NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 26, 2008

3:08 p.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 recite the Pledge of Allegiance.

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

ACTING PRESIDENT MARCELLINO: Today to give the invocation we have Dr. Charles Jennings, pastor of the Ridgewood Bible Church in Lockport.

PASTOR JENNINGS: Thank you for inviting me to this noble chamber. May I invite you to join with me to approach the throne of heaven.

Almighty God, we thank You, Lord, that it is by Your design and Your purpose that You have created us for intimacy with You. And Lord God, I'm amazed at such amazing grace, that You would want us to experience a relationship with You, the living creator.

And so, Father, I ask, Lord, that by Your mercy and grace You would work in our lives. Father, draw us to learn more of Your love, Your great love for us, and learn to

love You more.

Almighty God, Creator, Father, I thank You, Lord, that You've also created us in Your image, that we can reflect even Your character in this world. And I pray for all that are gathered in this room today that we might learn to reflect Your holiness, Your goodness, Your kindness, Your justice.

Father God, may we learn to love others, even one another, as You have loved us. Almighty God, I thank You, King of the universe, that You have also created us to exercise dominion in this earth according to Your will.

And I ask for these Senators, Father God, that You would work in their lives to enable them, to empower them, to grant them wisdom, that they might exercise their legislative power and their governing abilities to accomplish Your purposes.

Father, You have revealed to us even through Your prophet Micah that You desire for us to do justly and to love mercy and to walk humbly with our God.

And so, Lord God, I ask, Father,

that You would work in a mighty way to lead these noble Senators to do justly. O Father, I would pray, Lord, that You would also guide them to love mercy. And O Father, may You draw them to walk humbly with You.

And so, Father, I ask that Your blessing would be upon them, their staff, their families and this great work that You have called them to.

For I ask this all in the great name of my savior, the Lord Jesus Christ.

Amen.

ACTING PRESIDENT MARCELLINO: May we have the reading of the Journal, please.

THE SECRETARY: In Senate, Monday, February 25, the Senate met pursuant to adjournment. The Journal of Friday, February 22, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MARCELLINO: Hearing no 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 MARCELLINO: The Secretary will read the substitution.

THE SECRETARY: On page 25, Senator Skelos moves to discharge, from the Committee on Codes, Assembly Bill Number 9480 and substitute it for the identical Senate Bill Number 6499, Third Reading Calendar 322.

ACTING PRESIDENT MARCELLINO: Substitution ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could adopt the Resolution Calendar, with the exception of Resolutions 4270, 4271, and 4366.

ACTING PRESIDENT MARCELLINO: The question is on the adoption of the Resolution

Calendar, with the exception of Resolutions 4270, 4271, and 4366. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The Resolution Calendar is adopted, with the exceptions that were mentioned by the Deputy Majority Leader.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's a resolution by Senator Thompson at the desk. If we could have the title read, move for its immediate adoption, and Senator Thompson has offered it up for cosponsorship.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Thompson, Legislative Resolution Number 4270, memorializing Governor Eliot Spitzer to proclaim March of 2008 as Red Cross Month in the State of New York.

ACTING PRESIDENT MARCELLINO: 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 the resolution is open for cosponsorship by the usual procedure, that if anyone wishes not to be on it they should notify the desk.

Senator Skelos.

SENATOR SKELOS: Mr. President, Senator Thompson has another resolution at the desk. If we could have the title read, move for its immediate adoption, and open it up for cosponsorship.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Thompson, Legislative Resolution Number 4271, recognizing March 8, 2008, as International Women's Day in the State of New York.

ACTING PRESIDENT MARCELLINO: 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 again, the usual procedure. Anyone not wanting to be on the resolution please notify the desk.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's a resolution at the desk by Senator Volker. If we could have the title read, move for its immediate adoption, and open it up for cosponsorship.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Volker, Legislative Resolution Number 4366, memorializing Governor Eliot Spitzer to proclaim April 27 through May 3, 2008, as Municipal Clerks Week in the State of New York.

ACTING PRESIDENT MARCELLINO: 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.

Again, anyone wishing not to be on this resolution please notify the desk.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's a resolution at the desk by Senator Griffo. If we could have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT MARCELLINO: The Secretary will please read the resolution.

THE SECRETARY: By Senator Griffo, Legislative Resolution Number 4434, memorializing Governor Eliot Spitzer to proclaim February 26, 2008, as Spina Bifida Awareness and Prevention Day in the State of New York.

"WHEREAS, Spina bifida is a birth

defect that involves the incomplete development of the spinal cord or its coverings; and

"WHEREAS, Spina bifida occurs at the end of the first month of pregnancy; and

"WHEREAS, Neural tube defects are costly and can result in lifelong disabilities and death; and

"WHEREAS, There are many New Yorkers living with spina bifida for whom health and support services are critical to their well-being and improving their quality of life; and

"WHEREAS, Every year in the United States approximately 3,000 pregnancies are negatively impacted by neural tube defects; and

"WHEREAS, Folic acid is the single most effective weapon against spina bifida; and

"WHEREAS, January 7-13, 2008, was National Folic Acid Awareness Week; and

"WHEREAS, Studies have shown that taking folic acid decreases the risk of neural tube defects; and

"WHEREAS, It is estimated that 50 percent of all pregnancies are unplanned. Folic acid education can help women of childbearing age understand the benefits of taking a daily multivitamin to avoid these birth defects; and

"WHEREAS, Experts recommend that all women of childbearing age in the United States who are capable of becoming pregnant should consume 400 micrograms of folic acid per day for the purpose of reducing their risk of having a pregnancy affected with spina bifida; and

"WHEREAS, In 2003, 1,000 fewer babies were born with a serious birth defect of the brain and spine because of the B-vitamin folic acid; and

"WHEREAS, It is the sense of this Legislative Body to recognize this day in the State of New York to raise awareness regarding the challenges of living with spina bifida and steps that can be taken to prevent spina bifida; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize

Governor Eliot Spitzer to proclaim February 26, 2008, as Spina Bifida Awareness and Prevention Day in the State of New York; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Honorable Eliot Spitzer, Governor of the State of New York, and the Spina Bifida Association of Albany/Capital District of New York."

ACTING PRESIDENT MARCELLINO: To speak on the resolution, Senator Griffo.

SENATOR GRIFFO: Thank you, Mr. President.

As I was approached by individuals involved with the fight against spina bifida, I found this very interesting and very challenging as we look at healthcare in general.

We always are concerned, as we look to wellness efforts, to provide education and awareness to specific issues and concerns related to health and wellness. Also, prevention -- what type of undertakings can we enlist that will prevent, through examinations

or taking certain medication to help prevent certain activity or illness. And beyond that, the most important element is the research that can be conducted so in the future we can prevent some of this.

The statistics were somewhat alarming in this particular case. There are, in this country, over 65 million women of childbearing age. Over 50 percent of the pregnancies are unplanned.

And this spina bifida can occur without any kind of indication. It doesn't matter the family history. There isn't anything that can truly tell anybody how to expect this. So many families are so surprised when this diagnosis appears during the pregnancy.

So I think it's important, the recent research by the CDC shows that we have cases of over 70,000 people in the United States living with this birth defect and that by right now taking a multivitamin with B-vitamin with folic acid we can help prevent some of this during the early stages of pregnancy.

I find that it is imperative that we as a state begin to partner with organizations who are trying to increase awareness and trying to educate and inform not only the medical profession but individuals, particularly of childbearing age, of the risks absorbed with spina bifida.

So today this is the beginning, to continue to raise awareness, to talk about the prevention techniques that can be utilized, and also that we continue to urge for a partnership in developing the research to try to help cure this.

And today in the west gallery we have a number of individuals who have been very involved from the Capital Region. I want to introduce Karen Wentworth, who's the executive director of the Spina Bifida Association in Scotia. The Gallagher family is here. The Wyszomirski family is here.

But there are three people I want to really identify, three individuals who have had spina bifida and are living with spina bifida. One is a young adult by the name of Shameka Andrews. She has been Miss Wheelchair

New York for 2006, and she is from Albany. The other is Alexa Wyszomirski, from Colonie, and she has spina bifida. And the youngster up there -- I met with all of these individuals earlier. They're quite interesting people and have some interesting stories. And I want to introduce also Madeline Gallagher, Matte Gallagher, who's up there too, up in the west gallery.

So we want to thank all of you for your efforts in continuing to help us educate, to prevent as much as possible, and to encourage research and partnership so we can prevent this from occurring to other families across this state. So thank you very much.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Breslin, on the resolution.

SENATOR BRESLIN: Thank you, Mr. President.

I salute you, Senator Griffo, for introducing this resolution and for giving us information about spina bifida.

As many of you may not know, spina bifida, there are more cases than muscular

dystrophy, cystic fibrosis, and multiple sclerosis combined in this country.

And I look up and see members of the Gallagher family, a very prominent family in the Albany area that I've respected for many, many years. And I commend you for your outreach work and your work to tell others how you can prepare before and during pregnancy to prevent this disease.

Thank you very much, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Stachowski.

SENATOR STACHOWSKI: I too would like to rise and congratulate Senator Griffo on this resolution.

I have a friend that I used to share a house with when I was younger, after college. And when he got married, his first daughter was born. And we were all looking forward to it because he was 6-foot-6 and his wife was 6-foot-3. And we thought even if it's a girl, it's going to be this great athlete.

And his daughter had spina bifida.

And they told him that she would be dead by the time she was eight months old. And she just had her 30th birthday, and she's doing very well.

But in the course of that, I was involved with the Spina Bifida Association in Western New York, and they picked up a really high-profile board member whose husband's name is Scotty Bowman. And they lived in Buffalo ever since he was a scout there. And Mrs. Bowman got high profile for them, and they still do a lot of active work.

And I just wanted to commend you on your advocacy, and congratulations on being loving parents to a challenged child.

And I just again want to thank Senator Griffo for sponsoring this resolution and making more people aware of this health problem.

Thank you.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard on this resolution?

Seeing none, all in favor of the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: Hearing none, the resolution is adopted.

Senator Skelos.

SENATOR SKELOS: If we could go to the noncontroversial reading of the calendar.

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

THE SECRETARY: Calendar Number 186, by Senator DeFrancisco, Senate Print 2063, an act to amend the Estates, Powers and Trusts Law, in relation to distribution.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 243, by Senator Fuschillo, Senate Print 5047, an act to amend the General Business Law and the Correction Law, in relation to the use of inmate labor.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 272, by Senator Golden, Senate Print 1148, an act to amend the Executive Law, in relation to designating.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 275, by Senator LaValle, Senate Print 1244, an act to amend the Education Law, in relation to inclusion.

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, 49.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 308, by Senator Skelos, Senate Print 432A, an act to amend the Penal Law, in relation to sexual assault.

ACTING PRESIDENT MARCELLINO:

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 310, by Senator Nozzolio, Senate Print 703C, an act to amend the Penal Law, in relation to adding.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Nozzolio, to explain his vote.

SENATOR NOZZOLIO: Thank you,

Mr. President.

Mr. President and my colleagues, the measure we have before us today is extremely important because the numbers of people affected are growing exponentially each day. It's estimated that one in 15 children ages 10 to 17 have been threatened or harassed while they have been online. That there is cyberbullying and cyberbullies that are praying on their peers and young people from across this nation.

One of those young courageous individuals, a young lady by the name of Alexandra Emanuel, from Auburn, New York, brought this issue to my attention, an issue that is confronting our communities in every corner of New York and is unfortunately seeing more and more children suffering across America.

This enhances the penalties for anyone who engages in cyberbullying. Violence at any level, whether it be on the schoolyard or on the computer online, should not be tolerated.

And the ramifications of the

activity are enormous. We've seen children engage in very destructive behavior as victims of cyberbullying. Some have even committed suicide as a result of being harassed, continually harassed online.

This legislation draws the line. And I want to thank, again, Alex Emanuel for her courage in helping us move this issue forward.

We have a way to go. The New York State Assembly needs to follow our lead and enact this legislation. It's my hope that with our leadership today in enacting this bill, we will see the Assembly follow suit soon after and protect the children of New York State.

Mr. President, I support this measure, and I'm urging my colleagues to do likewise. And I appreciate their support.

ACTING PRESIDENT MARCELLINO: Senator Nozzolio will be recorded in the affirmative.

Please announce the results.

THE SECRETARY: Ayes, 52. Nays, 0.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 312, by Senator Little, Senate Print 1116B, an act to amend the Penal Law, in relation to providing.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Little, to explain her vote.

SENATOR LITTLE: Thank you, Mr. President.

This is a bill that I've sponsored for the past three years. It has passed the Senate unanimously for the past two years.

It's a topic that received a great deal of attention last fall when there was a report made about the number of teachers and school employees having relationships with

students, inappropriate relationships with students within their school district.

We've also seen a lot of attention given to teachers who have had relationships with students who are under the age of 17, and that results in statutory rape.

What this bill does is this bill amends Section 130 of the Penal Law, which talks about client-patient relationships, and says that any teacher or employee or volunteer of a school district cannot have a sexual relationship with any student, full-time student of that school.

Now, it exempts anyone when there is less than a four-year differential or when two people are married.

But what we have seen happen -- and I have examples of this in my district -- is a teacher who has a relationship with a 17-or-18-year-old student, and you cannot deny that that teacher holds something over, power over that student.

I've read in an affidavit --

ACTING PRESIDENT MARCELLINO: Excuse me, Senator. If we could just keep it

down. The stenographer is having trouble hearing. Thank you.

Senator.

SENATOR LITTLE: I've read in an affidavit where a teacher said they would not give a recommendation to that student in the class and for the college that they intended to go to.

So this is really a serious issue that happens to many students in New York State. What happens after it becomes known is the teacher is usually released from that school, loses their job. However, there is no real penalty here.

And in one case we found that the teacher had a relationship with a 17-year-old girl. Three years before, he'd had a relationship with another 17-year-old-girl, and a few years before that he'd had another relationship with another 17-year-old. The entire time, he was married.

So what this bill does is approaches that and makes a penalty out of any of these inappropriate relationships between a member of a school district -- an employee, a

volunteer -- and a full-time student of that district.

I vote aye, and I thank my colleagues for supporting this bill.

ACTING PRESIDENT MARCELLINO: Senator Little will be recorded in the affirmative.

Announce the results, please.

THE SECRETARY: Ayes, 55. Nays, 0.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 316, by Senator Skelos, Senate Print 2374, an act to amend the Criminal Procedure Law, in relation to the statute of limitations.

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.)

ACTING PRESIDENT MARCELLINO: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, I'm going to vote aye on this legislation, but I just want to put on the record that when there is further negotiations on this type of bill, which I'm in favor of -- namely, to keep open a case and extend the statute of limitations when DNA evidence is found at the scene and there's no match, simply because there's no match in the system at that point -- the objectionable part that I hope will be corrected is the fact that under the other two examples of where the statute of limitations is extended -- namely, where the identification of an individual is continuously known but they couldn't find him, or the person was continuously out of the jurisdiction -- on each of those they said, at the outside, it's extended by five additional years beyond the normal statute of limitations.

That is not the case in this new category where DNA evidence is found at the scene. I think there should be an outside limit -- although there should be an extension of time to try to find the perpetrator, there

ought to be some definite outside limit than infinity.

So hopefully when this goes further, we would have some kind of limit in that legislation.

I vote aye.

ACTING PRESIDENT MARCELLINO: Senator DeFrancisco will be recorded in the affirmative.

Announce the results, please.

THE SECRETARY: Ayes, 54. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 318, by Senator Lanza, Senate Print 4053, an act to amend the Penal Law, in relation to making Internet impersonation a crime.

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, 55.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 322, substituted earlier today by Member of the Assembly Lentol, Assembly Print Number 9480, an act to amend the Penal Law, in relation to aggravated harassment.

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.)

ACTING PRESIDENT MARCELLINO: Senator Skelos, to explain his vote.

SENATOR SKELOS: Mr. President, this legislation that passed the Senate last year -- and hopefully the Assembly will pass it this year -- would make it a crime of aggravated harassment if a person displays a noose with the intent to harass, annoy,

threaten or alarm another individual.

This would be similar to what exists in the Penal Law right now concerning the display of swastikas or burning a cross.

ACTING PRESIDENT MARCELLINO: Senator Skelos will be recorded in the affirmative.

Senator Skelos.

SENATOR SKELOS: I apologize, the Assembly did pass the bill this year. Not last year. They have passed it. So hopefully now I'll amend my statement and say I hope the Governor signs the bill.

ACTING PRESIDENT MARCELLINO: Your amended statement is accepted. You'll still be recorded in the affirmative, sir.

Announce the results.

THE SECRETARY: Ayes, 55. Nays, 0.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos, that completes the calendar.

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

ACTING PRESIDENT MARCELLINO: The desk is clear, sir.

SENATOR SKELOS: There being none, I move we stand adjourned until Wednesday, February 27th, at 11:00 a.m.

ACTING PRESIDENT MARCELLINO: On motion, the Senate will stand adjourned until Wednesday, February 27th, at 11:00 a.m.

(Whereupon, at 3:36 p.m., the Senate adjourned.)