NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 19, 2009

3:31 p.m.

REGULAR SESSION

SENATOR DAVID J. VALESKY, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

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

I ask everyone present to please rise and recite with me the Pledge of Allegiance.

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

ACTING PRESIDENT VALESKY: The invocation today will be delivered by Rabbi Abe Friedman, of the Congregation of Satmar in Brooklyn, New York.

Rabbi.

RABBI FRIEDMAN: Let us pray.

God, we gather here today in the New York State Senate chamber on this special day of remembrance in honor of the New York State Police, whose members have provided their courageous services to the residents of the State of New York. These officers have risked and, tragically, sometimes sacrificed their lives in the line of duty to make this great state a better place to live.

In the most profound appreciation

and exceptional devotion, I ask You, God, to bless the men and women of the New York State Police on this special day. I ask You, God, to recognize their heroism, give them strength, safeguard them and their families.

Everyone in this Senate chamber acclaims this group of officers, individuals who have shown in exemplary fashion the valor, the dedication to duty, the unique positions and extraordinary responsibilities. May God protect and preserve them and always grant them safe harbor.

God bless our leaders, the Honorable Governor of the State of New York, David Paterson; the Majority Leader, Malcolm Smith; the Minority Leader, Dean Skelos; and all members here today in the New York State Senate.

God bless the Superintendent, the Honorable Harry Corbett of the New York State Police, and all men and women of the New York State Police today. May You defend and secure them as they defend and secure us.

Amen.

ACTING PRESIDENT VALESKY: The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Monday, May 18, the Senate met pursuant to adjournment. Senator Valesky in the chair, upon designation of the Temporary President. Prayer by the Reverend Peter G. Young, Mother Teresa Community, Albany, New York. The Journal of Friday, May 15, 2009, was read and approved.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Senator Klein.

SENATOR KLEIN: Mr. President, are there any substitutions at the desk?

ACTING PRESIDENT VALESKY: There are, Senator Klein.

The Secretary will read.

THE SECRETARY: On page number 9, Senator Little moves to discharge, from the Committee on Health, Assembly Bill Number 2029A and substitute it for the identical Senate Bill Number 739A, Third Reading Calendar Number 57.

ACTING PRESIDENT VALESKY: Substitution ordered.

THE SECRETARY: On page number 12, Senator Thompson moves to discharge, from the Committee on Environmental Conservation, Assembly Bill Number 5765 and substitute it for the identical Senate Bill Number 3777, Third Reading Calendar Number 173.

ACTING PRESIDENT VALESKY: Substitution ordered.

THE SECRETARY: On page number 19, Senator Hannon moves to discharge, from the Committee on Health, Assembly Bill Number 1719A and substitute it for the identical Senate Bill Number 2947A, Third Reading Calendar 270.

ACTING PRESIDENT VALESKY: Substitution ordered.

THE SECRETARY: On page number 19, Senator C. Johnson moves to discharge, from the Committee on Environmental Conservation, Assembly Bill Number 7665 and substitute it for the identical Senate Bill Number 4236, Third Reading Calendar 279.

ACTING PRESIDENT VALESKY: Substitution ordered.

THE SECRETARY: On page number 21, Senator Diaz moves to discharge, from the Committee on Finance, Assembly Bill Number 1800 and substitute it for the identical Senate Bill Number 2210, Third Reading Calendar 294.

ACTING PRESIDENT VALESKY: Substitution ordered.

THE SECRETARY: On page number 21, Senator Griffo moves to discharge, from the Committee on Cities, Assembly Bill Number 1204 and substitute it for the identical Senate Bill Number 1732, Third Reading Calendar 299.

ACTING PRESIDENT VALESKY: Substitution ordered.

THE SECRETARY: On page number 22, Senator C. Kruger moves to discharge, from the Committee on Codes, Assembly Bill Number 3468 and substitute it for the identical Senate Bill Number 4334, Third Reading Calendar 309.

ACTING PRESIDENT VALESKY: Substitution ordered.

THE SECRETARY: On page number 23, Senator C. Johnson moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 7822 and substitute it for the identical Senate Bill Number 4578, Third Reading Calendar 319.

ACTING PRESIDENT VALESKY: Substitution ordered.

THE SECRETARY: On page number 24, Senator Savino moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 4106A and substitute it for the identical Senate Bill Number 5098, Third Reading Calendar 322.

ACTING PRESIDENT VALESKY:

Substitution ordered.

THE SECRETARY: On page number 24, Senator Parker moves to discharge, from the Committee on Environmental Conservation, Assembly Bill Number 306 and substitute it for the identical Senate Bill Number 1937, Third Reading Calendar 325.

ACTING PRESIDENT VALESKY: Substitution ordered.

THE SECRETARY: On page number 24, Senator Lanza moves to discharge, from the Committee on Environmental Conservation, Assembly Bill Number 6914 and substitute it for the identical Senate Bill Number 3269A, Third Reading Calendar 326.

ACTING PRESIDENT VALESKY: Substitution ordered.

THE SECRETARY: On page number 24, Senator DeFrancisco moves to discharge, from the Committee on Veterans, Homeland Security and Military Affairs, Assembly Bill Number 296 and substitute it for the identical Senate Bill Number 2037, Third Reading Calendar Number 327.

ACTING PRESIDENT VALESKY:

Substitution ordered.

THE SECRETARY: On page number 24, Senator Foley moves to discharge, from the Committee on Veterans, Homeland Security and Military Affairs, Assembly Bill Number 5025 and substitute it for the identical Senate Bill Number 4324, Third Reading Calendar Number 330.

ACTING PRESIDENT VALESKY:

Substitution ordered.

THE SECRETARY: On page number 25, Senator Parker moves to discharge, from the Committee on Energy and Telecommunications, Assembly Bill Number 4904 and substitute it for the identical Senate Bill Number 3329, Third Reading Calendar 335.

ACTING PRESIDENT VALESKY:

Substitution ordered.

Senator Klein, that completes the substitutions that are at the desk.

SENATOR KLEIN: Mr. President, I have two motions.

First, on behalf of Senator

Stavisky, on page 21 I offer the following amendments to Calendar Number 300, Senate Bill 1735, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT VALESKY: One moment, Senator Klein.

Let me just return to the regular order of business and call for reports of select committees, of which we have none; communications and reports from state officers, of which we have none; motions and resolutions.

The one that you previously read, so ordered.

SENATOR KLEIN: Thank you.

The second, Mr. President, is a motion to amend a bill recalled from the Assembly. On behalf of Senator Craig Johnson, I wish to call up Print Number 3821, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: Calendar Number 265, by Senator Craig Johnson, Senate Bill

3821, an act to amend Chapter 704 of the Laws of 1991 amending the Arts and Cultural Affairs Law.

ACTING PRESIDENT VALESKY: Senator Klein.

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

ACTING PRESIDENT VALESKY: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT VALESKY: The bill is before the house and restored to its place on the Third Reading Calendar.

Senator Klein.

SENATOR KLEIN: Mr. President, I now offer the following amendments.

ACTING PRESIDENT VALESKY: The amendments are received.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe there is a report of the Finance Committee at the desk.

ACTING PRESIDENT VALESKY:

Returning to the order of reports of standing committees, Senator Klein, there is a report of the Finance Committee at the desk.

The Secretary will read.

THE SECRETARY: Report from the Committee on Finance. The Committee on Finance reports the following nominations.

Member and chairman of the Public Service Commission, Garry Brown, of Averill Park.

ACTING PRESIDENT VALESKY:

Senator Kruger.

SENATOR CARL KRUGER: Move the nomination, please.

ACTING PRESIDENT VALESKY: Are there any Senators who wish to be heard on the motion to confirm the nomination?

The question, then, is on the motion to confirm the nomination of Garry Brown as member and chairman of the Public Service Commission. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The motion carries. The nomination is confirmed.

Chairman Brown is with us this afternoon. Congratulations.

(Applause.)

ACTING PRESIDENT VALESKY: The Secretary will continue to read.

THE SECRETARY: As a member of the Public Service Commission, Patricia L. Acampora, of Mattituck.

ACTING PRESIDENT VALESKY: Senator Kruger.

SENATOR CARL KRUGER: Move the nomination please.

ACTING PRESIDENT VALESKY: Are there any Senators who wish to be heard on the nomination?

Senator LaValle.

SENATOR LaVALLE: Mr. President, I rise to move the nomination of Pat Acampora, who was my partner for so many years in the

Assembly and then went to the Public Service Commission.

And the Governor has done a very wise thing by reappointing Pat Acampora, because she has always, in her career, worked in a very fair way to balance the equities between the consumers and the utilities. And she is a very fierce person, quite honestly, in protecting the interests of the consumer.

So this really is a great reappointment on the part of the Governor. He should be congratulated.

And Pat, congratulations. And she is joined by her husband Alan Croce.

ACTING PRESIDENT VALESKY: Thank you, Senator LaValle.

Senator Onorato, on the nomination.

SENATOR ONORATO: Mr. President, I too would like to congratulate the Governor for reappointing Pat. I've known Pat for many, many years, and her husband, Alan. We've dined together. We've had many memorable occasions together.

And she has such an expertise in

the matter. She was the former chairman of the board. And when she was, she came to my district and she listened very, very intently to the problems that we expressed to her, and she acted upon them.

So it is my very, very proud moment again today to be able to vote again for your reaffirmation to the board. Congratulations.

ACTING PRESIDENT VALESKY: Thank you, Senator Onorato.

Senator Flanagan, on the nomination.

SENATOR FLANAGAN: Thank you, Mr. President.

I want to concur with the remarks made by Senator LaValle in particular and just speak for a moment about Patty Acampora.

I think she, in my humble opinion, epitomizes what it means to be a true public servant. When she came to the Public Service Commission, she had certainly a legislative background, very well known and very well liked. But in reality, did she have a telecommunications background, or energy? No.

The reason she's so good at what she does, she immerses herself completely in the work that she does and really does try and look out for the best interests of the public.

We are fortunate to have her there. And Alan is almost as good a public servant as his wife. And I congratulate the Governor as well.

Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Flanagan.

Are there any other Senators who wish to be heard?

Seeing none, the question is on the motion to confirm the nomination of Patricia L. Acampora as a member of the Public Service Commission. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The motion carries. The nomination is hereby

confirmed.

Commissioner Acampora is with her husband, Alan Croce. Congratulations, Commissioner.

(Applause.)

ACTING PRESIDENT VALESKY: The Secretary will continue to read.

THE SECRETARY: For member of the Board of Trustees of the State University of New York College of Environmental Science and Forestry, Leslie Talbot, of New York City.

ACTING PRESIDENT VALESKY: Senator Kruger.

SENATOR CARL KRUGER: Please move the nomination.

ACTING PRESIDENT VALESKY: Are there any Senators who wish to be heard on the nomination?

Seeing none, the question is on the motion to confirm the nomination of Leslie Talbot as a member of the Board of Trustees of the SUNY College of Environmental Science and Forestry. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The motion carries, and the nominee is hereby confirmed.

Senator Klein.

SENATOR KLEIN: Mr. President, may we at this time adopt the Resolution Calendar in its entirety, with the exception of Senate Resolution Numbers 2013, 2026, 2037, and 2083.

ACTING PRESIDENT VALESKY: Returning to the order of motions and resolutions, all those in favor of adopting the Senate Resolution Calendar in its entirety, with the exceptions as listed by Senator Klein, please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The Senate Resolution Calendar is adopted.

Senator Klein.

SENATOR KLEIN: Mr. President, may we at this time take up Senate Resolution 2026. I ask that the resolution be read in its entirety and move for its immediate adoption and allow Senator Adams to speak on his resolution.

ACTING PRESIDENT VALESKY: The Secretary will read Resolution Number 2026 in its entirety.

THE SECRETARY: By Senator Adams, Legislative Resolution Number 2026, honoring several courageous and dedicated New York State police officers for their heroic action on January 10, 2009.

"WHEREAS, It is the sense of this Legislative Body to recognize and honor those distinguished citizens who devote their life's work and purpose to public service, contributing to the care and welfare of the citizens of their communities and this great Empire State; and

"WHEREAS, The quality of life of these communities is largely reflective of the

commitment and dedication demonstrated by members of the agencies which serve to protect, preserve and maintain public order. This Legislative Body is moved to laud particularly those individuals who risk their lives and personal safety providing that protection; and

"WHEREAS, This Legislative Body is proud to pay tribute to several Capital District area Division of State Police and East Greenbush Police Department police officers in recognition and appreciation of their heroic action on January 10, 2009; and

"WHEREAS, On that Saturday, just before noon, Trooper Ian E. Henry was patrolling Interstate 90 when he stopped a taxi in the Town of East Greenbush that had been traveling at a high rate of speed. As he approached the taxi, he noted the taxi was from Connecticut and that there was a passenger in the rear seat. As it is unusual for a Connecticut taxi to be in the Albany area with an apparent fare, the driver was asked key questions to ascertain if this was a

legitimate fare or if criminal activity might be afoot; and

"WHEREAS, Not satisfied with the answers provided by the driver, Trooper Henry engaged the rear-seat passenger in conversation. While asking pertinent questions, Trooper Henry scanned the interior of the taxi and saw the passenger was fumbling with his belongings. The passenger inadvertently revealed what looked like the stock of a gun protruding from the duffel bag. When he realized Trooper Henry had seen the weapon, the passenger fully removed the assault rifle from its hiding place; and

"WHEREAS, Not knowing the passenger's intention, Trooper Henry acted swiftly, attempting to reach in and grab the weapon. The passenger broke free, however, and pointed the assault rifle at Trooper Henry, who then drew his sidearm and began to move to a position of cover behind his vehicle. Trooper Henry knew he was outgunned but attempted to maintain control of the situation by keeping his weapon trained on the

taxi while issuing commands to its occupants. The panicked taxi driver exited the cab and ran at Trooper Henry; and

"WHEREAS, Not knowing if the driver was also armed or an innocent party, Trooper Henry took control of the driver and assisted him to a position of safety. With the assistance of a passing motorist, retired State Police Staff Sergeant Donald Egan, Trooper Henry restrained the driver and then stopped westbound traffic in order to ensure that unsuspecting motorists remained at a safe distance should the subject begin to fire the assault rifle; and

"WHEREAS, In yet another twist of fate, off-duty Investigator Rodney Livolsi was also traveling on I-90 in his Jeep and observed the situation as it was unfolding. Although unarmed, he demonstrated great bravery when he stopped on the shoulder to render assistance. Investigator Livolsi's vehicle was used to transport the taxi driver out of the range of the armed subject. As the subject began to fire the assault rifle in

their direction, Investigator Livolsi backed down the shoulder to a safer position; and

"WHEREAS, Once the taxi driver was secure, Trooper Henry realized many motorists were stranded in their vehicles, still well within harm's way. Without regard to his personal safety, Trooper Henry moved to the occupied stopped vehicles and began to evacuate motorists, directing them safely down the highway on foot; and

"WHEREAS, As other troopers and local police officers were being dispatched to the scene, Trooper Henry used the abandoned vehicles for cover to advance closer to the taxi to relay critical information to the dispatcher; and

"WHEREAS, As the highway became more congested with vehicles traveling from the east, the subject continued to fire his assault rifle toward innocent motorists, and State Police and local police personnel began to arrive and take decisive actions to stop the threat to life safely; and

"WHEREAS, State Police Lieutenant

John E. Agresta and Trooper Jeffrey M. Devine were among the earliest to arrive from the west. They immediately recognized the risks of allowing this subject to flee the area either on foot or in one of many abandoned vehicles. They knew the subject had an assault rifle, and they knew he had already used deadly physical force. They also knew it was likely the shooter might be outside the range of their weapons but that they would be within the range of his; and

"WHEREAS, Nonetheless, these brave officers positioned themselves in a direct line of fire across the highway from the shooter. They anticipated this would draw the shooter's attention and aggression toward them and, more importantly, away from the increasing number of innocent people on foot and in vehicles only a few hundred feet away in the westbound lanes; and

"WHEREAS, Investigator Timothy A. Northrup and Troopers Fred D. Scarano and Michael J. Keefe arrived and moved from the staging area east of the scene toward the

taxicab. Between bursts of gunfire from the shooter, these officers cleared the remaining motorists from their vehicles. After ensuring that all innocent persons had been moved to safety, these officers continued to move toward the shooter and took positions in the westbound lanes using only vehicles as cover. They were fired upon but maintained their composure as they relayed information to command officers while also returning fire; and

"WHEREAS, Numerous police requests were made of the shooter to drop his weapon and surrender. These were answered by continued gunfire from his assault weapon, making it clear that additional tactical assistance was needed; and

"WHEREAS, State Police Rifleman Trooper Steven J. Borbee was deployed for increased range and firepower. An 'immediate rapid deployment team' from the East Greenbush Police Department was also deployed and moved through a wooded area behind the shooter and operated from a position of concealment to

fire upon the shooter; and

"WHEREAS, The ordeal ended approximately 40 minutes after it began, with the assailant being disabled by the combined return fire of members of the New York State Police and the East Greenbush Police Department, an ordeal and threat which thankfully ended with no injuries to police or innocent persons; and

"WHEREAS, The officers involved in bringing this situation to its conclusion demonstrated great courage and devotion to duty in the face of grave personal danger and are to be commented for their bravery; and

"WHEREAS, The dedicated efforts of these officers, who unselfishly devote their lives to the preservation of order and the protection of others, are worthy of the full praise of this Legislative Body and the people of the State of New York; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor and pay tribute to each of the courageous officers

who played a role in bringing this dangerous life-threatening incident on January 10, 2009, to a conclusion; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to each of these outstanding police officers with the appreciation of this Legislative Body and the people of the State of New York."

ACTING PRESIDENT VALESKY: Senator Adams, on the resolution.

SENATOR ADAMS: You know, we often are used to nowadays that we see so many action flicks that we have the tendency to believe that even those things that play out on the real live stage, that they're just another extension of a drama on the big screen.

And we have the luxury sometimes if we miss a particular action in an exciting movie that we can just hit rewind. But you know what? These guys don't have rewind. They don't have the luxury of playing it again, they don't have the luxury of going in reverse, they don't have the luxury of

fast-forwarding. They have none of those luxuries.

And when you look at just this incident, when it was relayed to me after I read it in the newspaper and then sat down with the trooper and heard firsthand of what happened, you have to pause for a moment and state that we sleep well at night because they're on the highways and the byways and the roadways during the day, during the evening, and during the overnight shift.

I just want to commend Superintendent Corbett and the officers who are behind me and what they represent to the State of New York. And just hearing the resolution read, you don't get the full feel.

For 40 minutes, for 40 minutes they were in a situation where there was uncertainty if they were going home to their family members. For 40 minutes they were shot upon. Instead of doing the normal humanistic reaction of flight, they went into the face of danger. For 40 minutes, they showed a level of patience for the drivers.

Just go back in your mind and see what it's like to come to a cab and stop a cab and see a gun inside the cab, getting ready to take police action -- then, all of a sudden, the driver of the cab runs out towards the trooper, not knowing if he was part of the person who was committing the crime.

The officer showed restraint. Could have easily used his firearm to terminate the threat of the driver coming towards him.

But it didn't stop there. He also had to look on the highway and notice that there were cars driving down the highway towards the person who was armed with a firearm.

It didn't stop there. A retired officer -- could have gone home, could have stated, I'm no longer wearing the gray uniform, I could just go home to my family -- he decided to stop and give assistance.

But it didn't stop there. An off-duty officer -- could have stated, I'm off-duty, I'm off the clock, I don't have any

responsibility -- decided to stop and assist then. The continuation of the officers' understanding, they had in their psyche only one thing: We have to protect the public. For 40 minutes.

Here's the horrific part of this whole incident. They had to wait for a long gun to come to the scene. Do you know we have our men on the road today carrying water pistols, it seemed, in comparison to the artillery that the bad guys have?

If we leave this session without arming all of our officers with long guns, then we're hypocrites. We cannot state we appreciate them, we cannot state that we respect what they do but we're putting them in the line of fire without the right resources to be properly implemented to protect the public.

That's all they're asking. They're asking to be properly equipped. And that's why I wanted to take a moment out today, as we go outside and we touch the marble wall with a countless number of men and women who have

donned police uniforms and died in the line of duty, and we say eloquent speeches of how much we appreciate them.

Now it's time to show them that we're willing to give them the resources that they need to do their job. There's no greater statement we can make to those who want to harm the public than we will make sure our officers are equipped.

For 40 minutes they heard bullets going past their heads. For 40 minutes they moved civilian people to places of safety. For 40 minutes they had to hold down the scene to prevent a person who already made up his mind that he was going to harm anyone and everyone that came within his reach. For 40 minutes. Imagine that.

For 40 minutes, they didn't flee. They didn't run. They didn't turn away. They couldn't hit rewind. They couldn't say "Do over." They couldn't pull out the CD and say maybe there was a mistake. They couldn't say "Oops." They couldn't say "Well, can we do this another day?" They couldn't say "Hold

on." Forty minutes. All they knew: We've got to protect the public.

And all it takes is one thing on our part to say we're going to give them the resources to do it.

So I'm asking you, the members of the State Senate, to just take a moment of one minute of rising to your feet and applauding the finest men of the State Police.

Thank you.

(Standing ovation.)

ACTING PRESIDENT VALESKY: Thank you, Senator Adams.

Senator Savino, on the resolution.

SENATOR SAVINO: Thank you, Mr. President.

I also want to thank Senator Adams for that particularly inspiring speech about the contributions of our State Police and all officers in general. And I think it's particularly moving coming from him as a former member of the NYPD.

And I know it's reflected probably in the feelings of some of the members of this

body that are former police officers, like Senator Golden and Senator Monserrate and Senator Volker. And if I'm missing any, I apologize.

This is an annual event that we do honoring the contributions of State Police, particularly in recognition of an incident like the incident that happened on January 10th. And it's remarkable in its description of the level of professionalism and the restraint and the dedication of those officers, both on the job, retired, off-duty, and everyone who assisted.

But what it doesn't take into consideration is that level of professionalism exists every day they're on the job, from the first day they enter the academy until the very end. They are always police officers, always protecting the interests of the public.

And the moments that we take to recognize that are important, but I think this body has a greater obligation. Senator Adams mentioned one, about providing them the resources that they need, and we absolutely

need to do that.

But I think it's important to note that this body especially has always recognized that our obligation to our public protection and our police officers and law enforcement all over the state is also protecting their income security.

You know, this was a very difficult budget year for everyone. And I think it was rather disconcerting for those of us who had to make tough decisions to hear from outsiders, people who write editorials, describing the glowing work that your members do, whether they be State Police, city police, county police. But those very same people who will write a glowing editorial about what happened on January 10th and laud you for your bravery are the very same people who say that you are responsible for the budget crisis that New York State faces, we can no longer afford to provide wage security and we can no longer afford to provide income security.

And let me just say -- and I know I speak for everyone in this chamber -- that

this body does not ascribe to that notion. We can afford to provide wage compensation at a decent rate and benefits to those who protect us everyday.

And more importantly, we can, we will, and we have an obligation to protect income security for our retired members of law enforcement. Because as we saw from the actions on January 10th, retirees respond to the call of duty whether or not they're collecting a paycheck, and they will always do so, because it's who you guys are, men and women. Put on the uniform, and you never take it off.

So I want to thank all of you for your contributions and at least recognize that this body recognizes your contributions and we know we have a higher obligation to protect those who protect us every day.

Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Savino.

Senator Volker, on the resolution.

SENATOR VOLKER: Mr. President,

first of all, I want to thank you, Senator Adams, for sponsoring this resolution. It was long due.

In fact, I had introduced a resolution some time ago, or set the resolution up not too long after the January 10th, but we were waiting for an appropriate time to actually do it.

And when you think of it, what more appropriate time, I guess, than the day of the memorial service for deceased law enforcement officers.

As a former police officer, no one has to tell me of the dangers and the need, though, for common sense and clarity in what you need to do. I certainly congratulate the people who were involved in it.

In fact, I spoke with a number of people who were there -- that is, people who were part of the incident, they were in cars along the road -- and they told me how wonderful the troopers acted and how they protected the people that were there.

And one of the reasons they were

not able to get to the man was because they made sure, a hundred percent, that the people that were in any way in harm's way were taken care of first. And, in fact, to the detriment of themselves.

But I want to compliment particularly the Superintendent, because these are his men. And one of the problems I think that happens is -- and we love to criticize people who are in charge when something happens: Something wasn't done or whatever. These people are a tribute to Superintendent Corbett, who I think has done a super job in getting the State Police in a situation where they are again to be ranked as probably the top semimilitary organization -- I say "semimilitary" because that's what law enforcement people are in this country, particularly State Police all over the country.

But I want to say that we're happy, so happy, as you are, that your names, none of you, are to be put on the wall today -- which it could have happened. But we also realize

that it could easily have happened.

Thank you for your courage. Thank you for your ingenuity. And thank you for the fact that you serve us in the finest way possible. I'm proud, and this Senate is proud also.

ACTING PRESIDENT VALESKY: Thank you, Senator Volker.

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

Seeing none, the question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

And at the request of Senator Adams, it is open for cosponsorship by all members. Anyone wishing not to be a cosponsor of this resolution should please notify the desk.

Thank you to all of the members of the New York State police who are here, for all that you do to ensure the health and safety of all New Yorkers.

Senator Klein.

SENATOR KLEIN: Mr. President, may we at this time take up Senate Resolution 2013. I ask that the resolution be read in its entirety and move for its immediate adoption and allow Senator Perkins to speak on his resolution.

ACTING PRESIDENT VALESKY: The Secretary will proceed with reading Resolution Number 2013 in its entirety.

THE SECRETARY: In Senate, Legislative Resolution 2013, introduced by Senator Perkins, legislative resolution celebrating the 84th birthday of Malcolm X, a human rights activist and one of the most influential African-American leaders in history.

"WHEREAS, It is the sense of this Legislative Body to recognize and commend individuals and events which celebrate our

nation's great struggle to fulfill the promise of equality and opportunity for all; and

"WHEREAS, Attendant to such concern, and in full accord with its long-standing traditions, this Legislative Body is justly proud to celebrate the 84th birthday of Malcolm X, a powerful figure in American history; and

"WHEREAS, Malcolm X was born Malcolm Little in Omaha, Nebraska, on May 19, 1925; and

"WHEREAS, On January 14, 1958, Malcolm X married Betty Sanders. They had six children: Attallah, Qubilah, Ilyasah, Gamilah, Malaak, and Malikah; and

"WHEREAS, Once a member of the Nation of Islam, Malcolm X was a Muslim minister, public speaker, and human rights activist. He was a courageous advocate for the rights of African-Americans in the face of institutionalized racism; and

"WHEREAS, After his departure from the Nation of Islam, Malcolm X founded Muslim Mosque, Inc., and the Organization of

Afro-American Unity. He then became a Sunni Muslim, and after his holy pilgrimage to Mecca he became El-Hajj Malik El-Shabazz; and

"WHEREAS, Malcolm X's pilgrimage to Mecca, Saudi Arabia, proved life-altering, and for the first time, he shared his thoughts and beliefs with different cultures and found the response to be overwhelmingly positive; and

"WHEREAS, When he returned to the United States, Malcolm X mentioned that while he was abroad he had met men of all races that he could call his brothers. He also returned to the United States with a new outlook on the African-American struggle for equality, a new message for all mankind, and a new hope for the future; and

"WHEREAS, On February 21, 1965, Malcolm X was assassinated while giving a lecture in the Audubon Ballroom, in New York City, which was subsequently designated as a landmark and currently houses the Malcolm X and Dr. Betty Shabazz Memorial and Educational Center; and

"WHEREAS, In 1987, in honor of the

slain civil rights leader, Lenox Avenue in Harlem, New York City, was named after Malcolm X; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to celebrate the 84th birthday of Malcolm X, a human rights activist, dynamic orator, and one of the most influential African-American leaders in history."

ACTING PRESIDENT VALESKY: Senator Perkins, on the resolution.

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

I'm going to be brief. I think the resolution speaks eloquently for itself. And I just want to take a moment to just acknowledge how important a presence that Malcolm X was, not just for me and my contemporaries, but I think for most of us in this chamber and in this country, whether we recognize it or not, by virtue of the advancements that were made as a result of his advocacy for the human rights of African-American people.

You know, he had a few sayings that I'd just like to share with you that I think are very appropriate for what we do and help to guide us, and one of which is: "If you don't stand for something, you will fall for anything."

And, you know, this is an idea that should inform us that we are here to stand for something. Otherwise, we will be captive by that which we ourselves might ordinarily oppose. And so this is one of the models I'd like to share that hopefully we will use as we go forward in our work on behalf of the people of this state.

The other one that I'd like to read out is: "Power in defense of freedom is greater than power in behalf of tyranny and oppression, because power, real power, comes from our conviction which produces action, uncompromising action."

And again, I think that's part of what taints those of us who have the privilege of being elected officials, is the notion that we will compromise for anything. And I think

that what we really want, especially from the perspective of our constituents and really from the perspective of the wonderful opportunity we have to represent the best of our constituents, is to try not to be so compromising of our principles and of the needs of the people.

And I think that one of the lessons that Malcolm X has taught us is that we can be uncompromising and still be on the right side of justice for everybody -- not segregating or not separating, but really trying to do what's best for all.

Thank you so much. And I hope that my colleagues will join me in recognizing the great contribution that he has made.

ACTING PRESIDENT VALESKY: Thank you, Senator Perkins.

Are there any other Senators who wish to be heard?

Seeing none, the question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

Senator Perkins has asked that it be open for multisponsorship. Anyone wishing not to cosponsor this resolution should notify the desk.

Senator Klein.

SENATOR KLEIN: Going out of order, Mr. President, can we take up Senate Resolution Number 2083. I ask that the title of the resolution be read and move for its immediate adoption and allow Senator Parker to speak on his resolution.

ACTING PRESIDENT VALESKY: The Secretary will read the title of Senate Resolution 2083.

THE SECRETARY: In Senate, Legislative Resolution 2083, by Senator Parker, legislative resolution commemorating the 55th Anniversary of Brown v. Board of Education.

ACTING PRESIDENT VALESKY: Senator Parker, on the resolution.

SENATOR PARKER: Mr. President, on the resolution.

On Sunday we actually celebrated the 55th anniversary of the Supreme Court decision known popularly as Brown vs. Board of Education, which essentially got rid of de jure segregation in our schools.

This is a critical Supreme Court decision that frankly allowed me to be here in this place and this time, that allowed our President, Barack Obama, to become president, that allowed our Governor, David Paterson, to become Governor, and our illustrious leader, Malcolm A. Smith, to become leader of this great chamber.

It is frankly without the decision of Brown vs. Board of Education that many of us who have attained anything that even remotely looks like achievement, especially those of us in the academic field, were able to achieve because of this decision, which essentially struck down the idea that

"separate but equal" is equal.

That in fact we must continue every day to rededicate ourselves to make sure that we have a life that includes all of the fine traditions that we find here in the United States, and particularly in our great state.

But it is important that we take some time -- and I wanted to thank the members of this chamber to allow us to pause in our deliberations to discuss this and commemorate the importance of the Supreme Court decision, because it had not just meant so much for myself and all the others that I have mentioned, but it means so much as we stand here right now for all of the young people who are in classes right now, black children and white children and Asian children and Latino children sitting next to each other and learning from the same teachers, from the same textbooks, in the same classroom in the same public schools.

Now, our problem is is that many times the schools are crumbling and the textbooks are not where they should be. And

we need to do better as it relates to education, particularly in the funding of our education. I know that we're going to be working hard on that as we look towards mayoral control in New York City.

But the fact that we have gone past this idea of "separate but equal" is extremely important for our society, important for the children of this state. And I wanted to thank all my colleagues for taking time, again, to commemorate this important Supreme Court decision. I'm hoping that you will all join me as cosponsors on this resolution.

Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Parker.

Are there any other Senators who wish to be heard?

Senator Montgomery, on the resolution.

SENATOR MONTGOMERY: Yes, thank you, Mr. President.

I rise to thank my colleague Senator Parker for introducing this

resolution, and I'm very happy to cosponsor it.

And it is one of the seminal moments in the history of America, for which we are all very grateful because it has changed the course of life for so many Americans, especially Americans of color.

It is also -- this resolution, I believe, is also commending Thurgood Marshall, who was another great American, who was the attorney who tried the case. But also he was the person who established the law school at Howard University in Washington, D.C., that has been the source of people who have come out and attempted to walk in his shoes and do some of the things.

And it is also a tribute, I believe, to Martin Luther King, Dr. Martin Luther King, Jr., who was also a great American and was very instrumental in changing the course of life for so many people in this nation.

So in addition to Brown v. Board, I think that this is a tribute to those people

and so many, many others. And I am thankful that Senator Parker has caused us to take a moment and pause to remember and to reflect and to memorialize this great moment in the history of America.

Mr. President, I am happy to be a cosponsor of this resolution.

ACTING PRESIDENT VALESKY: Thank you, Senator Montgomery.

Are there any other Senators who wish to be heard?

Seeing none, the question -- Senator Perkins.

SENATOR PERKINS: The invisible man.

Anyway, thank you very much, Mr. President. I just want to be brief.

First, I thank my colleague Senator Parker for this resolution and the opportunity for it to be brought before the body.

And, you know, when I look at this chamber I see two sides: one side, generally speaking, Republican; the other side, generally speaking, Democrat. But before

Brown vs. Board of Education, these two sides might have been divided differently. Instead of being divided by party, they would have been divided possibly by race. At least that was the case especially with our public schools throughout the country at that time, but for Thurgood Marshall and the Brown vs. Board of Education.

So now we have these differences, but at least they're not differences that are crippling by virtue of our complexions or by virtue of our heritage. They're different by virtue of other reasons that are more socially acceptable.

But nevertheless, you know, I have to be frank about the conditions that some of us are experiencing that, kind of on that slippery slope of Plessy v. Ferguson, that pre-1954 Board of Education decision -- particularly when it comes to in my district, for instance, where below 96th Street you have public schools that are good enough for the children in those neighborhoods to attend, and then above 96th Street you have public schools

that are not good enough for the children to attend. Instead, what they're giving them is something called charter schools.

Now, you know, as a person who founded a charter school, you know, I have no inherent opposition to that. But it just seems to me that we're now developing, in New York City in particular, two separate systems, one for children who are above the 96th Street, children of color, and another for children who are basically white.

And the thing that really underscores the difficulty of this is the fact that our Mayor Bloomberg has been quoted in the local newspapers as saying "Charter schools are the private schools for children of color." So if that doesn't remind us of the problems that preceded Brown vs. Board of Education, it should.

And I'm glad that you bring this up, this resolution before us, because it helps us to look around and see are we still on that slippery slope that divides us, or are we moving forward in a positive and

progressive way that recognizes that we're all equal and that all of our children deserve the same quality of education, no matter what side of 96th Street, metaphorically speaking, they may live.

Thank you so much. And I vote aye.

ACTING PRESIDENT VALESKY: Thank you, Senator Perkins.

Senator Schneiderman, on the resolution.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I appreciate the opportunity to speak on this resolution. And I would urge all of my colleagues to consider that we all operate here as lawmakers in the shadow of the court's decision in Brown v. Board of Education.

We are still seeking to carry out the mandate of that decision. And I know that there are colleagues in this room who disagree sometimes when some of us press forward urging that the march towards equality that is the work of this republic, that is the work of

those of us who attempt to implement the ideals of this nation, the march towards equality is ongoing. We have a long way to go.

And as you consider the legacy of Brown v. Board -- I mean, I have been involved in the last ten, twenty years in many civil rights cases where we have established, it's been clearly established that we still have a society that is in many respects separate but not equal, including cases involving the school system in the State of New York, including cases involving the transit system in the City of New York, where an injunction was issued in 1994, not so long ago, based on the fact that it was in fact a segregated system and there were different financings available for different lines depending on the neighborhood.

So this is something that is a part of our work every day. And I hope that everyone here will recognize that this is, you know, not just a decision in history, this is a living decision that we have to operate

with.

What Senator Perkins said about the schools in New York City and around our state is absolutely true, as we saw in the Campaign for Fiscal Equity case. This is still our work.

And I'm pleased that we are pausing for a moment to reflect on this decision today. One of the most quoted parts of the decision is that we have to proceed to correct these wrongs "with all deliberate speed" was the great line. And I don't know that every day here in this body we are proceeding with all deliberate speed, ladies and gentlemen. Let's think about Brown v. Board of Education, and maybe we can step up the pace a little bit as we go forward.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Schneiderman.

Senator Stewart-Cousins, on the resolution.

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

I too rise to support the resolution and to thank Senator Parker for reminding us not to take for granted what this great decision has done.

Yesterday we were able in this chamber to honor young people who talk to their peers and the entire state about dating violence. And when we talk about Brown vs. Board of Education and how "separate but equal" was the law of the land so many years ago, and you see the types of issues that our children are dealing with today -- issues that transcend gender, issues that transcend race or color, issues that indeed affect and impact everyone -- and that has always been the case.

Education and the need for education is universal. And those things that we must learn in order to be a civilized society are universal. There is no need for separation. Because indeed, by understanding that we are one and we do need to transcend what we consider to be differences, we are all better.

Brown vs. Board of Education helped

us to at least deal with that reality legally. And every day, as each of my colleagues have said, we are impelled and compelled to make sure the promise of what education can bring to all of our children, for all of our benefit, is indeed realized.

So certainly I support the resolution.

ACTING PRESIDENT VALESKY: Thank you, Senator Stewart-Cousins.

Are there any other Senators who wish to be heard?

Seeing none, the question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

It is also open for multisponsorship. Anyone wishing not to multisponsor the resolution should notify the

desk.

Senator Klein.

SENATOR KLEIN: Mr. President, at this time can we take up Senate Resolution 2037. I ask that the title of the resolution be read and move for its immediate adoption and give Senator Adams the opportunity to speak on his resolution.

ACTING PRESIDENT VALESKY: The Secretary will proceed with Senate Resolution Number 2037.

THE SECRETARY: In Senate, Legislative Resolution 2037, by Senator Adams, commemorating Memorial Day, Monday, May 25, 2009, in the State of New York.

ACTING PRESIDENT VALESKY: Senator Adams, on the resolution.

SENATOR ADAMS: Thank you, Mr. President.

This too is one of the important resolutions -- and I know we've had several resolutions today -- because it's important that we are fortunate enough in the Senate to pause in our busy calendar, in our daily

tasks, just to recognize important days in our history or important moments.

This resolution deals primarily with Memorial Day. On Memorial Day we take an opportunity to pause and think about the countless number of soldiers who have lost their lives while defending what is important to us here in America.

Many people are not aware that New York State was one of the first states to formally recognize Memorial Day. And it's our way of saying that we appreciate our soldiers, the men and women who have fought countless number of wars. Over 576,000 men and women have lost their lives while engaged in some of the 10 major wars that our country has been involved in.

We are fortunate today, this afternoon, to have here in the chamber with us Lieutenant Colonel Kenneth Curley, who has joined us today, one of the courageous men who have fought in Baghdad and overseas and has continued to be a representative of what's great about this country and what's great

about our military service.

I say it over and over again, that we enjoy this quality form of life because our men and women who wear green fatigues or Navy uniforms or Air Force uniforms, because they've made the ultimate decision to leave their families and loved ones to protect those things that are important to us as Americans.

I take my hat off to Senator Diaz and to Senator Leibell and Senator Larkin and some of the other men and women who have not abandoned the desire to give public service. After serving our country on foreign fields, they've returned back to the State of New York to serve here on our home-grown land called New York State.

I think Memorial Day is an important day that we pause for a moment and recognize that a countless number of our soldiers have given their lives. Some may not have returned here in a body bag, but they've returned handicapped, they've returned injured from some of the fallout of war. We have an obligation and a responsibility to make sure,

when they return home, that they are rewarded with jobs, they're rewarded with educational opportunities, that they are rewarded with that which goes to any man or woman that protects the basic principles of our country.

We must make sure that all of our veterans, those who are disabled, those who fought in active duty and those who served during peacetime receive the proper recognition and the proper support that they can continue to prosper in this great country.

And I want to thank you, Colonel, for your years of service and how you and other men in our military have provided a safe environment for our communities and our families in this great country of ours.

Thank you very much.

ACTING PRESIDENT VALESKY: Thank you, Senator Adams.

Are there any other Senators who wish to be heard?

Senator Nozzolio, on the resolution.

SENATOR NOZZOLIO: Thank you very

much, Mr. President.

I wish to speak on the resolution and thank Senator Adams for bringing this very important issue before us, because recognition of those who have given so much to keep our nation free is the least we can do each and every day, to thank them for allowing us to debate in a free and open democracy.

I especially rise, on the issue of Memorial Day, that the nationally recognized birthplace of Memorial Day is in Waterloo, New York. That we in New York should be very proud of the fact that our state is the state that the entire country recognizes as the first state that cradled and mourned the sacrifices of those who gave their lives to keep our nation free.

That was recognized as taking place in the birthplace of Memorial Day, Waterloo, New York, which celebrates and commemorates the Memorial Day on the traditional date, the 30th of May. I will be participating in the services there and the ceremonies there again this year, and thank all the residents of

Waterloo for continuing to keep the real spirit of Memorial Day alive in the way it conducts its appropriate recognition of those who have served our nation.

I thank Senator Adams, thank my colleagues for the support of this resolution. And I ask all of you to take pride in the fact that we have, in New York, the truly recognized birthplace of this wonderful and important occasion of Memorial Day.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Nozzolio.

Senator Larkin, on the resolution.

SENATOR LARKIN: Thank you, Mr. President. I'd like to thank Senator Adams for the resolution.

You know, Memorial Day, as Mike Nozzolio said, everyone that I know that goes around and does any speaking on that day remembers that Waterloo and the general, the graves when they took the flags -- and they took flowers in those days.

But, you know, we as a body don't

do enough to encourage our young people in schools what Memorial Day is all about. Memorial Day today in our country is, gee, what time do the stores open early? Leibell, what time are the spices going to be good? Not talking about what this day is all about.

I had the privilege today of being at West Point where six distinguished graduates were there. The oldest graduate was the Class of 1934. His question to me: "Was what will you doing on Memorial Day?" And he said, "Before you answer, Memorial Day is the 30th. It's not the 22nd, the 23rd, next year the 25th or, what, last Monday." So I guess that 95-year-old general is pretty well up and tuned.

But we as legislators have a problem with this. We don't get our schools involved. You know, we say we want to honor the veterans. You know, I spent 23 years on active duty: World War II, Korea and Vietnam. I'm proud of it.

And every time I see a youngster today coming out of Iraq or coming home from a

meeting, I go up there and I salute him and I say, "Thank you for your service."

But for us to just say it's a great day, we think it's nice and all of this -- let's start to do something to encourage our young people to recognize what Memorial Day means, what it represents. It's not a vacation day. It's not a day off. It's not a sales day at a supermarket or a store. It's something to remind us that we had men and women, since way back when, answering the call to defend this country.

Senator Winner just last week had a young 21-year-old, 11 months into combat, killed. Does anybody worry about him? A company commander in that infantry outfit will write a letter and tell that family "Your son was killed today." But does somebody else understand what service means?

Memorial Day means honoring someone who'd done some service. It doesn't mean all these trivial things. And until we really get down to it and say we want to honor those men and women who gave something for us to be free

Americans, we have failed.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Larkin.

Senator Leibell, on the resolution.

SENATOR LEIBELL: Thank you, Mr. President.

Senator Adams and I started our day early today out at the state campus, at a program for disabled veterans, helping them, trying to help them get into the business Community. It seemed appropriate that it would be at this time of the year that we would have a chance to meet with these veterans and those who would be seeking to help them and also to pause for a moment, as we will in the next few days, to think about those who made the ultimate sacrifice.

I think one of the saddest things I do as a legislator, and I'm sure many of my colleagues would agree with this, is during this period of time go to some of the events that we have for our fallen veterans and to meet with some of the parents and siblings

that have been left behind, to see some of the Gold Star Mothers -- many of them are my own mother's age -- and to think of the children that they lost and that they never had the chance to see grow into maturity and to have their own families.

These sacrifices are too incomprehensible to even think about, but we do have to think about them. And sadly, right now, as Senator Larkin noted, every day there are new veterans and new people who are being added to that list of honor for those who have sacrificed so much.

So I thank my colleague Senator Adams for this very important resolution today, and hopefully that all of us will commemorate -- not just over the next few days but throughout the year -- all those who have sacrificed so much for this great country of ours.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Leibell.

Senator Morahan, on the resolution.

SENATOR MORAHAN: Thank you, Mr. President.

Thank you, Senator Adams, for this very important pause in our deliberations to memorialize Memorial Day.

We speak a lot about veterans who truly we honor in the fall of the year. This time of the year, Memorial Day, we celebrate, remember those who made the sacrifice of their lives to make sure that our country stayed united and stayed strong, safe and free.

When General Logan declared Decoration Day, which now is Memorial Day, it was at the end of the Civil War. The Civil War, more Americans died and were killed in that war than all the other wars that we have endured as a nation together, that one war to preserve this nation free and undivided.

And going back to the revolutionary days, it's those who died that gave us the Constitution. It's those who died who gave us the Declaration of Independence.

And it's really a fitting tribute, if you will, to those who didn't come back,

but also to remember the families of those men and women who were killed in the line of duty -- in action, in a swamp, face in the water, in a jungle, maggots, disease, in a hot desert storm with no water.

So I think it's important, and that's why I really want to commend Senator Adams for leading off with this resolution. It's critical that this country never forget those who made days like today possible, where people can walk and talk, say what they want, protest what they want. It's the fellow and gal who didn't come home.

And to remember the families and the children who grew up as orphans. And I know we have many programs here that look out for the survivors. But it ought not to be one day. Every day that you do something, every day that you make a speech as a politician, every day that you send your children to school safe, remember: There were people who died so that we could live free.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank

you, Senator Morahan.

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

Before we call the question on the resolution, I would ask all Senators, staff, visitors who are with us to please stand at this time and offer a moment of silence for those men and women who have made the ultimate sacrifice in defense of this great nation.

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

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

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

At Senator Adams' request, the resolution is open for cosponsorship. Any member wishing not to be a cosponsor of the resolution please notify the desk.

Senator Klein.

SENATOR KLEIN: Mr. President, can we at this time move to a reading of Calendar Number 48.

ACTING PRESIDENT VALESKY: The Secretary will proceed with a reading of Senate Calendar Number 48.

THE SECRETARY: Calendar Number 158, by Senator C. Kruger, Senate Bill 552, an act to amend the Election Law, in relation to providing Russian-language voting materials.

ACTING PRESIDENT VALESKY: Read the last section.

SENATOR OWEN JOHNSON: Mr. President, I'd like to address a question to Senator Kruger.

ACTING PRESIDENT VALESKY: Do you wish to lay the bill aside, Senator Johnson?

SENATOR OWEN JOHNSON: I wish to address a question to Senator Kruger.

ACTING PRESIDENT VALESKY: Well, to do that we would have to take the bill up on the controversial calendar. So if you are asking to --

SENATOR OWEN JOHNSON: I can't ask a question now?

ACTING PRESIDENT VALESKY: Not on the noncontroversial calendar.

SENATOR OWEN JOHNSON: Well, lay it aside, then.

ACTING PRESIDENT VALESKY: The bill is laid aside.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 192, by Senator Seward, Senate Bill 1825, an act to amend the Tax Law, in relation to extending the authorization for imposition of additional sales tax in the County of Otsego.

ACTING PRESIDENT VALESKY: 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 VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 194, by Member of the Assembly Crouch, Assembly Print Number 4397, an act to amend the Tax Law, in relation to extending the authorization of the County of Chenango to impose an additional 1 percent of sales and compensating use taxes.

ACTING PRESIDENT VALESKY: 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 VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 205, by Member of the Assembly Gottfried, Assembly Print Number 723, an act to amend the Public Health Law and the Insurance Law, in

relation to the definition of clinical peer reviewer.

SENATOR KLEIN: Lay that bill aside for the day.

ACTING PRESIDENT VALESKY: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 247, by Senator Stachowski, Senate Bill 1944, an act to amend the Real Property Actions and Proceedings Law, in relation to designating a party to accept service in the event a property becomes vacant during the foreclosure process.

SENATOR KLEIN: Could we lay the bill aside for the day also.

ACTING PRESIDENT VALESKY: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 250, by Senator L. Krueger, Senate Bill 4259, an act to amend the Real Property Law, in relation to fees landlords may charge tenants.

SENATOR KLEIN: Lay this bill aside for the day also.

ACTING PRESIDENT VALESKY: The

bill is laid aside for the day.

THE SECRETARY: Calendar Number 258, by Member of the Assembly Gianaris, Assembly Print Number 7458, an act to amend the State Administrative Procedure Act, in relation to notice of proposed rule-making.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, certainly this bill has a very appropriate purpose, extending the opportunity for public comment with regard to proposed rules made by an agency.

The only thing I would ask the sponsor to consider would be that there should be some type of date certain attached to this.

If you want to double the permissible period of time, so that it's not open ended. And that I think would probably help, I think, to somewhat make sure that there were boundaries to this.

And I think there also should be something said in this legislation with regard to a situation in which someone alleges or claims that they didn't have enough time and wanted more time, is there a remedy for that or can you not go any further, is your remedy to go to court, is it Article 78, or do you want to say you get one additional bite of the apple and it's not appealable?

Thank you, Mr. President. I will support the bill.

ACTING PRESIDENT VALESKY: Senator Saland to be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 263, by Senator Adams, Senate Bill 3762, an act to amend the General Business Law, in relation to requiring greater disclosure by stores of their refund policies.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day after it shall have become law.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 276, by Senator Klein --

SENATOR VOLKER: Lay that bill aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: Calendar Number 278, by Senator Valesky, Senate Print 2622, an

act to amend the Environmental Conservation Law, in relation to the placement of additional information on traps.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 297, by Senator Onorato, Senate Print 4110A, an act to amend the Labor Law, in relation to unemployment insurance benefits and part-time work, voluntary separations from employment, and on/off indicators for extended unemployment insurance benefits; and in relation to extended benefits.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 5. This

act shall take effect --

SENATOR SALAND: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

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

SENATOR KLEIN: Mr. President, can we now move to a reading of the controversial calendar.

ACTING PRESIDENT VALESKY: The Secretary will ring the bells.

I ask Senators to proceed for a reading of the controversial calendar, beginning with Calendar Number 158, Senate Bill 552, by Senator Kruger.

The Secretary will read.

THE SECRETARY: Calendar Number 158, by Senator C. Kruger, Senate Print 552, an act to amend the Election Law, in relation to providing Russian-language voting materials.

ACTING PRESIDENT VALESKY: Senator Johnson.

SENATOR OWEN JOHNSON: Would

Senator Kruger answer a question for me?

SENATOR CARL KRUGER: Yes, I would.

SENATOR OWEN JOHNSON: Thank you.

Senator, I'm asking a simple question. Why is this bill here? What's the reason for this bill?

SENATOR CARL KRUGER: Why is the bill here? Well, as more and more Russians join our communities and find themselves in a position where they want to vote but they also have a cultural and a language barrier that would entitle them to properly fill out a registration form, to fill out an absentee ballot, to understand the process, what we're doing now is opening up the dialogue and the explanation so -- the same way as we're doing now in Chinese, in Korean, and in Spanish -- we will offer that same translation in Russian.

SENATOR OWEN JOHNSON: To become a citizen, I believe that you must have some qualifications: Be able to understand, read, write and speak basic English, possess a basic

understanding of United States government and history.

Can these people not communicate in English? Are they citizens?

SENATOR CARL KRUGER: Well, again, although they've fulfilled the requirements of being a citizen, their ability to fluently communicate, to be able to graphically understand and to have the full import of what the meaning of the voting process is sometimes presents challenges to them. The ability to read it in Russian gives them that greater opportunity for access.

SENATOR OWEN JOHNSON: It's kind of interesting, Senator, that -- will you stand for another question? Statement, question, whatever it is.

SENATOR CARL KRUGER: Absolutely.

SENATOR OWEN JOHNSON: That they must be a resident for more than five years, in most cases, before they can even become a citizen. And they haven't learned to read a paper or anything during that time?

SENATOR CARL KRUGER: Well, you

know, again -- again, I'm not disputing the fact that they can read and write English the same way as the Chinese community, that is also eligible to vote, or the Korean community or the Hispanic community. We find ourselves that they are much more adept and feel much more comfortable by having the Russian-language translation in front of them.

SENATOR OWEN JOHNSON: Thank you. Another question.

ACTING PRESIDENT VALESKY: Senator Kruger, do you continue to yield?

SENATOR CARL KRUGER: Yes, I do, Mr. President.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR OWEN JOHNSON: There are now four languages who have these voting instructions in their language. And now we're going to have five. Should we have another one in the future?

SENATOR CARL KRUGER: Well, firstly, this is not on the ballot, this is purely for instruction, both on the Internet

or by a booklet, a hand booklet, if it would be made available to them.

In many instances when we're talking about the other translations, those translations are required under the Voting Rights Act. This is -- the Russian speaking language, the Russian community is not a protected class under the Voting Rights Act.

SENATOR OWEN JOHNSON: Well, maybe they needn't be.

But all I'm saying is the advantage to people to vote, to make it easy to vote without really being acculturated or familiar with our language leaves them also a lost soul in the greater American community. And they'd learn a lot more, if they learned English, they could participate without this. As the Italians and the Germans and the French and everybody else did.

SENATOR CARL KRUGER: A lot could be said about that, Senator. But at the same time, to encourage people to vote, to become part of the process, as those populations continue to grow not only in my district but

in districts throughout this state, I think that we're affording them a flexible opportunity to be able to cast their ballot.

SENATOR OWEN JOHNSON: Thank you, Senator.

I have another question, statement, whatever it is.

ACTING PRESIDENT VALESKY: Senator, do you continue to yield?

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR OWEN JOHNSON: I found out that this past October, October '08, the laws were changed, and regulations, and they require a lot more English-language proficiency to become a citizen and also more American history to help acculturate these people as citizens.

Well, let's say this bill -- I'm not going to try and stop the bill. I think it's a very valuable addition. But I don't think we should encourage this. And the new laws that are in place now will help new

citizens be more familiar and this kind of crutch would not be required for them again, they could fully participate in society.

SENATOR CARL KRUGER: Well, as my grandparents and their parents went to night school in order to read and write English, then I think that what we're doing is we're encouraging people to do that and at the same time encouraging them to vote as well.

SENATOR JOHNSON: And everybody who's a Native American stand up. Okay, everybody else's grandparents and parents came here and did the same thing. Congratulations.

SENATOR CARL KRUGER: Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Johnson.

Are there any other Senators who wish to be heard?

Senator Stavisky.

SENATOR STAVISKY: Yes, let me thank Senator Kruger for sponsoring this extremely important bill, especially to my community in Queens County.

We have many new Americans, and

that's what they are. They may be new, but they are Americans. We are a nation of immigrants, people who have come to the United States from terrible, terrible conditions in some cases, looking for not only a better life but the opportunity to participate in the democratic process.

And it seems to me that anything we do to make it easier for new Americans to participate, to become part of government -- and the first step is making it easier for them to vote.

So I commend Senator Kruger, and I will be supporting this bill.

ACTING PRESIDENT VALESKY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Will Senator Stavisky yield to a question?

ACTING PRESIDENT VALESKY: Senator Stavisky, do you yield?

SENATOR STAVISKY: Yes.

SENATOR DeFRANCISCO: Do you have any new Italian-American voters in your area that speak Italian?

SENATOR STAVISKY: I'm sure there are.

SENATOR DeFRANCISCO: Do you have -- another question.

ACTING PRESIDENT VALESKY: Do you continue to yield, Senator?

SENATOR DeFRANCISCO: Do you have any German-American people in your district that want to vote and they speak German?

SENATOR STAVISKY: Perhaps.

SENATOR DeFRANCISCO: Last question. Where do you draw the line?

SENATOR STAVISKY: I draw the line -- the numbers of Russian immigrants is large. I cannot give you a quantitative number, but there are far more people who speak Russian who are new Americans than who speak Italian or German. And if necessary, we perhaps can have information for them.

SENATOR DeFRANCISCO: Would she yield to one more question?

ACTING PRESIDENT VALESKY: Senator Stavisky?

SENATOR STAVISKY: Yes.

SENATOR DeFRANCISCO: So you're saying that the people who are going to get the materials that will help them vote, you draw the line based upon the number in that particular category? Is that what you're saying?

SENATOR STAVISKY: Well, there are some voting rights issues here as well. I represent a great many Chinese-Americans, a great many Korean-Americans as well. And they are covered under this legislation, previous legislation, prior legislation.

ACTING PRESIDENT VALESKY: Senator Leibell.

SENATOR LEIBELL: Briefly, if the sponsor would yield.

ACTING PRESIDENT VALESKY: Senator Kruger, do you yield?

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR LEIBELL: Working, Senator, on the theory that in order to vote you have to be a citizen, what are the

citizenship requirements with respect to the English language?

SENATOR CARL KRUGER: A degree of proficiency.

SENATOR LEIBELL: So if you've become a citizen and you had to have a degree of proficiency in order to become a citizen, why wouldn't that same level of proficiency help you to vote?

SENATOR CARL KRUGER: Well, I guess we could use the same standard that the federal government uses under the Voting Rights Act. There's a difference between a degree of proficiency in order to be able to become a citizen and to be comfortable in filling out the appropriate forms in order to be able to vote.

I think there's a sense of trepidation also that the new American-Russian new voter faces. And what we're doing is we're easing the process. We're opening up the door. And we're giving them a comfort level that they otherwise would not have if this legislation did not become law.

SENATOR LEIBELL: Thank you. Thank you. On the bill, if I may, briefly.

ACTING PRESIDENT VALESKY: Senator Leibell, on the bill.

SENATOR LEIBELL: One of the concerns I have is that we are in fact discouraging people from becoming more proficient in the English language. And that is a concern I have.

And as was commented by some of my colleagues here, where do you draw the line? Is it because a particular group has a certain number of people here, other groups do not?

I would point out, Senator Kruger, in my own family, my wife's family, they're Russian, and they had to become citizens and they had to learn to speak English. And I think that's a natural way to progress as you become an American.

I certainly would want to do everything possible to encourage people to vote. As these informational materials are put out, I hope you will also make sure that they do mention that there's a Republican

Party also.

(Laughter.)

SENATOR LEIBELL: Thank you, Senator.

ACTING PRESIDENT VALESKY: Thank you, Senator Leibell.

Are there any other Senators who wish to be heard?

Seeing none, the debate is closed.

The Secretary will ring the bells. I ask all Senators to proceed to the chamber.

The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first of January next succeeding the date on which it shall have become law.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: Yes, I'm going to vote no on this bill. And I think

there's -- there are new Americans in every single nationality are voting, maybe not too familiar with the English language, whether it's Polish-Americans, Italian-Americans, Irish-Americans, whatever Americans you want to come up with.

And to have a special category for one group to me just doesn't make sense, especially in view of the fact that to become a citizen, there should be some basic -- and there's required to be some basic literacy capabilities.

And as a result, I just think this bill should not pass and I'm going to vote no.

ACTING PRESIDENT VALESKY: Senator DeFrancisco to be recorded in the negative.

Everyone intending to vote in the negative on this bill please raise your hands.

Senator Nozzolio, to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, I'm voting no on

this matter. My grandfather on --

ACTING PRESIDENT VALESKY: Excuse me, Senator Nozzolio.

May we have some quiet, please.

SENATOR NOZZOLIO: Thank you.

My mother's father, my grandfather, spoke fluent Russian. He was an immigrant to this country from Ukraine. But he also understood to make it in America, to be part of the American dream, you needed to speak other languages, and English was that language.

He was fluent in seven languages. But the fact of the matter is he knew he was coming to a nation that spoke English, and he entrusted that into his children and his children's children.

We are a melting pot. We are a nation that respects other cultures. But this is a cost, a burden, it's unnecessary, and it's something that I believe past generations of Americans would also see as a waste of precious taxpayers' resources. That's why I vote in the negative.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Senator Nozzolio to be recorded in the negative.

Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President. I want to explain my vote.

I think America is the only industrialized nation in the world where there's only one language that most people speak, even the highest-educated ones. Every other country, people speak a variety of languages.

But that being the case, with us having basically one language that we all speak, we need to be able to communicate nonetheless with other people who have come to our shores who don't speak English as their main mother language.

So I'm very thankful that we have now before us a bill which says that in voting in this country, since we want everyone to be able to participate in that process, we want

all of our material also in those languages that other people in our country do speak.

So I thank our sponsor for introducing this legislation. I represent a large number of people who speak other languages other than English, and so this will benefit a large number of people certainly in my district, all over the city, and all over the state.

So I vote aye.

ACTING PRESIDENT VALESKY: Senator Montgomery to be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative are Senators Alesi, DeFrancisco, Flanagan, Griffo, O. Johnson, Larkin, Leibell, Little, Maziarz, Nozzolio, Ranzenhofer, Saland, and Seward.

Absent: Senator Winner.

So ayes, 48. Nays, 13.

ACTING PRESIDENT VALESKY: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 276, by Senator Klein, Senate Bill 1362C, an act to amend the Correction Law, in relation to subdirectory of Level 2 and 3 sex offenders.

ACTING PRESIDENT VALESKY: Senator Volker.

SENATOR VOLKER: There is an amendment at the desk. Would you please waive the reading and call on Senator Robach, please.

ACTING PRESIDENT VALESKY: Senator Volker, Senator Robach does have an amendment at the desk. I have reviewed the amendment with counsel and have ruled it out of order as not germane to the bill.

It does relate to a different subject matter than the main bill by Senator Klein under consideration. It also significantly expands the scope of the original intent of the legislation.

SENATOR ROBACH: Mr. President,

if I could have a moment to disagree with the decision.

ACTING PRESIDENT VALESKY: You wish to appeal the decision of the chair, Senator Robach?

SENATOR ROBACH: I would vehemently appeal it, yes.

ACTING PRESIDENT VALESKY: And I'd imagine you wish to be heard on that appeal.

SENATOR ROBACH: If I could.

ACTING PRESIDENT VALESKY: Go ahead.

SENATOR ROBACH: Thank you, Mr. President.

What this would do would be to add to Senator Klein's bill and I believe make it stronger by making the same section of the law almost exactly -- Correction Law -- would make a sex offender's failure to register a Class D felony. Adding that to Senator Klein's bill, which would also modify the penalty regarding email notification and changes of update of the Sex Offender Registry.

These are actually right next to each other in the section of law -- 168Q, 168T, all working toward trying to make people safer from sex offenders and pedophiles. Clearly related. Everyone in this chamber agrees we should do all we can to clamp down on this.

This bill, when a separate bill before, was passed unanimously by this Legislature.

And I don't think it could be any more germane, any more connected. Clearly Senator Klein's bill is to clamp down on sex offenders. This bill simply adds to that, makes it stronger, literally connecting the sections of the law that are already there, Q and T.

And I would ask all my colleagues who feel this is important who have any modicum of logic, who can see that this is clearly germane, would vote for this.

And again, everything we do here is important. But this is about protecting kids, making the bill a little bit stronger and a

little bit better. And I would implore that, with all due respect to you, Mr. President, we overrule that and do a something a little extra for the kids of this state to protect them.

And I'll end with this, too. Think of the only reason why someone who would not want to report in who's a sex offender is because they want to be anonymous, not to do something good but to do something bad to a child or someone else.

So I appeal that ruling, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Robach.

Senator DeFrancisco, on the appeal.

SENATOR DeFRANCISCO: Yes, I'm a little confused. And I guess for instruction on this particular bill and future bills, is it the ruling of the chair that an amendment that's from the same section of law but just in a different subparagraph, the ruling you're saying is that that's not germane?

ACTING PRESIDENT VALESKY: The

ruling in this particular case is that Senator Robach -- among others, is that Senator Robach's amendment contains penalties that Senator Klein's original bill does not. In which case Senator Robach's amendment would need to be considered by the Codes Committee, as all bills that have a penal impact are.

SENATOR DeFRANCISCO: And you're saying there's no penal impact of Senator Klein's bill?

ACTING PRESIDENT VALESKY: Correct. That's correct.

SENATOR DeFRANCISCO: And one last question, just to be clear.

Are you saying so if there was no penal impact, this would be a germane bill, the amendment would be germane to the bill?

The reason I ask is because I can't think of how more germane an amendment has to be if it's from the same section of the law and just a different subparagraph. And, you know, in this reform-minded new leadership, I just want to clarify what the situation is.

ACTING PRESIDENT VALESKY: Well,

Senator DeFrancisco, as it relates to this particular bill and this particular amendment by Senator Robach, the question of the lack of penalties in Senator Klein's bill, the imposition of penalties in Senator Robach's amendment has led to a ruling of the amendment being out of order on purposes of germaneness.

SENATOR DeFRANCISCO: All right. And you are aware, Senator, that each of these bills, Senator Klein's bill and the amendment, when the amendment was actually passed unanimously last year, came out of the same committee, Crime Victims, Crime and Corrections? And that doesn't make it germane?

ACTING PRESIDENT VALESKY: Senator Klein's bill came out of the Crime Victims Committee and was moved directly to the floor.

Senator Robach's amendment, because it imposes penalties, which Senator Klein's bill currently does not, would mean that the Senate Committee on Codes would need to consider the bill prior to its consideration

on the floor.

SENATOR DeFRANCISCO: All right. And you're aware that Senator Robach's amendment was a bill that passed unanimously last year and came out of the Crime Victims, Crime and Corrections Committee?

ACTING PRESIDENT VALESKY: I am aware of that.

However, in the rules that were adopted that govern the Senate for this year, we have a dual referencing system now. So that if Senator Robach's bill were introduced and reported out of the Crime Victims Committee, it would be flagged by the Senate Committee on Codes under the new rules of the house.

SENATOR DeFRANCISCO: So the last question -- I promise this is the last question -- so what you're saying is that under the new rules, the new and improved, open government of the new leadership, this is the ruling, but under the old rules the ruling would have been that it was germane?

Because there was no dual

referencing system under the old rules, the bad rules, the unimproved and undemocratic rules that we operated on prior to this year.

ACTING PRESIDENT VALESKY: Senator, we need to call the question on the germaneness of whether Senator Robach's amendment is in order.

SENATOR DeFRANCISCO: Thank you.

ACTING PRESIDENT VALESKY: I can't speak to how any previous presiding officer would have ruled in previous legislative sessions.

Senator Hannon, I believe, was first to rise. Senator Hannon.

SENATOR HANNON: Mr. President, may I make a comment on your ruling?

ACTING PRESIDENT VALESKY: You may.

SENATOR HANNON: I find that you have gone beyond the tradition of this chamber. And I find that what you're doing may be an unwanted precedent for your majority. Because when a bill is on the floor and to be amended, it requires a motion. We

don't necessarily enunciate that motion, but if you look at the record of this house, there is a motion made.

And what you're doing may well be constraining your ability for your own bills, because you have now taken what we have as a precedent and narrowed that in an extraordinary fashion.

I would suggest that common sense make you go back and look at what you're trying to do. Because if you want to run this house, what you have done today is narrow a precedent, and you're not going to be able to do it.

ACTING PRESIDENT VALESKY: Thank you, Senator Hannon.

Senator Lanza.

SENATOR LANZA: Thank you, Mr. President.

Mr. President, if I'm understanding this properly, the justification for this ruling is that because penalties are involved here, and because they have not come through the Codes Committee, that this is somehow not

germane.

I would remind you, Mr. President and my colleagues, that the laws involving the reduction of penalties concerning the so-called Rockefeller drug laws came to this floor without having gone through the Codes Committee.

And so given that precedent, it would seem that the justification being given here for ruling this not germane is not consistent and therefore does not seem to make a lot of sense.

And again, to repeat what's being said here, the amendment deals with precisely the same section, Section 168 of the Correction Law. If this is not germane, then of course no amendment would ever be ruled germane. And perhaps that is the true motivation here. And I would suggest and agree with Senator Hannon that if that is why this is being ruled not germane, then it establishes a very poor precedent for this body.

ACTING PRESIDENT VALESKY:

Senator Klein, why do you rise?

SENATOR KLEIN: Mr. President, point of order.

ACTING PRESIDENT VALESKY: Senator Klein, state your point of order.

SENATOR KLEIN: Clearly the amendment is not germane to the original object or purpose of the underlying bill. It is a different section.

My legislation deals with creating a subdirectory, which is presently in place. It in no way contains a penalty. So if we adopted the amendment, it would change the scope of my legislation.

Also, the amendment in question would also change the original title of my bill. So by expanding the scope and changing the title, that's the reason why the amendment was not germane under Senate Rule 9, Section 3-D.

ACTING PRESIDENT VALESKY: Thank you, Senator Klein.

Senator Saland, on the appeal of the ruling of the chair.

SENATOR SALAND: Thank you, Mr. President.

In light of Senator Klein's comments, I would ask if you would please share with us, then, whether the basis for this ruling is the fact that it expands the scope of Senator Klein's bill, as he has maintained, or whether it is because the bill contains a penalty provision. Which, as was so aptly pointed out by Senator Lanza, would fly in the face of a prior precedent that you in fact were part of when you voted for those Rockefeller drug laws.

ACTING PRESIDENT VALESKY: The points that Senator Klein has raised in regard to the germaneness of the amendment that is before the house at this time are the basis of the ruling for the amendment to be not germane.

SENATOR SALAND: So then Senator Klein's comments are controlling, and this is not being denied based on the fact that there is a penalty provision that would otherwise have had to have gone to the Codes Committee.

Which again, in the example Senator Lanza gave, certainly would have required the Rockefeller drug laws buried in the budget to have similarly gone to the Codes Committee.

ACTING PRESIDENT VALESKY: Actually, I believe that Senator Klein indicated the penalty provision or lack of penalty provisions in his original bill, as I indicated in my original ruling.

SENATOR SALAND: I respectfully would say that I'm confused. And I'm looking for a determination from you, as the President and presiding officer, as to whether we stop with Senator Klein's comments and that is the end of the discussion on relevancy -- i.e., it expands the scope of Senator Klein's bill -- or are we talking about a second reason which you maintained in your initial comments, which was that the amendment, because it contained a penalty, should have gone to the Codes Committee?

Are we dropping the second and going with the first, or are you giving us both?

ACTING PRESIDENT VALESKY:

Senator Klein in effect reiterated my original -- one of my reasons for ruling the amendment not germane, specifically in regard to the penalty provision. Senator Klein indicated that at the beginning of his remarks, before moving to his comments in regard to the scope of the bill.

SENATOR SALAND: Mr. President, and again with the utmost respect that I can possibly summon, is the basis -- had Senator Klein not spoken, would we still be in a situation which you would maintain that, as the presiding officer, this amendment would have had to have gone to Codes because it contained a provision for a penalty and Codes had not had the opportunity to hear it?

Then, Mr. President -- I can count, and I realize there are 32 Democrats and 30 Republicans. I also realize that the 32 Democrats spoke about reform and expansiveness. What you've effectively done is establish a precedent here that flies in the face of your own practice. So there are

rules for the Majority, and there are rules for the Minority.

To deny the fact that under your own construct the Rockefeller drug laws should have been on this floor buried in a bill but should have gone to Codes first really is, I would respectfully submit, rather hypocritical.

And I would also add that any bill that was discussed -- or any amendment that was discussed during the course of the adoption of the budget certainly was something that had fiscal implications, the measure had fiscal implications, and yet there was no proposal to deny the germaneness of those based upon the fact that they hadn't gone to the Finance Committee first.

So we are crafting a web here or spinning a web that certainly is arbitrary, certainly sets a rather dangerous precedent. And it seems to me, for those who have maintained that this is about a more open, collegial, reform-minded, transparent Senate, what we have seen today is anything but.

Again, there are rules for them that has and there are rules for them that don't.

ACTING PRESIDENT VALESKY: Senator Saland, the record will certainly reflect your concern.

I would just reiterate for the members and for the record that the amendment relates to a different subject matter than that which was under consideration; namely, the subdirectory of Level 2 and 3 sex offenders maintained by the Division of Criminal Justice Services, that it does significantly expand the purpose, scope and object of the original bill, which was to allow notification by email of changes to the Sex Offender Registry, and that the amendment would also require a change in title of the bill.

Senator Robach.

SENATOR ROBACH: If I could, just for a minute, on this appeal. To my colleagues, some of my colleagues over here have made some good points on the broader

picture, fairness.

But getting back to this bill, which I think one thing we've all been unified on, whether we're Democrats and Republicans, the importance of protecting kids.

And I appreciate Senator Klein's efforts, but I couldn't disagree more with what you said, Senator Klein. This amendment takes your idea of making it better to track these people and update the registry one way in a section of law that does have penalties in the larger section of Corrections, and says in addition to the way you want to do it and use email, we also want to use and think it's wise to use a penalty, a bigger penalty for people who don't report as another incentive -- a stick or a carrot, if you will -- to make these sex offenders report in. With the hope, again, they won't be out there anonymously doing more.

I can't understand how anybody would think that's not related in the same section of law or minimally couldn't see how this bill that we passed before, stand-alone,

would be related.

So I would ask my colleagues to focus on what this will do. I guess we're going to go on the germaneness. But clearly it is a stretch to say this isn't related in the same section of law affecting the same thing and trying to get even a greater result for the mutual people we want to protect.

And I guess I would agree with some other things that were said. If this isn't germane, I don't think you're ever going to rule anything germane. And I would hate to think that, because then this whole process of being able to make the motion is really for naught. And I don't think that would be good.

So I interject that and I hope you'll listen to it, because I think it's important in the outcome, in the protection of our kids.

ACTING PRESIDENT VALESKY: Thank you, Senator Robach.

Senator Flanagan, on the appeal.

SENATOR FLANAGAN: Mr. President, I'm not sure, frankly, if this question should

be directed to you or to Senator Klein. And I'm trying to listen carefully. But one of the points that was raised was changing the title of the bill. So I really have two questions, either through you or to you.

I'm not sure where the change in the title is, so I'd like someone to be able to point that out. Because I have a copy of the bill, and I have a copy of the amendment. And if there is some distinction, number one, I'd like to know that. And number two, I can't understand or fathom why that has any relevance whatsoever to the substance of the bill.

ACTING PRESIDENT VALESKY: Senator Flanagan, the title of the bill: "An act to amend the Correction Law, in relation to subdirectory of Level 2 and 3 sex offenders."

Senator Robach's amendment goes well beyond addressing issues regarding the subdirectory of Level 2 and 3 sex offenders. In fact, the title of Senator Robach's amendment: "An act to amend the Correction

Law, in relation to the failure to register or verify under the Sex Offender Registration Act or violation of the prohibition of sex offenders working on motor vehicles engaged in retail sales of frozen desserts."

So clearly the two titles are significantly different. Hence the need to change the title of the bill if the amendment was in fact germane.

SENATOR FLANAGAN: I'm sorry, could you repeat that last title? I got the first part, about the subdirectory.

ACTING PRESIDENT VALESKY: Senator Flanagan, Senator Robach's amendment as I have it in front of me -- I'd be happy to share it with you -- "An act to amend the Correction Law, in relation to the failure to register or verify under the Sex Offender Registration Act or violation of the prohibition of sex offenders working on motor vehicles engaged in retail sales of frozen desserts."

Is that what you have in front of you?

SENATOR FLANAGAN: No, I have a different copy. But I appreciate your sharing that with me. The part I have doesn't have any reference to that. But it does certainly speak to the establishment of a Class D felony.

Mr. President, let me just -- I'll be brief and speak to the appeal.

I want to join in the comments of my colleagues. And I think, you know, while protocol and procedure and process, I am a strong proponent of that, I think this is illustrative for the public to be able to see the type of discussion we're having on an issue that what the public really wants to hear is: What are you doing to protect kids? How are you making their lives better?

I agree wholeheartedly with Senator Robach that what starts out as a good bill offered by Senator Klein is actually made better by providing penalties for aberrant and unacceptable social and criminal behavior.

And this is the type of thing where I think the public would look at this and say:

What the heck is going on in Albany? Why are these folks doing business this way? Why can't you make a simple amendment that will actually enhance penalties?

We want to make something a felony. We want to take something bad and make a policy in societal and legislative judgment that the bill is fine, but there's a way to make it better.

I wouldn't want to have to go back to explain to people that because of something relating to a title that we're going to lose the opportunity to take the next step forward and frankly protect young boys and young girls more than anyone else in the State of New York.

I appeal the ruling with my colleagues. Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Flanagan.

The question, then, before the house is whether the ruling of the chair shall stand. All in favor of overruling the decision of the chair shall indicate by

raising their hand.

The Secretary will announce the results.

THE SECRETARY: Ayes, 29. Nays, 32.

ACTING PRESIDENT VALESKY: Having failed to obtain the necessary votes, the ruling of the chair is sustained and the appeal is denied.

Senator LaValle, why do you rise?

SENATOR LaVALLE: Will Senator Klein yield for a question.

ACTING PRESIDENT VALESKY: Senator LaValle, before you ask your question, would you ask Senator Klein for an explanation of the bill so he then can technically yield to a question?

SENATOR LaVALLE: Sure.

ACTING PRESIDENT VALESKY: Senator Klein, to explain the bill.

SENATOR KLEIN: On the bill.

I want to thank my colleagues and Senator Ruth Hassell-Thompson for her leadership in reporting this bill out of her

committee.

This is a piece of legislation I worked on for several years. And by the way, I wasn't able to pass it under the former majority, even though time and time again I showed on numerous occasions how there's 11,428 Level 2 and 3 sexual predators living around the State of New York, sometimes near schools, daycare centers, and parks.

If you look at just the numbers in New York City, Nassau County, Suffolk County and Westchester, on average there's 15 Level 2 or Level 3 sexual predators living in each zip code, on average.

This legislation I think is a common-sense approach, a simple approach. It's using high technology and the Internet to do something that's very, very simple. If someone wants to know about a specific zip code -- like where they live, where their kids go to school, where they work -- and they register online, they will be notified when a Level 2 or 3 sexual predator moves into their community or reregisters. A very simple

approach.

One of the problems with the present Megan's Law is, I believe, the notification requirements. Right now local law enforcement may notify the community. And in big cities like New York City and Buffalo, "may" is a very, very important word, because in many cases they're very busy, local law enforcement. I've had numerous occasions where PTA presidents and principals will call my office when they found out, unbeknownst to them, when a dangerous sexual predator moves into their community, why didn't anyone let us know. They're not notifying schools, they're not notifying principals, they're not notifying local police precinct councils.

So I think this allows a concerned parent, a concerned adult to be able to protect their family by knowing who lives in their community.

So I think this is a very, very important approach. Because if we're using email notification for such things as weather reports, up-to-the-minute stock quotations,

when our favorite author writes a new book, we should be using it to protect our families by knowing who actually lives in our community.

One of the other things that we're able to do now which I think makes this very cost-effective, I think most of my colleagues know that we have a system in place under the auspices of the Division of Homeland Security called New York Alert. New York Alert notifies people about weather conditions, emergency situations in and around the state.

The hope is that we're going to merge the sexual predator subdirectory, the Megan's Law directory that's presently up online for 2 and 3 level sexual predators with New York Alert, allowing people to receive instant email notification when a dangerous sexual predator moves into their community.

I'd now be happy to yield to a question, Mr. President.

ACTING PRESIDENT VALESKY: Senator LaValle, you may proceed with a question.

SENATOR LaVALLE: Thank you,

Senator Klein. Through you, Mr. President. Just speaking for myself, I feel that your bill does exactly what it says, and it's a good approach.

Last year Senator Robach's amendment passed unanimously, which means you voted for it and supported it.

SENATOR KLEIN: Well, as a stand-alone bill, I take it.

SENATOR LaVALLE: Yeah.

My question is, would you lay your bill aside and amend it to include Senator Robach's amendment or to allow us to put up the same amendment, meeting the prescription of the President, so that we can strengthen the bill? Because I think we all agree that what you have set in motion is good.

And we're trying to strengthen it because we don't know if we're going to have another bite at the apple to entertain something that people voted unanimously for last year.

So my question is would you just for a day set it aside and make the amendment

yourself?

SENATOR KLEIN: Through you, Mr. President, no. And the reason is rather simple.

As I said earlier, this is something that I fought long and hard for. Then-Democratic Leader Paterson appointed me to the Megan's Law Task Force when we were looking for changes to make Megan's Law stronger. I sat on that panel. I advocated for the piece of legislation that we're going to pass here today. And it never took place. It was never picked up by the Republican majority at the time nor the majority in the Assembly.

I think it's something that I will consider as far as enhancing penalties separately.

But I will say that presently the penalty system that we have in place, according to State Division of Criminal Justice Services, seems to be working. Again, according to information that they gave me a couple of weeks ago, they have about a

96 percent compliance rate as far as Level 2 and Level 3 sexual predators registering and reregistering as they're required to do every 90 days.

So I don't think that the problem at hand is dangerous sexual predators not registering as they were supposed to do under the law. But the problem is that our communities aren't adequately notified when one of them moves into a community.

So I think this legislation will solve that problem by having a very, I think, clean, comprehensive approach to making sure that parents who are interested in knowing about who's living in their community can be notified immediately.

ACTING PRESIDENT VALESKY: Senator Morahan.

SENATOR MORAHAN: Thank you, Mr. President. Will the sponsor yield to a few questions?

ACTING PRESIDENT VALESKY: Senator Klein, will you yield?

SENATOR KLEIN: I'll be happy to

yield, Mr. President.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR MORAHAN: Senator Klein, I believe -- as most of us do -- this is a very good bill.

You mentioned the Division of Criminal Justice. It came across my mind, when you said it's cost-effective, in using the email have they given you any -- because I notice there's no appropriation in the bill. Is there any concern by the Division of Criminal Justice that they can tool up for this without an appropriation?

SENATOR KLEIN: Through you, Mr. President. Again, after, you know, long discussions with the State Division of Criminal Justice Services and New York Alert, there's presently, as I think as we all know, a subdirectory that's presently administered by the New York State Division of Criminal Justice Services. Now someone can access that information. It's rather, you know, difficult sometimes. It's not as user-friendly as my

approach.

And the only thing they have to do now, from getting the information which presently is on the Division of Criminal Justice website and now have it part of New York Alert, is just a transfer of data. So the cost is minimal. It's just a matter of just transferring data. And they already have an up and going website, as I said, called New York Alert, so it's just new information they'll be able to do.

And as I said, to be able to register -- one of the things we did do initially is when someone does register with the division, they'll only be able to include three zip codes or three county jurisdictions. So in other words, they won't be able to get 10 or 15.

And I think that's sufficient because it could be, you know, where you live, where you work, where your kids go to school, as I said earlier.

SENATOR MORAHAN: So the provision that takes effect in 180 days,

there's sufficient time there for the Division of Criminal Justice?

SENATOR KLEIN: Absolutely. It's a transfer of information.

SENATOR MORAHAN: Why do we make it 180 days?

SENATOR KLEIN: The Division of Criminal Justice Services, through you, Mr. President, requested that period of time where they were very confident they could do it within that time period.

SENATOR MORAHAN: Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Morahan.

Are there any other Senators who wish to be heard?

Seeing none, the debate is closed.

The Secretary will ring the bells.

The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day after it shall have become law.

ACTING PRESIDENT VALESKY: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

Absent from voting: Senators Duane and Winner.

ACTING PRESIDENT VALESKY: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 297, by Senator Onorato, Senate Bill 4110A, an act to amend the Labor Law, in relation to unemployment insurance benefits and part-time work, voluntary separations from employment, and on/off indicators for extended unemployment insurance benefits; and in relation to extended benefits.

SENATOR VOLKER: Explanation.

ACTING PRESIDENT VALESKY: Senator Onorato, an explanation has been requested by Senator Volker.

SENATOR ONORATO: Yes, Mr. President. This is the unemployment stimulus extended benefits bill.

The bill will allow New York to receive $645 million under the American Recovery and Reinvestment Act of 2009; basically, the Stimulus Act. It will provide $370 million for 13 weeks of extended unemployment benefits to 120,000 unemployed New Yorkers and $275 million for the Unemployment Insurance Trust Fund, which is insolvent.

Congress previously approved 33 weeks of extended benefits beyond the 26 weeks of regular benefits allowed under state law, but these extended benefits will start to run out next week. Unless this legislation is adopted, 56,000 New Yorkers will lose their unemployment benefits at that time and an additional 5,000 to 8,000 will exhaust their benefits each week thereafter.

The bill will provide fully funded federal money for pay for the extended benefits. To qualify, state law must have a new alternative trigger to determine the state unemployment rate.

The new trigger, under the bill,

would be based on the state's total unemployment rate. The current trigger is based on the average weekly number of individuals filing claims and is too low for the state to qualify for the federal reimbursement.

The bill would also provide several hundred millions of dollars for the Unemployment Trust Fund. The fund pays unemployment benefits for thousands of our constituents who are presently unemployed.

To qualify, the language of the state unemployment law must conform to the federal language. These changes concern eligibility for benefits when individuals voluntarily separate from employment for compelling family reasons, including domestic violence, the illness or disability of an immediate family member, and the need to accompany the individual spouse to a new location of employment.

Each of these compelling reasons has long been recognized under case law for more than 50 years and would not create new

grounds for benefit eligibility in New York. And the Business Council has extended a memo in support of this legislation.

Without this bill, the ripple effect on local communities will be significant. According to many economists, for every $1 extended in benefits paid, $1.64 comes back to local economies in high-velocity direct spending on food, rent, and other basic needs. This will help local businesses as well as our local governments by avoiding the need to provide assistance to New Yorkers without unemployment income.

This bill will ease the burden on our people and our local communities by using the stimulus money Congress has approved to help get us through this difficult economic period in our state.

ACTING PRESIDENT VALESKY: Thank you, Senator Onorato.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President. Mr. President, would Senator Onorato yield, please?

ACTING PRESIDENT VALESKY:

Senator Onorato, do you yield?

SENATOR ONORATO: Yes, I do.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR SALAND: Senator Onorato, you said that the Business Council had put out a memo in support of this particular measure. Are you aware of the fact that the NFIB, National Federation of Independent Businesses, and the Retail Council had put out memos in opposition to this?

SENATOR ONORATO: No. As I spoke to you earlier, I never heard of these organizations that you told me about. But I never received one personally.

SENATOR SALAND: Senator Onorato, certainly we all can appreciate the critical importance of your legislation. There are hundreds of millions of dollars that would be at risk were we not to adopt this legislation.

But in your comments you made reference to certain federal requirements. And also among those requirements you said

that the feds are requiring that we provide for voluntary separation based on a compelling family reason and went on to say that that basically tracks case law in New York.

Senator Onorato, has there been a Court of Appeals decision -- the Court of Appeals being the highest court in this state -- which basically recognizes what you say is case law in the State of New York?

SENATOR ONORATO: For the past 50 years the department has allowed unemployment claims by workers who quit and move out of state because the well-being of their child required their presence. Appeal Board Case Number 78-484, 1961.

SENATOR SALAND: I'm sorry, I'm having a difficult time hearing you.

SENATOR ONORATO: They were allowed to quit and move out of state because the well-being of their child required their presence. The appeal board case number is 78-484 in 1961.

In a later case, a worker qualified for unemployment benefits after he quit to

relocate to a warmer climate for the health of his wife, who suffered from asthma, diabetes and arthritis. And that was under the Appeals Board Number 382-5774A, 1989.

And according to the Adjudication Services Office of the Department of Labor, which decides to keep track of these cases, these decisions are still good law and are representative of the current case law.

SENATOR SALAND: So are those -- and again I couldn't hear your citations. Are those Department of Labor determinations or are those Court of Appeal cases or decisions by some other court in New York State?

SENATOR ONORATO: These are by the Department of Labor. But the decisions represent the current law.

SENATOR SALAND: Senator Onorato, could you speak into your microphone? I'm sorry, I can't hear you.

SENATOR ONORATO: The decision is from the Department of Labor, and it's also based on case law.

SENATOR SALAND: You said based

on case law?

SENATOR ONORATO: It's also based on case law.

SENATOR SALAND: And really, I couldn't hear you. Did you cite cases when you read off whatever it was that you read by way of decision?

SENATOR ONORATO: The Appeals Board case number was 78-484, in 1961. In a latter case, a worker qualified for unemployment benefits after he quit to relocate to a warmer climate. And that case law is based on Case Number 382-5774A in 1989.

SENATOR SALAND: Senator Onorato, looking further at the bill, there's provisions -- and I'm looking at paragraph five on page 2 -- that states a claimant should not be denied unemployment insurance solely because the claimant is only seeking part-time work.

Is that a departure from current New York law, or is that consistent with current New York law?

SENATOR ONORATO: That is current

law.

SENATOR SALAND: And is that in statute or is that in case law or is that department regulation?

SENATOR ONORATO: The law is the same. It doesn't change anything at all. It's just the language to comply with the federal government.

SENATOR SALAND: So what we are being asked to do here is to, in effect, add to the current unemployment benefit eligibility. Because according to what you're telling us, that is one of the requisites that the feds have imposed upon us as part of receiving these several hundreds of millions of dollars.

SENATOR ONORATO: It does not change any eligibility regulations in this bill. It's all the same.

SENATOR SALAND: Senator, I would respectfully suggest that if you're relying on department regulations or lower court cases and not relying on statute or Court of Appeals cases, then in fact it would be very difficult

to maintain that this in fact is the law of the State of New York.

On the other hand, if you're telling me that the federal government is saying you must do this to be eligible to receive those $600 million that you referred to or the $275 million for the trust fund, that certainly is a lot of money to turn your back on. And I don't know how we'd do that, particularly in the kind of crisis that we're attempting to work our way through here in New York and obviously as is occurring elsewhere.

So I'm not quite sure that it -- when I look at this definition as provided on page 2, are we talking about a definition section that the federal government has said -- and I'm talking starting at line 14, running down through line 28. Are we talking about language that the feds have required us to have in this bill in order to receive the money? Or are we drawing on some other resource or expertise to come up with these definitions?

SENATOR ONORATO: This is law that we're putting in -- this is federal law that we're putting into the state law to comply to receive this funding.

SENATOR SALAND: Thank you, Senator Onorato.

Mr. President, on the bill.

ACTING PRESIDENT VALESKY: Senator Saland, on the bill.

SENATOR SALAND: Mr. President, we find ourselves in a position here where we can ill-afford to exhaust our trust fund and we can ill-afford to turn down the supplemental benefits that are being offered by our friends in Washington.

We do, however, find ourselves in a situation in which in the course of doing this, we are sort of going to be piling on, piling onto businesses. They have endured what for many businesses was one of the most ugly of budget results, some $8 billion worth of tax increases.

Those of us who have the misfortune of being in the MTA region, which applies to

some 12 counties, found ourselves being subjected to a host of -- or several fees, but particularly the payroll tax, which quite honestly has caused an anger that in my 29-plus years in the State Legislature I have never witnessed before. It is still burning with white heat in my district. There are few if any businesspeople who have not expressed in some way, shape or form, whether it be through their chambers, their business associations, or personally to my office how angry they are about the imposition of that payroll tax.

And now what we're doing is saying that at some point in time when this federal money is unavailable, our businesses are going to be required to pay for additional benefits that by law in New York they previously haven't been required to pay. And that was really part of what was contained in the two memos I referred to from the organization that represents small businesses -- and we all agree that small businesses are the engine that really drives our economy -- and

certainly the Retail Council, that have taken significant hits between the economy and, in the southern part of the state, the payroll tax.

So I'm not suggesting to anybody that they vote against this bill. I'm just basically saying that we find ourselves in a situation where the feds have imposed upon us a requirement that's going to do continued harm to our business community, that's going to force them to endure yet greater pain by expanding the definition of what we will be providing unemployment benefits here in the State of New York.

That should have been a decision more appropriately for this Legislature and the Governor and not have been imposed upon us by Washington. And as we probably know, there are some states that declined to accept this money simply based upon that reason, that they didn't want the federal government imposing their views on what the state's unemployment system should consist of.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Saland.

Senator Larkin.

SENATOR LARKIN: Thank you, Mr. President. Would Senator Onorato yield, through you.

ACTING PRESIDENT VALESKY: Senator Onorato, do you yield?

SENATOR ONORATO: Yes, I will.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR LARKIN: Senator, about two or three years ago we made a major borrow from the federal government to boost our unemployment insurance funding. We had to pay it back.

SENATOR ONORATO: That's correct.

SENATOR LARKIN: Are you saying that this is a freebie and we don't have to pay any of this back?

SENATOR ONORATO: Whatever the federal government is going to be providing for us --

SENATOR LARKIN: My hearing aid

isn't as good as yours. You're going to have to speak a little louder.

SENATOR ONORATO: Whatever the federal government is going to lend us to make the --

SENATOR LARKIN: Lend it to us.

SENATOR ONORATO: Yeah, they're going to lend it to us.

SENATOR LARKIN: So in other words, we're going to have to pay this back.

SENATOR ONORATO: Part of it. Not all of it. Not all of it.

SENATOR LARKIN: How much?

SENATOR ONORATO: The extended benefits are a hundred percent federally funded. The extended benefits are 100 percent federally funded.

SENATOR LARKIN: But how much are we going to have to repay?

SENATOR ONORATO: They're even waiving the interest on any monies that would have to be paid back until 2010.

SENATOR LARKIN: How much are we going to have to pay back? I can't hear. I'm

sorry, George.

SENATOR ONORATO: $275 million.

SENATOR LARKIN: So in other words, we're talking here as if this is the greatest thing since canned beer --

SENATOR ONORATO: I can't hear --

SENATOR LARKIN: -- and all of a sudden we're saying to somebody, O.J., we're going to give you money, unemployment insurance for your company. By the way, Richardson over here, he's going to have to find the money, because we're going to tax him to pay for it.

I mean, we're not being fair. We're telling the people this is the greatest thing. I've had four phone calls that said vote for it. I've had six calls that said "Am I going to have to make it up?" I said, "Yes, there's taxes." But nobody's saying that. Everybody's saying that this is good. Now I understand the Business Council are on board because you made peace with them. I don't know what peace you made with them, but they didn't make peace with me. They didn't make

peace with my chambers of commerce.

And, you know, we're sitting around here and we're talking about a trillion dollars and a trillion here, and, you know, pretty soon you've got some real money. But we have still $275 million. If we had that $275 million, we could have helped the chairman of Finance and the Deputy Majority Leader in their efforts to do the bailout or to do the rebate checks.

Because we have to -- think about it. This bill is going to cost the State of New York $275 million more. Yes or no?

SENATOR ONORATO: I was just informed that we're going to pay either way, because if we don't do it, they're going to --

SENATOR LARKIN: George, can you go into your speaker? It's not coming out.

SENATOR ONORATO: Senator, I've just been informed that we're going to pay either way. The employers are going to pay either way. Because when the funds run out, they're going to have to be taxed to meet the obligations. No matter which way you look at

it.

But this particular bill is only dealing with, you know, availing the current money to the unemployed that we have right now.

SENATOR LARKIN: You know, George, I understand what you're trying to do, and I believe you. And I understand it. The only question is is I don't think we've been fully honest with the public that we're going to get money -- there's no free money. You know, if there is, we'd have all won the lottery and left here years ago.

But what I'm saying is that I think somehow we have to go out and tell the public: Yes, we're going to get this money, but we have to pay it back. And the taxpayers of the State of New York will be held responsible for this 275 or 800, whatever this is.

Thank you very much.

ACTING PRESIDENT VALESKY: Thank you, Senator Larkin.

Senator Marcellino.

SENATOR MARCELLINO: Thank you,

Mr. President. Senator Onorato, would you please yield for a question? Through you, Mr. President.

ACTING PRESIDENT VALESKY: Senator Onorato?

SENATOR ONORATO: Yes.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR MARCELLINO: Thank you, Mr. President. Thank you, Senator.

Senator Onorato, will the unemployment rolls be increased by this bill, by paying the money into this bill?

SENATOR ONORATO: No, this will not increase the number that goes on -- it has nothing to do with the increasing number. It will just help to pay for this.

SENATOR MARCELLINO: So by including part-timers -- excuse me. Through you, Mr. President.

ACTING PRESIDENT VALESKY: Senator Onorato, do you continue to yield?

SENATOR ONORATO: Yes, I do.

ACTING PRESIDENT VALESKY: The

sponsor yields.

SENATOR MARCELLINO: So by including part-timers in the program, which they apparently are not now, are we or are we not increasing the number of beneficiaries to this program?

SENATOR ONORATO: The unemployed part-timers are already covered under the bill without this. They are already entitled to collect unemployment benefits.

SENATOR MARCELLINO: By department rule? Excuse me. Through you, Mr. President.

SENATOR ONORATO: By current law. I remember when I was in the construction industry, and if I only worked two days out of the week and I didn't make enough, I was eligible to receive a partial unemployment benefit. So this doesn't change that.

SENATOR MARCELLINO: At the end of the stimulus money, which I understand has got another year after this one, how do we pay for this program?

SENATOR ONORATO: I guess through

the normal way that we did before. But there will be no stimulus money available at that time. And we'll go back to our regular routine, with the unemployment benefits the employee pays into fund and we collect when we're unemployed.

But again, don't forget, the current Unemployment Insurance Fund has ran out of money and we had to borrow money from the feds to provide it. But this particular portion of it does not have to be repaid.

SENATOR MARCELLINO: I thought -- through you, Mr. President.

ACTING PRESIDENT VALESKY: Senator Onorato?

SENATOR ONORATO: I will continue to yield.

ACTING PRESIDENT VALESKY: The sponsor continues to yield.

SENATOR MARCELLINO: I thought I just heard before that $275 million would have to be repaid.

SENATOR ONORATO: Yes. That is another part of it, yes. We said that that

would be --

SENATOR MARCELLINO: Through you, Mr. President --

SENATOR ONORATO: The extended benefits do not have to be repaid.

SENATOR MARCELLINO: Okay. If the economy doesn't improve -- which we all hope it does -- but should it stay the way it is today, would there be enough money without the stimulus package to cover the cost of this bill or this program?

SENATOR ONORATO: Counsel is telling me that we would always have the federal government to borrow the money from.

SENATOR MARCELLINO: So I take it that there would not be. That's a no, I would take it as, George.

SENATOR ONORATO: I can't predict -- I wish I could predict the future economy. I'd make a lot of money out of it.

SENATOR MARCELLINO: I would join you, and we would have all had a bet on the Preakness and we could have worked something out there.

SENATOR ONORATO: I'll throw a nice party with it.

SENATOR MARCELLINO: Thank you, Senator.

On the bill, Mr. President.

ACTING PRESIDENT VALESKY: Senator Marcellino, on the bill.

SENATOR MARCELLINO: The point that I'm trying to get at is once the stimulus money goes away, unless the economy improves significantly, we go back to borrowing, which costs money. We go back -- because that has to be paid back. Ultimately, we're going to give this money back. Ultimately, it's going to cost the taxpayers money.

Ultimately, I disagree with my good friend Senator Onorato, there will be an expansion of the unemployment rolls, because we do not currently now take all of the part-timers and include them in the unemployment rolls. That's why many different states have not accepted this money. They don't want to be stuck with a program that's three times the size or bigger than it was

before and then they don't have federal money and then they're stuck paying the bill for a program that's much bigger.

That's the problem that we're looking at here today. I understand what Senator Onorato is trying to do. I will be supporting the bill. I just want to make everybody clear, as my colleagues have before me: There's no free lunch in this program. There's no free lunch here. We're going to pay for this bill.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Marcellino.

Are there any other Senators who wish to be heard?

Seeing none, the debate is closed.

The Secretary will ring the bell.

I ask all Senators to proceed to the chamber so that we may move forward with the roll call.

Senator Klein, there is a substitution of this bill at the desk.

The Secretary will read the

substitution.

THE SECRETARY: In respect to Calendar 297, Senator Onorato moves to discharge, from the Committee on Labor, Assembly Bill Number 8273 and substitute it for the identical Senate Bill Number 4110A, Third Reading Calendar 297.

SENATOR DeFRANCISCO: Point of order.

ACTING PRESIDENT VALESKY: Substitution ordered.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Is the substitution germane?

(Laughter.)

ACTING PRESIDENT VALESKY: Yes.

SENATOR DeFRANCISCO: Thank you.

SENATOR MAZIARZ: I challenge the ruling.

(Laughter.)

ACTING PRESIDENT VALESKY: Substitution ordered.

The Secretary will read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

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

SENATOR LITTLE: Thank you, Mr. President. Just to explain my vote.

This bill is certainly something that I'm going to vote in the positive for, because I have a tremendous amount of unemployment in my district and we certainly need to extend the unemployment and to get the federal money.

But I think the result of this vote and this piece of legislation is a vicious cycle. Because while we pay out the unemployment, we charge the employer more money, which is going to harm their business and could very easily create more unemployment. So it is a quandary.

And I do understand the impact on small business, particularly in my district.

I wish we could do more to help them. But I understand the need to expand the unemployment. And I do hope, as was pointed out, that when the stimulus money is gone we find some way of paying for this and not putting an increasing burden on the employer.

Thank you.

ACTING PRESIDENT VALESKY: Senator Little to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 61.

Absent from voting: Senator Winner.

ACTING PRESIDENT VALESKY: The bill is passed.

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

SENATOR KLEIN: Mr. President, can we just briefly return to motions and motions.

ACTING PRESIDENT VALESKY: Returning to the order of motions and resolutions. Proceed.

SENATOR KLEIN: Mr. President, I have two motions.

First, on behalf of Senator Onorato, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Bill 4614.

ACTING PRESIDENT VALESKY: So ordered.

SENATOR KLEIN: The second, on behalf of Senator Foley, on page 24, I offer the following amendments to Calendar Number 329, Senate Print Number 4025A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT VALESKY: So ordered.

SENATOR KLEIN: Mr. President, could you also call on Senator Volker for a brief announcement.

ACTING PRESIDENT VALESKY: Senator Volker.

SENATOR VOLKER: Thank you. It now appears that we will be done before

8 o'clock tomorrow morning, so I just --
8 o'clock tomorrow morning is the memorial service for deceased legislators at St. Mary's Church. We would appreciate anyone that could get down there. We put a lot of time and effort into it.

So it will be tomorrow morning at 8 o'clock at St. Mary's Church downtown. Thank you.

ACTING PRESIDENT VALESKY: Memorial service for deceased members of the Legislature tomorrow morning at 8:00 a.m. at St. Mary's Church.

Senator Klein.

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

ACTING PRESIDENT VALESKY: There is none.

SENATOR KLEIN: There being none, I move we adjourn until Wednesday, May 20th, at 11:00 a.m.

ACTING PRESIDENT VALESKY: On a motion by Senator Klein, the Senate stands adjourned until Wednesday, May 20th, at

11:00 a.m.

(Whereupon, at 6:26 p.m., the Senate adjourned.)