NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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May 11, 2009

3:26 p.m.

REGULAR SESSION

SENATOR NEIL D. BRESLIN, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

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

I ask all to rise and repeat with me the Pledge of Allegiance.

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

ACTING PRESIDENT BRESLIN: The invocation today will be delivered by the Reverend Peter G. Young, from Mother Theresa Community.

REVEREND YOUNG: As we gather on this beautiful May day, when we meet in session sometimes we stop listening and use our communication skills to advocate for only our own constituents' agenda.

God, You want us to communicate with respect and care for each of the Senators in this chamber, and all of their constituents, so we might show our New York State citizens and our constituents our example of togetherness and the common good of New York State.

Help us to have open ears and

hospitality in our mind as we listen, share, and build community instead of disunity for our citizens.

Amen.

ACTING PRESIDENT BRESLIN: Thank you, Father Young.

The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Friday, May 8, the Senate met pursuant to adjournment. The Journal of Thursday, May 7, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT BRESLIN: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Klein.

SENATOR KLEIN: Mr. President, on behalf of Senator Ruth Hassell-Thompson, I move that the following bill be discharged from its committee and be recommitted with instructions to strike the enacting clause: Senate Bill 5257.

ACTING PRESIDENT BRESLIN: So ordered.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, on behalf of Senator DeFrancisco, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Print Number 2394.

ACTING PRESIDENT BRESLIN: So ordered, Senator Libous.

SENATOR LIBOUS: Thank you.

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: Mr. President, I believe there are a few resolutions at the

desk. I ask that they be taken up at this time and move for their immediate adoption and allow Senator Nozzolio to speak on his resolution first.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: By Senator Nozzolio, Legislative Resolution Number 1884, congratulating the Newark High School Varsity Girls' Basketball Team upon the occasion of capturing the 2008-2009 New York State Class A Championship.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and strategic planning; and

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

competition; and

"WHEREAS, On Saturday, March 21, 2009, in the title game held at Hudson Valley Community College in Troy, New York, the Newark High School Varsity Girls' Basketball Team captured the New York State Class A Championship by defeating Albertus Magnus by a score of 75-68; and

"WHEREAS, The 'Reds' of Newark High School were led by their Head Coach Diane Kirnie, a skilled and inspirational mentor, respected for her ability to develop potential into excellence; and

"WHEREAS, The 2008-2009 Newark High School Varsity Girls' Basketball Team overall record is outstanding, and the team members were loyally and enthusiastically supported by family, fans, friends and the community at large; and

"WHEREAS, The hallmarks of the 2008-2009 Newark High School Varsity Girls' Basketball Team, from the opening game of the season to participation in league play and winning the Class A Championship, were a

sisterhood of athletic ability, of good sportsmanship, of honor and of scholarship, demonstrating that these team players are second to none; and

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

"WHEREAS, Head Coach Diane Kirnie has done a superb job in guiding, molding and inspiring the members of the 2008-2009 Newark High School Varsity Girls' Basketball Team toward their goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride, and accomplishment; and Head Coach Diane Kirnie and the 2008-2009 Newark High School Varsity Girls' Basketball Team's outstanding athletes have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

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

congratulate the 2008-2009 Newark High School Varsity Girls' Basketball Team, its members -- Alyssa Fenyn, Sarah Tanea, Kira Lauer, Shakista Woolfolk, Heather Virts, Marissa Bunce, Maddy Amo, Rachel MacBride, Jessica Graham, Nikki Clark, Maggie Van Kouwenberg, Amanda Robson, Brynn Lauer, Allison Miller, and Sabrina Macaulay -- and Head Coach Diane Kirnie on their New York State Class A Championship, outstanding season, and overall team record; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the members and head coach of the 2008-2009 Newark High School Varsity Girls' Basketball Team."

ACTING PRESIDENT BRESLIN: Senator Nozzolio.

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

Mr. President, many issues will be discussed in this chamber and in the State Capitol today, but this particular resolution celebrates the excellence of all that is great

in this state.

Congratulations to a group of fine young women who together fought tremendous odds to become state champions -- the Newark Reds Women's Basketball Team, state champions for the first time in their history, led by a great group of players, a tremendous coach, and an outstanding community supporting their school.

That I appreciate the resolution and the reading of the individual players who make up this championship team. I'm also very pleased that this team, to win the Section V title, beat Pittsford Mendon, which is represented by Senator Alesi. And it was very good that we could see Newark overcome that team from Section V.

And better yet, by beating Albertus Magnus as a team in Senator Morahan's district. And we couldn't certainly beat a better squad, and one that I'm very pleased that Senator Morahan, who is a good sport generally, took the defeat with the grace and good spirit.

Alyssa Fenyn was by far the most valuable player I believe in the history of Section V basketball. She finished her career scoring well over 2000 points, almost 2500 points, placing her in one of the numerous All-Star teams at the local, regional and state level.

She's going on to Virginia Tech next year, and we wish her well. We only hope that she comes back to New York State after being educated away from us in college.

Kira Lauer also receiving the Sportsmanship Award.

But the entire team, as you heard their names mentioned, worked very hard together. They pursued their goals, goals that were many years in the making.

That a few years ago I saw this team lose at the buzzer of the state semifinal championships. That, I believe, only made this state championship sweeter than ever in terms of being able to come from defeat and a few years later ensure, by many players who were on that team, ensure victory.

I cannot say enough about Head Coach Diane Kirnie. Her record of accomplishment as a leader of young people is outstanding. A tremendous community asset. We are so pleased that she continues to labor and work and mentor the young people of Newark.

Last year, this house recognized her for capturing her 300th career victory. She's well on the road to 400 now, and we hope we'll be celebrating that milestone in the very near future.

Also with us today is Coach Justin Fladd and the administration of Newark High School -- Kevin Whitaker, the high school principal, and Greg Herbst, assistant principal and director of athletics.

We thank these leaders from Newark and the Newark school system for bringing up such a fine group of young people.

State champions certainly. Those who understand excellence know what it's like to win a state championship. Only a handful of teams each year win such an accolade.

Newark, by far, shone the brightest of all the teams in that excellence category this year.

And with that, I'd like to ask this body to pause and to congratulate the administration, the coaches, the faculty, and especially the players who brought the state championship of girls' basketball to Newark, a great community in the center of Wayne County.

Congratulations, members of the Newark Basketball Squad, and thank you, Mr. President, for the opportunity to introduce them here and to recognize them as true state champions.

ACTING PRESIDENT BRESLIN: Thank you, Senator Nozzolio.

Are there any other Senators wishing to be heard on this resolution?

The question is on the resolution.

All those in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The

resolution is adopted.

Congratulations to the Newark Basketball Team for their Class A State Championship.

(Applause.)

ACTING PRESIDENT BRESLIN: The Secretary will continue to read.

THE SECRETARY: By Senator Ranzenhofer, Legislative Resolution Number 1885, paying tribute to the life and accomplishments of former New York State Congressman and Buffalo Bills quarterback Jack Kemp.

ACTING PRESIDENT BRESLIN: Senator Ranzenhofer.

SENATOR RANZENHOFER: Thank you, Mr. President.

It's with a great deal of sadness, especially after talking about the great accomplishment of the Newark Basketball Team, that I rise to talk about the passing of Jack Kemp.

As many of you know, Congressman Kemp served the Western New York area for

18 years, was a great representative for our area, very eloquent, a great communicator. He's also known to Western New Yorkers not so much for his Congressional accomplishments but for his accomplishments as the quarterback of the Buffalo Bills and the only quarterback that led our city to a championship many, many years ago.

Congressman Kemp served our area, as I said, for many years. He served as Secretary of Housing and Urban Development under President George Bush, was also the Republican nominee for vice president in 1996.

In addition to his accomplishments as a Congressman, as a quarterback, I think most people know him for his later accomplishments, later in life, as I said, for just being very approachable, very open, a very, very warm individual.

And not only will Western New York and all of New York but our country will miss his presence, his quick wit, and his good charm.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Ranzenhofer.

Senator Volker.

SENATOR VOLKER: Mr. President, Jack Kemp was a close and personal friend of mine who I have known for some forty years.

In fact, the second person he hired in his office after Ed Rutkowski, a close personal friend, was my wife. And she remained his office secretary until she became quite pregnant with my first son, Marty.

He was a gentleman, he was a great orator. He was a man who loved this country. He loved football and loved sports. And he loved Western New York, even though he was initially a Californian, he graduated from Occidental College. He spent a lot of time in Western New York.

I had asked him to come in on a number of occasions to do fundraisers, as did many people. And he always agreed when whenever he could.

At one point I suggested that it would be good if he would put his name in for

Governor of New York. His response was: "I'm not a state guy. You're a state guy. I'm a national guy. I'm not into that state stuff. I want to make policy on a national level. I want to help change this country."

He was a great man. His wife, by the way, Joanne, was just a peach, a great person. Carol and I spent a lot of time with the both of them. And we will miss him deeply, although I haven't seen him as much in the last few years.

I ran his campaign at the convention in New Orleans for vice president. And there are some people like myself and some others who believe that had George Bush, Sr., picked Jack Kemp instead of Dan Quayle, he might have been a lot more successful in the years to come.

But -- I could give you some idea of why that happened, but it would be better not to get into it.

But Jack Kemp was a true American, a true American athlete, a true American statesman, a true New Yorker, a true Western

New Yorker, and a man who will be greatly missed in this land and will not be forgotten.

ACTING PRESIDENT BRESLIN: Thank you, Senator Volker.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, I rise to share my condolences to the Kemp family, to support this resolution, and to mention that Jack Kemp's picture has been in my office for the 26 years that I've been a state legislator.

Jack Kemp was a mentor of mine. I met him while I was still in college, when he was a newly elected Congressman and I was working in my very first position in government and politics as an intern in Washington, D.C.

And I met him because of the fact that he was the quarterback of my favorite football team, the Buffalo Bills. But in so doing, I got to know the fact that he -- more than anyone else, I believe, in the last generation -- had conveyed the spirit of what it was like to be a Republican in the true

spirit of what the Republican Party should be doing.

And that's a spirit of keeping the principles of opportunity that America so greatly has cherished throughout its history but maybe had lost its way. And that through less taxes, through better support of enterprise and letting enterprise be free in this state and in this nation, Jack Kemp preached a political philosophy that guided many.

And I agree with Senator Volker that -- I was with Senator Volker in New Orleans in 1988, had run in New York as a Kemp delegate, had worked with other state legislators who also supported Jack Kemp to put Jack Kemp as our vice presidential nominee in 1988.

Jack Kemp cared about Western New York. His district went well into the district that I now serve, in Ontario County. And that he is, though, an icon for not just the past, but for the principles that he espoused of growth, opportunity, progress,

individual initiative. Those are the hallmarks of the American way, and they're the guiding lights of a great leader like former Congressman, former HUD Secretary Jack Kemp.

We mourn his passing, and we extend our sympathies, our deep sympathies to his family.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Nozzolio.

Senator Stachowski.

SENATOR STACHOWSKI: Thank you, Mr. President. I too would like to rise to share condolences on Jack Kemp's passing.

I met Jack Kemp when I was a senior in high school. He was a quarterback at the Buffalo Bills, and I was a high school quarterback, and we took a picture in the paper and that laid.

And then I ended up representing -- when I got elected to the Senate, Jack and I, our districts overlapped. And we would sit together a lot at different functions. In particular, usually a League of Women Voters

dinner they had in Hamburg, we would always sit at the same table and chitchat.

So when he retired from Congress, I had an extra copy of that picture that he had autographed for me when I was a senior in high school. So I signed it to him: "Long way from the rock pile -- State Senator Bill Stachowski."

And years later, when they celebrated some anniversary team for the Bills, Jack came up to me and said, "You know, in my office I have two Democrats. I have Thomas Jefferson and you." And so it was kind of a funny story that he kept.

But I think the most striking thing about Jack Kemp -- and obviously everybody spoke about all the things he accomplished and the incredible person he was. But his human rights beliefs were as strong as anybody's from any party. And he showed that when he was an AFL All-Star and they went down to New Orleans again.

And that was the year that they went to New Orleans to do an All-Star game,

and when they got there all the African-American players were told they couldn't stay in the same hotel with the other guys.

So Jack and a bunch of people approached the people running the game and said, "Well, we just want you to know that we're not going to play if they can't stay in the same hotel."

And they ended up moving that game to Miami, and the rest is history. And then things started changing.

But that's the kind of person Jack Kemp was, a stand-up guy. Very interesting man. If he was your friend, he was always your friend and it didn't matter which party you were from.

So it's a great loss for everybody. Jack was an interesting individual. He left a legacy of all kinds of friends and teammates, et cetera, all over Western New York and obviously everywhere else that he traveled.

So we'll miss Jack Kemp. Our condolences to his family.

And the interesting thing is when you read all the obituaries, although politics is everything most people remember about him, football was his real vocation. And his sons were the ones that pointed that out. That was one of the central things to the whole family, was football and that participation.

So it's a good day to celebrate the life of Jack Kemp, but it will always be a great loss for everybody that knew him.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Stachowski.

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

The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The resolution is adopted.

At the request of the sponsor, the

resolution is open for multisponsorship by the entire house. Any member wishing not to be a multisponsor of the resolution should so inform the desk.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. I would just request the privilege of the floor to welcome a very important constituent of mine who was just honored in the Assembly on this Disability Awareness Day that they have every year.

His name is Andrew Bowman, and he received the State Assembly's Excelsior Award for Excellence. He is a swimmer. He won the Special Olympics gold medal last year. I've got a picture of him with other gold medals that he's holding and other medals that he's holding. He's just a special young man who has done special things.

He's an 8th-grader. And he's here with his father, Chris Bowman, his mother, Susan Bowman, and his brother Peter.

And they're here, if they'd just stand up. Andrew, give a wave to everybody.

(Applause.)

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

ACTING PRESIDENT BRESLIN: Thank you, Senator DeFrancisco.

And congratulations to the Bowman family and in particular Andrew.

Senator Klein.

SENATOR KLEIN: Mr. President, may we at this time move to a reading of Senate Calendar Number 44.

First, are there any substitutions at the desk?

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

The Secretary will read.

THE SECRETARY: On page 19, Senator Stewart-Cousins moves to discharge, from the Committee on Local Government, Assembly Bill Number 7505 and substitute it for the identical Senate Bill Number 3743, Third Reading Calendar 218.

And on page 22, Senator Schneiderman moves to discharge, from the

Committee on Mental Health and Developmental Disabilities, Assembly Bill Number 1801 and substitute it for the identical Senate Bill Number 4058, Third Reading Calendar 246.

ACTING PRESIDENT BRESLIN: Substitution ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, can we now go to a reading of Senate Calendar Number 44.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: Calendar Number 75, by Senator Breslin, Senate Print 738A, an act to amend the Executive Law, in relation to records.

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN:

Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 97, by Member of the Assembly Lopez, Assembly Print Number 5567A, an act to amend the Private Housing Finance Law, in relation to tax exemptions.

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 167, by Senator Klein, Senate Print 1865A, an act to amend the Vehicle and Traffic Law, in

relation to stopping.

ACTING PRESIDENT BRESLIN: There is a home-rule message at the desk.

Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 171, by Senator Savino, Senate Print 3512, an act to amend the Education Law, in relation to mandated payment.

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 182, by Senator Adams, Senate Print 2782, an act to amend the Surrogate's Court Procedure Act, in relation to confirmation.

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 183, by Senator Espada, Senate Print 2871A, an

act to amend the Real Property Actions and Proceedings Law, in relation to new owners.

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT BRESLIN: The bill is passed.

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

SENATOR KLEIN: Mr. President, can we please recognize Senator Ruth Hassell-Thompson at this time for an announcement.

ACTING PRESIDENT BRESLIN: Senator Hassell-Thompson.

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

I would like to announce that immediately following session there will be a meeting of the Majority in Room 332.

ACTING PRESIDENT BRESLIN: There will be a meeting of the Senate Majority immediately following session in Room 332.

Senator Klein.

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

ACTING PRESIDENT BRESLIN: No, Senator Klein, the desk is clear.

SENATOR KLEIN: There being none, I move that we adjourn until Tuesday, May 12th, at 3:00 p.m.

I want to remind everyone that tomorrow is going to be the time we take our Senate photographs. So we're starting promptly at 3:00 p.m.

ACTING PRESIDENT BRESLIN: Senator Volker.

SENATOR VOLKER: I'm sorry, could I just remind everybody that tomorrow is the Senate Club, tomorrow evening at 6 o'clock at the Jack's Restaurant, because a lot of people

tend to forget it. I'm sorry, I forgot to mention it before.

And we appreciate anybody that can come to it. We're going to have a lot of the older Senators from before are going to be coming.

Thank you.

ACTING PRESIDENT BRESLIN: The annual Senate Club dinner will be tomorrow night at Jack's at 6:00 p.m.

There being no further business to come before the Senate, on motion, the Senate stands adjourned until Tuesday, May 12th, at 3:00 p.m.

(Whereupon, at 3:54 p.m., the Senate adjourned.)