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NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 3, 2008

3:47 p.m.

REGULAR SESSION

SENATOR JOSEPH A. GRIFFO, Acting President

STEVEN M. BOGGESS, Secretary

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P R O C E E D I N G S

ACTING PRESIDENT GRIFFO: 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 GRIFFO: The
invocation today will be given by the Reverend
Peter G. Young, of Mother Theresa Community.
Father?

REVEREND YOUNG: Thank you very
much, Senator.

May we pray for one of our former
colleagues, Howard Nolan, who is now in the
operating room for a quadruple bypass.

God, by Your love, You made a world
where we have become neighbors to each other
and we are enabled to love one another.

Grant that we too may use this
Senate to strive toward a way of life in
keeping with Your plan, O God.

Amen.

ACTING PRESIDENT GRIFFO: The

1 reading of the Journal.

2 THE SECRETARY: In Senate,
3 Friday, February 29, the Senate met pursuant
4 to adjournment. The Journal of Thursday,
5 February 28, was read and approved. On
6 motion, Senate adjourned.

7 ACTING PRESIDENT GRIFFO: Without
8 objection, the Journal stands approved as
9 read.

10 Presentation of petitions.
11 Messages from the Assembly.
12 Messages from the Governor.
13 Reports of standing committees.
14 Reports of select committees.
15 Communications and reports from
16 state officers.
17 Motions and resolutions.
18 Senator Fuschillo.

19 SENATOR FUSCHILLO: Thank you,
20 Mr. President.

21 On page number 14 I offer the
22 following amendments to Calendar Number 169,
23 Senate Print Number 5543C, and ask that said
24 bill retain its place on the order of Third
25 Reading Calendar.

1 ACTING PRESIDENT GRIFFO: The
2 amendments are received and adopted, and the
3 bill will retain its place on third reading.

4 SENATOR FUSCHILLO: Mr.
5 President, on behalf of Senator Little, on
6 page number 21 I offer the following
7 amendments to Calendar Number 261, Senate
8 Print Number 5302B, and ask that said bill
9 retain its place on the order of Third Reading
10 Calendar.

11 ACTING PRESIDENT GRIFFO: The
12 amendments are received and adopted, and the
13 bill will retain its place on the Third
14 Reading Calendar.

15 Senator Skelos.

16 SENATOR SKELOS: Mr. President,
17 there's Resolution Number 4470 at the desk, by
18 Senator Stewart-Cousins. If we could have it
19 read in its entirety and move for its
20 immediate adoption.

21 ACTING PRESIDENT GRIFFO: The
22 Secretary will read.

23 THE SECRETARY: By Senator
24 Stewart-Cousins, Legislative Resolution
25 Number 4470, honoring the members of the

1 North East Knights Softball Team, which
2 captured the Bronze Medal at the 2007 Special
3 Olympics World Summer Games in Shanghai,
4 China.

5 "WHEREAS, It is the sense of this
6 Legislative Body to recognize and pay tribute
7 to those individuals with disabilities from
8 the State of New York who have inspired and
9 brought pride to their community by achieving
10 outstanding success in athletic competition;
11 and

12 "WHEREAS, Attendant to such
13 concern, and in full accord with its
14 long-standing traditions, this Legislative
15 Body is justly proud to honor the members of
16 the North East Knights Softball Team, which
17 captured the Bronze Medal at the 2007 Special
18 Olympics World Summer Games in Shanghai,
19 China; and

20 "WHEREAS, Special Olympics provides
21 an opportunity for year-round sports training
22 and athletic competition in a variety of
23 Olympic-style sports for 43,000 children and
24 adults with intellectual disabilities,
25 complimentary to the athletes, their family

1 and caregivers; and

2 "WHEREAS, Special Olympics in the
3 State of New York began in 1969. It was
4 started nationally the year before when the
5 first Games were held in Chicago by founder
6 Eunice Kennedy Shriver; and

7 "WHEREAS, On Wednesday,
8 September 26, 2007, the North East Knights
9 Softball Team departed to compete in the World
10 Games. They trained vigorously and are proud
11 to represent Special Olympics New York, and
12 served as goodwill ambassadors at these
13 esteemed global games; and

14 "WHEREAS, Over 7,000 athletes from
15 165 different countries, including 450
16 Americans, competed in the 2007 Special
17 Olympics World Summer Games; and

18 "WHEREAS, The North East Knights
19 were led by Frank Ragusa, Team Captain, and
20 the team escaped elimination and finished in
21 third place behind Australia and China; and

22 "WHEREAS, Coaches Nancy Troiano,
23 Donna Ascher and Joe Bellini have done a
24 superb job in guiding, molding and inspiring
25 the outstanding athletes toward their goals.

1 Prior to this achievement, the members of the
2 team also competed in the 2005 World Games and
3 won Gold Medals in the floor hockey
4 championship; and

5 "WHEREAS, True assets to their
6 society, their courage, determination and
7 pride stands as superb examples to all, and as
8 ambassadors they have represented New York and
9 the United States in an admirable fashion; and

10 "WHEREAS, Through their
11 participation in Special Olympics New York,
12 the members of the North East Knights Softball
13 Team have gained confidence and have built
14 positive self-images, which have expanded into
15 their home, their workplace and their
16 community; now, therefore, be it

17 "RESOLVED, That this Legislative
18 Body pause in its deliberations to honor the
19 members of the North East Knights Softball
20 Team upon the occasion of capturing the Bronze
21 Medal at the 2007 Special Olympics World
22 Summer Games in Shanghai, China; and be
23 further

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

1 to the members of the North East Knights
2 Softball Team."

3 ACTING PRESIDENT GRIFFO: Senator
4 Stewart-Cousins.

5 SENATOR STEWART-COUSINS: Thank
6 you, Mr. President.

7 It is really an honor for me to
8 rise today and to present this resolution on
9 behalf of the North East Knights Softball
10 Team.

11 This fall I had an opportunity to
12 meet three of their members: Frank Ragusa,
13 who is the team captain, and Andrew Sawicki
14 and Richard Hunt. They represented my
15 district, the 35th District. But what they
16 did was make sure that I understood that they
17 represented so much more than that.

18 These three were just members of a
19 team that went to Shanghai, China, and
20 competed with thousands of other Special
21 Olympians and managed to win the Bronze Medal
22 for their athleticism. And I felt that it was
23 really selfish of me to just honor the three
24 from my district when there are so many from
25 all over the state who have not only shown an

1 amazing amount of courage, an amazing amount
2 of discipline, an amazing amount of
3 leadership, and have acted as ambassadors for
4 us in China.

5 We all know how difficult it is for
6 us to go out of our comfort zones. So can you
7 imagine these great athletes leaving their
8 comfort zone, the United States, and going to
9 China? Not only did they learn the culture,
10 they learned that teams work wherever they
11 are, and they brought honor to all of us.

12 So I wanted to take this
13 opportunity to say what they taught me today,
14 "Ni hao," which in Chinese means "hello," and
15 to thank you for being such an exemplary
16 example of the very best that can be, not only
17 as athletes, but as people. We honor the
18 Special Olympians.

19 I also wanted to make special note
20 of their coaches, Nancy Troiano, Donna Ascher,
21 and Joe Bellini, because clearly, without
22 great leadership, even the best team can't
23 win.

24 So again, on behalf of all of my
25 colleagues, we want to congratulate you.

1 And I'd like to open the resolution
2 for all of my colleagues to join.

3 Congratulations.

4 (Sustained applause.)

5 ACTING PRESIDENT GRIFFO: We
6 welcome you, we congratulate you, and we wish
7 you best wishes.

8 On the resolution, all in favor
9 signify by saying aye.

10 (Response of "Aye.")

11 ACTING PRESIDENT GRIFFO:

12 Opposed, nay.

13 (No response.)

14 ACTING PRESIDENT GRIFFO: The
15 resolution is carried.

16 Senator Skelos.

17 SENATOR SKELOS: Mr. President,
18 would you please recognize Senator Smith.

19 ACTING PRESIDENT GRIFFO: Senator
20 Smith.

21 SENATOR SMITH: Thank you very
22 much, Mr. President.

23 Members, colleagues in the
24 chambers, visitors -- "Ni hao ma" to our
25 Chinese contingency up there -- it is with

1 great pleasure today that we welcome a new
2 member to this chamber.

3 As it has been said throughout the
4 times of my life, as has been said throughout
5 many places in this country, there is no
6 chamber like the chamber that the State Senate
7 holds in the State of New York. The
8 individual members all have a certain
9 confident level, they all have a certain level
10 of intellect, they all provide a great deal of
11 representation on behalf of the constituents
12 that they serve.

13 Today we are here to welcome a
14 member to our conference, a conference that
15 has for many years seen a number of
16 individuals come and go. We are so proud of
17 this gentleman by the name of Darrel
18 Aubertine.

19 Darrel Aubertine has recently won a
20 special election in the North Country,
21 representing Oswego, Jefferson and
22 St. Lawrence. He comes from the New York
23 State Assembly, where he served them very
24 proud. He comes with a background and
25 interest not only for the common person, but

1 also to do what's best for this one state of
2 New York which we all represent.

3 So, ladies and gentlemen, it is my
4 pleasure for me to introduce to some of you,
5 and to reintroduce to many of you, the newest
6 member to this august body, Senator Darrel
7 Aubertine.

8 (Standing ovation.)

9 ACTING PRESIDENT GRIFFO: Senator
10 Skelos.

11 SENATOR SKELOS: Mr. President, I
12 too want to welcome you, on behalf of the
13 Majority and Senator Bruno, to the chamber.

14 Elections are elections, and
15 sometimes people are happy, sometimes people
16 are a little less happy.

17 But I know that you're going to
18 enjoy being with this chamber. We are a great
19 legislative body, and we do welcome you.

20 SENATOR AUBERTINE: Thank you.

21 ACTING PRESIDENT GRIFFO:
22 Welcome, Senator Aubertine.

23 SENATOR AUBERTINE: Thank you.
24 Mr. President, if I might.

25 ACTING PRESIDENT GRIFFO: Senator

1 Aubertine.

2 SENATOR AUBERTINE: I certainly
3 want to thank all my colleagues for that
4 wonderful warm welcome. And I certainly look
5 forward to working with each and every one of
6 you on all the issues that come before us over
7 the next year.

8 So again, thank you very much,
9 Mr. President.

10 ACTING PRESIDENT GRIFFO: Thank
11 you, Senator.

12 Senator Skelos.

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

16 ACTING PRESIDENT GRIFFO: The
17 Secretary will read.

18 THE SECRETARY: Calendar Number
19 56, by Member of the Assembly John, Assembly
20 Print Number 9473, an act to amend Chapter 433
21 of the Laws of 2007 amending the Labor Law.

22 ACTING PRESIDENT GRIFFO: Read
23 the last section.

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

1 ACTING PRESIDENT GRIFFO: Call
2 the roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes, 58.

5 ACTING PRESIDENT GRIFFO: The
6 bill is passed.

7 THE SECRETARY: Calendar Number
8 176, by Senator Rath, Senate Print 678, an act
9 to amend the Family Court Act, in relation to
10 orders of disposition.

11 ACTING PRESIDENT GRIFFO: Read
12 the last section.

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

15 ACTING PRESIDENT GRIFFO: Call
16 the roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes, 58.

19 ACTING PRESIDENT GRIFFO: The
20 bill is passed.

21 THE SECRETARY: Calendar Number
22 181, by Senator DeFrancisco, Senate Print
23 1271, an act to amend the Estates, Powers and
24 Trusts Law, in relation to the right of
25 election.

1 ACTING PRESIDENT GRIFFO: Read
2 the last section.

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

5 ACTING PRESIDENT GRIFFO: Call
6 the roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes, 58.

9 ACTING PRESIDENT GRIFFO: The
10 bill is passed.

11 THE SECRETARY: Calendar Number
12 226, by Senator Padavan, Senate Print 6542, an
13 act in relation to the authorization for a
14 city with a population of one million or more.

15 ACTING PRESIDENT GRIFFO: Read
16 the last section.

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

19 ACTING PRESIDENT GRIFFO: Call
20 the roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes, 58.

23 ACTING PRESIDENT GRIFFO: The
24 bill is passed.

25 THE SECRETARY: Calendar Number

1 240, by Senator Larkin, Senate Print 1918, an
2 act to amend the General Business Law and
3 others, in relation to peddling New York
4 agricultural products.

5 ACTING PRESIDENT GRIFFO: Read
6 the last section.

7 THE SECRETARY: Section 5. This
8 act shall take effect on the 180th day.

9 ACTING PRESIDENT GRIFFO: Call
10 the roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes, 58.

13 ACTING PRESIDENT GRIFFO: The
14 bill is passed.

15 THE SECRETARY: Calendar Number
16 253, by Senator Larkin, Senate Print 189, an
17 act to amend the Education Law, in relation to
18 suspending the pay of any tenured person.

19 ACTING PRESIDENT GRIFFO: Read
20 the last section.

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

23 ACTING PRESIDENT GRIFFO: Call
24 the roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes, 58.

2 ACTING PRESIDENT GRIFFO: The
3 bill is passed.

4 THE SECRETARY: Calendar Number
5 255, by Senator Saland, Senate Print 1096, an
6 act to amend the Education Law, in relation to
7 involuntary transfer.

8 ACTING PRESIDENT GRIFFO: Read
9 the last section.

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

12 ACTING PRESIDENT GRIFFO: Call
13 the roll.

14 (The Secretary called the roll.)

15 ACTING PRESIDENT GRIFFO: Senator
16 Hassell-Thompson, to explain her vote.

17 SENATOR HASSELL-THOMPSON: Yes,
18 thank you, Mr. President.

19 I was excused in 2007 when this
20 bill was passed, and had I been present, I
21 would have voted no. And I intend to vote no
22 today on this bill.

23 I do believe that there is a major
24 concern about violent students in the
25 classroom, and I can understand the cause for

1 alarm and concern.

2 However, I am very concerned that
3 we have added disruptive as well as violent
4 students to this bill. And I have found that
5 in too many instances, teachers use the
6 definition too loosely of "disruptive" in
7 order for me to vote and to support this bill.

8 I would hope that my colleagues
9 would think this through and amend this bill
10 and put the category of "disruptive" in a
11 totally different set of language.

12 Therefore, Mr. President, I will in
13 fact be voting no.

14 ACTING PRESIDENT GRIFFO: Senator
15 Hassell-Thompson to be recorded in the
16 negative.

17 Senator Montgomery.

18 SENATOR MONTGOMERY: Yes,
19 Mr. President. I'm going to continue to
20 oppose this legislation, as I have in the
21 past.

22 And we now are looking at changing
23 the language to include transfer of pupils to
24 another school under the so-called appropriate
25 educational setting in another school.

1 This presumes that the students
2 will receive a quality environment wherever
3 they're transferred to. I have had students
4 who have been transferred to other schools
5 involuntarily. Already, they do it in
6 New York City.

7 These young people have no one to
8 advocate for them, and they lose the
9 opportunity to continue uninterrupted in their
10 school. Because why? They've been
11 disruptive. Perhaps. Now, "disruptive" is a
12 subjective characterization of a young
13 person's behavior.

14 And, too, we have done nothing in
15 New York City -- certainly not enough -- to
16 make sure that every single young person has
17 access to mental health crisis intervention
18 services.

19 So I am totally opposed to this.
20 And I certainly hope that my colleagues will
21 take a step back -- Senator Saland, take a
22 step back -- and consider what this means to
23 young people in our city and in our state.

24 So I'm going to continue to oppose
25 this. No.

1 ACTING PRESIDENT GRIFFO: Senator
2 Montgomery to be recorded in the negative.

3 Announce the results.

4 THE SECRETARY: Those recorded in
5 the negative on Calendar Number 255 are
6 Senators Adams, Duane, Gonzalez,
7 Hassell-Thompson, Montgomery, Parker and
8 Perkins.

9 Ayes, 51. Nays, 7.

10 ACTING PRESIDENT GRIFFO: The
11 bill is passed.

12 THE SECRETARY: Calendar Number
13 260, by Senator Little, Senate Print 4963A, an
14 act to amend the Real Property Tax Law, in
15 relation to definition.

16 ACTING PRESIDENT GRIFFO: Read
17 the last section.

18 THE SECRETARY: Section 2. This
19 act shall take effect September 1, 2008.

20 ACTING PRESIDENT GRIFFO: Call
21 the roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes, 58.

24 ACTING PRESIDENT GRIFFO: The
25 bill is passed.

1 THE SECRETARY: Calendar Number
2 265, by Senator Libous, Senate Print 1591, an
3 act to amend the Religious Corporation Law, in
4 relation to sale, mortgage and lease.

5 ACTING PRESIDENT GRIFFO: Read
6 the last section.

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

9 ACTING PRESIDENT GRIFFO: Call
10 the roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes, 57. Nays,
13 1. Senator Duane recorded in the negative.

14 ACTING PRESIDENT GRIFFO: The
15 bill is passed.

16 THE SECRETARY: Calendar Number
17 290, by Senator Flanagan, Senate Print 3885,
18 an act to amend the General Municipal Law, in
19 relation to games of chance.

20 ACTING PRESIDENT GRIFFO: Read
21 the last section.

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

24 ACTING PRESIDENT GRIFFO: Call
25 the roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes, 56. Nays,
3 2. Senators Duane and Padavan recorded in the
4 negative.

5 ACTING PRESIDENT GRIFFO: The
6 bill is passed.

7 THE SECRETARY: Calendar Number
8 307, by Senator Maziarz, Senate Print 257A, an
9 act to amend the Penal Law, in relation to the
10 crime of surreptitious surveillance.

11 ACTING PRESIDENT GRIFFO: Read
12 the last section.

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

16 ACTING PRESIDENT GRIFFO: Call
17 the roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes, 58.

20 ACTING PRESIDENT GRIFFO: The
21 bill is passed.

22 THE SECRETARY: Calendar Number
23 349, by Senator O. Johnson, Senate Print 5928,
24 an act to authorize the commissioner of
25 transportation to alienate and convey.

1 ACTING PRESIDENT GRIFFO: Read
2 the last section.

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

5 ACTING PRESIDENT GRIFFO: Call
6 the roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes, 58.

9 ACTING PRESIDENT GRIFFO: The
10 bill is passed.

11 THE SECRETARY: Calendar Number
12 350, by Senator Griffo, Senate Print 6748, an
13 act authorizing the Town of Vernon.

14 ACTING PRESIDENT GRIFFO: There
15 is a home-rule message at the desk.

16 Read the last section.

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

19 ACTING PRESIDENT GRIFFO: Call
20 the roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes, 58.

23 ACTING PRESIDENT GRIFFO: The
24 bill is passed.

25 Senator Skelos, that completes the

1 noncontroversial reading of the calendar.

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

4 ACTING PRESIDENT GRIFFO: There
5 is no further business at the desk at this
6 time.

7 SENATOR SKELOS: Mr. President,
8 Senator Bruno hands up the following committee
9 assignments and asks that they be filed in the
10 Journal.

11 ACTING PRESIDENT GRIFFO:
12 Received and filed.

13 SENATOR SKELOS: There being no
14 further business to come before the Senate, I
15 move we stand adjourned until Tuesday,
16 March 4th, at 3:00 p.m.

17 ACTING PRESIDENT GRIFFO: On
18 motion, the Senate stands adjourned until
19 Tuesday, March 4th, at 3:00 p.m.

20 (Whereupon, at 4:07 p.m., the
21 Senate adjourned.)

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