NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:32 p.m.

REGULAR SESSION

SENATOR DIANE SAVINO, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

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

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

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

ACTING PRESIDENT SAVINO: In the absence of clergy, may we all bow our heads in a moment of silence.

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

ACTING PRESIDENT SAVINO: The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Monday, March 15, the Senate met pursuant to adjournment. The Journal of Sunday, March 14, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT SAVINO: 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: Madam President, I believe there's a report of the Finance Committee at the desk.

ACTING PRESIDENT SAVINO: There is a report of the Finance Committee at the desk.

The Secretary will read.

THE SECRETARY: Senator Kruger, from the Committee on Finance, reports the following nominations.

As Major General of the New York Army National Guard, Patrick A. Murphy, of Clifton Park.

ACTING PRESIDENT SAVINO: Senator Kruger.

SENATOR CARL KRUGER: Please move that nomination.

ACTING PRESIDENT SAVINO: Are there any Senators wishing to be heard on this nomination?

Seeing none, the question is on the motion to confirm the nomination. All those

in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The motion carries. The promotion of Patrick A. Murphy to Major General of the New York Army National Guard is confirmed.

Major General Murphy is joined in the gallery today by his wife Cherie.

Congratulations.

(Applause.)

ACTING PRESIDENT SAVINO: The Secretary will continue to read.

THE SECRETARY: As chairman and president of the Tax Appeals Tribunal, James H. Tully, Jr., of Albany.

ACTING PRESIDENT SAVINO: Senator Kruger.

SENATOR CARL KRUGER: Madam President, please move the nomination.

ACTING PRESIDENT SAVINO: Are there any Senators wishing to be heard on this nomination?

Senator Breslin.

SENATOR BRESLIN: Thank you very much, Madam President.

I rise to salute the Governor for choosing Jim Tully for this position. Jim has an exemplary background. As most of you know, he was a former Tax Commissioner from '75 to '82. He's been a partner in DeGraff, Foye, Conway & Holt-Harris in Albany for a number of years. And he brings the experience, the professionalism, and the integrity to that position.

And we should compliment not only the appointee but the Governor for making this appointment.

Thank you, Madam President.

ACTING PRESIDENT SAVINO: Are there any other Senators wishing to be heard on this nomination?

Seeing none, all those in favor of the nomination indicate by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The motion carries. The nomination of James H. Tully, Jr., of Albany, as chairman and president of the Tax Appeals Tribunal is confirmed.

Congratulations.

(Applause.)

ACTING PRESIDENT SAVINO: The Secretary will continue to read.

THE SECRETARY: As a member of the Metropolitan Transportation Authority, Allen Cappelli, of Staten Island.

ACTING PRESIDENT SAVINO: Senator Kruger.

SENATOR CARL KRUGER: Madam President, please move the nomination.

ACTING PRESIDENT SAVINO: Are there any Senators wishing to be heard on this nomination?

Senator LaValle.

SENATOR LaVALLE: Thank you, Madam President.

Normally it's always a privilege to rise to support a nomination and a nominee. In this case today, I rise to oppose the

nomination of Allen Cappelli.

And I appreciated so much the courtesy shown by our chairman of the Finance Committee to have Mr. Cappelli come before the committee as a reappointment. And usually we waive reappointments. But in this case, because the subject of the MTA is very, very important, Mr. Cappelli came before our committee and answered a number of questions, anywhere between half an hour to 45 minutes.

The thing that is troubling to me is that as a member of the board -- and he has participated very fully in attending hearings and committee meetings. He's on the finance committee. In the finance committee, Mr. Cappelli voted no on the MTA budget because he felt that there would be service cuts and things that were critically important.

He reversed himself when it came to the budget because Chairman Walder asked him to vote yes for reasons of having a balanced budget -- some potential that his vote, his vote would make a difference in the bond rating on any bonds that the MTA would move

forward.

Today, that budget and remarks he made that were critically important that the plan put forward by Citizen Ravitch was important to the MTA and providing services.

So what do we have today? Today we have a situation where we have an MTA tax that has ravaged -- no pun -- our economic well-being in many parts of this state. It has also had service cuts in my area, the cuts to the Ronkonkoma-to-Greenport line, cuts in service to the Port Jefferson line. I live in the Village of Port Jefferson, and people who use that service are inconvenienced by the cuts.

Most importantly, to a point, yes, we can make cuts, you know, of certain personnel and do certain things. But one of the last -- the last question that I asked the nominee was that in the year 2010, as opposed to when the MTA was created -- and on Long Island, when it was created, people went into New York City to work. Today, 80-plus percent either work intercounty or intracounty.

So my question and my question for

years has been, in terms of reform, that we need to create a new paradigm. It is obvious that the existing model, the existing structure just doesn't work. And so I think it's critically important for MTA board members to force the process to change. This is not something new. It is something that has been discussed that we need to make new changes, new modeling to provide services to the commuter.

Today, one of my supervisors came up with the jingle, I guess, "Taxation Without Transportation."

So for many of the people in my district, and I would remind -- one thing that we do have in common, as a Staten Islander with representing Eastern Long Island, Staten Island wanted to secede from New York City and the individuals in the East End wanted to leave Suffolk County and form Peconic County.

So I think he understands the chemistry of the constituency on Eastern Long Island. But quite honestly, whether it's Eastern Long Island or Western Nassau, it's all the same.

So, Madam President, with some regret, I vote no on this nomination.

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Madam President, I'd like to second the nomination of Allen Cappelli.

I have had the opportunity to know and work with Allen during his tenure working for Bronx Borough President Freddy Ferrer.

And when you look at Allen's resume, you quickly realize that here's somebody that served this community, served this state, and someone who you can consider a public man.

He worked for the Office of the New York State Ombudsman. He was assistant deputy superintendent to the New York State Superintendent of Insurance. He was on the Unemployment Insurance Appeals Board. The list goes on and on.

And I think the balance, besides working in various government positions, is his dedication to his community in Staten Island.

So I know the great county of Staten Island has some individual problems that I think certainly will be met by the expertise of Allen Cappelli. I second the nomination wholeheartedly.

ACTING PRESIDENT SAVINO: Senator Saland.

SENATOR SALAND: Thank you, Madam President.

Madam President, I in part want to echo the comments of Senator LaValle. It seems not too long ago that we were here confirming Jay Walder as the CEO and chief executive of the MTA. And I recall at that time having had the opportunity to question him when he was in the Finance Committee, speaking of his qualifications on the one hand and on the impact of the MTA in the region that I represent on the other hand.

At that time, with a degree of reluctance, given the fact that I thought he truly had the bona fides but was fearful of the fact that he would be more of the same, I cast a vote in opposition to Jay Walder. And I find myself being placed in somewhat the

same predicament.

As a Senator who represents an area which has come to be known in MTA parlance as one of the "Quarter Pounders" -- in this case, Dutchess County, which along with Putnam and Orange and Rockland each have a quarter of a vote -- we have a very modest number of commuters, somewhere in the area of about 11,000. And we pay an average of well in excess of $30,000 for the dubious distinction of being part of Metro North.

In my district, quite candidly, MTA is a four-letter word. It's a vilification. It is something which is viewed not merely with anger but with frustration and even hatred. And the payroll tax that was imposed upon our district was the straw that truly broke the camel's back.

I saw Mr. Cappelli in the Finance Committee. He certainly comported himself well. I bear him no malice. But I can find little or nothing redeeming about being a revenue hostage in the MTA.

And when I asked Mr. Cappelli about how it came to pass that the transit authority

found itself in binding arbitration, he responded by advising me and the members of the committee present at that time that that was not a board decision. I believe the question I asked him was whether it was a board decision, and he said no, it was not. That decision was made by Mr. Walder's predecessor, Mr. Sanders.

And I found that just absolutely appalling. And I don't know how one person unilaterally could have imposed that binding arbitration upon that system. And when I asked if in fact there was any effort to censure Mr. Sanders for having done that, the response was, well, he had already been gone.

Well, you know, when you're on the board, it's a heavy responsibility. And for an agency that is renowned for being, on the whole, insensitive, irresponsible, inefficient -- and I can go on and on and on -- you would think that that was truly over the top. It was a dereliction of at least some responsibility to let the public know that you disagreed with this decision. And whether it was a censure, whether it was some

form of criticism of the act, nothing was forthcoming.

So I, as I said, bear no malice to Mr. Cappelli. He's not from my neck of the woods, so to speak. But I can't in good conscience look to Mr. Cappelli and say somehow or other there will be some difference in the way the MTA is administered that somehow or other my part of that enormous undertaking is going to be any better served. I just see more of the same, and more of the same is enormous pain.

And I am compelled to vote in opposition to his reconfirmation.

Thank you, Madam President.

ACTING PRESIDENT SAVINO: Senator L. Krueger.

SENATOR LIZ KRUEGER: Thank you. I would also like to rise to second the nomination to continue on the MTA board of Allen Cappelli.

I also was at the Finance Committee meeting this morning where members of this committee put him through a very rigorous set of questioning about decisions made by the

MTA, the board -- in fact, questioning our own decisions here in the Legislature vis-a-vis the MTA.

There was frustration voiced about the MTA and public transportation in various parts of the state. I point out that when you go to hearings in New York City or outside New York City, you hear frustrations all round.

But in fact, this gentleman has held the highest standards as a board member to fight for the best interests of public transportation and the users of public transportation throughout the state. And I am very glad that people like Allen want to continue to serve on the MTA board.

So I'm delighted to support his reconfirmation to the MTA board.

Thank you very much for your service.

ACTING PRESIDENT SAVINO: Senator Leibell.

SENATOR LEIBELL: Thank you, Madam President.

You've heard from a number of my colleagues today that in Senate Finance today

we had a chance to hear from the nominee. And we certainly appreciate that he was there to answer our questions.

Let me say that in my many years in office, both in the Assembly and the State Senate, I doubt that I have seen greater anger over any issue than this in our districts and in my district in the Hudson Valley.

In our region, the MTA is thoroughly disliked. There are many agencies and authorities that run very well. Unfortunately, this is not one of them. You've heard the costs that are involved in our passengers coming from our regions into the city, how we are taxed to the fullest. I have to tell you, the payroll tax is one of the most disliked taxes you will ever find.

To sum it up, there's an anger, there's a frustration out there on the behalf of our constituents, our residents, towards the MTA. The payroll tax is probably one of the most crippling taxes that could be inflicted upon our region of the state, which already bears a high tax burden, one of the highest in the United States.

So I regret that as I stand here I'm not able to support this nomination. I would hope, though, that the nominee, if confirmed, will go back to the MTA, let the people who work there and the board members know how disliked that entity is by the constituents that I represent and that my constituents deserve so much better than they give.

Thank you.

ACTING PRESIDENT SAVINO: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you. I rise to vote in favor of this nominee.

And having lived in Staten Island, I know that it's Richmond County, not Staten Island County. And I'm sure that was a slip of the tongue by one of my colleagues.

But I understand that it's a very difficult situation, the MTA. And I understand the frustration of my colleagues. It's amazing to me that anyone would want to be on that board without compensation in view of the headaches that that board provides.

I just want to mention one thing

that he said during the confirmation hearings that I was very impressed with. He wants to make sure that the service is there and cut the bureaucracy, cut the administration, cut the dead weight that has grown over the years since well before the time he was on that board.

So I understand the frustration of my colleagues, and I would hope that some of the things that he mentioned he will in fact do. Because in a way, policy is in many ways set by the board members.

The policy to have a payroll tax was a policy set by this body, not the members of the board. Certain people in this conference here -- all of the people on this side of the aisle -- voted against that payroll tax. He didn't put the payroll tax in. And we should not blame the appointees to a board when we made that policy decision, or at least some of us in this body did.

The reason I mention policy is because we have the West Genesee High School government policy class here. And unfortunately, we don't have any bills to

debate, any juicy bills that we can debate. But policy is set in many ways by who the Governor appoints and who we confirm.

Lastly, I remember when we went into that whole discussion to as to how the MTA was going to be saved. And I remember vividly all my other 16 years in the Senate that whenever there was a package for the MTA, there was a package for roads and bridges upstate. And I remember distinctly, when that package was put together for the MTA to help bail it out, that we were going to deal with the roads and bridges of upstate, a plan for the roads and bridges in October or in the fall. Well, we're now in the spring, rapidly approaching the summer and another fall, and we still forgot about those roads and bridges.

I haven't forgotten. The upstate representatives haven't forgotten. And we would hope that we get to that extremely important issue before this session is over.

Thank you, Madam President, and I will vote aye on the nominee.

ACTING PRESIDENT SAVINO: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

I wish to thank Mr. Cappelli for his willingness to serve and for his service in government. He chose a very difficult position to accept at a very difficult time in our state's history.

When I listened to his testimony in answer to my questions in the Finance Committee hearing, I liked what I heard. He talked about a bloated bureaucracy, he talked about cutting it, he talked about maintaining services, he talked about making sure that the system was available for the people it was designed to serve: the public. Not an elite system, but a mass transit system.

He seemed to recognize the problems, and he heard about the frustrations. And I toyed with a positive vote here on the floor because I did like what I heard from this gentleman.

However, I do believe, after thinking about it more and more, I do believe that we have to send a message to the MTA bureaucracy. We have to send a strong message

that their behavior is intolerable, that the system is broken, that no one trusts this particular agency, no one.

One day the books are balanced and they're in surplus, the next day they're in deficit. Right now I understand, from Mr. Cappelli's testimony, they're looking for $750 million to fill a gap. The MTA tax, which was designed to prevent this from happening, apparently has failed. It is not providing the revenue needed. Instead, it's costing jobs on Long Island. It's costing jobs throughout this state.

We need to send a strong message to the MTA board, and I hope Mr. Cappelli will carry it. I hope he will. I'll be more than willing to work with him, and I know my colleague Senator LaValle and the gentlemen who speak earlier will all be willing to work with him for the benefit of the ridership, the people who need the system.

My constituents want to be able to get on the Long Island Railroad and travel into the City of New York or to their jobs and be able to afford it. Right now they can't.

Right now they're being priced out of the system and they're being forced back into their cars, someplace we don't want them.

We would rather see people riding the trains and the buses. Bus service on Long Island is an abomination. And the trains are becoming just so expensive that the average person simply can't afford it. So the reverse is happening. We want them in the mass transit, not in their cars.

So I'm going to vote no on this nomination. Not because I'm opposed to Mr. Cappelli, but I am opposed to the policies and the behavior of the MTA as a whole. It's got to change. And the message has to be sent loud and clear from this Legislature that we will not tolerate it any longer.

Enough is enough. They've got to start performing, they've got to start living within their means. They cannot be coming back looking for more and more and more money, more and more and more fee increases, more and more and more fare increases, and providing less and less service to the riding public. That, Madam President, is totally intolerable.

So I thank you for your indulgence in allowing me to speak, but I will be voting no on Mr. Cappelli's nomination.

ACTING PRESIDENT SAVINO: Senator Dilan.

SENATOR DILAN: Yes, Madam President, I rise in support of this nomination.

And I just want to indicate that as chairman of the Transportation Committee, we did have Mr. Cappelli actually come before the committee. And we did ask very tough questions of Mr. Cappelli, because I too had questions with regard to the way that the MTA board has handled itself.

However, as a result of the questioning that happened in the Transportation Committee of Mr. Cappelli, we found out that he's an advocate for the riders of the system, he's imaginative, and of many of the members that serve on that committee, he is one of those that is very active and also questions the system and ensures that the MTA does the right things. And at those meetings he too asked the tough questions of

the chairman and the bureaucracy at the MTA.

And for that reason and many more, as an active member of the MTA board, my mind was changed after questioning him. And I believe that we should all confirm his nomination. And at that time members of the other side of the aisle, I believe, were also impressed with his answers and also found out the type of individual that he is.

And I don't think that we should be blaming Mr. Cappelli for the economic state that we're in in the State of New York, or that of the MTA.

And I know there was a comment made with respect to the capital budget, roads and bridges, which have nothing really to do with the MTA except for the fact that last year we did do a two-year plan for them which ultimately was rejected by the Capital Review Board, where we had the commissioner of DOT veto that capital budget.

So in essence, ladies and gentlemen, the MTA does not have a capital plan and the current capital plan that is in effect to the end of this fiscal year is that

one that was done nearly five years ago. And in the current budget, as we made a commitment last year, we're looking to fund a new capital plan. I just wanted to make that clear for the record.

And again, I ask that we confirm Mr. Cappelli. Thank you.

ACTING PRESIDENT SAVINO: Thank you.

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

Senator Perkins.

SENATOR PERKINS: Thank you, Madam Chair.

I just want to take a moment, as the chair of the Committee on Corporations, Authorities and Commissions, particularly concerned about the MTA and the important role that it plays not only in our city but for our region, and the need to have the caliber of support that this nominee will be able to provide for the system, especially during this critical period when there are so many challenges affecting our customers, affecting our businesses.

And with the kind of vision and the kind of leadership that Mr. Cappelli has provided up to now, we will need even more so as we go down this very, very difficult road.

He has obviously an outstanding resume of public service. And in his capacity on that board up to now, he has shown himself to be someone that is sensitive and that is very much concerned about the future, especially from the perspective of the customers for this system.

And it's the kind of vision and the kind of leadership that I wish we could have with regard to so many of our other public authorities that we are going to see in him.

In fact, as we move towards more transparency and accountability with the new legislation that we have passed and was signed by the Governor on public authority reform, he's the one for the time.

And so I just wanted to make sure that my voice was lent in support of this nomination and encourage my colleagues to do the same.

Thank you so much.

ACTING PRESIDENT SAVINO: Are there any other Senators wishing to be heard on this nomination?

Seeing none, the question is on the motion to confirm the nomination. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT SAVINO: The motion carries. The reappointment of Allen Cappelli of Staten Island, Richmond County, to the MTA board is confirmed.

Congratulations.

(Applause.)

ACTING PRESIDENT SAVINO: The Secretary will continue to read.

THE SECRETARY: As a member of the Administrative Review Board for Professional Medical Conduct, Dattatraya Wagle, of Williamsville.

As directors of the Municipal Bond Bank Agency, Naomi Bayer, of Rye Brook, and William Myers, of Ithaca.

As members of the Dormitory Authority, John B. Johnson, Jr., of Watertown, and Charles G. Moerdler, of Riverdale.

As members of the Lake George Park Commission, Dean Cook, of Ticonderoga, and David G. Floyd, of Huletts Landing.

As a member of the State Park, Recreation and Historic Preservation Commission for the City of New York, Simon C. Roosevelt, of New York City.

As members of the Veterans' Affairs Commission, Luis Barsallo, of Waterford; James R. Edgar, of Schenectady; Rebecca C. Keough, of Fayetteville; Michelle Lindsay, of Stillwater; and Kevin G. McKenna, of Wynantskill.

As director of the New York State Urban Development Corporation, Robert Dyson, of Millbrook.

As members of the Advisory Council on Agriculture, Leslie L. Cole, Jr., of Livonia; Russell J. Kelly, Jr., of Fultonville; Robert W. Nolan, of East Patchogue; Robert B. Reynolds, Jr., of Hamburg; Daniel W. Sievert, of Burt; James L.

Vincent, of Byron; and Charles E. Wille, of Montgomery.

As members of the Advisory Council on Alcoholism and Substance Abuse Services, Herbert Barish, of Nyack; Katharine Briar-Lawson, of Wynantskill; Lawrence Brown, Jr., of Brooklyn; Lynda Marlene Karig-Hohmann, of Albany; Kathleen Riddle, of Larchmont; and John Tavolacci, of East Williston.

As members of the Mental Health Services Council, Todd L. Benham, of Watertown; Janice Laverne Cooper, of Harrison; David Hamilton, of Delmar; David R. Kaczynski, of Schenectady; and Luis R. Marcos, M.D., of New York City.

As members of the State Camp Safety Advisory Council, Eric A. Bacon, of Camillus, and Douglas W. Pierce, of Roslyn.

As members of the State Council on the Arts, Jill Erika Braufman, of New York City, and Natalie Merchant, of Tivoli.

As a member of the Board of Visitors of the Hudson River Psychiatric Center, Karen Bishop Pilner, of Pleasantville.

As a member of the Board of

Visitors for the New York State Home for Veterans and Their Dependents at Batavia, Gerald J. Diskin, of LeRoy.

As a member of the Board of Visitors for the New York State Home for Veterans and Their Dependents at Oxford, Mary E. Smallcomb, of Vestal.

And as a member of the Board of Visitors for the New York State Home for Veterans and Their Dependents at St. Albans, Elva L. Girton, of Wappingers Falls.

ACTING PRESIDENT SAVINO: Senator Kruger.

SENATOR CARL KRUGER: Madam President, please move those nominations. Thank you.

ACTING PRESIDENT SAVINO: Are there any Senators wishing to be heard on the nominations?

Senator C. Johnson.

SENATOR CRAIG JOHNSON: Thank you very much, Madam President. Good to see you up there.

I rise to second the nomination of Douglas W. Pierce as a member of the State

Camp Safety Advisory Council. I commend the Governor for reappointing Mr. Pierce, who is a constituent of mine and, more importantly, a friend for a number of years.

I can't think of anybody better to serve on this board. If you look through his resume, Doug -- I'm sorry, Mr. Pierce has extensive experience, lifelong experience. His family owns a number of camps in New York State, both day camps and sleep-away camps.

But more importantly, I worked very closely with Mr. Pierce last year to address some very important safety issues involving our camps. He's extremely knowledgeable, extremely dedicated, and his reappointment will really help make camping here in New York State a better place.

I proudly support this nomination and urge my colleagues to do so as well.

Thank you.

ACTING PRESIDENT SAVINO: Are there any other Senators wishing to be heard on the nominations?

Senator Marcellino.

SENATOR MARCELLINO: Yes, Madam

President. I too rise to second my colleague Craig Johnson's words on this nominee.

I have known his family and his father for a number of years. Good people. They have served the county and they have served the state and they've served their industry well.

And I know that Mr. Pierce will do a fine job in his position for which the Governor has nominated him. I congratulate the Governor on a very good nomination.

Thank you.

ACTING PRESIDENT SAVINO: Are there any other Senators wishing to be heard on the nominations?

Seeing none, the question is on the motion to confirm the nominations. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The motion carries. The nominations are confirmed.

Returning to the order of business, reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Klein.

SENATOR KLEIN: Madam President, can you please recognize Senator Libous. He has one floor motion.

ACTING PRESIDENT SAVINO: Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

On behalf of Senator Morahan, Madam President, on page 14 I offer up the following amendments to Senate Calendar Number 209, Senate Print 1535, and ask that the said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT SAVINO: So ordered.

Senator Klein.

SENATOR KLEIN: Madam President, I have a resolution at the desk. I ask that the title of the resolution be read and move

for its immediate adoption. And I'd also like to speak on my resolution.

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

SENATOR KLEIN: Yes, it has, Madam President.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Klein, legislative resolution urging the New York State Congressional delegation to enact the Prevent All Cigarette Trafficking Act.

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Thank you, Madam President.

Every once in a while an issue comes around that you spend an awful lot of time working on. And the issue of untaxed cigarettes is certainly that issue in my career.

I passed legislation when I was a member of the State Assembly which was signed

into law in 2000, which at the time was landmark legislation which banned the sale of cigarettes over the Internet through mail order.

We had a difficult time with the enforcement. There was a challenge to the legislation. It was eventually upheld by a federal circuit court. Then Attorney General Eliot Spitzer and myself negotiated with credit card companies -- actually, credit cards companies agreeing not to accept payments with credit cards for cigarette sales. We got Federal Express and UPS to once again agree not to deliver these cigarettes.

But unfortunately, there was a major loophole. And the loophole was that the United States Postal Service was still delivering these cigarettes.

This issue was very important for two reasons. First of all, over the years we've seen time and time again that when cigarettes are sold over the Internet, it allows young people to purchase cigarettes, no questions asked. Cigarettes have been delivered to young people as young as 14 years

of age. And that has to end.

The issue that certainly resonates with many of us here, and especially during these tough budget times, is the issue of uncollected tax revenue.

My colleague Chairman Kruger over the last year has done a tremendous job in alerting the public to how much money we are really losing every year to untaxed cigarettes. The lion's share of those untaxed cigarettes are those sold over the Internet.

Well, this past week the United States Senate passed the Prevent All Cigarette Trafficking Act, which will essentially ban the delivery of cigarettes through the United States Postal Service. I called Congressmember Anthony Weiner today, who has the companion bill in the United States Congress, and supposedly the bill is going to pass as early as tomorrow.

So the timing is excellent. This is an opportunity for us to collect anywhere from $500 million to a billion dollars in uncollected tax revenue, money that the taxpayers of the State of New York need so

much. And at the end of the day, we can finally put an end to what I consider is the illicit trade of selling cigarettes over the Internet.

So I urge the New York State Congressional delegation to enact the Prevent All Cigarette Trafficking Act.

Thank you, Madam President.

ACTING PRESIDENT SAVINO: Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

I want to rise and congratulate Senator Klein for putting this resolution forth.

He mentioned that when he was in the Assembly, I was in the Senate, and we worked together on a number of these issues and actually were published in a book for our efforts in going after this type of trade.

I think the time has come where this bill, if hopefully it comes before Congress tomorrow, is passed swiftly. And certainly the efforts that have been put forth in this house in the past, along with the

efforts of Senator Klein when he authored the legislation in the Assembly, show the taxpayers of the state that indeed not only are we going after the Internet trafficking of illegal cigarettes, but at the same time there is a tremendous revenue stream that can come to the state.

So, Senator Klein, I want to applaud you on this effort and support it 100 percent.

ACTING PRESIDENT SAVINO: Are there any other Senators wishing to be heard on this resolution?

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT SAVINO: The resolution is adopted.

Senator Klein has indicated that he would like to open this resolution up to the entire body for cosponsorship. Anyone not

wishing to be a cosponsor please notify the desk.

Senator Klein.

SENATOR KLEIN: Thank you, Madam President.

At this time I move that we pass the Resolution Calendar in its entirety, with the exception of Senate Resolutions 4205, 4227, and 4108.

ACTING PRESIDENT SAVINO: All those in favor of adopting the Resolution Calendar in its entirety, with the exception of Resolutions 4227, 4108, and 4205, please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The Resolution Calendar is adopted.

Senator Klein.

SENATOR KLEIN: Madam President, at this time I move to take up Senate Resolution 4205, by Senator Morahan. I ask that the title of the resolution be read and

move for its immediate adoption. And I know Senator Maziarz wants to speak on this resolution.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Morahan, Legislative Resolution Number 4205, memorializing Governor David A. Paterson to proclaim March 2010 as Spread the Word to End the Word Awareness Month in the State of New York.

ACTING PRESIDENT SAVINO: Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Madam President and Senator Klein.

This resolution was sponsored by Senator Morahan. It is cosponsored by myself and our colleague Senator Bill Perkins.

Spread the Word to End the Word is an ongoing effort by the Special Olympics and its supporters to raise the consciousness of society about the dehumanizing and hurtful effects of the word -- and I'm going to say the word. This is a resolution not to say the word, but in order for everyone to know what

we are talking about, the word is "retard" -- and to encourage people to pledge to stop using that "R" word.

Throughout the month of March, youth and friends of the global movement Special Olympics will be hosting rallies and implementing grassroots outreach efforts to encourage members of their communities to take the pledge to stop using the "R" word in a demeaning manner.

Respectful and inclusive language is essential to the movement for the dignity and humanity of people with intellectual disabilities. However, much of society does not recognize that.

We all know when we were young people in school, you know, and we saw somebody who may have had some mental incapacities or may have had some mental challenges, we would refer to them by the "R" word. I think it was because we had no idea how much that hurt people, how much that hurt grandparents and parents who would hear their children referred to by the "R" word.

Senator Morahan, who

unfortunately -- he's doing great. I talked to him today, by the way. He is home -- could not be here. But he wanted me to express his support for this resolution and to ask all of our colleagues to sign on as cosponsors of it.

And there are representatives of the Special Olympics New York here today. Hilary Kellogg is the director. And there are several people in the gallery today from the Special Olympics.

And I want to thank you for the very special work that you do -- including one of our Olympians is here today, Beth Costello -- and thank Special Olympics for the all the work they do across New York. This is one thing that we can agree -- we disagree on a lot of things down here, believe it or not. Some of us, you know, have geographic disagreements -- Long Island, New York City, upstate, even Binghamton once in a while we disagree with.

But one thing we all agree with is to, number one, to congratulate you on your campaign to stop the "R" word. You see the sponsors, Senator Morahan, from the Hudson

Valley region, my colleague Senator Perkins from New York City, and myself, from upstate, the far northwest corner of New York, all of us join together in congratulating you for this campaign, encouraging you to go further to stop the use of the "R" word, and really to salute you and thank you for all the great work that Special Olympics do for some very special, talented people in New York.

Thank you.

ACTING PRESIDENT SAVINO: Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

I would ask if the rest of us could go on as cosponsors, Senator. I'm sure Senator Morahan would concur with that. And we can join together and do something extremely productive in this house this afternoon with all 62 members of the Senate supporting this resolution.

Madam President, I have been blessed in my life and particularly my Senate life for the last 22 years, in being involved with the folks from Special Olympics. And I

see my good friend Neal Johnson here today.

If you have not been involved, I would ask that you get yourself involved with Special Olympics. Take the time out of your schedule, visit when your local has the games, whether they be the winter games or the summer games, and experience for yourself the exhilarating feeling in watching these athletes compete and knowing that of all the things we debate and discuss here in this chamber, that we can come together in helping those folks with developmental disabilities have a wonderful life, a life full of fun and activity.

And let me tell what you will get out of that. You will get from them the love. And you will feel it. And you will feel energized after you leave a Special Olympics event.

So, Senator Morahan, I'm glad you're doing better. Thank you for this resolution, Senator Maziarz for bringing to the floor.

And to all of my friends who have dedicated their lives to Special Olympics in

New York State, thank you for being here. And I hope that that horrible word is never uttered by any members of this house, and I believe that it won't be ever again, and that other New Yorkers will take it away from their vocabulary.

ACTING PRESIDENT SAVINO: Senator Perkins.

SENATOR PERKINS: Thank you very much, Madam President.

I want to, you know, express my appreciation to my colleague who has been leading this effort. You know, there are many "R" words out here that we need to ban. Sometimes they begin with "N," and sometimes they begin with "B," sometimes they begin with "F."

But today we want to talk about the one that we have come to know about as the "R" word, the "R" word that maybe, as young people, we thought we could use without having the appreciation of what it means to be called retarded and what it means to those who may be having their own challenges. But maybe we use it carelessly, not meaning to hurt -- but

nevertheless we do, especially for those who are on the other end of it and who have to suffer the denigration implied by it.

And so I'm pleased to be a part of this movement to ban the "R" word, to ban those derogatory words that make us second-class and, if I may, "niggerize" us into moments of embarrassment, not only as individuals, as a community, but also as a society.

So this is an important resolution because of how much it speaks to our values as a body, our values as a state, our values as a country.

And so to that movement that has joined us today to help us understand and to be sensitive to the use of this particular word, I want to thank them for their leadership, encourage them to continue to be brave and to be visionary about themselves and about what we can accomplish as legislators and as citizens in this state.

And I again want to thank my colleague for allowing me to be a part of this effort to ban the "R" word once and for all.

Thank you so much.

ACTING PRESIDENT SAVINO: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you.

Senator Libous beat me to the punch, because what I wanted to talk about was the Special Olympics.

I had the honor of being at the opening ceremonies for the Winter Olympics, the Special Olympics in Syracuse, and to observe those opening ceremonies was truly a pleasure. Not only were the Olympians there from all the regions of the state, but the community support, whether it be from the Syracuse University Basketball Team, the cheerleaders, the high school teams -- it was really marvelous.

And the impression that I left with the most is that, you know, I've gone to enough sporting events in my life and participated in many, many more, is that this sporting event was truly special. Everybody, no matter what the ability level was, truly left this auditorium and left the fields or the hills feeling that they were winners. And

that's a real important thing.

And I'll never forget, as long as I live, there were two Syracuse University basketball players at the lead of each region that was represented in the Special Olympics. And there was one young participant who had her arm around Wes Johnson, the Most Valuable Player in the Big East this year. Wouldn't let go. She was grabbing onto him, he was obviously her hero, and he was smiling from ear to ear. And it showed the importance of the affection going both ways at these particular ceremonies.

And the last thing I want to say, the other part that I remember, is the ovation that Neal Johnson got every time his name was mentioned. And the only thing I request in return for cosponsoring this legislation is that Neal doesn't run against me.

(Laughter.)

SENATOR DeFRANCISCO: Thank you, Madam President. I gladly cosponsor this bill and speak in favor of it. Thank you.

ACTING PRESIDENT SAVINO: Thank you.

Senator Robach.

SENATOR ROBACH: Yes, Madam President. I too rise, very briefly.

This is somewhat, I guess, even a little bit of not only an important day but an emotional one in some regard for me. We all love the Special Olympics. I've had a sister who's now 47 years old who's participated in it.

But more importantly, I've been so proud of New York State, which has done so much more for only Special Olympics, to let people with extra challenges compete, enjoy the athleticism, accomplishment, what we've done in day treatment, also work experience, giving people with developmental disabilities in this state an opportunity to work, earn some money, and housing and so many other things.

And I just wanted to applaud and say I think today is a good day, Senator Maziarz, Senator Morahan, Senator Perkins, for this resolution as well. We should stamp out that word, because it really has come to mean that those people somehow are judged

differently or substandard when all of us in this room who deal with people on an everyday basis know that every single person, every human being has the same thing. We all want to enjoy things, we all want to have comfort, we all want to feel loved.

And it's no different for people in the developmentally disabled population group. Though they may be dealing with some extra challenges, it's the same.

So today is a good day in this chamber that we're doing this resolution, and I hope is a further step of showing our love for all of our citizens. And many of those, I think, if you look at anybody's family, somewhere in there, or your neighbor's family, somebody is going to be in that group. It's good that we continue to move down this path of civility and wipe out this word that, at best, is passe if not misrepresentative.

And I thank everyone for joining in on this. Happy to do so as well.

Thank you, Madam President.

ACTING PRESIDENT SAVINO: Senator Alesi.

SENATOR ALESI: Thank you, Madam President.

We have some people in the gallery -- and I know normally we don't acknowledge them, but from my area that are very special to me. And they're with someone who is very special to all of us, someone who would be the recipient of discrimination with the word that we are today officially being asked to ban.

Just as Senator Perkins pointed out, there are other words in our English language that we have already determined are brutally harmful, discriminatory. Senator Duane has pointed these out to us on numerous occasions.

So there is a whole list of words that we have come to know that are not just discriminatory but, as I said, brutally painful to those people that are on the receiving end, and equally painful to their families and their friends and the people that work so hard to take special members of our population and make sure that their lives are meaningful.

We talked about Special Olympics. Tomorrow it is my hope that we will have the opportunity to have a privileged resolution on the floor acknowledging the 40th anniversary of Special Olympics in New York State.

But let's be certain, the heroes that we recognize in the Special Olympics -- and they rightfully deserve our recognition and our praise -- don't make up all of the population of people who are challenged. So recognizing that every one of us has an obligation to be respectful and to be intelligent in the way we speak about our fellow human beings, include not just those people that we're talking about today but all of us, every member of our society. I mentioned Senator Perkins and Senator Duane.

We're also, tomorrow, going to recognize, as I said, the achievements of Special Olympics. But we should also, while we're doing that, recognize the achievements of all those people who are good of heart and pure of spirit and embrace -- not just because we're standing here on the floor, but embrace the true meaning of what this resolution is

meant to do.

In closing, I would again like to welcome my friends here and thank them for being an inspiration to us, and I'd also like to thank Senator Morahan for his work on his committee and his commitment to get this resolution passed today.

ACTING PRESIDENT SAVINO: Are there any other Senators that wish to speak on this resolution?

Senator Larkin.

SENATOR LARKIN: Thank you, Madam President.

You know, I just wish Tom could have been here today, because he has devoted so much time of his life before he ever came here to this cause.

You know, I just heard my good friend Jim Alesi talk about certain things. I have always had the impression that, you know, some people say, you know, they're disabled, they're retarded. I hate that word. They're physically challenged.

Every year at the United States Military Academy we have one of the biggest

projects that goes on with our Special Olympics, when all of these people come from all over the Hudson Valley, and about a thousand to 1500 cadets, male and female, get involved with these individuals and show them and promote them and entertain them in the light that they are just as good as anybody else.

And until one of these days when we stop -- you know, it's true, Senator Perkins just said about using words. Maybe we ought to all extend ourselves and tell people that, you know, they may be different, but they're still the same as we are, human beings.

Thank you very much.

ACTING PRESIDENT SAVINO: Senator LaValle.

SENATOR LaVALLE: Thank you, Madam President.

I rise to speak on this resolution. I think it's very important that we recognize Special Olympics and people with special needs.

In the mid-1970s, this state and indeed our country really turned a corner in

providing legislation both at the state level and federal level to provide a free and appropriate education for students with handicapping conditions. Those were the words that were articulated in the mid-1970s.

With each decade, we have made huge changes in opportunities for employment, opportunities for housing, opportunities for transportation. At one time those were things that were kind of a dream put off, and it all began to come together.

The Special Olympics provides another opportunity for individuals to be all that they can be. And today in our country, and certainly in this state, there is nothing, no impediment that an individual faces that they cannot overcome.

And so we have made huge changes since the 1970s to this 2010. And I look forward to seeing that we can truly, truly, truly have a brotherhood where there is no discrimination and everyone has the opportunity to be all that they can be.

Thank you, Madam President.

ACTING PRESIDENT SAVINO: Are

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

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The resolution is adopted.

Senator Morahan has indicated that he would like to open this resolution up to the entire body for cosponsorship. Any Senator wishing not to be on the resolution please inform the desk.

Senator Klein.

SENATOR KLEIN: Madam President, at this time I move we take up Senate Resolution Number 4227, by Senator Onorato. I ask that the title of the resolution be read and move for its immediate adoption and allow Senator Onorato to speak on his resolution.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Onorato, Legislative Resolution Number 4227, commemorating the 99th Anniversary of the Triangle Shirtwaist Factory Fire on March 25, 2010.

ACTING PRESIDENT SAVINO: Senator Onorato.

SENATOR ONORATO: Thank you, Madam President.

I rise today to invite everybody here to join on this resolution by carrying on the tradition of a very dear friend of our ours, one of our former colleagues, Senator Serph Maltese, who introduced this resolution for many, many years, who lost members of his immediate family in the fire.

And on next Wednesday, on March 23rd, we will be having a ceremony right downstairs in the mall right outside of the Key Bank, at 1:30, for a ceremony with the Commissioner of Labor. And we invite everyone, if it's at all possible to put it on your schedule, to take part in this ceremony.

Thank you.

ACTING PRESIDENT SAVINO: Are

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

There being none, the question is on the resolution. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The resolution is adopted.

Senator Onorato has indicated that he would like to open this resolution up to the entire body for cosponsorship. Any Senator not wishing to be on the resolution please inform the desk.

Senator Klein.

SENATOR KLEIN: Madam President, on behalf of Senator Ruth Hassell-Thompson, there will be a meeting of the Majority Conference in the Majority Conference Room at 5 o'clock.

ACTING PRESIDENT SAVINO: Meeting of the Senate Majority in the Majority Conference Room at 5 o'clock.

Senator Klein.

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

ACTING PRESIDENT SAVINO: Senator Klein, the desk is clear.

SENATOR KLEIN: There being none, Madam President, I move that we adjourn until Wednesday, March 17th, at 1:00 p.m.

ACTING PRESIDENT SAVINO: There being no further business to come before the Senate, on motion, the Senate stands adjourned until Wednesday, March 17th, at 1:00 p.m.

(Whereupon, at 4:37 p.m., the Senate adjourned.)