NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 10, 2010

3:36 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: In the absence of clergy, may we bow our heads in a moment of silence.

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

ACTING PRESIDENT VALESKY: The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Tuesday, March 9, the Senate met pursuant to adjournment. The Journal of Monday, March 8, was read and approved. On motion, Senate adjourned.

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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Klein.

SENATOR KLEIN: Mr. President, on behalf of Senator Foley, I wish to call up Print Number 5945, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: Calendar Number 86, by Senator Foley, Senate Print 5945, an act to amend the Election Law.

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

ACTING PRESIDENT VALESKY: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT VALESKY: The bill is before the house.

Senator Klein.

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

ACTING PRESIDENT VALESKY: So ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, can you please call on Senator Libous for a motion.

ACTING PRESIDENT VALESKY: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I'm glad you called on me, because I wasn't sure if you would recognize me.

On behalf of Senator Maziarz, Mr. President, on page 10 I offer the following amendments to Calendar Number 108, I believe Senate Print Number 1055B, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT VALESKY: So ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, do we have any substitutions at the desk?

ACTING PRESIDENT VALESKY: There are substitutions.

The Secretary will read.

THE SECRETARY: On page 8, Senator Serrano moves to discharge, from the Committee on Finance, Assembly Bill Number 8395 and substitute it for the identical Senate Bill Number 5811, Third Reading Calendar 51.

On page 9, Senator Klein moves to discharge, from the Committee on Codes, Assembly Bill Number 4015A and substitute it for the identical Senate Bill Number 5988, Third Reading Calendar 66.

On page 14, Senator Serrano moves to discharge, from the Committee on Codes, Assembly Bill Number 8154A and substitute it for the identical Senate Bill Number 4603A, Third Reading Calendar 189.

On page 15, Senator Schneiderman moves to discharge, from the Committee on Codes, Assembly Bill Number 7805B and

substitute it for the identical Senate Bill Number 5461B, Third Reading Calendar 191.

And on page 15, Senator Adams moves to discharge, from the Committee on Finance, Assembly Bill Number 8182 and substitute it for the identical Senate Bill Number 3021, Third Reading Calendar 199.

ACTING PRESIDENT VALESKY: Substitutions ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe Senator Smith has a resolution at the desk. I ask that the title of the resolution be read and move for its immediate adoption.

ACTING PRESIDENT VALESKY: Senator Klein, has this resolution been deemed privileged and submitted by the office of the Temporary President?

SENATOR KLEIN: Yes, it has, Mr. President.

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: By Senator Smith, legislative resolution honoring Ericka K. Wala upon the occasion of being selected as

Constituent of the Month for her valuable contributions as Principal of the Peninsula Preparatory Academy, Far Rockaway, Queens.

ACTING PRESIDENT VALESKY: All in this favor of adopting the resolution --

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT VALESKY: Senator Libous.

SENATOR LIBOUS: Could I have an explanation on what "Constituent of the Month" is? I understand we're honoring an individual. But what is the title "Constituent of the Month"? Is this a new honor bestowed upon individuals by the Senate?

ACTING PRESIDENT VALESKY: Senator Libous, is this a point of order that you're stating or --

SENATOR LIBOUS: Mr. President, I could state a point of order. Or a point of information.

ACTING PRESIDENT VALESKY: Senator Klein.

SENATOR KLEIN: Mr. President, can we please stand at ease.

ACTING PRESIDENT VALESKY: The

Senate will stand at ease.

(Whereupon, the Senate stood at ease at 3:41 p.m.)

(Whereupon, the Senate reconvened at 3:43 p.m.)

SENATOR KLEIN: Mr. President, can we proceed?

ACTING PRESIDENT VALESKY: Senator Klein.

SENATOR KLEIN: Move the resolution.

ACTING PRESIDENT VALESKY: All those in favor of adopting the resolution signify by saying aye.

(Response of "Aye.")

SENATOR LIBOUS: I'd like to speak on the resolution.

ACTING PRESIDENT VALESKY: Senator Libous, on the resolution.

SENATOR LIBOUS: I just spoke with Senator Smith, who is sponsoring the resolution. And certainly his constituent is worthy of being honored by the Senate, and I congratulate the constituent.

But I suggested that in the future

the title "Constituent of the Month" might be rewritten, only because I think if 62 Senators decided that each one of us wanted to have a constituent of the month, we would be kind of buried in paperwork here.

While it's important to honor our constituents, I think doing it in a way that is not requiring a monthly or a weekly salute is the way we should do it, as we have for the last so many years.

So I will support the resolution and hope that the title will be different in the future.

ACTING PRESIDENT VALESKY: Thank you, Senator Libous.

Senator Klein.

SENATOR KLEIN: On the resolution.

This is a young woman who dedicated her life to education. She was principal of the Peninsula Preparatory Academy in Far Rockaway.

I know over the course of this legislative session my office, as well as the Temporary President, has given tremendous

leeway to both sides of the aisle in what resolutions we bring to the floor to honor our constituents. I guess we have to look at it a lot more carefully in the future.

And I guess we won't be as, I guess, willing to give in to some of our colleagues when they have their constituents here who work so hard for their districts and deserve the recognition on the floor of the State Senate.

Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Klein.

All in favor of adopting the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT VALESKY: The resolution is adopted.

Senator Klein.

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

ACTING PRESIDENT VALESKY: The Secretary will proceed with the reading of the active bills on Senate Calendar Number 19.

THE SECRETARY: Calendar Number 150, by Senator Sampson, Senate Print 6264A, an act to amend the Judiciary Law --

SENATOR KLEIN: Lay the bill aside for the day, Mr. President.

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

THE SECRETARY: Calendar Number 177, by Senator Stavisky, Senate Print 1736 --

SENATOR KLEIN: Lay the bill aside for the day.

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

THE SECRETARY: Calendar Number 182, by Senator Aubertine, Senate Print 6317A, an act to amend the Agriculture and Markets Law, in relation to definition.

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, 53.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 183, by Senator Aubertine, Senate Print 6443A, an act to amend the Agriculture and Markets Law, in relation to including production.

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, 53.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 184, by Senator Valesky --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: Calendar Number

187, by Member of the Assembly Jeffries, Assembly Print --

SENATOR KLEIN: Lay the bill aside for the day.

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

THE SECRETARY: Calendar Number 198, by Member of the Assembly DelMonte, Assembly Print Number 901A, an act to amend the Town Law and the Public Authorities Law, in relation to travel.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 3. This act shall take effect June 1, 2012.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 208, by Senator Dilan, Senate Print 1434, an act to amend the Election Law, in relation to prohibiting election commissioners.

ACTING PRESIDENT VALESKY: Read the last section.

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

SENATOR KLEIN: Lay the bill aside for the day.

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

THE SECRETARY: Senator Klein, that completes the noncontroversial reading of the active bills.

SENATOR KLEIN: Mr. President, at this time can we please go to a reading of the controversial calendar.

ACTING PRESIDENT VALESKY: The Secretary will ring the bells.

Members are asked to come to the chamber for a reading of the controversial calendar.

ACTING PRESIDENT STEWART-C0USINS: The Secretary will read.

THE SECRETARY: Calendar Number 184, by Senator Valesky, Senate Print 6780, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT STEWART-C0USINS:

Senator Padavan.

SENATOR PADAVAN: Yeah, Madam President, would Senator Valesky yield to a question.

SENATOR VALESKY: Certainly.

SENATOR PADAVAN: Or two.

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you yield?

SENATOR VALESKY: Certainly.

SENATOR PADAVAN: Senator, your bill would extend the current provision that allows wine in frozen desserts from currently ice cream to -- I quote in the bill -- "or other frozen desserts." And up to 5 percent of the volume of those other frozen desserts could be wine.

Now, Senator, a question.

SENATOR LIBOUS: Can we have some order, Madam President.

SENATOR PADAVAN: Frozen desserts cover a wide range of products. As an example, you could buy frozen pies, frozen cakes, cheesecake and others.

Would this bill allow 5 percent by volume of those products to be wine?

SENATOR VALESKY: Yes, it would. Through you, Madam President, yes.

SENATOR PADAVAN: So, Senator, in effect what we would be doing is in every small or large retail establishment, from bodegas to 7-11s to supermarkets, turning that dessert area into a place where we're selling 5 percent of the volume -- which is a significant amount if you take an apple pie -- of alcohol. Is that really what you want to do in this state?

SENATOR VALESKY: The intent of the bill is to allow sorbets, sherbets and other products to be added to the list of products that could be made with wine, in conjunction with the bill passed in this house a couple of years ago that created -- I believe Senator Griffo actually sponsored that.

SENATOR PADAVAN: On the bill. I don't want to belabor the point.

ACTING PRESIDENT STEWART-C0USINS: Senator Padavan, on the bill.

SENATOR PADAVAN: What Senator Valesky said as extended to sorbets and

similar products is one thing. But the way the bill is written it says "or other frozen desserts." There's no limitation here. It is a wide and broad category.

And as we consider one of the proposals in the budget about selling wine in supermarkets, it seems to me that this is something that we're moving substantially, when we talk about 5 percent by volume, in that direction.

So I would either suggest to Senator Valesky that he amend the bill to be more specific -- namely, sorbets and what was the other product, sherbet -- and not make it as broad as it is here, covering virtually every product that's in the frozen dessert area.

Now, I go into my supermarket and walk down the -- there's a whole aisle, all kinds of frozen desserts. And I don't think we really want to turn that whole aisle into a place where 5 percent by volume is going to be alcohol.

ACTING PRESIDENT STEWART-C0USINS: Senator Golden.

SENATOR GOLDEN: Thank you, Madam President. I -- Senator Valesky --

ACTING PRESIDENT STEWART-C0USINS: Are you asking Senator Valesky to yield?

SENATOR GOLDEN: Yes, please.

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you yield for a question?

SENATOR VALESKY: Yes, certainly.

SENATOR GOLDEN: Senator Valesky, do you know how much volume is in a can of beer, how much volume of alcohol is in a can of beer?

SENATOR VALESKY: I don't have that information in front of me, no, Senator.

SENATOR GOLDEN: Could you get some of your staff --

SENATOR VALESKY: Madam President, I'm not sure how the question is relevant to the bill before us.

SENATOR GOLDEN: It's a -- it does -- I will get there. I just want to know how much volume of alcohol is in a beer or in a glass of wine. I'm trying to come to the --

SENATOR VALESKY: Madam President, through you, I believe it varies on

the product that we're talking about. I don't think there's one answer to the question.

SENATOR GOLDEN: Well, I --

ACTING PRESIDENT STEWART-C0USINS: Senator Golden, would you direct your question through the President?

SENATOR GOLDEN: Yes. The -- I know when I was in the service, there were 2 percent. But I believe the volume in beer is somewhere around 5 percent, 7 percent. Wine, similar.

So we're going to be selling these types of parfaits, cakes, ice creams in these stores, delicatessens, bodegas, that would have content that would be equal to or similar to or close to that of a can of beer or a glass of wine.

SENATOR VALESKY: Madam President, through you, I am not aware of any product that presently exists or any interest in creating such a product.

As Senator Padavan and I discussed, there has been an interest in developing a wine sorbet. And this bill simply, by addressing that interest, expands the original

definition from law two years ago to include the definition that is consistent with the Agriculture and Markets Law in terms of frozen desserts.

SENATOR GOLDEN: The -- on the bill, Madam President.

ACTING PRESIDENT STEWART-C0USINS: Senator Golden, on the bill.

SENATOR GOLDEN: We've seen only recently in some delicatessens and bodegas over in the Bronx that were attempting to sell some concoctions in their stores that had alcoholic contents to them. And I believe many of the people in the community were very upset about it, and many of our elected officials were upset about it.

I believe right now it's difficult for the policing agents, the SLA, the ABC, all of those different units to be able to supervise what is presently going on in our state here, such as kids under the age of 18, 16, 17, purchasing beer, purchasing wine in stores, purchasing liquor, going into some of our institutions and our bars across the state.

And I think this is just another tool that our children will have the ability to use to get that high that they're looking for, in some cases. And I think that this sends the wrong message in selling these out of grocery stores, out of bodegas, out of different stores across our state.

It's the wrong message. It's like selling the wine in the grocery stores. Tomorrow, it's our parfaits, wine in grocery stores, and then eventually liquor in grocery stores.

I think it's wrong. I think there is a price to pay for that, and that's our children. And some of them, unfortunately, will go out, some of them will drive, some of them will get into accidents, and some of them will kill themselves and others in these vehicle accidents. And others will have, you know, opportunity to have alcohol when in fact we, as a responsible state legislature, should not be allowing this type of alcohol to be available in the stores across the State of New York --

ACTING PRESIDENT STEWART-C0USINS:

Senator Johnson. Senator Johnson, why do you rise?

SENATOR CRAIG JOHNSON: Will Senator Golden yield for a question, please?

ACTING PRESIDENT STEWART-C0USINS: Senator Golden, will you yield?

SENATOR GOLDEN: Yes, sir.

SENATOR CRAIG JOHNSON: Thank you very much, Senator Golden. And I didn't mean -- I mean, if you wanted to finish your statement, I'd gladly wait.

SENATOR GOLDEN: I finished it. I voted no on the bill.

SENATOR CRAIG JOHNSON: Through you, Madam President. Senator Golden, I was listening to your statement, and I just want to get some clarification.

First, when you talked about the incidents in the Bronx with these bodegas, can you expand upon that? You talked about alcohol. I'm trying to get an understanding about what these incidents were with respect to these concoctions that were alcohol-related.

SENATOR GOLDEN: Well, I don't

believe that that has anything to do with the bill that I am talking about. Through you, Madam President. But I believe it was in the New York Post and in other newspapers. If you want to read about it, you can.

But what I'm discussing here is alcohol that is readily available to our children at a low-cost price that is as cheap as a parfait or an ice cream, that our parents are unaware of that these children have opportunities, going into these stores and having the opportunity to purchase these parfaits, these ice creams, and indulging in what may be alcoholic content of 5 percent.

SENATOR CRAIG JOHNSON: Will Senator Golden continue to yield?

ACTING PRESIDENT STEWART-C0USINS: Senator Golden, do you continue to yield?

SENATOR GOLDEN: Yes, I do, Madam President.

SENATOR CRAIG JOHNSON: Senator Golden, I mean I just wondered, because you brought up -- in your comments in explaining the bill you brought up, as an example, this incidence in the Bronx as maybe a basis for

why you didn't support Senator Valesky's legislation, and now you say it doesn't apply. So I was just trying to get clarification.

Do you know how much someone would have to consume with respect to maybe one of these wine-laden parfaits in order to get the buzz or the state of inebriation that we're all concerned about when it comes to our young people?

SENATOR GOLDEN: Senator, I do believe -- Madam President, I do believe that it doesn't matter, my dear man, in how many it takes.

What we're doing is allowing our children to have the opportunity to have alcohol and to break them into the possibility of having and expanding into beer and wine and giving them the steps and the ability to have more alcohol when they are under the age of 21 years of age. This is just a slippery slope that allows for the children to have alcohol of 5 percent content.

SENATOR CRAIG JOHNSON: Madam President, will the Senator continue to yield for a question?

SENATOR GOLDEN: Of course, Senator.

ACTING PRESIDENT STEWART-C0USINS: Senator Golden, do you continue to yield?

SENATOR GOLDEN: Yes, I do, Madam President.

SENATOR CRAIG JOHNSON: Excellent. Senator Golden, when we passed this legislation in 2008 when your side controlled this great chamber of ours, how did you vote on this bill, when we allowed it for ice cream?

SENATOR GOLDEN: It was not the same bill, my dear Senator. Madam President.

SENATOR CRAIG JOHNSON: Okay. Madam President, through you, I repeat my question for a simple yes-or-no answer.

Did you vote on this legislation in 2008 when it came to wine in an ice cream product, yes or no?

SENATOR GOLDEN: The answer, Madam President, is no. Because it's not the same bill, Madam President.

And the state legislator should understand the difference between last year's

bill in 2008, two years ago, versus this bill. Maybe he should be briefed before he asks the question.

SENATOR CRAIG JOHNSON: Thank you.

Madam President, will Senator Golden continue to yield?

ACTING PRESIDENT STEWART-C0USINS: Senator Golden, do you continue to yield?

SENATOR GOLDEN: Yes, I do, Senator.

SENATOR CRAIG JOHNSON: Senator Golden, your concern about our children having access to this product, when a child goes in to purchase, let's say, beer in a supermarket, I would assume that that child could -- that child or that teenager would also be proofed at the supermarket checkout; correct?

SENATOR GOLDEN: The law is yes, they should, Madam President.

SENATOR CRAIG JOHNSON: Okay. And through you, Madam President, are they also proofed with respect to the ice cream that's currently sold right now under the law?

SENATOR GOLDEN: No, they are

not, Madam President.

SENATOR CRAIG JOHNSON: And, Madam President, through you, will Senator Golden continue to yield?

ACTING PRESIDENT STEWART-C0USINS: Senator Golden, do you continue to yield?

SENATOR GOLDEN: Yes. Yes, I do, Madam President.

SENATOR CRAIG JOHNSON: Have you received, by the way, you know, complaints from constituents, either your district or other districts, as to the rise in horrific underage consumption of wine ice cream in this state, or in your district or in my district?

SENATOR GOLDEN: Madam President, since it's not legal in the state of our great New York, no, I have not.

I will tell you, though, Madam President, I get constant complaints about underage drinking in my community. I have numbers of hit-and-run accidents. I have numbers of DWIs by young children that are under the age of 21, 19, 18, 17 in my community. And I think he, as the good Senator from Long Island, has a similar

problem.

So that's why I am so ardently against this bill, Madam President.

SENATOR CRAIG JOHNSON: Through you, Madam President, will Senator Golden continue to yield?

ACTING PRESIDENT STEWART-C0USINS: Senator Golden, do you continue to yield?

SENATOR GOLDEN: Yes.

SENATOR CRAIG JOHNSON: Do you have the same complaints with respect to consumption of wine in ice cream with the underage drinking-and-driving problems that you've just talked about?

SENATOR GOLDEN: Madam President, I don't have it because it's not yet sold.

But maybe after the good Senator gets this bill passed and it's here in this great state, then maybe yes, we will see the problems that this bill, this action brings upon our communities across the State of New York.

SENATOR CRAIG JOHNSON: Madam President, will Senator Valesky yield for a couple of questions as the sponsor of the

bill?

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you yield?

SENATOR VALESKY: Certainly.

SENATOR CRAIG JOHNSON: Senator Valesky, in hearing this fascinating dialogue between myself and Senator Golden, maybe you can explain what would be the economic impact for our great state --

SENATOR LIBOUS: Madam President, point of order. I believe Senator Golden has the floor.

SENATOR CRAIG JOHNSON: I apologize for --

ACTING PRESIDENT STEWART-C0USINS: -- have the floor.

SENATOR LIBOUS: He interrupted him with a question.

ACTING PRESIDENT STEWART-C0USINS: Senator Golden was asked whether or not he would allow Senator Valesky to answer a question. And Senator Golden, I believe you were engaged and so you might not have heard that.

But Senator Johnson would like to

direct his questioning to Senator Valesky, if you --

SENATOR GOLDEN: Well, Senator Valesky will have his opportunity to get on the floor. But I am debating Senator Johnson at this moment, and the answer is no.

SENATOR CRAIG JOHNSON: I'm sorry, no to --

SENATOR GOLDEN: As to referring to Senator Valesky.

SENATOR CRAIG JOHNSON: Senator Golden, I thank you for your questions.

My understanding, by the way, when I stood up, Senator Golden did say he was complete with his statement. So I just want to make sure, if we get clarification, who actually has the floor right now. Senator Golden had completed his statement.

ACTING PRESIDENT STEWART-C0USINS: Senator Golden --

SENATOR LIBOUS: Point of order. Senator Golden had the floor at the time.

ACTING PRESIDENT STEWART-C0USINS: I understand that, Senator Libous.

SENATOR LIBOUS: It was never

relinquished.

ACTING PRESIDENT STEWART-C0USINS: And I -- and I've said that. And I have just repeated that.

SENATOR LIBOUS: Thank you.

ACTING PRESIDENT STEWART-C0USINS: So it is very clear that Senator Golden has the floor.

And, Senator Johnson, if --

SENATOR LIBOUS: Thank you.

ACTING PRESIDENT STEWART-C0USINS: -- you are finished with posing questions, then we will let Senator Golden continue his statement.

SENATOR CRAIG JOHNSON: I am, Senator Stewart-Cousins. Thank you very much, Madam President.

Thank you very much, Senator Golden.

ACTING PRESIDENT STEWART-C0USINS: Thank you.

SENATOR GOLDEN: Thank you, Senator Johnson.

And as I have said, Madam President, I will be voting no on this bill.

Thank you.

ACTING PRESIDENT STEWART-C0USINS: Senator Little.

SENATOR LITTLE: Thank you, Madam President. On the bill.

I'm going to vote yes on this bill. But I would like to point out that while this is a bill that certainly will help a segment of population and some of the businesses in New York State, there are many businesses and many people in New York State that need to know what we are doing about the budget process and what is going to happen to them.

And just to point out, the school districts have to come up with their budget plan, they have to have a budget by April 27th, they have a budget vote that has to take place in mid-May. We have the halls full of people, we have people visiting our offices --

ACTING PRESIDENT STEWART-C0USINS: Senator Little, we would like to keep the comments germane to the bill.

SENATOR LITTLE: If I could just conclude.

Being here, this is our third week of four-day weeks, I think that we need to be doing something more substantial and get to the budget process so we don't have what happened last year.

Thank you.

ACTING PRESIDENT STEWART-C0USINS: Thank you, Senator.

Senator Padavan.

SENATOR PADAVAN: Are we voting?

ACTING PRESIDENT STEWART-C0USINS: No, Senator Padavan.

Senator Johnson.

SENATOR CRAIG JOHNSON: Thank you very much, Madam President. Will the sponsor yield for a couple of quick questions?

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, will you yield?

SENATOR VALESKY: Certainly. Certainly.

SENATOR CRAIG JOHNSON: Thank you. And thank you, Senator Valesky, for taking the time.

I'm just trying to get an understanding as to -- we've certainly heard

the concerns from Senator Padavan and Senator Golden --

ACTING PRESIDENT STEWART-C0USINS: May we have order in the chamber, please.

SENATOR CRAIG JOHNSON: -- and certainly heard the support from Senator Little. I'm trying to get an understanding. What are the economic benefits to passing this legislation?

SENATOR VALESKY: Madam President, through you, this bill is consistent with a number of bills that this house has taken up in recent years that would be of assistance to New York's wine and grape industry.

In fact, the law that this bill amends, I would just make clear for the record, was approved, signed into law by the Governor as Chapter 189 of the Laws of 2008, which was approved in this house by a vote of 60 to nothing two years ago.

So this, Senator Johnson, to your question, continues to move forward and encourage the continued development of the wine and grape industry in this state without

any risk of young people having access to alcohol.

It is very clear, line 20 and 21 of the bill: "The sale of this product to individuals under the age of 21 years is prohibited," consistent with any other product that is sold in any establishment that contains alcohol.

SENATOR CRAIG JOHNSON: Madam President, will Senator Valesky -- I know he's eager to sit down and not face my relentless questioning. But will Senator Valesky continue to yield?

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you continue to yield?

SENATOR VALESKY: Yes, I will. Certainly.

SENATOR GOLDEN: Now, Senator Valesky, I was listening to this debate. And I'm trying to get an understanding, because I think the question came up -- maybe it was from Senator Golden -- about the volume of alcohol in glasses or beer cans. But how much ice cream or sherbet -- I mean, ice cream is the best example right now. But how much

ice cream would it take to equal one glass of New York's finest red wine in terms of alcohol? How much would it take for --

SENATOR VALESKY: Madam President, through you, my understanding is it would take about two quarts of ice cream to equal the alcohol content in one glass of wine.

SENATOR CRAIG JOHNSON: Madam President, through you, will Senator Valesky continue to yield?

SENATOR VALESKY: Certainly.

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you continue to yield?

SENATOR VALESKY: Yes.

SENATOR CRAIG JOHNSON: I would assume -- I don't profess to be an expert in making ice cream or sherbet or sorbet. But I would assume that same size -- two quarts of ice cream would be similar also for sherbet or sorbets, that two quarts of sherbet or sorbet would equal one glass of red wine.

SENATOR VALESKY: That would be correct, yes.

SENATOR CRAIG JOHNSON: Okay.

Through you, Madam President, one more question.

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you continue to yield?

SENATOR VALESKY: Yes, I do.

SENATOR CRAIG JOHNSON: Thank you.

And just to clarify, the language with respect to -- I think it was referenced the 5 percent of alcohol by volume, we're not talking about, you know, percentages of store space, we're talking about percentages of alcohol within the particular product; is that correct?

SENATOR VALESKY: Madam President, through you, that's correct.

SENATOR CRAIG JOHNSON: Thank you, Senator Valesky.

On the bill, Madam President.

ACTING PRESIDENT STEWART-C0USINS: Senator C. Johnson, on the bill.

SENATOR CRAIG JOHNSON: I'm going to support this legislation for a number of reasons.

First of all, I think, as Senator

Little talked about, and others, Senator Valesky, I think this is going to have a very positive economic impact for our state, in particular our wine growers -- our entrepreneurs who are going to enter into the frozen market.

As a parent of three children, all under the age of 8, I am very familiar with the frozen ice cream and frozen treat section of a supermarket, and I know what they sell in terms of ice cream, sorbets. Look, you know, my kids have -- I think children in general are more interested in chocolate chip ice cream than a Bordeaux sorbet. I mean, that's what the tastes run in the Johnson household and maybe other households.

But I think we are overreaching in terms of some of the concerns here. No doubt, no doubt we are trying to prevent any particular problems when it comes to drinking and driving. But I think what shows here is that if you can eat more than two quarts of ice cream in one sitting, you've got a better constitution than I have when it comes to holding something down like that.

So this is a piece of legislation that's going to help our farmers, our grape growers, our entrepreneurs in selling products in New York State. I support this legislation. I thank Senator Valesky for his time in answering the questions. I thank you, Senator Golden, as well for engaging in a productive dialogue for this piece of legislation.

I'll be voting yes, Madam President. Thank you very much.

ACTING PRESIDENT STEWART-C0USINS: Thank you, Senator Johnson.

Senator Klein.

SENATOR KLEIN: Thank you, Madam President.

I want to stand in support of Senator Valesky's legislation, and I want to praise the Senator for once again upholding the interests of upstate New York, once again upholding the interests of our agricultural industry in New York State.

It's very interesting that when a bill is introduced and passed by a Democrat, all of a sudden we change the meaning of the

bill, we change the importance of the bill. I guess Senator Golden likes ice cream, but he hates sherbet and sorbet.

Because this is something that clearly is something that's very, very important to the wine industry in New York State. I constantly hear how we have to do everything possible to make sure New York wines are competitive with other wines across our nation. And I'm all for that.

So anything we can do to promote our wine industry by expanding the definition to sorbet and other things is something that we all should support, whether or not now Senator Valesky, a majority member, is introducing the bill.

So thank you, Senator Valesky. And I vote yes on this legislation, Madam President.

ACTING PRESIDENT STEWART-C0USINS: Thank you.

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

You know, Senator Klein brings up a

very good point. And we care very much about supporting upstate economies, and that's something that this side of the aisle has done and will continue to do.

And I guess, based on that, I have a question for Senator Valesky, if he would yield.

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you yield?

SENATOR VALESKY: Yes.

SENATOR LIBOUS: Thank you, Madam President.

Senator Valesky, in the budget this year, the Governor has a sugar tax. And the sugar tax as proposed is --

ACTING PRESIDENT STEWART-C0USINS: Senator Libous, is this germane to the bill?

SENATOR LIBOUS: Oh, it's very germane, if you'd let me finish, Madam President.

ACTING PRESIDENT STEWART-C0USINS: This is about alcohol content in sorbet.

SENATOR LIBOUS: It is very much about alcohol content, Madam President.

ACTING PRESIDENT STEWART-C0USINS:

Continue, Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

As we care about the economy of upstate New York, and as the Governor has proposed in his budget, Madam President, through you to Senator Valesky, a sugar tax, and as these are alcohol and sugary treats, and as alcohol is taxed in this state and now we want to put a sugar tax on soda and juices --

ACTING PRESIDENT STEWART-C0USINS: Senator -- Senator --

SENATOR LIBOUS: Madam President, my question to Senator Valesky is will there be a sugar tax imposed on this product? Because as we're talking about per volume of liquid, I'm just somewhat concerned, as proposed in your legislation.

SENATOR VALESKY: Madam President, through you. This bill, if it's approved today, would not have any impact on the definition of a sugar tax as proposed by Governor Paterson in his Executive Budget.

SENATOR LIBOUS: Thank you,

Madam President.

ACTING PRESIDENT STEWART-C0USINS: Thank you, Senator Libous.

Senator Marcellino.

SENATOR LARKIN: Thank you, Madam President.

SENATOR MARCELLINO: Senator Marcellino, she said.

SENATOR LARKIN: Oh, excuse me.

(Laughter.)

SENATOR LARKIN: I didn't have my hearing aid in. I was worried about it.

SENATOR MARCELLINO: I know we look so much alike.

(Laughter.)

SENATOR LARKIN: You have a little more hair.

(Laughter.)

SENATOR MARCELLINO: I just have a little more hair. Just a little more. But it's going fast.

Madam President, could I ask my colleague and friend Senator Valesky a question, please?

ACTING PRESIDENT STEWART-C0USINS:

Senator Valesky, do you yield?

SENATOR VALESKY: Certainly. Yes.

SENATOR MARCELLINO: David, I heard you ask -- and I don't mean that with disrespect. I heard you mention the fact that the purpose of this bill is to enhance the wine industry in upstate New York or in New York in general. Is that correct?

SENATOR VALESKY: That's correct, yes.

SENATOR MARCELLINO: Is the wine to be used in these sugar desserts limited to New York State wines?

SENATOR VALESKY: No, it is not.

SENATOR MARCELLINO: Are the desserts produced in New York State?

SENATOR VALESKY: Some are, some aren't.

SENATOR MARCELLINO: Yes, I go to the grocery store -- and again, through you, Madam President, if he will continue to yield.

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you continue to yield?

SENATOR VALESKY: Yes.

SENATOR MARCELLINO: I go to the grocery store. And I'm a Type 2 diabetic, and I look at sugar content constantly. And I'm constantly looking at the dessert counter. As is obvious, I enjoy dessert now and again. But I find that most of the desserts are not made in New York State, they're not even made in this country.

So I wonder, if we do not have been some type of restriction on where it's made and where the wine will come from, how can we know that there's a benefit in any way, shape or form to New York State wines?

SENATOR VALESKY: Well, Senator Marcellino, I would -- in answer to that question, I would refer back to the original law from two years ago that we're amending. A local business in Boonville, New York, in upstate New York, Mercer's Dairy, has been manufacturing wine ice cream since the enactment of Chapter 189 of the Laws of 2008, and that has been an economic success, directly as a result of the law that we passed here two years ago.

So I think it's consistent with

that law and in the spirit of that law that we could envision and will see, should this particular bill be approved, similar economic businesses by New York businesses.

SENATOR MARCELLINO: Through you, Madam President. Will Senator Valesky continue to yield?

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you continue to yield?

SENATOR VALESKY: Yes.

SENATOR MARCELLINO: Have you had any requests from other manufacturers of desserts for this product and for the production of this product in the state?

SENATOR VALESKY: Madam President, through you. We have received a similar request -- actually, Assemblyman Magee, the chairman of the Assembly Agriculture Committee has directly received that request.

I don't have that individual to share with you today, but I can assure you that through Assemblyman Magee's office that outreach has been made, and hence the bill introduced in both that house and here.

SENATOR MARCELLINO: Madam President, through you, if the Senator will continue to yield.

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you continue to yield?

SENATOR VALESKY: Yes.

SENATOR MARCELLINO: Senator Valesky, is it your understanding that the wines used in these desserts are high-quality wines? I mean, are they the kind of wines that you would be putting on your dinner table? Or are these, you know, like a cooking sherry or something like that?

SENATOR VALESKY: My understanding is -- Madam President, through you -- these are wines from pinots to chardonnays to other products that are manufactured here in New York State and elsewhere. Quality wines.

SENATOR MARCELLINO: Well, I'm not talking about the quality of the producer, I'm talking about the grade of the wine itself.

I would not imagine -- Madam President, if the Senator will continue to

yield.

ACTING PRESIDENT STEWART-C0USINS: Senator, do you continue to yield?

SENATOR VALESKY: Yes.

SENATOR MARCELLINO: I would not imagine that they're going to use the highest-quality chardonnay in a dessert or in an ice cream wine. That would be the lesser-quality product. That would make sense to me. I don't see the highest quality products going into this wine; that would be a waste.

So again, is there and has there been -- in your understanding, are there numbers, are there requests from the wine manufacturers that this is going to in effect help them and help their bottom line?

SENATOR VALESKY: Madam President, again through you, there has been at least one request for this law to be amended to include the opportunity to manufacture ice cream sorbet in this state.

And the intent of the bill -- again, Madam President, through you -- Senator Marcellino, is to provide our grape growers

and wine industry in this state with additional opportunities by which to expand their industry. This bill, I believe, is consistent with that theory.

SENATOR MARCELLINO: Thank you, Madam President. On the bill.

Thank you, Senator.

ACTING PRESIDENT STEWART-C0USINS: Senator Marcellino, on the bill.

SENATOR MARCELLINO: Madam President, I agree with my colleague Senator Padavan. The definition of these desserts I think has to be clarified. Will it require -- if the volume is such, will it require a liquor license? Will it require some kind of understanding as to where these desserts are going to be placed? Will it require a proofing process in order to get these wines?

I mean, we are opening a door here. I understand trying to create a market. I do. And I believe -- and we have wine growers on Long Island; they're always looking to expand their market. Hence the idea of selling wine in grocery stores is coming into play, as we all know. There is a move in that direction.

It can create a problem, because we do have an enforcement situation. We do have a concern that you cannot monitor and you cannot go after the illegal sales of this product. And there's no way the grocery store is going to handle it like a liquor store would.

So if you don't define carefully the kind of product that you're going to allow these wines in, then I think we have an open-ended situation. You'll find them everywhere. And it doesn't take -- I understand Senator Johnson's comments about how much. And a couple of quarts was designed to say, well, it's insignificant.

Well, it really isn't. It's like saying, you know, only one little sip is insignificant of alcohol. My mother used to give us, you know, wine at the table, my brother and I. She would give us a glass of wine. She'd take an 8-ounce glass of wine, put about an eighth of an inch of wine in it, and fill the rest of it up with water. You could barely see a pink color. She wanted us to have a taste of it, but she didn't want her

sons to become drunks. So this was a way of protecting us.

But the idea here that only a little bit is there, that it's only a small amount -- we could use that argument everywhere, in any situation. We're opening a door, and we have to be careful how we open that door. I understand we voted for the ice cream, but that doesn't mean now we're going to vote for this and then we're going to have it in other products, and in other products.

Because any other food product that you can imagine, we can include wine. Where does it end? What's the stop? I mean, the wine industry has some group that's going to say, We want more access and we want to be able to sell our products, and therefore this is a good idea and this is a good way to do it.

Again, we're opening a door. And if we don't look ahead and think ahead about it, the potential is problematic. It may not be a disaster, but it's problematic. And I am concerned about the problem. I am concerned

about this making it too easy to access alcoholic beverages. And I don't like it. You know, I'm not saying I'm a teetotaller, but I don't like the idea that we are now opening this door and making it so simple that you can get it.

So, Madam President, I will be joining my colleague and vote no on this bill. I would like to see if this bill was amended and there were some restrictions put in as to the kind of desserts, as to the kind of product that it was in. And specifically limiting the amount -- not so much 5 percent by volume, because I think that's a lot.

If you limited it so that the flavor you want to enhance, that's one thing. But if you limit the kind of desserts that you put them into, and you limit the places where it can be sold, then I think I could support it. But the way it is now, I think it's just too broad. And it opens too big of a door in much too wide a situation.

Thank you, Madam President.

ACTING PRESIDENT STEWART-C0USINS: Thank you, Senator.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I'd like to speak on this bill in support of Senator Valesky.

I think that this bill in and of itself is pretty straightforward. We've passed a bill unanimously a while ago that needed a technical correction and allowed the use of wine in the manufacture of ice cream. There's businesses in New York State doing it. There are other businesses, in a time of economic stress, that would like to make sorbet; they're barred from doing so currently. This would enable them to conduct such businesses.

So the bill itself is worth supporting. It's a pro-business bill.

But I have to say that dealing with a lot of issues related to alcohol abuse and drunk driving and the illegal sale of alcohol in the Codes Committee, I am a bit dismayed at the discussion that's just taken place. I do sponsor the bill to ban what's called "Nutcracker" -- and these are the articles that Senator Golden was referring to about

bodegas and barber shops, actually, and other stores selling very, very sweet, very highly potent alcohol to children. Sometimes they even have candies in the alcohol.

And I sponsor a bill that would enable us to enforce the laws more effectively to prevent that, that would actually enable us to take away the licenses of these stores because the SLA is not capable of policing even the legitimate businesses that sell alcohol, much less barbershops and others.

And in lieu of a complex debate attempting to make the tenuous if not absurd point that this bill would make sorbet the new gateway drug in the State of New York, I would appreciate it if Senator Golden -- who is not a sponsor of the bill to ban Nutcracker -- would sign onto the bill to address the real problem. And I welcome all of my colleagues to join me in that effort.

Thank you, Madam President. I'll be voting yes.

ACTING PRESIDENT STEWART-C0USINS: Thank you, Senator.

Senator Larkin.

SENATOR LARKIN: Madam President, would Senator Valesky yield for a question?

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you yield?

SENATOR VALESKY: Yes.

SENATOR LARKIN: We talk about the wineries. I just stepped out here before, and I called four wineries. They knew nothing about the bill. And I asked them, "What do you think?" And all four said, "I don't want a part of it."

Do you have any requests from wineries that they want you to do this?

SENATOR VALESKY: Madam President, through you. I've had numerous conversations with the Farm Bureau -- who, as Senator Larkin and others know, represent the wine industry, the grape-growing industry in this state -- and they have indicated to me on behalf of the wine industry that they are supportive of this legislation.

SENATOR LARKIN: Well, I think, David, we also should hear from the wineries. Thank you very much.

You know, Madam President, it's

4:23 now, at this time. And while I was out there, I was told I had another phone call. And the phone call was this: "I heard you're debating wineries."

ACTING PRESIDENT STEWART-C0USINS: Senator --

SENATOR LARKIN: Just a minute. And he said, "When are you going to sit down and discuss the budget? I am going to lay off 16 people in my school district. I think it's about time" --

ACTING PRESIDENT STEWART-C0USINS: Senator --

SENATOR LARKIN: -- "that we start talking about the budget."

ACTING PRESIDENT STEWART-C0USINS: Senator Larkin, we know that -- we are trying to debate this bill, and your comments are not germane.

SENATOR LARKIN: Well, they may not be germane --

ACTING PRESIDENT STEWART-C0USINS: They're out of order.

SENATOR LARKIN: -- Madam President, but they are germane to the people

who are paying the taxes in this state. Thank you.

ACTING PRESIDENT STEWART-C0USINS: Thank you, Senator Larkin.

Senator Stachowski.

SENATOR STACHOWSKI: Madam President, I too rise to support this bill.

I thought it was a good idea when Senator Griffo had a bill to allow Mercer Dairy to sell their wine-flavored ice creams. And although I really like ice cream a lot, I think those are -- they just taste terrible to me.

(Laughter.)

SENATOR STACHOWSKI: But I don't know why any kid would want to eat that stuff. It's just -- it's good to people that like wine, I think. But, you know, to an average ice cream eater, it's not all that great.

But I think to expand it to sorbet and sherbet is a great idea. The Farm Bureau supports it. And the people that make this product think it's a good idea. I don't see anybody getting hooked on wine-flavored sorbet or wine-flavored sherbet. I think that we

have much more serious things to worry about.

And if everyone felt so strongly about that, it's amazing they didn't feel that strongly about ice cream. So I'm supporting Senator Valesky's proposal and hope it passes. Thank you.

ACTING PRESIDENT STEWART-C0USINS: Thank you, Senator Stachowski.

Is there anyone else wishing to speak on the bill? Senator Golden.

SENATOR GOLDEN: I shall be quick.

One of the reasons that I'm voting no on this bill is because of Senator Schneiderman's bill. And I would love to join on Senator Schneiderman's bill, but you have to circulate it so that we can get on that bill.

Will the sponsor please yield for a question?

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you yield?

SENATOR VALESKY: Yes, Madam President.

SENATOR GOLDEN: And I'll be

quick.

I think line one on your bill says: "Consumption of alcohol impairs your ability to drive a car" -- on page 2, line 1. "Consumption of alcohol impairs your ability to drive a car or operate machinery and may cause health problems."

Line 3, the following advisory or sign or poster, not less than 7 inches or 5 inches in a format. And then it goes down to line 8, and that sign will say: "This area contains wine ice cream and other frozen desserts made with wine."

Line 10: "The sale of wine ice cream or other frozen desserts made with wine."

Line 11: "Individuals under the age of 21 years of age are prohibited."

Line 12: "Wine ice cream or other frozen desserts made with wine," 13, "contain alcohol up to 5 percent by volume."

Line 17: "Women should not consume alcohol during pregnancy because of the risk of birth defects." Line 18.

Line 19: "Consumption of alcohol

impairs your ability to drive a car."

Line 20: "Operating machinery may cause a health problem."

Line 21: "It is a violation punishable under law if any person under the age of 21" -- 22, 23 and 24, those lines -- "to present any written evidence of age that is false, fraudulent or not actually his own for the purpose of attempting to purchase wine ice cream or other frozen desserts."

Why so many protections in this bill, Sponsor?

SENATOR VALESKY: Madam President, through you. The information that Senator Golden just read is, with the exception of "or other frozen desserts made with wine," part of existing law.

Perhaps Senator Griffo, as the sponsor of this law two years ago, who ably wrote this law -- and I want to thank Senator Griffo and credit him for his efforts in this regard, to make sure that there is appropriate warning signs or notification.

So perhaps Senator Griffo, as the original sponsor of this law, would like to

respond, since Senator Golden's questions really relates to the original law as opposed to the bill that's in front of us today.

SENATOR GOLDEN: Madam President, this 6780 I believe is Senator Valesky's bill, not Senator Griffo's bill. And therefore, I'd like Senator Valesky to explain, the sponsor of the bill to explain why he believes we need this much protection in his bill.

SENATOR VALESKY: Madam President, I believe I've already answered that question, but I will restate it.

We are simply -- this bill does nothing more than add "frozen desserts made with wine" to a statute that was passed and signed into law as Chapter 189 of the Laws of 2008.

SENATOR GOLDEN: Is it not, Madam President, because you, the sponsor, believe that the alcohol content is high enough that, according to state law, it is required to be here in the bill?

ACTING PRESIDENT STEWART-C0USINS: Is that a question for Senator Valesky?

SENATOR GOLDEN: Yes, it is,

Madam President.

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you continue to yield?

SENATOR VALESKY: Madam President, yes. That's exactly why you have to be over 21 years of age to purchase this product.

SENATOR GOLDEN: And the alcoholic content, Madam President, is high enough that that's the reason for these protections in this bill required by law here in the State of New York?

SENATOR VALESKY: Yes.

SENATOR GOLDEN: That's why I will be voting no, for the second time, Madam President.

This is the wrong message for our children. When you need this many protections, there is alcoholic content in here that our children across this state will have the opportunity to get to and to use. And you're putting onus again on business owners to in fact --

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, are you wishing to --

SENATOR GOLDEN: -- protect the businesses here across the State of New York --

ACTING PRESIDENT STEWART-C0USINS: -- respond to Senator Golden?

SENATOR GOLDEN: -- from all of this onerous regulation and products that we believe should not be sold.

ACTING PRESIDENT STEWART-C0USINS: Senator Golden, Senator Valesky has asked you to yield.

SENATOR GOLDEN: I'd love to, Senator Valesky.

SENATOR VALESKY: Senator Golden, I'm just curious, then, why, if you have these concerns with this bill, why did you vote for Senator Griffo's legislation two years ago?

SENATOR GOLDEN: Because Senator Schneiderman pointed out to me about the use of alcohol that's going on across our city and state and how easy it is for our kids to get ahold of that alcohol and to be able to have and digest that alcohol and cause danger to themselves.

And it was to see that we're going

to add it to many other -- what we have here. What are we adding it to? "Frozen desserts" I think sends the wrong message to the children across the State of New York that it's okay to have wine and to participate in the drinking of wine and alcohol.

SENATOR VALESKY: Would Senator Golden yield to a question?

ACTING PRESIDENT STEWART-C0USINS: Senator Golden, do you continue to yield?

SENATOR GOLDEN: Senator Valesky, I would love to yield to you. Keep on getting pumped up there by your staff. Whatever you need --

ACTING PRESIDENT STEWART-C0USINS: Senator Golden, a yes or no is fine.

SENATOR VALESKY: No, I'm just trying to make a connection between the bill two years ago and the bill that's before us today.

So if Senator Griffo's bill were before us today, would you vote for Senator Griffo's bill if it were not already in law, or would you vote against it because of the concerns that you have raised here today?

SENATOR GOLDEN: Does that have to be germane, Madam President?

ACTING PRESIDENT STEWART-C0USINS: Well, again, I think -- no, no, no, the original discussion obviously was on the bill. But then I believe you mentioned that what you read was, although on Senator Griffo's bill, was part of Senator Valesky's bill. So it has become part of the discussion.

SENATOR GOLDEN: It was the sponsor that brought that up. But, Madam President, I can see how we can redefine "germane" when we need to.

But the answer is I would vote against Mr. Griffo's bill if it were before me today. Thank you.

ACTING PRESIDENT STEWART-C0USINS: Thank you.

SENATOR VALESKY: Thank you.

ACTING PRESIDENT STEWART-C0USINS: Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Valesky yield to a question?

SENATOR VALESKY: Yes, Madam President.

SENATOR DeFRANCISCO: You've mentioned Senator Griffo on several occasions and that it was his bill and that maybe he should answer the questions and so forth.

As the chairman of the reform movement in the State Senate, can you tell me why it's your bill now and not Senator Griffo's?

SENATOR VALESKY: Madam President, through you. I received a request from Assemblyman Magee, the chairman of the Assembly Agriculture Committee, to sponsor this bill. Hence, it's before us today under my name.

SENATOR DeFRANCISCO: And knowing -- would he yield to another question?

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you continue to yield?

SENATOR VALESKY: Yes.

SENATOR DeFRANCISCO: And knowing that Senator Griffo authored this bill in the past, did it occur to you ever to contact Senator Griffo and say: "Senator Griffo, this is your bill, the Assembly would like to put it through again. In all fairness, since you

authored it, even though you're a minority member, I want to send it to you because I'm chairman of the Reform Committee and I'm not going to do something and steal a bill of yours"?

SENATOR VALESKY: Well, Madam President, through you. This bill actually was not introduced -- there's no theft of any legislation here. Senator Griffo's bill, I think appropriately, as did 59 of my colleagues back in 2008 saw it appropriate to approve that bill. This expands upon existing law.

What I would say, Senator DeFrancisco, is Senator Griffo, yourself, any other member of this house on either side of the aisle, as a result of rules reform done earlier in this term, have the opportunity to cosponsor this bill. And perhaps Senator Griffo would like to do that, given that he has a history of support of these types of issues.

SENATOR DeFRANCISCO: Thank you. On the bill.

ACTING PRESIDENT STEWART-C0USINS:

Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: I think everybody really understands what actually happened here. There are no cosponsors on this bill the way I understand it right now. So obviously, the bill was not circulated. And this gesture of goodwill that's being shown at this point in time is a gesture in order to answer a very difficult question for the movement that was pushing for reform where bills that were majority member bills back when we were in the majority --

ACTING PRESIDENT STEWART-C0USINS: Is this on the bill, Senator DeFrancisco? On the bill, the content?

SENATOR DeFRANCISCO: I'm speaking on the bill.

ACTING PRESIDENT STEWART-C0USINS: I understand. But the content of the bill, sir.

SENATOR DeFRANCISCO: Well, excuse me, I beg to differ. You just mentioned a moment ago when Senator Golden was asked about the Griffo bill, the Griffo bill, you said that it was germane. Now it's not --

ACTING PRESIDENT STEWART-C0USINS: Well, because it is the language that's also contained in the Valesky bill.

SENATOR DeFRANCISCO: So the procedure, including cosponsors and the like, is not germane? Is that your ruling?

ACTING PRESIDENT STEWART-C0USINS: The cosponsorship is not in question. It's the content of the bill that is in question.

SENATOR DeFRANCISCO: Well, the content of the bill is -- the procedure in which the bill is being brought before the house is just as relevant as the content. And I'm going to continue unless you're telling me I cannot speak any further on the process of this particular bill that used to be Senator Griffo's bill that is now authored solely by Senator Valesky.

ACTING PRESIDENT STEWART-C0USINS: Senator DeFrancisco, I will allow you to continue for a moment or two.

SENATOR DeFRANCISCO: Thank you.

I've made my point. I have nothing further.

(Laughter.)

ACTING PRESIDENT STEWART-C0USINS: Thank you.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: I was going to ask Senator DeFrancisco to yield for a question.

ACTING PRESIDENT STEWART-C0USINS: Senator DeFrancisco, do you yield?

SENATOR DeFRANCISCO: Yes.

SENATOR SCHNEIDERMAN: Thank you. Senator DeFrancisco, is it not the case that prior to last summer, when our conference reformed the rules of the Senate, that it was not possible without the consent of the sponsor for any of us to put our name on a bill -- but that under the reform rules passed by this conference, any one of you can file a form, which is available to all of you, and get your name on any bill you want?

SENATOR DeFRANCISCO: No. I believe when we were in the majority, there were Democrat sponsors on many bills. And that was not prohibited.

And to remind you of the history behind this, there was no reform in this

regard concerning what you were just referring to until after there was a question as to who's leading and what members of which side of the aisle were going to be on which side of the aisle ultimately.

Because that all came out of that dispute. It wasn't something that was originally out of any reform --

ACTING PRESIDENT STEWART-C0USINS: Senator Schneiderman, is this going to be on the bill?

SENATOR SCHNEIDERMAN: Yes, thanks. I'd like to thank Senator DeFrancisco.

Ladies and gentlemen, in case there's any confusion, in July, after all of the troubles were over, we did enact a rule that allows anyone to get on any bill. I personally was refused by sponsors to get on bills on quite a few occasions when you all were in the majority. There's now a form. Senator Golden can get on my Nutcracker bill, anyone can get on any bill. And I just want to make sure that we're clear on that.

ACTING PRESIDENT STEWART-C0USINS:

Thank you.

SENATOR DeFRANCISCO: Point of order.

ACTING PRESIDENT STEWART-C0USINS: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yeah, the only point of order I have: Is this now germane, the procedure?

ACTING PRESIDENT STEWART-C0USINS: I have asked that question. And I think if you -- as you were seated, I said to Senator Schneiderman that I wanted him to discuss the bill, because indeed we had become embroiled in process.

So I believe we are back on the bill.

SENATOR DeFRANCISCO: I think it's germane. My only question is why -- I'm just trying to see some consistency. I'm trying to --

ACTING PRESIDENT STEWART-C0USINS: And I was consistent.

SENATOR DeFRANCISCO: Okay. So it's germane at this point?

ACTING PRESIDENT STEWART-C0USINS:

I had asked Senator Schneiderman to speak on the bill, as opposed to the process, the same way I asked you to do. Okay?

Senator Onorato.

SENATOR ONORATO: Madam President, will the sponsor yield to a question?

ACTING PRESIDENT STEWART-C0USINS: Senator Valesky, do you yield?

SENATOR VALESKY: Yes, Madam President.

SENATOR ONORATO: Senator Valesky, are there any other products, is there any products that you know of that contain wine or other types of alcohol in them?

SENATOR VALESKY: Madam President, through you. Other than wine ice cream, which was authorized by Chapter 189 of the Laws of 2008, my understanding is some chocolate confectionaries may be allowed to contain contents of wine.

SENATOR ONORATO: And will you continue to yield?

SENATOR VALESKY: Yes.

SENATOR ONORATO: To your knowledge, has anybody ever been arrested for driving an automobile while under the influence of consuming too many desserts?

SENATOR VALESKY: Madam President, through you. Not to my knowledge.

SENATOR ONORATO: Thank you, Senator.

ACTING PRESIDENT STEWART-C0USINS: Senator Craig Johnson.

SENATOR CRAIG JOHNSON: I hoped to ask Senator Golden to yield for a couple of clarifying questions pertaining to this riveting debate we've had here today, but he's not in the chamber right now. I don't know if anybody else has to add something or not.

No, Senator Padavan wasn't the one who made the comments, it was Senator Golden, Senator Libous. Thank you.

SENATOR PADAVAN: Madam President, where are we in terms of --

ACTING PRESIDENT STEWART-C0USINS: At this point I have no one else who wishes to speak on the item, and I believe your counsel went to ask Senator Golden if he was

available.

SENATOR PADAVAN: Madam President, if I may, I don't believe there's anything in our rules about stopping the Senate in terms of any discussion of a bill to go get somebody.

Now, if the Senator who has the floor wants to comment, he should.

ACTING PRESIDENT STEWART-C0USINS: Senator Johnson, would you like too speak on the bill?

SENATOR CRAIG JOHNSON: Well, I'd like to, certainly.

I find it incredible with respect to Senator Padavan. You know, Senator Golden had made himself available throughout this entire debate, oftentimes changing the subject matter and, in fact, quite frankly rewriting history. And I think for Senator Golden to make statements and then walk out of the chamber is a little bit disingenuous.

I appreciate Senator Padavan rising to defend him. But as we wait, because I think the people of New York deserve to have questions answered --

ACTING PRESIDENT STEWART-C0USINS: Senator Young, why do you rise?

SENATOR YOUNG: Is this line of discussion from Senator Johnson germane to the contents of the bill?

ACTING PRESIDENT STEWART-C0USINS: I think at this point we had hoped that the discussion that Senator Johnson had begun would be continued.

At this point, Senator Johnson, we might --

SENATOR CRAIG JOHNSON: Then I think simply to clarify for the record, because I think it's important for the record to be accurate, on June 12, 2008, a bill came before the Senate sponsored by Senator Griffo, which was the original piece of legislation that addressed the sale of ice cream with wine pertaining to --

SENATOR LIBOUS: Madam President.

ACTING PRESIDENT STEWART-C0USINS: Senator --

SENATOR LIBOUS: Point of order to the germaneness. We keep talking about this bill by Senator Griffo. That is not the

bill on the floor. Therefore, the discussion to Senator Griffo's previous legislation is not germane.

If our colleague would prefer to discuss the bill by Senator Valesky, we would have no problem with that. But I believe it is not germane.

SENATOR KLEIN: Madam President.

ACTING PRESIDENT STEWART-C0USINS: Senator Klein.

SENATOR KLEIN: Point of order, please.

ACTING PRESIDENT STEWART-C0USINS: Senator Klein.

SENATOR KLEIN: I correct my esteemed colleague on the other side of the aisle. Senator Johnson is speaking to this bill, the original bill by Senator Griffo and now the new bill by Senator Valesky. It certainly is germane.

We are not talking about late budgets or if we're going to do a budget or when we're doing a budget or school districts that are supposedly losing their money. Senator Johnson's discussion is on the bill

ahead.

ACTING PRESIDENT STEWART-C0USINS: Senator Johnson, the discussion of the bill, which is what you were conducting, is certainly germane, as Senator Griffo's original legislation contained I think 90 percent of what Senator Valesky's bill contains.

SENATOR CRAIG JOHNSON: Thank you. Thank you very much, Madam President, for allowing me to continue.

I'm just simply trying to clarify for the record the fact that Senator Golden voted for the original bill.

I have the actual piece of legislation -- and by "original bill," I mean the bill that allows the sale of wine in ice cream. And I think the record needs to clarify that.

I have a copy of the voting tally. It was Bill Number -- it was referring to Bill Number A10132. It was voted 60 in the affirmative, no nays. Senator Golden was a yes vote. I think just letting the record reflect it so there's no, you know, vagueness

when it comes to the record.

SENATOR LIBOUS: Madam President, point of order.

ACTING PRESIDENT STEWART-C0USINS: Senator Libous.

SENATOR LIBOUS: The vote was already part of the record. It is already reflected in the record. And I believe that, in all due respect to our colleague, he's being quite redundant in waiting for either Senator Golden to appear or -- the record reflects Senator Golden's vote on the Griffo bill.

SENATOR CRAIG JOHNSON: Well, Senator Golden made it clear that he --

ACTING PRESIDENT STEWART-C0USINS: Senator --

SENATOR CRAIG JOHNSON: Well, then it's first he voted for it before he voted against it. Because then he just said -- and if he were here, we could actually ask him -- but he's --

ACTING PRESIDENT STEWART-C0USINS: Senator Johnson -- Senator Johnson, I think we quite understand the point.

SENATOR CRAIG JOHNSON: Thank you, Madam President.

ACTING PRESIDENT STEWART-C0USINS: And I appreciate the clarification.

Are there any other Senators wishing to speak on the bill?

SENATOR MARCELLINO: Yes, Madam President. One second.

ACTING PRESIDENT STEWART-C0USINS: Senator Marcellino.

SENATOR MARCELLINO: I know, groan a little bit. But this is okay.

What my good friend Senator Johnson just said is a little disingenuous at least. Senator Golden said he had voted, he agreed he had voted for the bill, he said he had voted for the bill. He was asked by Senator Valesky, "Would you vote for it now?" He said, "No, I changed my vote and I would vote against it now."

That's not what you're saying, Craig, and you know it. You're calling Senator Golden that he changed his vote. He didn't change his vote. He admitted what he voted for, he agreed that he voted for it

before, and he said now that he would vote against it in response to Senator Valesky --

ACTING PRESIDENT STEWART-C0USINS: Senator Marcellino --

SENATOR MARCELLINO: That is the record.

ACTING PRESIDENT STEWART-C0USINS: You have clarified -- you have clarified -- I think the clarification is on both sides.

SENATOR MARCELLINO: Thank you.

ACTING PRESIDENT STEWART-C0USINS: I think we clearly understand where everyone is and has been.

So if there is any other Senator wishing to speak on the bill --

SENATOR LIBOUS: Read the last section.

SENATOR MONTGOMERY: Read the last section.

(Laughter.)

ACTING PRESIDENT STEWART-C0USINS: Hearing none, debate is closed.

The Secretary will please ring the bell.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT STEWART-C0USINS: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT STEWART-C0USINS: Senator Winner, to explain his vote.

SENATOR WINNER: Madam President, briefly to explain my vote.

You know, I am a representative of an area that has the most wineries in the State of New York. And I'm a little astonished to hear the Deputy Majority Leader indicate that this is the Majority's response to helping agriculture and the wine industry in New York.

You know, all I can do is look forward to deliberations on the budget where we're going to see where your actions meet your words as it relates to marketing and promoting of New York wines. Because we have a couple of things in there called the Wine and Grape Foundation and other wine marketing efforts that are far superior to having wine in sherbet and sorbets. And they will do a

lot more to promote the New York wine industry than this rather hollow effort, albeit an effort that I support.

So we'll give you your chance. You made some points today, and I give you credit for that. However, the proof is going to be in whether you deliver really for New York's agriculture community, and particularly the wine industry. And we'll see how you do.

I vote yes.

ACTING PRESIDENT STEWART-C0USINS: Senator Winner to be recorded in the affirmative.

Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Madam President.

We have increased the age of drinking to 21 years old, trying to prevent our youth from tasting alcoholic beverages. Now it seems that we are trying to circumvent the law and telling our youth, Here, here is a little taste of alcohol in your frozen dessert.

So I think that we are sending a wrong message to our youth, and I'm voting no.

ACTING PRESIDENT STEWART-C0USINS: Senator Diaz to be recorded in the negative.

Anyone else wishing to explain his or her vote?

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 184 are Senators Diaz, Golden, O. Johnson, Marcellino and Padavan.

Absent from voting: Senator C. Kruger.

Ayes, 53. Nays, 5.

ACTING PRESIDENT STEWART-C0USINS: The bill is passed.

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

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

ACTING PRESIDENT STEWART-C0USINS: Senator Klein, the desk is clear.

SENATOR KLEIN: There being none, Madam President, I move that we adjourn until Thursday, March 11th, at 11:00 a.m.

ACTING PRESIDENT STEWART-C0USINS: There being no further business to come before

the Senate, on motion, the Senate stands adjourned until Thursday, March 11th, at 11:00 a.m.

(Whereupon, at 5:01 p.m., the Senate adjourned.)