NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 2, 2007

11:04 a.m.

REGULAR SESSION

SENATOR CARL L. MARCELLINO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MARCELLINO: The Senate will come to order.

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

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

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

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

ACTING PRESIDENT MARCELLINO: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, May 1, the Senate met pursuant to adjournment. The Journal of Monday, April 30, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MARCELLINO: 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 Farley.

SENATOR FARLEY: Thank you, Mr. President.

Mr. President, I wish to call up Senator LaValle's bill, Print Number 4524, which was recalled from the Assembly and it's now at your desk.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 687, by Senator LaValle, Senate Print 4524, an act to amend the Education Law.

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

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

SENATOR FARLEY: Mr. President, I now move to recommit the bill to the Committee on Rules.

ACTING PRESIDENT MARCELLINO: The bill is recommitted to the Committee on Rules.

SENATOR FARLEY: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: Mr. President, there's a Resolution 1826, by Senator Hassell-Thompson. If we could have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT MARCELLINO: The Secretary will read, please.

THE SECRETARY: By Senator Hassell-Thompson, Legislative Resolution Number 1826, congratulating the Mount Vernon High School Boys Basketball Team and Coach Bob Cimmino upon the occasion of capturing its second consecutive New York State Public High School Athletic Association Class AA Championship.

"WHEREAS, Excellence and success in competitive sports can be achieved only

through strenuous practice, team play and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, The Mount Vernon High School Boys Basketball Team are the New York State Class AA Champions; and

"WHEREAS, The Mount Vernon Knights defeated the Bishop Maginn Griffins by a score of 68 to 65, for their second consecutive New York State Public High School Athletic Association Class AA state title on Sunday, March 18, 2007, at the Glens Falls Civic Center; and

"WHEREAS, The athletic talent displayed by this team is due in great part to the efforts of Coach Bob Cimmino and his dedicated staff, skilled and inspirational

tutors respected for their ability to develop potential into excellence; and

"WHEREAS, The team's overall record of 24 and 5 is outstanding, and the team members were loyally and enthusiastically supported by family, fans, friends and the community at large; and

"WHEREAS, The hallmarks of the Mount Vernon High School Boys Basketball Team, from the opening game of the season to participation in the championship, were a brotherhood of athletic ability, of good sportsmanship, of honor and of scholarship, demonstrating that these team players are second to none; and

"WHEREAS, Athletically and academically, the team members have proven themselves to be an unbeatable combination of talents, reflecting favorably on their school; and

"WHEREAS, Coach Bob Cimmino has done a superb job in guiding, molding and inspiring the team members toward their goals; and

"WHEREAS, Sports competition

instills the values of teamwork, pride and accomplishment, and Coach Bob Cimmino and these outstanding athletes have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Mount Vernon High School Boys Basketball Team, its members -- Marcquis Abney, Ketema Brooks, Odayne Clarke, Michael Coburn, Woody Eliezer, Jabarie Hinds, Jahrine Jones, Kevin Jones, Jordan Lessane, Tyrone Mitchell, Kortney Parker, Naseer Robinson, Malik Taylor, Sherrod Wright, and Shawn Cowans -- and Coaches Bob Cimmino, Brian Pritchett, Garee Bryant, Paul Roland, Peter Monteplier, Tony Pavlacka, Dwayne Murray, Rasaun Young, Rich Suozzo, Pat Theodule, Anthony Pisacreta, Yaacov Williams, Bryan Browne, and Larry Barnes -- on their outstanding season and overall team record; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted

to the Mount Vernon High School Boys Basketball Team and to Coach Bob Cimmino."

ACTING PRESIDENT MARCELLINO: On the resolution, Senator Hassell-Thompson.

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

I rise to congratulate the basketball team of Mount Vernon High School, and to the Mount Vernon community, for their successful achievement in winning the state championship.

This is not the first time that I have stood here with tremendous pride to congratulate the Knights and Coach Bob Cimmino and all of the supporting coaches and parents and volunteers who go with our young men as they play the games and to instill in them the awareness of what a tremendous community they represent, as well as themselves.

You are so powerfully pleasing to me today. Very few things bring me to tears, but this occasion does, as we have this week mourned the deaths of three of our very young men at the hands of violence this week. This helps me to balance the job that I have as

your State Senator and representative, in knowing that there is a sunshine behind every great cloud.

Thank you for being here with us this morning. And I want to congratulate you on not only your ability on the court, but your academics in the classroom and showing us that it's not brains versus brawn, but together they make a powerful combination.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Adams, on the resolution.

SENATOR ADAMS: Thank you, Mr. President.

I want to rise also to congratulate. And I know the spirit of my colleague, Senator Ruth Hassell-Thompson, and how important young people are.

During my college and high school days, I couldn't win a championship, because I rode the bench all the time. I wasn't a good player.

But as I thought, there was one person on my team, as I shared with my colleagues yesterday, that no matter how

difficult the game was, he wanted the ball in his hand, because he was a winner. He wanted to take the last shot. He wanted to be the person who the entire team depended on before the end of the game.

And I want to share something with you young men, that right now the game is on the line. Gun violence is pervasive in the community you call home. Who wants the ball? AIDS is suffocating the life of your community, your peers. Who wants the ball? Right now, education, your peers across this state can't read or write. Who's going to be the teacher to hold the ball? Who's going to be the cop to patrol your community?

There are men that you know that look like you, that find life to be comical and funny. Class clowns of yesterday are holding squeegees in their hand, washing windows for a quarter.

Now it's time to be serious. You won the championship at Mount Vernon; now I want you to win the championship in life. On the real court, the full court press is on you. I want you to say: I want the ball, I

want to be the one to score the last point, I want to be the one to score the last basket, to make sure my peers are able to do what I do -- not only to put a ball in the hoop, but to also put a person as a CEO in a top corporation in the state of New York.

If you can play ball in Mount Vernon, you can be a doctor in Bed-Stuy. You can also be a pediatrician in Belgium. You can be an accountant in Troy, New York. You can be the same thing on the global proportion.

Take the ball. Don't let anyone prevent you to the geographical boundaries of their mentality that believe you can only be great on the court. You can be great in whatever you want to do. Say to yourself today, in this Senate chamber: Give me the ball, I want to take the last shot.

Congratulations to you.

ACTING PRESIDENT MARCELLINO: That was well said, Senator.

Senator Stewart-Cousins.

SENATOR STEWART-COUSINS: Well, I rise -- and, you know, certainly following

what Senator Adams and Senator Hassell-Thompson had to say, there's very little that I can add. But as a Senator representing Westchester, I did want to say how proud I am of you.

I represent Yonkers and Greenburg and Mount Pleasant. But before I had the honor to come to these chambers, I served with Legislator Young in the county legislature. And year after year, your team would come and we would have jokes about how wonderful you were and how, above everyone else in Westchester County, you prevailed.

So I am pleased to have left the county legislature to come here to find that you are here, still on top, still state statewide champions, still bringing honor to Westchester County, still showing us that the beyond everything, you will do what you have to do to win.

I think Senator Adams said it beautifully. You have to; you are already winners. You already have proven it takes discipline, it takes skill, it takes mental acuity, it takes everything that you need to

win in life to win the way you do every single year.

There is nothing that can be in your way. There is nothing that will stop you except what's here. Be unstoppable. Keep that ball, keep making us proud. Follow us on every level of government. Because you are beyond local champions, you are heroes.

Thank you very much.

ACTING PRESIDENT MARCELLINO: On the resolution, Senator Little.

SENATOR LITTLE: Thank you, Mr. President.

Senator Hassell-Thompson, I would like to join you in congratulating the Mount Vernon Basketball Team for winning the championship New York State basketball title, and they won it in Glens Falls, New York. And I had the opportunity to watch them play, so I certainly know that their skill and their dedication is second to none, and certainly they were very deserving of this title.

I'm also, coincidentally, joined today by St. Mary's-St. Alphonsus Regional Catholic School, which is two blocks from the

Civic Center. And these are youngsters in fourth grade who have been able to watch the players come to Glens Falls from around the state and have celebrated their wonderful athletic skills and been able to see them, to cheer for them, and to host them in Glens Falls since the 1980s.

And it's a special day for me to have them here in the gallery, because not only am I a graduate of St. Mary's Academy, the high school -- even though that has closed and only goes to eighth grade -- but I have this fourth-grade class here, and included in that fourth grade is my oldest granddaughter, Jacqueline Hogan, and they are accompanied by their teachers, Mrs. Edie and Mrs. Hiscox, and several parents, including my daughter Elizabeth Hogan.

So I am proud to have three generations of Littles here in the chamber today, and welcome this class. And they are very family with these basketball players, who come to Glens Falls every year and are truly congratulated and celebrated as being champions in their community and in the state.

And what a wonderful example the basketball players and their dedication are to these youngsters who get to see them when they come to town.

So congratulations, and thank you for coming down, learning more about New York State history. And congratulations to the Mount Vernon High School Basketball Team.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Diaz, on the resolution.

SENATOR DIAZ: Thank you, Mr. President.

I rise to congratulate also not only the young men of Mount Vernon for their achievement, but also my colleagues Senator Stewart-Cousins and Senator Hassell-Thompson.

Because, you know, in life we sometimes don't appreciate or sometimes we don't even know the blessings that God gave us. And we take it for granted, we take for granted things in life. Many times we don't stop to analyze, to think and to appreciate the things that God has given us.

That small group of young persons

over there, today in this Senate, they are making the people, the residents of Mount Vernon proud. They bringing pride, they're bringing honor to Mount Vernon, just that small group of people.

And they are also making Senator Hassell-Thompson, even she says, crying. They're making Senator Stewart-Cousins proud.

And we in this Senate chamber, we are praising you guys. We are telling you thank you. But we have to realize, even us here, that sometimes we don't even know what God is giving us. Sometimes we don't even deserve it. There are so many people out there, there are so many people, there are so many other people better than us. Better than us, more intelligent than us, more capable than us. But God has chosen us. God has chosen you.

And that's something that we have to be aware of, that today that group of residents of Mount Vernon, New York, are here on this Senate floor making Mount Vernon proud. You know how many other residents of Mount Vernon would like to have that

opportunity that God has given you today?

You, you have been chosen. You were chosen by God, you were chosen to be in that team, you were chosen to make us proud. You were chosen among many others. The same way we have been chosen among many others.

So congratulations, God bless you. God bless you, God be with you, continue making us proud.

And Senators, those colleagues of mine that represent White Plains, New York, I am proud to represent, because I have been honored to represent and to be sent here by the honorable residents of the 32nd Senatorial District in the Bronx. There are so many people better than me, there are so many other people that could do this better than I do. But those people, those residents of the 32nd Senatorial District sent me here, and I'm proud to serve them.

And I know that today Senator Hassell-Thompson, your chest, your chest is so big, so wide, because you're looking at those young guys over there. Congratulations, Senator Hassell-Thompson. Enjoy, rejoice.

This is the day that the Lord has made.

God bless you. Thank you.

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

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The ayes have it. The resolution is adopted.

Can we have a round of applause for these fine young men.

(Standing ovation.)

ACTING PRESIDENT MARCELLINO: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Mr. President, I would like to open up this resolution to all members who would be willing to sign on to it. And I thank you for your support.

SENATOR SKELOS: Mr. President, if anyone wishes not to sponsor the resolution, they should notify the desk.

Mr. President, there's a Resolution

1874 at the desk by Senator Winner. If we could have the title read and move for its immediate adoption.

And Senator Winner, I believe, wishes to open it up for cosponsorship.

ACTING PRESIDENT MARCELLINO: The Secretary will read the title of the resolution by Senator Winner.

THE SECRETARY: By Senator Winner, Legislative Resolution Number 1874, memorializing Governor Eliot Spitzer to proclaim May 18, 2007, as NASCAR Day in the State of New York.

ACTING PRESIDENT MARCELLINO: On the resolution, Senator Winner.

SENATOR WINNER: Thank you, Mr. President.

I'm proud to be here to have the opportunity to wave the green flag, so to speak, to start New York's celebration of NASCAR Day for 2007.

In my district in the Southern Tier and the Finger Lakes, we are home to the Watkins Glen International, the soul of American road racing, which over the course of

more than five decades has become a national institution, the premier road racing facility in the United States.

Watkins Glen is a great source of pride to our region and an economic mainstay and landmark that annually attracts visitors from all around the world in the thousands and thousands. Over the last two decades, thousands of NASCAR fans have visited Watkins Glen each and every August, and we've been proud to welcome the NASCAR community to Watkins Glen, and we know that their enthusiasm, loyalty and spirit is unmatched.

It is in recognizing the NASCAR spirit that today's resolution seeks to have New York join many other states in proclaiming Friday, May 18, 2007, as NASCAR Day, which is the signature charitable event of the NASCAR Foundation in supporting a wide range of worthy charitable initiatives. It is an opportunity for us to draw attention to the fact that NASCAR fans all across New York contribute to this worthy cause, and a worthy opportunity for all of them to express their sense of community.

Thank you for supporting this resolution.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator. The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is adopted.

And as has been stated by the acting chair, the resolution has been opened for all who would like to cosponsor. If you would not like to, please notify the chair.

Senator Skelos.

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

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

THE SECRETARY: Calendar Number

167, by Senator Maziarz, Senate Print 258, an act to amend the State Administrative Procedure Act, in relation to establishing.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 306, by Senator Seward, Senate Print 804, an act to amend Chapter 650 of the Laws of 1998 amending the Insurance Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 308, by Senator Seward, Senate Print 2071, an act to amend the Insurance Law, in relation to annuity contracts.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 90th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 415, by Senator Farley, Senate Print 918, an act to amend the Election Law and the State Finance Law, in relation to requiring proposition authorizing.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 426, by Senator Larkin, Senate Print 3435, an act to amend the provide for the creation of the Pine Bush Area Public Library.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 470, by Senator Marcellino, Senate Print 633, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 492, by Senator Skelos, Senate Print 2462A, an act to amend the Uniform Commercial Code, in relation to obligation.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 2. Senators Duane and Savino recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 543, by Senator Trunzo, Senate Print 1321, an act to amend the Public Officers Law and the Education Law, in relation to removal.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 545, by Senator Volker, Senate Print 1873, an act to amend the Tax Law, in relation to extending.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 550, by Senator LaValle, Senate Print 3821, an act to amend the Alcoholic Beverage Control Law, in relation to service of alcoholic beverages.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 619, by Senator DeFrancisco, Senate Print 911A, an act to amend the Executive Law, in relation to establishing "School-Related Professionals Recognition Day."

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 649, by Senator Volker, Senate Print 4035, an act to amend the Penal Law, in relation to trespassing in a motor vehicle.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 649 are Senators Duane, Hassell-Thompson and

Montgomery.

Ayes, 52. Nays, 3.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 667, by Senator Little, Senate Print 1101, an act to legalize, validate, ratify and confirm certain actions taken by the board of education.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 668, by Senator Trunzo, Senate Print 1307, an act in relation to directing the Education Department.

ACTING PRESIDENT MARCELLINO: If we can have a little order, please.

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos, that completes the noncontroversial calendar. In fact, that completes the calendar.

SENATOR SKELOS: Mr. President, if we could return to motions, I believe either Senator Fuschillo or Senator Farley or Senator Robach has a motion to make at this time.

Senator Robach.

ACTING PRESIDENT MARCELLINO: Motions and resolutions.

Senator Robach.

SENATOR ROBACH: Yes, Mr. President. On page 26 I offer the following amendments to Calendar Number 413, Senate Print Number 3748, and ask that the

said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: So ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, in consultation with the Minority Leader, Senator Bruno hands up the following committee change and asks that it be filed in the Journal.

ACTING PRESIDENT MARCELLINO: The changes are accepted.

SENATOR SKELOS: Is there any further business?

ACTING PRESIDENT MARCELLINO: There is none, Senator.

SENATOR SKELOS: There being none, I move we stand adjourned until Monday, May 7th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MARCELLINO: There being no further business, the Senate stands adjourned until Monday, May 7th, at 3:00 p.m., intervening days to be legislative days.

(Whereupon, at 11:32 a.m., the Senate adjourned.)