the Legislature to provide New York City schools with $9.2 billion for school facilities construction. This order only applies to New York City. But many of us, I know, in this house, we had high hopes that the state would recognize the need for the overhaul of the whole school financing system and provide needed resources to school districts throughout the state. However, as we all know, this didn't happen.

This amendment would provide enough funds to address the capital construction needs for school districts around our state. All school districts would qualify for participation, though funding is targeted at districts that have the highest need.

Also, this proposal would not affect the financial plan for this fiscal year, our state fiscal year, as this is a capital plan, capital spending, and no debt service payments would be due until the following year, 2006-2007.

Also, this amendment would address financial inequities which in the past prevented school districts from providing a sound basic education. There will be no match required for the lowest-wealth school districts in their capital plans. For others, there will be a match required. However, the state share will be more than the current building aid ratio is currently in our state.

In order for New York State students to have a meaningful high school education and a lower school education, K through 8, we have to provide the adequate

physical facilities and classrooms for students and teachers. This initiative intends to create an environment that is conducive to learning by providing much-needed resources directed towards reducing class size through capital construction and rehabilitation of school and library facilities.

We all have heard many horror stories of overcrowding in schools and classes being held in hallways and even in closets, and I once heard in even a bathroom.

So I think the need is evident that we have to do something in the way of capital construction, because we can't be teaching our children in inadequate rooms and in inadequate facilities. We have to do new construction, and this amendment would advance that.

Thank you.

ACTING PRESIDENT MEIER: On the amendment, those Senators in agreement please signify by raising your hand.

Announce the results.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin,

Brown, Diaz, Dilan, Gonzalez, Hassell-Thompson, Klein, L. Krueger, C. Kruger, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Sampson, Savino, Schneiderman, Serrano, A. Smith, M. Smith, Stachowski and Stavisky.

ACTING PRESIDENT MEIER: The amendment is not agreed to.

Any other Senator wish to be heard on the bill?

Debate is closed.

Ring the bells.

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.)

ACTING PRESIDENT MEIER: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 280 are Senators Andrews, Diaz, Gonzalez, Hassell-Thompson, L. Krueger, Parker, Paterson, Sabini, Savino, Serrano and

A. Smith. Also Senator Stavisky.

Those Senators absent from voting on Calendar Number 280: Senators Balboni, DeFrancisco, Duane, Nozzolio and Volker.

Ayes, 43. Nays, 12.

ACTING PRESIDENT MEIER: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 281, Senate --

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

SENATOR LIZ KRUEGER: I'm sorry. I'd been rising waiting to explain my vote.

ACTING PRESIDENT MEIER: The bill is passed, Senator.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 281, Senate Budget Bill, Senate Print 992B, an act to amend the Public Health Law and others.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator

Johnson, an explanation has been requested with regard to Calendar 281.

SENATOR JOHNSON: Mr. President, this is the Article VII or language bill accompanying Senate 554D, the health and mental hygiene bill, which was passed a short time ago.

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

Debate is closed.

Sound the bells.

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.)

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

SENATOR BRESLIN: Thank you, Mr. President.

On each of these budget bills I have voted in the affirmative, and I applaud the Senate and the Assembly for taking enormous steps in the past several days.

But I'd like to point out that although I am voting for this bill, I have some serious reservations on the Medicaid cap. I really don't think it should be referred to as a Medicaid cap, and we can do better.

You know, when counties come to us and they're suffering and we see counties that have a high elderly population and a density at nursing homes, and we have other poor counties who can't handle the Medicaid, this doesn't take into consideration various factors.

And it seems to me it isn't the kind of change that we need in Medicaid. It's a small, small start that I think will be unfair to many of the counties throughout the State of New York.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Breslin, how do you vote?

SENATOR BRESLIN: In the affirmative.

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

Senator Schneiderman, to explain

his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

In addition to the very serious issues Senator Breslin just addressed, there are some other problems with this legislation that I think are, in the long run, potentially very serious.

We do not fully restore the Governor's additions of copays. We do not restore some critical services such as dental services. And I'm afraid we are on the edge of a catastrophic two-tier system of medical care in this state in which all but the most wealthy New Yorkers are on a downhill spiral of reduced benefits, increased copays -- and that is not acceptable.

We could save money in this state by simply providing universal single-payer health care under a state plan to everyone in the state. It would make us more competitive. I don't believe we're moving in the right direction.

I realize that the major opposition in this area comes from the Governor, and the

Senate has made extraordinary efforts to restore cuts that the Governor first proposed.

But I do think we have to take a more long-term view of this. This is not an issue that's going to go away. It's not going to go away with this sort of an approach. And we're going to have to come back with a more comprehensive treatment of it, I hope, before the session is out.

I will be voting in the affirmative also, Mr. President, but with those serious, serious concerns.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 281 are Senators Andrews, L. Krueger, Parker and Paterson.

Those Senators absent from voting on Calendar Number 281: Balboni, DeFrancisco, Duane, Nozzolio and Volker.

Ayes, 51. Nays, 4.

ACTING PRESIDENT MEIER: The bill

is passed.

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

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please recognize Senator Savino. I think you have a motion to make. No?

ACTING PRESIDENT MEIER: Senator Savino.

SENATOR SAVINO: Mr. President, pursuant to Rule 9, I was required to be at a public hearing of the Economic Development and Taxation Budget Conference Committee, and I'd like to cast my votes as follows for the bills that were on the controversial calendar:

Senate 553D, Calendar Number 277, in the negative;

Senate 554D, Calendar 278, in the negative;

Senate 990B, Calendar 279, in the negative.

And in addition, as I was required to be at that meeting, I was forced to miss the canvass of agreement on the following bills, so I'd like to cast my canvass of

agreement as follows: For Senate 554D, Calendar Number 278, in the affirmative.

Thank you.

ACTING PRESIDENT MEIER: So ordered.

Senator Larkin.

SENATOR LARKIN: Mr. President, pursuant to Rule 9, I was required to be at a meeting of the Economic Development Conference Committee and cast my votes as follows for the bills on the controversial calendar:

553D, Calendar 277, yes;

554D, Calendar 278, yes;

Senate Bill 990B, Calendar 279, yes.

ACTING PRESIDENT MEIER: So ordered.

Senator Alesi.

SENATOR ALESI: Thank you, Mr. President.

Pursuant to Rule 9, I was required to be at the public meeting of the Economic Development Conference Committee and would like to cast my votes as follows on the bills on the controversial calendar:

Senate Bill 553D, Calendar Number 277, I vote yes.

Senate Bill 554D, Calendar 278, I vote yes.

Senate Bill 990B, Calendar Number 279, I vote yes.

ACTING PRESIDENT MEIER: So ordered.

Senator Leibell.

SENATOR LEIBELL: Mr. President, pursuant to Rule 9, I was required to be at a public hearing or meeting of the Economic Development Conference Committee and cast my votes as follows for bills on the controversial calendar:

553D, Calendar 277, aye;

554D, Calendar 278, aye;

990B, Calendar Number 279, aye.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: So ordered.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

Remarkably, I have the same problem

pursuant to Rule 9, and I was also at the public hearing of the Economic Development and Taxation Budget Conference Committee. I would like to cast my votes as follows for the bills on the controversial calendar:

Senate 553D, no;

Senate 554D, no;

And Senate 990B, no.

I would also like to cast my vote on the canvass of agreement that was raised in Senate Bill 554D, Calendar 278, in the affirmative.

Thank you.

ACTING PRESIDENT MEIER: So ordered.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, and in addition, Senator Duane is scheduled to speak on a mention to petition a bill out of committee today. He is now at the Public Protection Budget Conference Committee and unable to be here to do so. So I would like to request unanimous consent to adjourn his motion to petition and allow him to do so tomorrow.

ACTING PRESIDENT MEIER: Without objection.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

ACTING PRESIDENT MEIER: That will be so ordered for tomorrow.

Senator Skelos.

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

ACTING PRESIDENT MEIER: No further business, Senator Skelos.

SENATOR SKELOS: I just would like to point out session will be at 11:30 tomorrow. But prior to that, at 10:00 a.m., the Human Services/Labor Conference Committee will be meeting in Hearing Room C of the LOB, Mental Hygiene, Hearing Room A of the LOB, and Transportation will be in Hearing Room B of the LOB.

There being no further business to come before the Senate, I move we stand adjourned until Wednesday, March 16th, at 11:30 a.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until

Wednesday, March 16th, at 11:30 a.m.

(Whereupon, at 4:20 p.m., the Senate adjourned.)