

1 NEW YORK STATE SENATE

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3
4 THE STENOGRAPHIC RECORD

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9 ALBANY, NEW YORK

10 April 21, 2009

11 3:29 p.m.

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13
14 REGULAR SESSION

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18 SENATOR NEIL D. BRESLIN, Acting President

19 ANGELO J. APONTE, Secretary

1 P R O C E E D I N G S

2 ACTING PRESIDENT BRESLIN: The
3 Senate will please come to order.

4 I ask all to rise and recite the
5 Pledge of Allegiance to the Flag.

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

8 ACTING PRESIDENT BRESLIN: The
9 invocation today will be delivered by Bishop
10 C. Nathan Edwers, senior pastor of the
11 Friendship Worship Center in Mt. Vernon,
12 New York.

13 BISHOP EDWERS: Thank you.
14 Let us pray.

15 Almighty God, who is the sustainer
16 and the monitor of human affairs, we thank You
17 for this day and all the possibilities that
18 this day brings. We thank You for the
19 opportunity of life and liberty. And we thank
20 You that You have provided us the access to
21 give reason and chart the path that others may
22 follow.

23 We pray for this State Legislature,
24 Assembly, the Governor and those who are in

1 authority. Please guide them, direct them,
2 inspire them to create a state government that
3 is for the people. Help us during these
4 challenging times to possess an equality of
5 fairness.

6 Please, Lord, provide us with the
7 sensitivity to never forget the homeless, the
8 disadvantaged, and the poor. Help us to
9 fulfill our purpose as we move towards our
10 destiny.

11 Now, when life shall come to an end
12 for us and the curtain is drawn, usher us into
13 our final resting place, where we will receive
14 our reward for the things that we have done.

15 We pray in the names that are
16 ascribed to You. Amen.

17 ACTING PRESIDENT BRESLIN: Thank
18 you, Bishop.

19 The reading of the Journal.

20 The Secretary will read.

21 THE SECRETARY: In Senate,
22 Monday, April 20, the Senate met pursuant to
23 adjournment. The Journal of Friday, April 17,
24 was read and approved. On motion, Senate

1 adjourned.

2 ACTING PRESIDENT BRESLIN:

3 Without objection, the Journal stands approved
4 as read.

5 Presentation of petitions.

6 Messages from the Assembly.

7 Messages from the Governor.

8 Reports of standing committees.

9 Senator Klein.

10 SENATOR KLEIN: Mr. President, I
11 believe there's a report of the Judiciary
12 Committee at the desk.

13 ACTING PRESIDENT BRESLIN:

14 Senator Klein, there is a report from the
15 Judiciary Committee here at the desk.

16 The Secretary will read.

17 THE SECRETARY: Senator Sampson,
18 from the Committee on Judiciary, reports the
19 following nominations.

20 As a judge of the Court of Claims,
21 Juan M. Merchan, of Douglaston.

22 ACTING PRESIDENT BRESLIN:

23 Senator Sampson.

24 SENATOR SAMPSON: Thank you very

1 much, Mr. President.

2 It gives me great pleasure to
3 present this nomination before the full body,
4 of Juan M. Merchan. Presently he's sitting as
5 a Family Court judge in Bronx County. He is
6 going to be appointed as a judge of the Court
7 of Claims.

8 And I want to commend him for his
9 exemplary background, especially coming from
10 Colombia and South America, next to the home
11 of my father in Guyana, South America.

12 And I want to commend the Governor
13 on this appointment. I know he would make his
14 family proud but, most of all, us in the
15 New York Senate proud.

16 Thank you very much, Mr. President.

17 ACTING PRESIDENT BRESLIN: Are
18 there any other Senators wishing to be heard
19 on the nomination?

20 The question is on the motion to
21 confirm the nomination of Juan M. Merchan, of
22 Douglaston, as a judge of the Court of Claims.
23 All those in favor signify by saying aye.

24 (Response of "Aye.")

1 ACTING PRESIDENT BRESLIN:

2 Opposed, nay.

3 (No response.)

4 ACTING PRESIDENT BRESLIN: The
5 motion carries. The nomination of Juan M.
6 Merchan as judge of the Court of Claims is
7 hereby confirmed.

8 (Applause.)

9 ACTING PRESIDENT BRESLIN: Judge
10 Merchan is joined by his wife, Lara Merchan;
11 son, Jordan Merchan; his daughter, Loren; and
12 a host of other relatives and friends from
13 across the state.

14 Congratulations, Judge Merchan.

15 The Secretary will read.

16 THE SECRETARY: As a judge of the
17 Rensselaer County Court, Andrew G. Ceresia, of
18 Wynantskill.

19 ACTING PRESIDENT BRESLIN:

20 Senator Sampson.

21 SENATOR SAMPSON: Mr. President,
22 once again, it gives me great honor and
23 pleasure to stand up here before you for the
24 nomination to the County Court of Rensselaer

1 for Andrew Ceresia.

2 I want to first of all acknowledge
3 that Mr. Ceresia is a graduate of Albany Law
4 School, which is an excellent institution, and
5 we turn out excellent individuals such as
6 myself.

7 (Laughter.)

8 SENATOR SAMPSON: And at this
9 point in time I want to commend the Governor
10 for his selection of Mr. Ceresia. And I want
11 to commend him for his stewardship.

12 Once again, I want to thank you,
13 Mr. President, for allowing me to speak on
14 this nomination.

15 ACTING PRESIDENT BRESLIN: Thank
16 you, Senator Sampson.

17 Are there any other Senators
18 wishing to be heard on the nomination?

19 The question is on the motion to
20 confirm the nomination of Andrew G. Ceresia,
21 of North Greenbush, as a judge of the
22 Rensselaer County Court. All those in favor
23 please signify by saying aye.

24 (Response of "Aye.")

1 ACTING PRESIDENT BRESLIN:

2 Opposed, nay.

3 (No response.)

4 ACTING PRESIDENT BRESLIN: The
5 nomination of Andrew G. Ceresia, of North
6 Greenbush, as judge of the Rensselaer County
7 Court is hereby confirmed.

8 (Applause.)

9 ACTING PRESIDENT BRESLIN:
10 Senator McDonald, on the nomination.

11 SENATOR McDONALD: Thank you,
12 Mr. President.

13 He's a resident of mine. He's a
14 fine young man, an excellent, excellent
15 lawyer. And I'm so proud that we just
16 confirmed his judgeship.

17 Thank you. God bless him and his
18 family, I'm sure he'll do a good job. Thank
19 you.

20 ACTING PRESIDENT BRESLIN: Thank
21 you very much, Senator McDonald.

22 (Applause.)

23 ACTING PRESIDENT BRESLIN: Judge
24 Ceresia is joined by his wife, Tracee Ceresia;

1 his son, Braden Ceresia; his uncle, Richard
2 Ceresia; and his aunt, Josephine Chetko.

3 Judge Ceresia.

4 (Applause.)

5 ACTING PRESIDENT BRESLIN: The
6 Secretary will read.

7 THE SECRETARY: As judge of the
8 Fulton County Family Court, Edward F. Skoda,
9 of Johnstown.

10 ACTING PRESIDENT BRESLIN:
11 Senator Sampson.

12 SENATOR SAMPSON: Once again,
13 Mr. President, I want to commend the Governor
14 for the appointment of this individual,
15 Mr. Skoda, to the Fulton County Family Court.
16 And I know he will really make a difference,
17 especially in the lives of those individuals
18 that come before the Family Court.

19 And he has a great State Senator
20 that represents him in Senator Farley, which
21 I'm quite sure Senator Farley wants to speak
22 on this nomination.

23 ACTING PRESIDENT BRESLIN:
24 Senator Farley, to second.

1 SENATOR FARLEY: Thank you,
2 Senator Sampson.

3 Let me just say something about Ed
4 Skoda, who I've known for over 30 years. He
5 will be serving in the Family Court, which is
6 one of the most difficult courts, I think, in
7 the State of New York.

8 But if there's anybody that is able
9 to understand what the family is about, it's
10 Ed Skoda. He's joined here today with his
11 wife, Maureen Kelly Skoda, a graduate of
12 Nazareth College. And he has three
13 daughters -- Jennifer, who's a graduate of
14 Dartmouth, Mary Elizabeth, who's a graduate of
15 Middlebury, and Jill, who is a graduate of
16 Ithaca College. He paid a lot of tuition, to
17 say the least, and his daughters have done
18 very, very well.

19 Ed is a graduate of the local high
20 school in Gloversville. He's also a graduate
21 of Siena College, which had a wonderful year
22 in basketball. And he's a graduate of Albany
23 Law School, where our distinguished chairman
24 also went to school.

1 You know, he has served our
2 community up there in Fulton County so well.
3 He's served on practically every board you
4 could mention, with the YMCA and so many
5 things. And he's practiced law for a number
6 of years, and he has a distinguished record
7 before the bar and is recognized as one of the
8 area's finest lawyers.

9 He's joined here today by half of
10 Fulton County, I think. That just shows you
11 what they think of him.

12 And, Mr. President, it's with
13 enthusiasm that I endorse and second the
14 nomination of Ed Skoda for the Family Court
15 judge of Fulton County.

16 Thank you.

17 ACTING PRESIDENT BRESLIN: Thank
18 you, Senator Farley.

19 Are there any other Senators
20 wishing to be heard on the nomination?

21 The question is on the motion to
22 confirm the nomination of Edward F. Skoda, of
23 Johnstown, as a judge of the Fulton County
24 Family Court. All those in favor please

1 signify by saying aye.

2 (Response of "Aye.")

3 ACTING PRESIDENT BRESLIN:

4 Opposed, nay.

5 (No response.)

6 ACTING PRESIDENT BRESLIN: The
7 nomination carries. The nomination of Edward
8 F. Skoda, of Johnstown, as judge of the Fulton
9 County Family Court, is hereby confirmed.

10 Congratulations.

11 (Applause.)

12 ACTING PRESIDENT BRESLIN: Judge
13 Skoda is joined by his wife, Maureen, and, as
14 Senator Farley indicated, a host of others
15 from Fulton County.

16 The Secretary will read.

17 THE SECRETARY: As a judge of the
18 Oneida County Surrogate Court, Louis P.
19 Gigliotti, of New Hartford.

20 ACTING PRESIDENT BRESLIN:

21 Senator Sampson.

22 SENATOR SAMPSON: Once again, I
23 want to commend the Governor for this
24 appointment of Mr. Gigliotti to the Surrogate

1 Court of Oneida County.

2 And I know he will make a fine
3 judge, and I'm quite sure your Senator,
4 Senator Griffo, would be proud to know that an
5 individual like you will be sitting on the
6 Surrogate Court really dealing with issues
7 that really impact families, especially during
8 their time of need.

9 But once again, I want to commend
10 this body but most of all the Governor for
11 this appointment.

12 ACTING PRESIDENT BRESLIN: Thank
13 you, Senator Sampson.

14 Senator Valesky.

15 SENATOR VALESKY: Would you
16 recognize Senator Griffo?

17 ACTING PRESIDENT BRESLIN:
18 Certainly.

19 Senator Griffo, on the nomination.

20 SENATOR GRIFFO: Thank you,
21 Mr. President. Thank you, Senator.

22 I also want to welcome
23 Mr. Gigliotti here. He is a citizen of our
24 county, he has a good reputation in our area.

1 He has been someone who many people know. And
2 he is going to be someone who will assume this
3 position and I know that will make a lot of
4 people who are supporting him right now proud
5 of his efforts.

6 So I want to congratulate
7 Mr. Gigliotti on his appointment today.

8 ACTING PRESIDENT BRESLIN:
9 Senator Valesky.

10 SENATOR VALESKY: Thank you,
11 Mr. President. I want to join my colleague
12 Senator Griffo in congratulating Lou Gigliotti
13 who's here with us with his family.

14 I don't have the pleasure of
15 knowing him for a very long time, but through
16 the process, the screening process, I had a
17 chance to meet with him and speak with him and
18 review his qualifications, and I can certainly
19 recommend him to the entire Senate. I have no
20 doubt that he will do a tremendous job as a
21 judge of the Oneida County Surrogate Court.

22 So I'm pleased to second the
23 nomination of Lou Gigliotti and request the
24 support of my colleagues.

1 Thank you, and congratulations.

2 ACTING PRESIDENT BRESLIN: Thank
3 you, Senator Valesky.

4 Are there any other Senators
5 wishing to be heard on the nomination?

6 The question is on the motion to
7 confirm the nomination of Louis P. Gigliotti,
8 of New Hartford, as a judge of the Oneida
9 County Surrogate Court. All those in favor
10 please signify by saying aye.

11 (Response of "Aye.")

12 ACTING PRESIDENT BRESLIN:
13 Opposed, nay.

14 (No response.)

15 ACTING PRESIDENT BRESLIN: The
16 motion carries. The nomination of Louis P.
17 Gigliotti as judge of the Oneida County
18 Surrogate Court is hereby confirmed.

19 Congratulations.

20 (Applause.)

21 ACTING PRESIDENT BRESLIN: Judge
22 Gigliotti is joined by his wife, Carmela
23 Gigliotti; his daughter, Mary; his father,
24 Felix; and again, a host of other relatives

1 and friends.

2 Congratulations, Judge Gigliotti.

3 (Applause.)

4 ACTING PRESIDENT BRESLIN: The
5 Secretary will read.

6 THE SECRETARY: As judge of the
7 Monroe County Court, Brian M. McCarthy, of
8 Rochester.

9 ACTING PRESIDENT BRESLIN:
10 Senator Sampson.

11 SENATOR SAMPSON: Thank you very
12 much, Mr. President.

13 I want to once again commend the
14 Governor for this appointment of Mr. McCarthy
15 to the Monroe County Court.

16 But at this point in time I want to
17 allow his Senator, Senator Robach, to say some
18 fine words about an individual that he
19 represents.

20 ACTING PRESIDENT BRESLIN:
21 Senator Robach.

22 SENATOR ROBACH: Thank you,
23 Mr. President.

24 I'm happy to also join in in this

1 nomination, and applaud the Governor for that.
2 I know Mr. McCarthy is not only a prominent
3 attorney but has been very active in our
4 community, and I think those are great assets
5 to possess on the bench.

6 And I also would say that some of
7 the other names I heard being considered, I
8 certainly think he was an excellent choice.

9 And I'm happy to second the
10 nomination of Mr. McCarthy for a judge of
11 Monroe County Court and wish him the best of
12 luck in serving the constituents of Monroe
13 County.

14 ACTING PRESIDENT BRESLIN: Are
15 there any other Senators wishing to be heard
16 on the nomination?

17 The question is on the motion to
18 confirm the nomination of Brian M. McCarthy as
19 judge of Monroe County Court. All those in
20 favor please signify by saying aye.

21 (Response of "Aye.")

22 ACTING PRESIDENT BRESLIN:
23 Opposed, nay.

24 (No response.)

1 ACTING PRESIDENT BRESLIN: The
2 motion carries. The nomination of Brian M.
3 McCarthy, of Rochester, as judge of the Monroe
4 County Court is hereby confirmed.

5 Congratulations.

6 (Applause.)

7 ACTING PRESIDENT BRESLIN: Judge
8 McCarthy is joined today by his wife,
9 Patricia, and his daughter, Colleen.

10 Congratulations, Judge McCarthy.

11 (Applause.)

12 ACTING PRESIDENT BRESLIN: The
13 Secretary will read.

14 THE SECRETARY: As judge of the
15 Court of Claims, Jeffrey D. Lebowitz, of
16 Jamaica.

17 ACTING PRESIDENT BRESLIN:
18 Senator Sampson.

19 SENATOR SAMPSON: At this point
20 in time, Mr. President, I would like to have
21 my colleague Senator Toby Stavisky proceed
22 with the nomination of the Honorable Jeffrey
23 D. Lebowitz.

24 ACTING PRESIDENT BRESLIN:

1 Senator Stavisky.

2 SENATOR STAVISKY: Yes, thank
3 you, Mr. President. And thank you, Senator
4 Sampson.

5 I'm delighted and very, very proud
6 to rise today to speak about Judge Jeffrey
7 Lebowitz, whom I've known for many, many
8 years.

9 And in fact, some of you may
10 remember his father, who served in the other
11 house. I see some of my colleagues are
12 shaking their heads. Sid Lebowitz served in
13 the Assembly with my husband many, many years
14 ago. And therefore, I think it's sort of
15 fitting that we meet today to confirm Judge
16 Lebowitz for the Court of Claims.

17 He has served in all of the courts
18 of the State of New York, from matrimonial
19 parts to criminal parts and the civil part of
20 the Supreme Court, the Criminal Court, and
21 currently he serves as an acting justice of
22 the Supreme Court of New York State.

23 He served in the district
24 attorney's office. He has been an assistant

1 and aide in the Assembly. He served in the
2 DA's office, as I said.

3 But it's his community activities
4 where I also bump into Judge Lebowitz quite
5 often, whether it be his service on the board
6 of trustees of the Reform Temple of Forest
7 Hills -- he's been involved with the Forest
8 Hills Little League, the Brandeis Association,
9 and all of the various civic and community
10 organizations in Queens County. He is a
11 resident of Forest Hills.

12 And I'm delighted to congratulate
13 both Judge Lebowitz and his family, who are
14 here today with him.

15 Thank you, Mr. President.

16 ACTING PRESIDENT BRESLIN: Thank
17 you, Senator Stavisky.

18 Senator Volker.

19 SENATOR VOLKER: Yes,
20 Mr. President. I just want to say that people
21 often say to me: "Senator, if you're half as
22 good as your father" -- who was an
23 Assemblyman -- "you're pretty good."

24 So I just want to say to Judge

1 Lebowitz, if you're half as good as your
2 father, who is an Assemblyman who served with
3 my father, and who I knew, then you'll be a
4 great judge, and I'm sure you will be.

5 Congratulations.

6 ACTING PRESIDENT BRESLIN: Thank
7 you, Senator Volker.

8 Senator Onorato.

9 SENATOR ONORATO: Thank you,
10 Mr. President.

11 I rise to second the nomination of
12 a wonderful, wonderful man who has such a
13 wonderful background in law enforcement,
14 starting out as an intern in the district
15 attorney's office and then winding up being
16 the law secretary to another dear friend of
17 mine, Judge Phil Chetta.

18 And I met the judge at many of the
19 swearing-in ceremonies throughout Queens
20 County. And he's done such an outstanding
21 job, when you look at this resume of his, you
22 wonder how come he's been an acting judge so
23 long.

24 Well, today your dreams have come

1 true. You'll no longer be an actor, you're a
2 full-fledged Court of Claims judge.

3 And I congratulate you, and I wish
4 you and your family everything that I wished
5 for me and my family. God bless you.

6 ACTING PRESIDENT BRESLIN: Thank
7 you, Senator Onorato.

8 Are there any other Senators
9 wishing to be heard on the nomination?

10 The question is on the motion to
11 confirm the nomination of Jeffrey D. Lebowitz,
12 of Jamaica, as judge of the Court of Claims.
13 All those in favor please signify by saying
14 aye.

15 (Response of "Aye.")

16 ACTING PRESIDENT BRESLIN:
17 Opposed, nay.

18 (No response.)

19 ACTING PRESIDENT BRESLIN: The
20 motion carries. The nomination of Jeffrey D.
21 Lebowitz as judge of the Court of Claims is
22 hereby confirmed.

23 (Applause.)

24 ACTING PRESIDENT BRESLIN: Judge

1 Lebowitz is joined by his wife, Joan, and his
2 cousin Robert Katz.

3 Congratulations, Judge Lebowitz.
4 (Applause.)

5 ACTING PRESIDENT BRESLIN: We
6 will return to the regular order of business.

7 Reports of select committees.

8 Communications and reports from
9 state officers.

10 Motions and resolutions.

11 Senator Klein, for floor
12 substitutions.

13 SENATOR KLEIN: Mr. President,
14 are there any substitutions at this desk?

15 ACTING PRESIDENT BRESLIN: Yes,
16 there are, Senator Klein.

17 The Secretary will read.

18 THE SECRETARY: On page 13,
19 Senator Hassell-Thompson moves to discharge,
20 from the Committee on Crime Victims, Crime and
21 Corrections, Assembly Bill Number 4039 and
22 substitute it for the identical Senate Bill
23 Number 3744, Third Reading Calendar 145.

24 ACTING PRESIDENT BRESLIN:

1 Substitution ordered.

2 Senator Klein.

3 SENATOR KLEIN: Mr. President,
4 before we adopt the Resolution Calendar, I'd
5 like all of us to wish one of our colleagues,
6 Senator Craig Johnson, a happy birthday.

7 (Applause.)

8 SENATOR KLEIN: Rumor has it that
9 he's still under 40 years of age.

10 (Laughter.)

11 ACTING PRESIDENT BRESLIN:
12 Congratulations, Senator.

13 SENATOR KLEIN: Now,
14 Mr. President, at this time can we adopt the
15 Resolution Calendar in its entirety, with the
16 exception of Legislative Resolution 1446.

17 ACTING PRESIDENT BRESLIN: All
18 those in favor of adopting the Senate
19 Resolution Calendar in its entirety, with the
20 exception of Legislative Resolution 1446,
21 please signify by saying aye.

22 (Response of "Aye.")

23 ACTING PRESIDENT BRESLIN:
24 Opposed, nay.

1 (No response.)

2 ACTING PRESIDENT BRESLIN: The
3 Resolution Calendar is adopted in its
4 entirety, with the exception of Legislative
5 Resolution 1446.

6 Senator Klein.

7 SENATOR KLEIN: Mr. President, at
8 this time can we take up Senate Resolution
9 1446. I ask that the resolution be read in
10 its entirety and move for its immediate
11 adoption and allow Senator Fuschillo to speak
12 on his resolution.

13 ACTING PRESIDENT BRESLIN: The
14 Secretary will read.

15 THE SECRETARY: By Senator
16 Fuschillo, Legislative Resolution Number 1446,
17 memorializing Governor David A. Paterson to
18 proclaim April 2009 as Autism Awareness Month
19 in the State of New York.

20 "WHEREAS, It is the sense of this
21 Legislative Body to memorialize Governor David
22 A. Paterson to proclaim April 2009 as Autism
23 Awareness Month in the State of New York; and

24 "WHEREAS, Autism, the third most

1 common developmental disability in the United
2 States, is an affliction occurring in children
3 before the age of 3, recognized by
4 unresponsiveness to human contact, deficits in
5 language development, and peculiar reactions
6 to environmental stimuli; and

7 "WHEREAS, Affecting over
8 1.5 million Americans, the cause of autism is
9 unknown and is the result of a neurological
10 disorder; and

11 "WHEREAS, One in 150 children
12 nationally will be diagnosed with autism; and

13 "WHEREAS, Autism knows no racial,
14 ethnic, or social boundaries and is four times
15 more prevalent in boys than girls; and

16 "WHEREAS, Autism interferes with
17 the normal development of the brain in areas
18 of reasoning, social interaction, and
19 communication skills, causing people with
20 autism to have difficulty relating to others;
21 and

22 "WHEREAS, Over the past 30 years,
23 significant progress has been made in the
24 areas of research, medicine, diagnostic

1 issues, and therapies for autism, resulting in
2 improved quality of life for those with autism
3 and their loved ones; and

4 "WHEREAS, It is in the interest of
5 New York State to recognize the achievements
6 made and to continue these efforts by
7 promoting the awareness and fostering the
8 understanding of autism; and

9 "WHEREAS, Autism Awareness Month
10 has been recognized nationally since 1996;
11 now, therefore, be it

12 "RESOLVED, That this Legislative
13 Body pause in its deliberations to memorialize
14 Governor David A. Paterson to proclaim
15 April 2009 as Autism Awareness Month in the
16 State of New York; and be it further

17 "RESOLVED, That copies of this
18 resolution, suitably engrossed, be transmitted
19 to the Honorable David A. Paterson, Governor
20 of the State of New York; the Autism Coalition
21 of the Empire State; Autism Speaks; and the
22 National Alliance for Autism Research."

23 ACTING PRESIDENT BRESLIN:
24 Senator Fuschillo.

1 SENATOR FUSCHILLO: Thank you
2 very much, Mr. President. Just briefly.

3 I am honored to sponsor this
4 resolution declaring April Autism Awareness
5 Month here in the State of New York.

6 The resolution speaks for itself,
7 but when you think about --

8 ACTING PRESIDENT BRESLIN: Excuse
9 me, Senator Fuschillo.

10 Can we have some order, please.
11 Thank you.

12 SENATOR FUSCHILLO: Thank you,
13 Mr. President.

14 This is a very important issue when
15 you think about that more than 1.5 million
16 Americans are affected with autism, and that
17 one in 150 children are diagnosed with autism,
18 a disease that has no racial, ethnic or social
19 boundaries.

20 And the resolution really spoke for
21 itself where it said great strides have been
22 made, but not enough. And we as a state have
23 to do more to support children with autism and
24 the families that have children with autism or

1 young adults or adults.

2 And hopefully soon this body will
3 be taking up legislation that I've sponsored
4 that would provide greater insurance coverage
5 to families of children with autism.

6 So I urge all to sponsor this
7 resolution, Mr. President. It will be opened
8 up for full sponsorship. And I thank you.

9 ACTING PRESIDENT BRESLIN: Thank
10 you, Senator Fuschillo.

11 Senator Marcellino.

12 SENATOR MARCELLINO: Thank you,
13 Mr. President.

14 In the first place, I'd like to
15 congratulate my colleague and thank him very
16 much for the very timely and important
17 resolution on a very serious, very serious
18 condition that affects families and children
19 all over this state, all over the United
20 States of America and the world.

21 Autism is a heartbreaking
22 condition. Nothing is worse to a parent than
23 to hear a diagnosis from a doctor that your
24 child has autism and that there really isn't

1 that much that they can do about it. It's a
2 heartrending situation for a parent, for
3 grandparents, for a family to deal with. More
4 and more of our families -- my own, my
5 extended family -- are faced with this
6 condition, are faced with this problem.

7 Awareness and education is the key.
8 Discovering the problem early, getting the
9 youngsters, especially the young children,
10 into treatment facilities and into schools
11 where they are cared for and given proper
12 training and education, goes a long way
13 towards helping these young people to be all
14 that they can be.

15 This resolution is very important.
16 And I urge all of us, all of my colleagues, to
17 go out and talk about this issue when you do
18 your speaking engagements, when you go into
19 the schools and when you talk to your
20 community groups. Because as I said before,
21 the best way to treat this, the best way to
22 deal with this problem is to catch it early,
23 get the youngsters diagnosed early, and get
24 their treatment started as soon as possible.

1 Miracles can happen, but we have to
2 get it early. And this resolution I think
3 points that out. And once again, I thank my
4 colleague Senator Fuschillo for bringing this
5 forward. And I hope the Governor goes forward
6 and does exactly what you said in this
7 resolution, Senator.

8 I urge every one of us to get on
9 this resolution and sponsor it and support it.

10 ACTING PRESIDENT BRESLIN: Thank
11 you, Senator Marcellino.

12 Senator McDonald.

13 SENATOR McDONALD: Thank you,
14 Mr. President. Thank you for the resolution.

15 Like it's been said already,
16 eventually autism and similar-type problems
17 affect everybody. It gives you a different
18 perspective. It can hit anywhere. There's no
19 geography, no race, no religion, no ethnicity.
20 It hits everybody.

21 I know; I'm the grandfather of two
22 little boys, Jacob and David, 4 and 6 years
23 old, both autistic. Brothers go through life.
24 It's serious stuff. I said to myself when I

1 found this out a couple of years ago -- my
2 daughter had a second child not knowing the
3 first child had a problem -- it opened up a
4 new world to me. Made me a different person.
5 A lot more sensitive to people with
6 disabilities.

7 I found out something that I
8 learned a long time ago, but it comes back to
9 repeat over and over again. Sooner or later,
10 everybody and their family and friends will
11 encounter a problem. And when they do,
12 they'll be reaching out to society as a whole
13 to help.

14 I know this body, the Assembly, our
15 governors, I know they care. I've divided
16 this problem into two categories. A macro
17 category. I can't walk through my district
18 when people who have these problems and their
19 families don't come up to me and say: "What
20 causes it?" I don't know. "How can we cure
21 it?" I really don't know. A lot of research
22 is going on. A lot of well-intentioned, good
23 folk are trying desperately to do something.

24 I call that the macro problem,

1 supporting federal government proposals and
2 legislation, our great universities all
3 throughout New York State, our Governor, our
4 Commissioner of Mental Health and Development,
5 all the folks that are needed to support on
6 that macro issue.

7 What I want to focus on, with your
8 help and the Assembly's -- nonpartisan, I
9 know; many from both sides have talked to
10 me -- what I want to focus on, and I know we
11 all have big hearts, is how do we make it
12 better for the people who have this problem,
13 whether they be children, adults. How do we
14 make it better for their caregivers, their
15 family members, the special ed teachers, the
16 wonderful volunteers in these organizations?
17 How do we help them, whether it be in respite
18 programs, additional education, funding, or if
19 the worst-case scenario occurs,
20 institutionalization?

21 This is real. It was mentioned
22 earlier about the percentages, 1 out of 150.
23 Those numbers are old; it's going to be less
24 than that. New Jersey, I think, was 1 out of

1 95.

2 I don't know what causes it. We
3 feel like we are so unknowledgeable about it,
4 it's frustrating. But we are going into a
5 battle. And I'm grateful that all of you are
6 going into this battle with me. I'm grateful
7 our Governor, our Commissioner, the Assembly,
8 both parties are doing this.

9 I was honored in the Assembly to be
10 my party's chairman of a special task force.
11 It was only about a year, a year and a half
12 old before I came over here. I traveled
13 throughout the state, different communities.
14 It was sad. It was frustrating. I saw people
15 who were distraught, people of all
16 backgrounds. I felt frustrated. I wanted to
17 help them.

18 I've been blessed that Dean Skelos,
19 my leader, has appointed me to the same type
20 of task force we're creating. I will be
21 reaching out to both sides of the aisle. I
22 will be reaching out to the other house, to
23 the Governor. There's nothing I won't do.

24 And I appreciate everything that

1 you folks do. I have no doubt in my mind that
2 we stand as 62 on this issue. And whether
3 it's this disability or any disability, I
4 believe we all stand together, and I'm proud
5 to be a part of your team. God bless you all.

6 (Applause.)

7 ACTING PRESIDENT BRESLIN: Thank
8 you, Senator McDonald.

9 Senator Volker.

10 SENATOR VOLKER: Mr. President, I
11 too am proud to speak on behalf of this
12 resolution, and I want to thank Senator
13 Fuschillo for the resolution.

14 My son, Dr. Martin Volker, and now
15 his wife, Dr. Gloria Lee Volker, have been
16 doing studies on autism for many years. And
17 in fact, this Legislature has provided funding
18 to SUNY Buffalo -- as well as other places in
19 the state, but SUNY Buffalo has been doing
20 particularly fine work on an area called
21 Asperger's syndrome, which is a part of the
22 whole issue of autism.

23 We just don't understand -- and one
24 of the issues that I said to my son, is there

1 more autism now than there was a few years
2 ago? And his answer was, "We believe there
3 is. But people should know that years ago,
4 people did not understand that someone had
5 autism."

6 And the tragedy of it is that some
7 of the people in our jails, we're now finding
8 out that those people actually have autism.
9 And part of their problem and part of the
10 reason they ended up in jail was autism,
11 because it is a debilitating syndrome.

12 There is a lot of work going on,
13 but a lot more needs to be done. I'm proud of
14 my son and his wife and what they've done.
15 But as they've said, they have a long, long,
16 long way to go.

17 But this Legislature, I will say --
18 I'm not supposed to say some of the good
19 things that have been done. But the Governor
20 cut out virtually all the autism funding in
21 the original bill, and this Legislature -- and
22 I believe it was, in fact, the Senate -- did
23 restore a small amount of money for autism,
24 and part of that funding is going to Buffalo,

1 to SUNY Buffalo.

2 So I want to thank my colleagues
3 and thank Chuck, Senator Fuschillo, for this.
4 This is something that we have got to deal
5 with because it is part of the future, the
6 necessary future of medical care in this
7 nation.

8 ACTING PRESIDENT BRESLIN: Thank
9 you, Senator Volker.

10 Senator Nozzolio.

11 SENATOR NOZZOLIO: Thank you,
12 Mr. President. On the resolution.

13 I rise with great honor and thanks
14 to Senator Fuschillo for helping this
15 legislative body promote the importance of
16 focus on this very, very important issue.
17 When 1 in 150 families are directly impacted,
18 we certainly need to have a clarion call
19 throughout this state and nation to help and
20 to focus and to early diagnose and treat the
21 conditions of the autism syndrome.

22 That early intervention is
23 essential, caregiving, respite, providing
24 appropriate daycare, and of course support of

1 the scientific research done at our fine
2 universities across this state and
3 particularly at the University of Rochester
4 Medical Center, where an autism center has
5 been established.

6 That it's critical that we help
7 families. Last year I conducted an autism
8 summit in my senatorial district, had well
9 over 250 people attending. It is a critical
10 issue for families across this state.

11 And thanks to Senator McDonald, for
12 taking the lead in helping as a task force in
13 a bipartisan, nonpartisan fashion, to ensure
14 that appropriate state policies are put
15 forward to support those families that are
16 confronted with these significant challenges.

17 Thank you, Mr. President, for the
18 opportunity to join in support of this great
19 resolution.

20 ACTING PRESIDENT BRESLIN: Thank
21 you, Senator Nozzolio.

22 Senator DeFrancisco.

23 SENATOR DeFRANCISCO: Yes, I rise
24 to support the resolution.

1 And I'm not going to repeat
2 anything that anybody's said up to this point,
3 because it is all very to the point. And
4 efforts towards curing autism are essential
5 for all New Yorkers.

6 The reason I rise is that Senator
7 Fuschillo not only has this resolution but he
8 has a bill, Senate 2366. That's an important
9 bill that just doesn't give platitudes about
10 what we should be doing and tell everyone how
11 we feel for them, it actually will have an
12 important effect towards helping families with
13 insurance coverage when they have family
14 members with autism.

15 So I rise to urge the new Senate
16 Majority to put Senate Bill 2366 on the
17 calendar so we can vote to do something
18 constructive in addition to giving verbal
19 support to people and families that are
20 suffering from autism in their family.

21 Thank you, Mr. President.

22 ACTING PRESIDENT BRESLIN: Thank
23 you, Senator DeFrancisco.

24 Senator Serrano.

1 SENATOR SERRANO: Thank you,
2 Mr. President.

3 Previous Senators have mentioned
4 that there really isn't anyone who isn't in
5 some way touched by autism, and I'm no
6 exception. My nephew, a beautiful 4-year-old
7 boy, has been diagnosed on the autism
8 spectrum. And I recall the pain in my
9 sister's eyes in trying to understand and
10 really sort of wrap her life around what has
11 happened.

12 And I think it's important that we
13 as a legislature talk about this. Because
14 what I have found in speaking with my sister
15 and other parents in this situation is that
16 not only do they want the scientific research
17 to be done, but they also want to know that
18 people care, that people are speaking about
19 this. They're grasping at whatever they can
20 get to get the energy that they need to
21 continue to push everyday for their kids.

22 What really I think frightens so
23 many of us is that when you think about these
24 numbers -- which are being updated all the

1 time -- of the number of autistic children for
2 every number of children born, it is
3 increasing. And we're going to see an entire
4 generation of autistic people unless we can
5 start to reverse this trend.

6 And I think we need to have far
7 more aggressive research done, genetic
8 research. I think everything should be on the
9 table. Because when you think about the
10 staggering numbers that we're looking at for
11 autism, we really can't wait. Every day, more
12 and more children are diagnosed with this
13 disease.

14 So on behalf of my sister and my
15 family and so many other families who are
16 raising beautiful, wonderful, enjoying life
17 with their children who have autism but are
18 hoping for a better day for them, let us
19 continue to work in a bipartisan fashion as a
20 state legislature to promote the research
21 needed, to promote the change needed, but also
22 to show parents that we are thinking about
23 this, that we are talking about it, and that
24 we care about it.

1 Thank you.

2 ACTING PRESIDENT BRESLIN: Thank
3 you, Senator Serrano.

4 Are there any other Senators
5 wishing to be heard on the resolution?

6 The question is on the resolution.
7 All those in favor please signify by saying
8 aye.

9 (Response of "Aye.")

10 ACTING PRESIDENT BRESLIN:
11 Opposed, nay.

12 (No response.)

13 ACTING PRESIDENT BRESLIN: The
14 resolution is adopted.

15 At the request of the sponsor, the
16 resolution is open for multisponsorship by the
17 entire house. Any member wishing not to be a
18 sponsor of the resolution shall so inform the
19 desk.

20 Senator Klein.

21 SENATOR KLEIN: Mr. President, at
22 this time can we move to a reading of Senate
23 Calendar 36.

24 ACTING PRESIDENT BRESLIN: The

1 Secretary will read.

2 THE SECRETARY: Calendar Number
3 57, by Senator Little, Senate Print 739, an
4 act to authorize certain healthcare
5 professionals.

6 ACTING PRESIDENT BRESLIN: Read
7 the last section.

8 THE SECRETARY: Section 2. This
9 act shall take effect July 22, 2009.

10 ACTING PRESIDENT BRESLIN: Call
11 the roll.

12 (The Secretary called the roll.)

13 ACTING PRESIDENT BRESLIN:
14 Announce the results.

15 THE SECRETARY: Ayes, 62.

16 ACTING PRESIDENT BRESLIN: The
17 bill is passed.

18 THE SECRETARY: Calendar Number
19 87, by Senator Volker, Senate Print 2405, an
20 act to amend the Criminal Procedure Law, in
21 relation to sentence of parole supervision.

22 ACTING PRESIDENT BRESLIN: Read
23 the last section.

24 THE SECRETARY: Section 3. This

1 act shall take effect immediately.

2 ACTING PRESIDENT BRESLIN: Call
3 the roll.

4 (The Secretary called the roll.)

5 ACTING PRESIDENT BRESLIN:
6 Announce the results.

7 THE SECRETARY: Ayes, 62.

8 ACTING PRESIDENT BRESLIN: The
9 bill is passed.

10 THE SECRETARY: Calendar Number
11 121, by Member of the Assembly Bradley,
12 Assembly Print Number 3169, an act to amend
13 the Public Officers --

14 SENATOR LIBOUS: Lay the bill
15 aside, please.

16 ACTING PRESIDENT BRESLIN: The
17 bill is laid aside.

18 THE SECRETARY: Calendar Number
19 122, by Member of the Assembly Destito,
20 Assembly Print Number 6382, an act to amend
21 the Public Officers Law, in relation to
22 records.

23 ACTING PRESIDENT BRESLIN: Read
24 the last section.

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

3 ACTING PRESIDENT BRESLIN: Call
4 the roll.

5 (The Secretary called the roll.)

6 ACTING PRESIDENT BRESLIN:
7 Announce the results.

8 THE SECRETARY: Ayes, 62.

9 ACTING PRESIDENT BRESLIN: The
10 bill is passed.

11 THE SECRETARY: Calendar Number
12 123, by Senator Valesky, Senate Print 3195, an
13 act to amend the Public Officers Law, in
14 relation to recording.

15 SENATOR VALESKY: Lay the bill
16 aside for the day, please.

17 ACTING PRESIDENT BRESLIN: The
18 bill is laid aside for the day.

19 THE SECRETARY: Calendar Number
20 124, by Senator C. Johnson, Senate Print
21 3348A, an act to amend the Public Officers
22 Law, in relation to definition.

23 ACTING PRESIDENT BRESLIN: Read
24 the last section.

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

3 ACTING PRESIDENT BRESLIN: Call
4 the roll.

5 (The Secretary called the roll.)

6 ACTING PRESIDENT BRESLIN:
7 Announce the results.

8 THE SECRETARY: Ayes, 62.

9 ACTING PRESIDENT BRESLIN: The
10 bill is passed.

11 THE SECRETARY: Calendar Number
12 125, by Member of the Assembly John, Assembly
13 Print Number 2046A, an act to amend the Public
14 Officers Law, in relation to enforcement.

15 ACTING PRESIDENT BRESLIN: Read
16 the last section.

17 THE SECRETARY: Section 2 --

18 SENATOR MARCELLINO: Lay it
19 aside.

20 ACTING PRESIDENT BRESLIN: The
21 bill is laid aside.

22 Senator Klein, that completes the
23 reading of the noncontroversial calendar.

24 SENATOR KLEIN: Mr. President,

1 can we now have a reading of the controversial
2 calendar.

3 ACTING PRESIDENT BRESLIN: The
4 Secretary will please ring the bell.

5 Members are asked to come to the
6 chambers for the controversial reading of the
7 calendar.

8 The Secretary will read.

9 THE SECRETARY: Calendar Number
10 121, by Member of the Assembly Bradley,
11 Assembly Print Number 3169, an act to amend
12 the Public Officers Law.

13 ACTING PRESIDENT BRESLIN:
14 Senator Libous.

15 SENATOR LIBOUS: Mr. President, I
16 believe Senator Winner has an amendment at the
17 desk. If we can waive its reading and call on
18 Senator Winner, please.

19 ACTING PRESIDENT BRESLIN:
20 Senator Winner.

21 SENATOR WINNER: Mr. President, I
22 have the following amendment.

23 Mr. President, this amendment is
24 designed to deal with what the world

1 recognized as one of the most deficient
2 budgetary processes that we've ever seen in
3 the history of this state, which was the
4 adoption of the 2009-2010 Executive Budget.
5 That process is even acknowledged by those who
6 supported the budget to be extraordinary
7 flawed and need to do better.

8 And one of the keystones of the
9 former budget reform of 2007 was that we have
10 provided for the formation, upon submission of
11 the budget and deliberations continuing
12 thereon, that we have the formation and the
13 operation of conference committees between the
14 two houses.

15 We all know that the three New York
16 City Democrats in a room that we experienced
17 in that budget produced a product that I don't
18 think many people were particularly proud of.
19 And we're now only learning day by day certain
20 flaws and certain deficiencies and certain
21 necessities of amendments and reconstruction
22 and changes that are going to be necessary as
23 we uncover the mistakes that were made in the
24 adoption of that budget.

1 The conference committee process
2 would have undone a lot of those mistakes and
3 certainly would have produced a product that
4 would have been, in the use of one of your
5 favorite terms, better transparency.
6 Obviously, better informing the public, better
7 informing the legislators and, most
8 importantly, producing a better product for
9 the people of the State of New York.

10 The failure to adopt those
11 conference committees was justified by a
12 rather tortuous explanation predominantly
13 promoted by the Speaker of the Assembly, and
14 that was: Well, because we're both Democrats
15 and because we really don't have any
16 disagreements, that we can work this out
17 together and we don't need to have conference
18 committees because there really aren't any
19 competing proposals.

20 So not only did neither house of
21 the Legislature pass competing budget
22 proposals so as to have a functioning
23 circumstance where differences of the two
24 houses are resolved, they chose to ignore that

1 circumstance in its entirety and just revert
2 again and scurry back behind the closed doors
3 of the three-men-in-a-room process.

4 This amendment, Mr. President,
5 would require under all circumstances that
6 those conference committees meet and that
7 those conference committees operate within the
8 budget negotiation process so the public, the
9 Legislature, the members of the staff and
10 everyone can produce a better product for the
11 benefit of the people of the State of
12 New York.

13 I would move the amendment.

14 ACTING PRESIDENT BRESLIN: Are
15 there any other Senators wishing to be heard
16 on the amendment?

17 Seeing none, the question is on the
18 nonsponsor motion to amend Calendar Number
19 Calendar Number 121.

20 SENATOR LIBOUS: Mr. President,
21 can we please, as usual, have a fast roll call
22 on this?

23 ACTING PRESIDENT BRESLIN: Yes,
24 Senator Libous.

1 Those Senators voting in support of
2 the nonsponsor amendment please raise your
3 hands.

4 Announce the results.

5 THE SECRETARY: Ayes, 30. Nays,
6 30.

7 ACTING PRESIDENT BRESLIN: The
8 motion fails.

9 On the bill, read the last section.

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

12 ACTING PRESIDENT BRESLIN: Call
13 the roll.

14 (The Secretary called the roll.)

15 ACTING PRESIDENT BRESLIN: The
16 Secretary will ring the bell.

17 Everyone in their seats.

18 Announce the results.

19 THE SECRETARY: In relation to
20 Calendar Number 121: Ayes, 60. Nays, 0.

21 Absent from voting: Senators Diaz
22 and Seward.

23 ACTING PRESIDENT BRESLIN: The
24 bill is passed.

1 The Secretary will read.

2 THE SECRETARY: Calendar Number
3 125, by Member of the Assembly John, Assembly
4 Print Number 2046A, an act to amend the Public
5 Officers Law.

6 SENATOR MARCELLINO: Explanation,
7 please.

8 ACTING PRESIDENT BRESLIN:
9 Senator Oppenheimer, an explanation has been
10 requested by Senator Marcellino.

11 Excuse me, Senator. Can we have
12 quiet, please.

13 SENATOR OPPENHEIMER: Thank you,
14 Mr. President.

15 This is a relatively simple bill
16 that just is designed to strengthen the Open
17 Meetings Law, which has been of great value to
18 us in government and certainly for the
19 citizenry.

20 And what this says is there are two
21 means to enforcing that the decisions made are
22 made in public by the public entity. And one
23 way of enforcing action would be a stay on the
24 implementation of whatever action was taken in

1 that closed meeting, so that the meeting would
2 have to occur again and all the information
3 that was held in private would then have to be
4 offered to the public.

5 And the other is a fine of up to
6 \$500 on the public body that was in violation
7 of the Open Meetings Law.

8 That's the whole bill.

9 ACTING PRESIDENT BRESLIN: Can we
10 please continue to have some quiet. Thank
11 you.

12 Senator Oppenheimer.

13 SENATOR OPPENHEIMER: I have
14 concluded. I said that it was a \$500 fine for
15 each public body that has held what amounts to
16 a closed meeting. They have done the business
17 of the people and of the government in
18 private, and they either have to revisit that
19 issue again in public and review everything
20 that they had done in private and/or they will
21 have a fine of up to \$500.

22 ACTING PRESIDENT BRESLIN:
23 Senator Marcellino.

24 SENATOR MARCELLINO: Thank you,

1 Mr. President. If Senator Oppenheimer would
2 yield for a question, through you.

3 SENATOR OPPENHEIMER: Of course.

4 ACTING PRESIDENT BRESLIN: Excuse
5 me. Can we have some quiet, please.

6 Senator Oppenheimer yields, Senator
7 Marcellino.

8 SENATOR OPPENHEIMER: I'm happy
9 to yield.

10 SENATOR MARCELLINO: Thank you,
11 Mr. President. Thank you, Senator
12 Oppenheimer.

13 Senator, would you agree with me
14 that the FOIL law -- which, by the way, was a
15 product of my predecessor during his tenure
16 here -- would you agree with me that that law
17 is somewhat vague as to when it applies and
18 when it doesn't apply?

19 SENATOR OPPENHEIMER: In
20 response, I think it gets more and more
21 defined each time a case comes before the
22 public and the courts.

23 SENATOR MARCELLINO: Again,
24 through you, Mr. President, would the Senator

1 yield?

2 ACTING PRESIDENT BRESLIN:

3 Senator Oppenheimer, do you continue to yield
4 to Senator Marcellino?

5 SENATOR OPPENHEIMER: Of course.

6 SENATOR MARCELLINO: The reason I
7 ask you that question, I sat on a school
8 board -- and I know you were a member of a
9 local government body. And I remember we used
10 to do a lot of executive session meetings.
11 And most of the time in executive session, we
12 were debating did we belong in executive
13 session or not.

14 And finally our school board just
15 simply came up with the decision that if one
16 member of the board felt we were somehow in
17 any way, shape or form doing something that
18 could possibly be considered incorrect, we
19 went public with it. We just did everything
20 we could to do that.

21 My question to you is, this bill,
22 you mentioned some issues in your explanation
23 as to what the bill does. What is new in this
24 bill that is not already in existing state

1 law?

2 ACTING PRESIDENT BRESLIN:

3 Senator Oppenheimer.

4 SENATOR OPPENHEIMER: In
5 response, the first part, which is that you
6 must then do -- the business that you have
7 done in private, you then must do in public.
8 And so that has been prescribed before in law.

9 But what is new is the fine. The
10 fine has not been there before. And we think
11 that that would be even further deterrence.

12 But I empathize with what you're
13 saying, Senator Marcellino, because I also was
14 a board that was constantly, whenever we went
15 into closed session, it was oh, my God, is
16 this really something that, you know,
17 qualifies for closed session, and then we'd
18 spend 10 minutes talking about can we be in
19 closed meeting.

20 So I know what you're saying. And
21 in some areas it is vague, but it is getting
22 more and more defined by the courts.

23 SENATOR MARCELLINO: Thank you,
24 Mr. President. On the bill.

1 ACTING PRESIDENT BRESLIN:

2 Senator Marcellino, on the bill.

3 SENATOR MARCELLINO: Mr.

4 President, the reason I raised the issue is
5 because this FOIL law is, in my opinion, a
6 vague bill. We have not defined the
7 parameters clearly enough, the circumstances
8 clearly enough for local municipalities, fire
9 districts, water districts, sewer districts.
10 These are run by well-meaning volunteers in
11 most cases -- unpaid, well-meaning volunteers
12 who may not have great legal backgrounds and
13 who may not totally understand it.

14 We are putting them under pressure.
15 We are now going to possibly levy a fine.
16 Some citizen who had a decision made that they
17 didn't agree with or they didn't like will
18 come back with an attorney, sue the board or
19 the entity to review everything. They may be
20 subject to a fine.

21 The question is, who would pay the
22 fine? Is it the individuals who made the
23 decision, or is it the district itself? So in
24 the case of a school board, are we fining the

1 school district or the members of the board?
2 Are we fining the municipality or the members
3 of the board that made the decision to go into
4 executive session -- maybe improperly, maybe
5 out of ignorance, certainly I don't believe
6 out of intent.

7 The issue here is I think we need
8 to take a step back before we start fining
9 people for something that may be done
10 inadvertently. And I think we should clear up
11 the law and make it absolutely transparent and
12 absolutely crystal-clear as to what can be
13 done in executive session and what cannot be
14 done in executive session. And we should do
15 that before we get into the fining business.

16 You know, I've put legislation
17 before this house on a number of occasions to
18 increase penalties and increase fines, and
19 Senator Montgomery has always opposed me. I
20 take that back. No offense meant to Senator
21 Montgomery; I love her dearly.

22 But the point being is that before
23 we get into the fining stuff, I think we have
24 to do the defining a little better. And I

1 don't think this bill clarifies the issue
2 enough before we go forward. So I would ask
3 that we just take another look.

4 I'm going to support the bill. But
5 we should just take a look at the law, and we
6 should take a look at defining what can and
7 cannot be done in the future so we have a
8 better FOIL law than we have at the present
9 time.

10 I will vote aye on this bill.

11 ACTING PRESIDENT BRESLIN: Thank
12 you, Senator Marcellino.

13 Senator Ranzenhofer.

14 SENATOR RANZENHOFER: Thank you,
15 Mr. President.

16 I want to rise and talk about this
17 bill that we have in front of us. And quite
18 frankly, the comments that I'm going to make
19 about this bill could actually apply to the
20 five bills that were on the agenda today.

21 ACTING PRESIDENT BRESLIN:
22 Senator Ranzenhofer, on the bill.

23 SENATOR RANZENHOFER: Thank you.
24 My apologies.

1 One of the bills that we were
2 dealing with today dealt with posting notices
3 on the website. Then we had one dealing with
4 FOIL requests, being able to respond with
5 electronic mail. We had one with recording
6 and broadcasting and again putting things on
7 the website. Then we had one expanding the
8 definition of a public body. And then on this
9 particular one, with the enforcement of the
10 Open Meetings Law and the imposition of a
11 fine.

12 And as I was reading through some
13 of the justifications -- and I'll just read
14 one of the justifications that I read on one
15 of the bills. It talked about "institutions
16 and organizations charged with the
17 responsibility of serving the general public
18 should be required to make the necessary
19 arrangements to allow for as much transparency
20 and openness in their deliberations as
21 possible."

22 And what struck me as a new member
23 of this body, having been here now for
24 approximately 3 1/2 months, is that -- and

1 again, I don't have the history of what the
2 prior proceedings were like. But I think the
3 general feeling in Albany and across the state
4 is that this was probably one of the least
5 transparent, least open, most secretive
6 deliberations that ever took place not only in
7 the State of New York but in the history of
8 the United States.

9 And simply because you are
10 introducing a piece of paper which says that
11 you are in favor of openness and transparency,
12 I don't think that you're really fooling the
13 public by what your actions really are on this
14 bill or any of the other five bills. You
15 can't say that you're for openness, you can't
16 say that you are for having transparent
17 government operations and then conduct your
18 actions in the exact opposite way.

19 That would be like saying that
20 you're not in favor of raising spending and
21 then you vote for a budget which increases
22 spending by \$10 billion. That would be like
23 saying that you're in favor of restoring STAR
24 rebate checks after having just taken an

1 action where you took that away from millions
2 of people across the state.

3 So I don't think that the people of
4 this state are being fooled. These are
5 actions which, if ever enacted, would be good,
6 but I think the public is a lot wiser to what
7 is really going on. And I only hope that the
8 actions of this body actually matches the
9 pieces of paper that we're discussing today.

10 Thank you, Mr. President.

11 ACTING PRESIDENT BRESLIN: Thank
12 you, Senator Ranzenhofer.

13 Are there any other Senators
14 wishing to be heard on the bill?

15 Hearing none, the debate is closed.

16 The Secretary will ring the bells.

17 Read the last section.

18 THE SECRETARY: Section 2. This
19 act shall take effect on the 60th day.

20 ACTING PRESIDENT BRESLIN: Call
21 the roll.

22 (The Secretary called the roll.)

23 ACTING PRESIDENT BRESLIN:

24 Announce the results.

1 THE SECRETARY: In relation to
2 Calendar Number 125: Ayes, 60. Nays, 0.
3 Absent from voting: Senators Diaz
4 and Seward.
5 ACTING PRESIDENT BRESLIN: The
6 bill is passed.
7 Senator Klein, that completes the
8 controversial reading of the calendar.
9 SENATOR KLEIN: Mr. President, I
10 believe there's a couple of motions to
11 discharge at the desk. I ask that we take
12 them up at this time.
13 ACTING PRESIDENT BRESLIN: The
14 Secretary will read.
15 THE SECRETARY: Senate Print
16 1989, by Senator Griffo, an act to amend the
17 Penal Law.
18 SENATOR PADAVAN: Mr. President,
19 would you recognize Senator Griffo, please.
20 ACTING PRESIDENT BRESLIN:
21 Senator Griffo.
22 SENATOR GRIFFO: Thank you,
23 Mr. President.
24 In 2001 the Legislature enacted a

1 law that dealt with sexual assault, the Sexual
2 Assault Reform Act. What we neglected, what
3 the Legislature neglected to do, making it a
4 felony for any unlawful sexual contact with
5 individuals under 13, what was neglected was
6 to do the same for the crime of sexual abuse.

7 And as a result of that, only if
8 you are under the age of --

9 ACTING PRESIDENT BRESLIN: Excuse
10 me, Senator Griffo.

11 Can we continue to have some quiet,
12 please. Thank you.

13 SENATOR GRIFFO: So it would be a
14 felony relative to sexual assault if that
15 inappropriate sexual contact took place. But
16 for the crime of sexual abuse, that was not
17 the case. Only under the age of 11 would that
18 felony come into play.

19 So this piece of legislation
20 corrects that, continues to make sure that we
21 express how we believe that this crime of
22 sexual abuse is equally as important as the
23 crime of sexual assault, particularly when
24 you're looking at minors.

1 And under its current status, the
2 way the law is right now, if somebody were to
3 inappropriately abuse someone at the age of
4 12, for instance, it would be treated the same
5 way as if someone went and stole a pack of gum
6 from a convenience store. So this would
7 elevate that crime to a felony.

8 ACTING PRESIDENT BRESLIN: Thank
9 you, Senator Griffo.

10 Are there any other Senators
11 wishing to be heard?

12 Senator Schneiderman.

13 SENATOR SCHNEIDERMAN: Thank you,
14 Mr. President.

15 I think Senator Griffo has raised
16 an important issue. There are other people
17 who have raised this concern. And this does
18 reflect an inconsistency in the law when we
19 revised the rape laws a number of years ago.

20 We will be taking up this issue in
21 the Codes Committee. I will be voting against
22 the bill today, because I don't think in this
23 instance it is appropriate to circumvent the
24 committee procedure. But I do appreciate the

1 Senator's passion on the issue. And it is
2 something, as I've indicated to Senator
3 Griffo, that we will be addressing in the
4 committee.

5 ACTING PRESIDENT BRESLIN:
6 Senator DeFrancisco.

7 SENATOR DeFRANCISCO: I don't
8 know the procedure, but is it appropriate for
9 me to ask Senator Schneiderman if he'd yield
10 to a question?

11 ACTING PRESIDENT BRESLIN: It's a
12 motion and not a bill. So I believe it would
13 be --

14 SENATOR DeFRANCISCO: Well, point
15 of order. I believe he spoke on the bill and
16 gave -- on the motion and gave his position on
17 the motion. I have a question as to his
18 position.

19 ACTING PRESIDENT BRESLIN: I
20 believe he misspoke.

21 SENATOR DeFRANCISCO: He
22 misspoke.

23 ACTING PRESIDENT BRESLIN: Right.
24 But I'll ask Senator Schneiderman,

1 even though I disagree and I think that he is
2 not permitted, if Senator Schneiderman would
3 yield.

4 SENATOR SCHNEIDERMAN: This is a
5 motion to discharge a bill. I don't have
6 anything to say -- if it's on the procedural
7 reason I'm voting no, I'll yield.

8 But the proper forum for further
9 discussions is going to be in committee and if
10 we actually do get a bill on the calendar.
11 Thank you.

12 ACTING PRESIDENT BRESLIN: Thank
13 you, Senator DeFrancisco.

14 SENATOR DeFRANCISCO: Excuse me,
15 Mr. President. It is specifically on what
16 Senator Schneiderman asked; namely, if it's on
17 the procedure. And that's the question I have
18 about the procedure, and he indicated he would
19 be willing to answer questions about the
20 procedure.

21 ACTING PRESIDENT BRESLIN:
22 Senator DeFrancisco, you're entitled to speak
23 on the motion.

24 SENATOR DeFRANCISCO: My

1 question --

2 SENATOR LIBOUS: Point of order,
3 Mr. President.

4 SENATOR DeFRANCISCO: Can I
5 finish?

6 SENATOR LIBOUS: Well, I'm going
7 to defend you here.

8 ACTING PRESIDENT BRESLIN:
9 Senator Libous.

10 SENATOR LIBOUS: Mr. President, I
11 believe that debate can commence on the
12 motion. I think the issue here is whether or
13 not Senator Schneiderman is willing to yield.
14 I believe you can debate the motion.

15 ACTING PRESIDENT BRESLIN: I have
16 already ruled that you can't --

17 SENATOR LIBOUS: Well, I would
18 like you to show me or at least show this
19 house where that rule is.

20 SENATOR SCHNEIDERMAN: Mr.
21 President --

22 ACTING PRESIDENT BRESLIN:
23 Senator Klein, why do you rise?

24 SENATOR KLEIN: Mr. President, a

1 point of order. Mr. Schneiderman --

2 SENATOR LIBOUS: Excuse me,
3 Mr. President. There's an awful lot of noise
4 in this chamber. I cannot hear Senator Klein.

5 ACTING PRESIDENT BRESLIN: Point
6 well-taken, Senator Libous. Can we have
7 quiet, please.

8 SENATOR KLEIN: Mr. Schneiderman
9 agreed to yield on the procedural question,
10 not the substance of the motion to discharge.
11 So now it's up to whether or not Senator
12 Schneiderman wants to yield to
13 Mr. DeFrancisco's question.

14 SENATOR LIBOUS: So,
15 Mr. President -- Mr. President, so there is --
16 there can be debate on a motion?

17 ACTING PRESIDENT BRESLIN: That's
18 correct.

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

21 SENATOR DeFRANCISCO: So the
22 question remains, will Senator Schneiderman
23 yield?

24 SENATOR SCHNEIDERMAN: As I said,

1 if you have a procedural motion, I would be
2 glad to discuss it with you.

3 SENATOR DeFRANCISCO: Yes. My
4 question would be, if Senator Schneiderman is
5 now yielding, he had mentioned that he's going
6 to vote no on this particular procedural
7 motion or motion to discharge on the grounds
8 that he doesn't want to circumvent the
9 committee process.

10 Would Senator Schneiderman tell me
11 what is the purpose, then, of having a
12 procedure for a motion to discharge?

13 ACTING PRESIDENT BRESLIN:
14 Senator Schneiderman.

15 SENATOR SCHNEIDERMAN: It's more
16 of a philosophical question. What is the
17 purpose of having a motion to discharge?

18 I can talk more specifically about
19 the circumstances today with this particular
20 motion and this particular piece of
21 legislation. I don't know that I want to
22 opine more generally on the purpose of a
23 motion to discharge.

24 There are times when it may be

1 appropriate, and there are times when it may
2 not be appropriate. In the past I know,
3 having served on committees for a long time,
4 that it was very, very difficult prior to this
5 year for members of the minority to get bills
6 moved in committee. And indeed, it was
7 virtually impossible this early in the session
8 for us to get our bills passed on the floor.
9 And it happens now as a matter of routine.

10 I know that this particular piece
11 of legislation, I've told Senator Griffo that
12 we would move it on the Codes Committee
13 agenda, and he said he wanted to bring the
14 motion anyway.

15 So in this particular case --
16 through you, Mr. President -- I do not think
17 this is the best way to proceed. The
18 committee process -- while we are a work in
19 process and engaging in efforts to reform the
20 dysfunctional gridlock that has permeated
21 Albany for years and years, we are still
22 working on it.

23 But I will tell you, on this
24 particular bill, this particular

1 legislation -- which I think has a good,
2 strong argument to be passed by this house and
3 enacted into law on the merits -- I'm willing
4 to put this on the Codes Committee agenda.
5 I've advised the proponent of this motion of
6 that. He's chosen to bring the motion anyway
7 rather than put it on the agenda.

8 There are other Senators who are
9 interested in similar pieces of legislation.
10 Perhaps one of them will have a bill passed
11 through the Codes Committee, and that that may
12 move forward in the ordinary course. That's
13 the reason for my vote on this.

14 SENATOR DeFRANCISCO: Would
15 Senator Schneiderman yield to another
16 question.

17 ACTING PRESIDENT BRESLIN:
18 Senator Schneiderman, would you continue to
19 yield to Senator DeFrancisco?

20 SENATOR SCHNEIDERMAN: I will
21 yield for another question.

22 ACTING PRESIDENT BRESLIN:
23 Senator.

24 SENATOR DeFRANCISCO: Senator

1 Schneiderman, there is a limited period of
2 time under the current rules of this house as
3 to when a motion to discharge can be brought.

4 And isn't it true that if we do not
5 have this discharged during this period of
6 time and you choose at a later date to choose
7 another bill other than Senator Griffo's bill,
8 that we have no recourse to get that bill on
9 the floor? Is that fair to say?

10 ACTING PRESIDENT BRESLIN:

11 Senator Schneiderman.

12 SENATOR SCHNEIDERMAN: I don't in
13 fact believe that that is the case.

14 But I will note that if the
15 sponsor's concern is who gets credit for the
16 bill, whether it is Senator Griffo as sponsor
17 of this bill or it's another sponsor of a bill
18 that deals with the same subject matter, I'm
19 not really sure that that's something that
20 justifies avoiding the committee procedure.

21 And in our committee we have, as
22 any of the members on your side of the aisle
23 will tell you, we have open discussions of
24 matters and we take everyone's view into

1 consideration and I think treat them with
2 respect.

3 I look forward to having a
4 discussion in committee on the subject matter
5 of this legislation. If -- and I guess what
6 you're saying is this is a matter of Senator
7 Griffo's own personal role in this, which I
8 totally respect. He's very passionate about
9 the issue. But I would rather deal with this
10 bill in the course of committee proceedings
11 before it comes to the floor.

12 ACTING PRESIDENT BRESLIN: Thank
13 you, Senator Schneiderman.

14 SENATOR SCHNEIDERMAN: I also
15 just do want to note that as per the reform
16 agenda rolled out today by the Task Force on
17 Reform, really the procedures we have now I
18 don't think are by any means adequate, and
19 there are much more ambitious procedures that
20 are being worked on to make it possible to
21 move bills more effectively and more easily
22 through committee and to bring them to the
23 floor.

24 ACTING PRESIDENT BRESLIN: Thank

1 you, Senator Schneiderman.

2 Senator DeFrancisco.

3 SENATOR DeFRANCISCO: On the
4 motion.

5 ACTING PRESIDENT BRESLIN:

6 Senator DeFrancisco, on the motion.

7 SENATOR DeFRANCISCO: This is a
8 motion to discharge to bring a specific bill
9 by a specific sponsor to the floor. And
10 unless the motion to discharge is totally
11 meaningless under this new openness and new
12 reform that we're now under, that it seems to
13 me that if we're truly open and this process
14 has been reformed, why, if the chairman of
15 that committee is going to put that bill on
16 the committee, why in God's name, if there's
17 such a procedure in place, can the majority
18 not vote for the bill to be put on the
19 committee agenda and follow the procedure and
20 get it done now?

21 Why does it have to be on a promise
22 and a handshake? Other than the fact that the
23 process that they're complaining about that
24 the Senate majority of the past followed

1 during these motions to discharge. Unless
2 it's truly nothing has changed whatsoever.

3 So it seems to me that if it's true
4 that this is going to be discussed, it's going
5 to be debated -- very simple. Vote yes,
6 discharge it, and get on with the Griffo bill
7 and any other bills pertaining to this.

8 But to say on the day that we're
9 going to have this motion to discharge that if
10 it you choose to take it off, we'll take it
11 up, okay, when we only have a limited period
12 of time to bring these motions to discharge --
13 so I think that's disingenuous at best.

14 Secondly, since Senator
15 Schneiderman brought up this new openness that
16 we've started today with this commission
17 report, I think it's germane to follow through
18 on that point that every major reform issue
19 that has been debated by the Brennan Center,
20 who's -- one of its employees is now on the
21 Senate Majority -- the crucial issues like
22 openness and budgets, like how we handle the
23 various committee processes during the budget,
24 how staff members are allocated and what staff

1 members go to which committee -- every single
2 major one that the majority who rolled out
3 this great reform system today sued us for in
4 past years, that the majority who brought
5 motions to amend our rules begged for and
6 called us names for not doing, not one of them
7 is in this so-called reform package that I've
8 been reading while this debate on much less
9 significant reform bills are being debated
10 here on the floor.

11 So in addition to the disingenuous
12 remarks of Senator Schneiderman and how they
13 make absolutely no sense in their claim to be
14 more and more open, the whole process that is
15 a process of delay and delay further, the
16 major issues that they sued us for and tried
17 to get done -- when they've got the votes to
18 do all of these things -- today, to me, is not
19 a day of openness like this agenda would
20 suggest. It's the opposite. It shows total
21 hypocrisy by the majority party in this house.

22 And even a little inkling of some
23 change could have happened today by just
24 voting for a bill which they concededly say

1 they're going to discuss in committee, by
2 voting for a discharge. No, it's not going to
3 happen, in Senator Schneiderman's words,
4 because that would circumvent the committee
5 process. Now, how that is the case I have no
6 idea.

7 So I'm going to vote in favor of
8 this motion to discharge. And we'll have more
9 to come. And something in this new openness
10 that we're now going through, I've got a
11 feeling -- just a guess on my part, I just
12 have a guess -- that every single motion to
13 discharge that we bring, whether the majority
14 thinks it's a good idea, they may vote no on.
15 And I hope I'm wrong. But I think in this new
16 openness, I think it's still going to be the
17 case.

18 So I'm going to vote yes on this
19 motion to discharge.

20 ACTING PRESIDENT BRESLIN:
21 Senator Klein.

22 SENATOR KLEIN: Mr. President, on
23 the motion to discharge.

24 I think Mr. DeFrancisco will be

1 happy that what we're doing here today is one
2 of the first areas of reform that the Senate
3 took up when the new majority took over in the
4 January.

5 In the past, we weren't even
6 allowed to call what we're doing today a
7 motion to discharge. It was called a motion
8 to petition. There was no recorded no votes,
9 only yes votes. So clearly the residents and
10 our constituents all over the State of
11 New York didn't even know how we would vote on
12 these motions.

13 As far as today, the report that
14 was issued by Senator David Valesky and
15 Senator Bonacic I believe does what we should
16 have done quite some time ago. It opens up
17 the committee process.

18 Anyone will tell you, not only the
19 Brennan Center, but the way to truly debate
20 issues and make sure there's an open hearing
21 of various pieces of legislation is through a
22 strong committee process. Not only will we
23 really inform the public of what we do here,
24 but also give rank-and-file members more of a

1 say in the process.

2 The process now will have a system
3 in place where a majority of the members are
4 able to get a bill to the floor to be voted
5 upon.

6 So I think today is a day where I
7 think maybe we'll be able to do away with the
8 motions to discharge, or the previous canvass
9 of agreements, because hopefully what's going
10 to happen is meaningful debate at the
11 committee level. And I think that not only
12 will allow us to have meaningful legislation,
13 but also will show the world and certainly the
14 residents of New York State what we do here.

15 ACTING PRESIDENT BRESLIN:

16 Senator DeFrancisco, why do you rise?

17 SENATOR DeFRANCISCO: Would
18 Senator Klein please yield to a question?

19 ACTING PRESIDENT BRESLIN:

20 Senator Klein, would you yield to a question?

21 SENATOR KLEIN: I'd be happy to
22 yield on the motion to discharge before us
23 today, on the procedure here. I know
24 Mr. DeFrancisco has a report in front of him.

1 I don't have my report with me, but I'll do my
2 best to answer any questions.

3 ACTING PRESIDENT BRESLIN:
4 Senator DeFrancisco, Senator Klein has
5 conceded to yield.

6 SENATOR DeFRANCISCO: Thank you.
7 You had just indicated your desire to -- that
8 hopefully we won't need the motion to
9 discharge because of the new committee
10 process.

11 One of the recommendations was
12 allow a petition of one-third of the members
13 of a standing committee to hold a hearing on a
14 specific bill within the jurisdiction of the
15 committee, scheduled no less than two weeks in
16 advance, unless rejected by a majority.

17 Was that one of the
18 recommendations?

19 SENATOR KLEIN: Right. Right.

20 SENATOR DeFRANCISCO: So can you
21 tell me what worth there is of one-third
22 petitioning when a majority is always going to
23 make the decision?

24 SENATOR KLEIN: Well, I'll answer

1 your question, again, this is a majority of
2 the committee members. This is an opportunity
3 to have hearings on important issues.

4 One of the concerns of the entire
5 committee was that basically any member can
6 turn around and say "I want a hearing on every
7 specific piece of legislation." Which I think
8 everybody knows would be impossible to
9 accomplish.

10 So we figured if it was the most
11 important issues, where there was a majority
12 to hold such a hearing, it would make sense.

13 By the way, Senator, the other
14 reform that we put forth was also to give both
15 the minority and the majority the opportunity
16 to invite guest speakers to the committee,
17 taking both sides of a controversial issue.
18 Or any issue, for that matter.

19 ACTING PRESIDENT BRESLIN:
20 Senator DeFrancisco.

21 SENATOR DeFRANCISCO: Would
22 Senator Klein yield to one last question.

23 ACTING PRESIDENT BRESLIN:
24 Senator Klein, will you yield to one question?

1 SENATOR KLEIN: Mr. President,
2 I'd be happy to continue to yield.

3 ACTING PRESIDENT BRESLIN:
4 Senator Klein yields, Senator DeFrancisco.

5 SENATOR DeFRANCISCO: Senator
6 Klein, in this new era of openness and this
7 new process that I just read, can you tell me
8 which committee in the Senate has a majority
9 of Republican members?

10 SENATOR KLEIN: There is no
11 committee that has a majority of Republican
12 members.

13 SENATOR DeFRANCISCO: So how is
14 this procedure different than the way it has
15 always been?

16 SENATOR KLEIN: This is a
17 majority of members of the committee, Senator.
18 Not of Democrats or Republicans.

19 SENATOR DeFRANCISCO: All right.

20 ACTING PRESIDENT BRESLIN: Thank
21 you, Senator Klein. Thank you, Senator
22 DeFrancisco.

23 Senator Montgomery.

24 SENATOR MONTGOMERY: Yes,

1 Mr. President, thank you. Would Senator
2 DeFrancisco yield for a question?

3 SENATOR DeFRANCISCO: Yes,
4 absolutely. I'd love to.

5 ACTING PRESIDENT BRESLIN:
6 Senator DeFrancisco yields.

7 SENATOR MONTGOMERY: Senator
8 DeFrancisco, in all of the years that I've
9 been here -- maybe you were before me, I'm not
10 sure. Probably not, okay.

11 In all of the years that I've been
12 here, I have never known of a motion to
13 discharge to pass. Have you? Am I missing
14 something? Did you ever know of a motion to
15 discharge to pass in this body, in this house?

16 ACTING PRESIDENT BRESLIN:
17 Senator DeFrancisco.

18 SENATOR DeFRANCISCO: No.
19 And let me say something else.
20 That was during the period when there was a
21 majority of Republicans.

22 SENATOR MONTGOMERY: Thank you.
23 Exactly.

24 SENATOR DeFRANCISCO: And to

1 continue -- I'd like to complete my answer, if
2 I could.

3 SENATOR MONTGOMERY: I'm happy to
4 hear the rest of your answer, but that's
5 excellent.

6 SENATOR DeFRANCISCO: But my
7 point is, what I'm pointing out here is not
8 that the procedure is any different than it
9 was in the past. What I'm pointing out here
10 is the hypocrisy to sue the Republicans for
11 that procedure, the hypocrisy to make motions
12 to change the rules, and then when you have
13 the authority to do it, you have committees
14 upon committees to delay upon delay.

15 So the hypocrisy of your not doing
16 what you claimed you wanted a judge to do for
17 you because you had no power, or that you
18 wanted to do when you became in the majority,
19 and you campaigned to do these changes, then
20 that's the hypocrisy that I'm trying to show.

21 SENATOR MONTGOMERY: Mr.
22 President, the answer is satisfactory. It is
23 hypocrisy to raise it, because now it's a
24 Democrat majority. When it was a Republican

1 majority, as Senator DeFrancisco admits, we
2 never passed a motion to discharge.

3 So I just want to point out the
4 hypocrisy so we all agree the hypocrisy that
5 has been discussed. Thank you.

6 (Laughter.)

7 ACTING PRESIDENT BRESLIN: Thank
8 you, Senator Montgomery.

9 Are there any other Senators
10 wishing to be heard?

11 Senator Griffo.

12 SENATOR GRIFFO: Mr. President,
13 you know, I listened to this, and we have done
14 some very important things across the state in
15 trying to fight sex abuse crimes. And we have
16 a sexual abuse task force in our county which
17 is a model across the state.

18 So when I recently learned that a
19 70-year-old grandfather, for the purposes of
20 sexual gratification, hurt a 12-year-old
21 granddaughter, I realized that we cannot wait
22 for action to take place.

23 So my effort is motivated out of
24 concern -- not out of credit, out of concern.

1 In fact, this very bill passed with 61 votes
2 last year in this chamber.

3 And when I spoke to Senator
4 Schneiderman, it was only today, so there was
5 no real assurances as to what would happen.

6 And I believe this is a critical
7 issue. It shouldn't wait without any
8 guarantees or assurances that anything will be
9 done on it again this year. And that's why I
10 think it's critical that we move forward on
11 this.

12 And last year, 61 of you voted for
13 this, so I don't know how you can not vote for
14 it this year.

15 And beyond that, imitation is the
16 greatest source of flattery. If you want to
17 put somebody else's name on the same bill --
18 you've done it other pieces of legislation
19 from members of this conference already this
20 year. If you want to do it with this piece of
21 legislation, go for it. I'll vote for it.
22 But let's just get it done.

23 Thank you.

24 ACTING PRESIDENT BRESLIN: The

1 motion is on the motion to discharge, from the
2 Committee on Codes, from consideration of
3 Senate Print Number 1989. All those in favor
4 of the motion please signify by --

5 SENATOR LIBOUS: Mr. President, a
6 fast roll call, please.

7 ACTING PRESIDENT BRESLIN: -- by
8 raising your hands, a fast roll call.

9 The Secretary will announce the
10 results.

11 THE SECRETARY: Ayes, 36. Nays,
12 25.

13 ACTING PRESIDENT BRESLIN: The
14 motion passes.

15 (Applause.)

16 ACTING PRESIDENT BRESLIN: The
17 second motion is before the house. The
18 reading is waived.

19 SENATOR LIBOUS: Mr. President,
20 would you call on Senator Griffo.

21 ACTING PRESIDENT BRESLIN:
22 Senator Griffo.

23 SENATOR GRIFFO: Can we go two
24 for two?

1 (Laughter.)

2 SENATOR GRIFFO: Thank you all
3 very much for --

4 ACTING PRESIDENT BRESLIN: Every
5 50 years.

6 (Laughter.)

7 SENATOR GRIFFO: You'll be here,
8 Mr. President. I don't know about . . .

9 Thank you very much for the prior
10 vote.

11 And on this particular piece of
12 legislation, again, it is something that we
13 did pass here last year. It's involving the
14 all-terrain vehicle industry. That is not
15 only a recreational industry, it also is an
16 important part of the economy in Northern and
17 Central New York.

18 And in recognition of the changes
19 in the manufacturing of ATVs right now, this
20 would change the definition from what an ATV
21 is defined from relative to its poundage, from
22 1,000 to 1,500.

23 In some cases what you're seeing is
24 side-by-sides. These are used by seniors. I

1 have a number of law enforcement officials in
2 areas that I represent that have come out in
3 favor of what these utility terrain vehicles
4 or ATVs, also, as they are now manufactured.

5 This also not only will help out by
6 allowing people to be able to register them
7 here, where before they would have to register
8 them somewhere else, but that also is going to
9 be increased revenue for the State of New York
10 at a time when a lot of people are talking
11 about the need for revenue.

12 This I think people can understand,
13 because it would allow them to recognize this
14 new manufacturing of these larger ATVs and to
15 register them appropriately and to gain that
16 revenue. Right now they would not be able to
17 register them as an ATV but as something -- a
18 different type of equipment.

19 So essentially, it's just
20 redefining the definition of an ATV from the
21 weight poundage of 1,000 to 1,500 pounds. And
22 again, this passed last year.

23 So I would appreciate your
24 consideration.

1 ACTING PRESIDENT BRESLIN: Thank
2 you, Senator Griffo.

3 Are there any other Senators that
4 wish to be heard on this motion to discharge?

5 SENATOR SQUADRON: Point of
6 order, Mr. President.

7 ACTING PRESIDENT BRESLIN:
8 Senator Squadron.

9 SENATOR SQUADRON: I'd like to
10 yield to Senator Stewart-Cousins, actually,
11 for a point of order. Forgive me.

12 ACTING PRESIDENT BRESLIN:
13 Senator Stewart-Cousins.

14 SENATOR STEWART-COUSINS: This
15 will be painless.

16 (Laughter.)

17 SENATOR STEWART-COUSINS: When
18 the motion to discharge passed, there was so
19 much discussion about how we were going to
20 vote it down and how it was all -- and all of
21 the hypocrisy.

22 And so I thought, since this is the
23 first time, I believe, in the history of this
24 chamber that a motion to discharge actually

1 passed, I thought it actually deserved a
2 moment where we acknowledged the fact that
3 yes, this is historic reform; yes, this is a
4 good day; and yes, it is a new beginning.

5 Thank you, Mr. President.

6 (Applause.)

7 ACTING PRESIDENT BRESLIN: Thank
8 you, Senator.

9 Senator DeFrancisco.

10 SENATOR DeFRANCISCO: Point of
11 order.

12 Before we start hurting our arms by
13 slapping ourselves on the back, we might want
14 to recognize the fact that all the argument
15 from the Majority side was against the motion
16 to discharge and how we never allowed it in
17 the past.

18 And I think what really happened
19 here is an historic embarrassment, that the
20 other side --

21 (Hissing; boos.)

22 SENATOR DeFRANCISCO: -- wanted
23 to show that something good was happening.
24 And it had nothing to do with the merits of

1 the bill, it had to --

2 SENATOR LIBOUS: Mr. President,
3 could there be order in the chamber? I
4 believe Senator DeFrancisco has the floor, and
5 he cannot be heard over some moans and groans.

6 ACTING PRESIDENT BRESLIN: Let's
7 have some quiet to allow Senator DeFrancisco
8 to express himself.

9 SENATOR DeFRANCISCO: And the
10 point being that the bill, there wasn't one
11 person on the Majority side that spoke in
12 favor of the motion to discharge. And then
13 all of a sudden, at the end, there was a
14 change of heart. And that's great, because
15 we've got many, many more bills.

16 And now it's very clear if you vote
17 no on a mission to discharge, you're really
18 voting against moving a bill forward. And
19 it's not just a procedural motion anymore, it
20 has some real true meaning.

21 And I'll be very happy to see how
22 the votes come on future motions to discharge.
23 Thank you very much.

24 ACTING PRESIDENT BRESLIN: Thank

1 you, Senator DeFrancisco.

2 The question is on the motion to
3 discharge, from the Committee on
4 Transportation, from consideration of Senate
5 Print Number 2927. All those in favor of the
6 motion please signify by raising your hand.

7 The Secretary will announce the
8 results.

9 THE SECRETARY: Ayes, 30. Nays,
10 30.

11 ACTING PRESIDENT BRESLIN: The
12 motion fails.

13 Senator Klein.

14 SENATOR KLEIN: Mr. President, is
15 there any further business at the desk?

16 ACTING PRESIDENT BRESLIN:
17 There's no further business. The desk is
18 clear.

19 SENATOR KLEIN: There being none,
20 I move we adjourn until tomorrow, Wednesday,
21 April 22nd, at 11:00 a.m.

22 ACTING PRESIDENT BRESLIN: There
23 being no further business to come before the
24 Senate, on motion, the Senate stands adjourned

1 until Wednesday, April 22nd, at 11:00 a.m.

2 (Whereupon, at 5:10 p.m., the

3 Senate adjourned.)

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