

1 NEW YORK STATE SENATE

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3
4 THE STENOGRAPHIC RECORD

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9 ALBANY, NEW YORK

10 May 3, 2010

11 4:12 p.m.

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13
14 REGULAR SESSION

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18 SENATOR NEIL D. BRESLIN, Acting President

19 ANGELO J. APONTE, Secretary

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

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

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

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

8 ACTING PRESIDENT BRESLIN: The
9 Reverend Peter G. Young will give the
10 invocation, from Mother Teresa Community
11 Church.

12 REVEREND YOUNG: Thank you.

13 May I remember with prayer the
14 death anniversary of Senator John Marchi
15 today, who had served in this house for over
16 50 years, and all of those who have served in
17 this house, the Senators who have been so
18 dedicated, so that they will be remembered by
19 way of their leadership in New York State.

20 Because You, Almighty and Eternal
21 God, have revealed Your glory to all nations,
22 God of power and might and wisdom and justice,
23 come to our Senators through Your authority
24 with the prayer that Your laws are enacted and
25 the judgments are decreed, with our citizens

1 benefiting from their dedication and of our
2 session today.

3 Amen.

4 ACTING PRESIDENT BRESLIN: Thank
5 you, Father Young.

6 The reading of the Journal.

7 The Secretary will read.

8 THE SECRETARY: In Senate,
9 Sunday, May 2nd, the Senate met pursuant to
10 adjournment. The Journal of Saturday,
11 May 1st, was read and approved. On motion,
12 Senate adjourned.

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

16 Presentation of petitions.

17 Messages from the Assembly.

18 Messages from the Governor.

19 Reports of standing committees.

20 Reports of select committees.

21 Communications and reports from
22 state officers.

23 Motions and resolutions.

24 Senator Klein.

25 SENATOR KLEIN: Thank you,

1 Mr. President.

2 On behalf of Senator Aubertine, on
3 page number 23 I offer the following
4 amendments to Calendar Number 371, Senate
5 Print Number 7181, and ask that said bill
6 retain its place on Third Reading Calendar.

7 ACTING PRESIDENT BRESLIN: So
8 ordered.

9 SENATOR KLEIN: On behalf of
10 Senator Foley, I move that the following bill
11 be discharged from its respective committee
12 and be recommitted with instructions to strike
13 the enacting clause: Senate Number 4985.

14 ACTING PRESIDENT BRESLIN: So
15 ordered.

16 SENATOR KLEIN: On behalf of
17 Senator Foley again, on page number 24 I offer
18 the following amendments to Calendar Number
19 389, Senate Print Number 5995, and ask that
20 said bill retain its place on Third Reading
21 Calendar.

22 ACTING PRESIDENT BRESLIN: So
23 ordered.

24 SENATOR KLEIN: Mr. President, I
25 move to amend Senate Bill Number 1901A by

1 striking out the amendments made on April 1,
2 2009, and restoring it to its original print
3 number, 1901.

4 ACTING PRESIDENT BRESLIN: So
5 ordered.

6 SENATOR KLEIN: Mr. President, I
7 wish to call up my bill, Print Number 5896C,
8 recalled from the Assembly, which is now at
9 the desk.

10 ACTING PRESIDENT BRESLIN: The
11 Secretary will read.

12 THE SECRETARY: Calendar Number
13 378, by Senator Klein, Senate Print 5896C, an
14 act to amend the Real Property Law.

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

18 ACTING PRESIDENT BRESLIN: The
19 Secretary will call the roll on
20 reconsideration.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes, 59.

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

25 ACTING PRESIDENT BRESLIN: The

1 amendments are received, Senator Klein.

2 SENATOR KLEIN: Mr. President, at
3 this time can you please call on Senator
4 Parker.

5 ACTING PRESIDENT BRESLIN:
6 Senator Parker.

7 SENATOR PARKER: Mr. President,
8 point of personal privilege.

9 ACTING PRESIDENT BRESLIN: You
10 may proceed, Senator Parker.

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

13 I'd like to take a few moments of
14 personal privilege to address my words and
15 actions of last week.

16 I ran for this office to bring
17 change. The communities I represent of the
18 21st District, which include Flatbush and East
19 Flatbush, Midwood, Ditmas Park, Kensington and
20 Boro Park, have long been shortchanged. On
21 every single issue that matters to my
22 constituents -- affordable housing,
23 immigration access, access to healthcare,
24 quality education, mass transit and public
25 safety -- this state, this Senate, has let

1 them down.

2 The seat I occupy was created in
3 2002 during redistricting. I ran and ran hard
4 on all those issues, to make change. When I
5 got here, I was somewhat surprised to learn
6 that as a freshman Senator in the minority, I
7 was expected to be unseen, unheard and
8 uninvolved. It was implicit but clear my
9 constituents were expected to be
10 disenfranchised. My vote and their votes were
11 effectively irrelevant, and I was urged by
12 some in this chamber to go along and get
13 along. I think everybody knows that didn't
14 happen.

15 I was sent here to be a voice for
16 the voiceless. One month within my first
17 term, the New York Times ran an editorial when
18 I had the nerve, the gall, to actually ask
19 questions in a committee meeting. I asked
20 questions about the nominee's qualifications
21 to run one of the most important agencies in
22 the state. He had failed the bar several
23 times, for example, but I never asked him
24 questions about his race, his ethnicity, and
25 his religion.

1 And as a matter of fact, post that
2 questioning, him and I actually developed, I
3 think, a very good relationship, and I
4 consider him a friend even to this day.

5 The next day Senator Duane tried to
6 ask the same questions of a nominee in the
7 Senate Finance Committee. As Senator Duane
8 went further, asking questions the nominee's
9 involvement in allegedly helping fix a case
10 where a worker was killed on a job site, the
11 committee chair simply ruled his questions as
12 not relevant. The chair decided the questions
13 had gone on long enough and called for the
14 vote.

15 We've come a long way since 2003.
16 In terms of process, we became more active as
17 a minority conference. We worked with
18 communities across the state and won elections
19 to transform this chamber. And when we took
20 the majority, we didn't stifle debate, strip
21 minority resources, or bottle things up in
22 committee.

23 Instead, under Malcolm Smith and
24 John Sampson, we opened this house up in ways
25 never seen before, offering members of the

1 minority conference the ability to exercise
2 their rights, privileges of being a Senator,
3 and the ability to represent their
4 constituents, a courtesy we had never
5 previously received.

6 Mr. President, I would much prefer
7 today's spotlight be on the environmental or
8 labor bills and the budget extenders. And to
9 the extent that my words last week brought
10 commotion and emotion to this house in ways
11 that may distract or divide us or divert us
12 from the important work of the people of
13 New York State -- this work that's so
14 important for all of us, the work that
15 New Yorkers sent us here to accomplish -- if I
16 have offended people in this chamber in any
17 way, I offer my sincerest apologies for my
18 zealous advocacy.

19 But to the extent that my words
20 bring debate and discussion to this house on
21 the issue of race, exclusion and, conversely,
22 new opportunity, I offer my sincerest
23 commitment to continue that debate and that
24 discussion and ask you to be partners in that
25 debate.

1 It is also exceedingly important
2 for me to explain to this house, through you,
3 Mr. President, that my criticisms are not, in
4 fact, at bottom personal. I can't see into
5 anyone's soul. And I should not have
6 personalized my comments, because the issues I
7 spoke about are larger than any one individual
8 or group. The problems of race, lack of
9 access to opportunity, and the economic
10 disparities in New York existed long before
11 any of us were elected to this chamber. And
12 to the extent they persist, in many ways we
13 are all complicit.

14 All that is necessary for evil to
15 triumph is for good people to do nothing. The
16 failures of this chamber to right historic and
17 current wrongs were and are not personal.
18 Rather, they are institutional, and we are all
19 of us not doing enough.

20 We need to do more to ensure
21 diversity on the bench and the commissions,
22 authorities, and boards. We need to do more
23 to ensure fair and less political contracting
24 and investment opportunities through OGS and
25 the agencies and departments and office of the

1 State Comptroller.

2 We need to look more closely at
3 hiring an opportunity agenda for the Senate
4 itself. It would be easy to look at either
5 side of this chamber, compare the compositions
6 of our conferences and call it a day. It
7 would be easy to look at their respective
8 hiring records and draw conclusions. But that
9 would only further divide us, fuel the
10 dysfunction, and weaken our state even more in
11 these difficult times.

12 I regret seeking to ascribe blame
13 in such personal terms rather than focusing on
14 the broader nature of the work that we must
15 do. We don't need to fix blame, we need to
16 fix the problem. And we can really only do
17 that if we work together.

18 I think everyone knows that I am a
19 loud and passionate advocate for my community
20 and for the people of the State of New York.
21 I will never shrink away from my
22 responsibility to speak up for those who sent
23 me here and, by extension, for those I love.

24 Even before former Governor Spitzer
25 said it, I have long believed that you don't

1 change the world by a whisper. I believe, in
2 my responsibility to speak the truth as I know
3 it, that we still have far to go on issues of
4 race, gender, class and sexuality, and to
5 confront those hard truths in all their
6 complexity whenever I can.

7 Much has been said about what
8 people describe as my anger. I still believe
9 there is much to be confronted and much to be
10 fought over. And in recent days I have been
11 reminded of President Obama's speech on race,
12 and I have read it again in the context of
13 this moment. It was an amazing speech at an
14 amazing time in our collective histories. And
15 in it our President spoke of anger on both
16 sides of the racial divide.

17 One particular passage about black
18 anger struck me, and it stays with me. He
19 said, and I quote, "That anger is not always
20 productive. Indeed, more often it distracts
21 attention from solving real problems. It
22 keeps us from squarely facing our own
23 complexity and our condition and prevents the
24 African-American community from forging the
25 alliances it needs to bring about real change.

1 But the anger is real; it is powerful; and it
2 simply can't be wished away. To condemn it
3 without understanding its roots only serves to
4 widen the chasm of misunderstanding that
5 exists between the races."

6 The President went on to say that a
7 similar anger exists in the white community
8 and how anger on both sides distracts from the
9 real challenges, he says. Again, in quotes,
10 "Just as black anger often proved
11 counterproductive, so have these white
12 resentments distracted attention from the real
13 culprits of the middle-class squeeze -- a
14 corporate cultural rift with inside dealings;
15 questionable accounting practices and
16 short-term greed; a Washington dominated by
17 lobbyists and special interests; economic
18 policies that favor the few over the many.
19 And yet to wish away the resentment of white
20 Americans, to label them as misguided or even
21 racist without recognizing they are grounded
22 in legitimate concerns, this too widens the
23 racial divide and blocks our path to
24 understanding."

25 Here we are, two years after the

1 speech, facing the same problems of the
2 economy, class, and special influence -- and
3 here we are with no real cooperation to fix
4 the problems, to form a more perfect union, or
5 to build a safer, stronger or more prosperous
6 New York.

7 I also agree with the President
8 that we cannot view racial relations as
9 static, as if no progress has been made and we
10 are bound to a tragic past. America has
11 changed, but that change has not come easily
12 or quietly. Nor has that change come without
13 hard work, sacrifice, and the willingness to
14 work together. And for most times it has been
15 New York leading that change -- in the labor
16 movement, the abolitionist movement, the
17 suffrage movement, the Stonewall uprisings and
18 others.

19 I believe it is time for us to lead
20 again. It is my hope today that hard as my
21 words were last week, we can use these coming
22 weeks of our session to have a conversation
23 and to do that hard work that we need to do
24 around these difficult issues.

25 It is my hope that today can be a

1 starting point for real conversation based on
2 a commitment on my part to work on both sides
3 of the aisle to find ways to give real people
4 access to real jobs, capital and the
5 opportunities of this state.

6 It is my hope today that we can
7 lead a meaningful effort to bring our people
8 together instead of continuing the divisions
9 that have manifested themselves in conflictive
10 governmental dysfunction.

11 Mr. President, I wish to make one
12 more point. Over the past few days, I've had
13 a relatively unique set of experiences. I
14 have received more requests for media
15 interviews than at any other time in my
16 career. Not for legislation I passed or
17 demonstrating for more education funding or
18 for the free breast cancer or dental
19 screenings I offer in my district, or for the
20 prom dresses I will give away to many young
21 women of low-income households this Saturday,
22 but solely for this issue.

23 I have also, for the first time in
24 my life, received death threats. My office
25 has received multiple threats, one of which

1 also threatened the President. The
2 authorities are investigating, and I hope not
3 much more will come of it. But the threats
4 tell me that that conversation we need -- we
5 really need to have this conversation.

6 The threats are also a clear
7 reminder to me that we are not alone and that
8 I am not alone. That those around me -- my
9 staff, my family, you, my colleagues -- may
10 all be impacted by my actions. And I say to
11 all of you that I will work to make better
12 choices.

13 I'm not afraid. I know that there
14 are consequences for those choices that I
15 make. But I believe that conversation is too
16 important to back away from, and I'll tell you
17 why. Last Wednesday reporters descended upon
18 my district office seeking comments from me
19 and my constituency. Tragically, right across
20 the street, a young man in his early thirties
21 was shot and killed. The media was there to
22 cover me but ended up covered the shooting. I
23 can tell you they don't usually cover
24 shootings in Brooklyn, particularly in
25 Flatbush. If it weren't so tragic, that irony

1 could make one laugh or cry.

2 Where were the schools and the
3 after-school programs, the prenatal care, the
4 social workers, the cops on the beat when that
5 young man was shot? That's why I'm here. For
6 all the young men and women who are murdered
7 over economic scrapes, or who live in poverty
8 and fear, and those kids we have failed. The
9 reality is I cannot fix these problems by
10 working alone. I need your help, and I want
11 your help to fix them.

12 That's the real test for us. We
13 can -- the real test for us is whether we can
14 work together across regions, across racial
15 and political lines, and invest in each other
16 to save our state. Can we reject the old
17 arrangements, the old disagreements to build a
18 stronger and fairer economy for everyone? Can
19 we come together to build a safe, strong and
20 more just New York? Can we suffer together in
21 the deepest, most savage economic upset since
22 the Great Depression?

23 I believe we can. I know we can.
24 I am willing to step back from the rhetoric
25 alone if we were all willing to step up and do

1 the work. I am willing to work with anyone in
2 this chamber to make that a reality, and I ask
3 you for all your help in this effort.

4 Thank you, Mr. President.

5 ACTING PRESIDENT BRESLIN: Thank
6 you, Senator Parker.

7 Senator Klein.

8 SENATOR KLEIN: Mr. President,
9 can you recognize Senator Libous. I believe
10 he has a motion.

11 ACTING PRESIDENT BRESLIN:
12 Senator Libous.

13 SENATOR LIBOUS: Mr. President,
14 on page 19 I offer the following amendments to
15 Calendar Number 311, Senate Print 5863A, on
16 behalf of Senator Fuschillo, and ask that said
17 bill retain its place on Third Reading
18 Calendar.

19 ACTING PRESIDENT BRESLIN: So
20 ordered.

21 Senator Klein.

22 SENATOR KLEIN: Mr. President, I
23 believe there's a resolution at the desk by
24 Senator Sampson. I ask that the resolution be
25 read in its entirety and move for its

1 immediate adoption.

2 ACTING PRESIDENT BRESLIN:

3 Senator Klein, has this resolution been deemed
4 privileged and submitted to the offices of the
5 Temporary President?

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

8 ACTING PRESIDENT BRESLIN: The
9 Secretary will read.

10 THE SECRETARY: By Senator
11 Sampson, legislative resolution recognizing
12 Saturday, May 1, 2010, as Law Day USA in the
13 State of New York.

14 "WHEREAS, For over two centuries
15 our state and nation have adhered to the rule
16 of law as the foundation for a safe, free and
17 justice society. Seeking to formally
18 recognize this tradition, President Eisenhower
19 established Law Day in 1958 as a day of
20 national dedication to the principles of
21 government under the law; and

22 "WHEREAS, This Legislative Body
23 celebrates the importance of Law Day USA in
24 the State of New York. In doing so, we as
25 citizens of this great state and nation

1 recommit ourselves to the rule of law and to
2 upholding the fundamental principles enshrined
3 in our founding documents; and

4 "WHEREAS, The theme of this year's
5 Law Day, 'Law in the 21st Century: Enduring
6 Traditions and Emerging Challenges,' reminds
7 us to draw upon and adapt to our time-honored
8 legal traditions to meet the demands of a
9 global world; and

10 "WHEREAS, As we begin the second
11 decade of the 21st century, new communications
12 technologies are rapidly emerging, connecting
13 the world. Legal issues of human rights,
14 migration, environmental regulation, and
15 outsourcing are now internationally commingled
16 due to the ease of communicating and traveling
17 across borders. Accordingly, the law is also
18 dramatically changing; and.

19 WHEREAS, This Legislative Body is
20 committed to ensuring that the citizens of
21 New York State understand and remain dedicated
22 to and are protected by the principles of
23 government under the law; now, therefore, be
24 it resolved

25 "RESOLVED, That this Legislative

1 Body pause in its deliberations to recognize
2 Saturday, May 1, 2010, as Law Day USA in the
3 State of New York; and be it further

4 "RESOLVED, That copies of this
5 resolution, suitably engrossed, be transmitted
6 to Carolyn B. Lamm, President, American Bar
7 Association, and to Michael E. Getnick,
8 President, New York State Bar Association."

9 ACTING PRESIDENT BRESLIN: The
10 question is on the resolution. All those in
11 favor please signify by saying aye.

12 (Response of "Aye.")

13 ACTING PRESIDENT BRESLIN:
14 Opposed, nay.

15 (No response.)

16 ACTING PRESIDENT BRESLIN: The
17 resolution is adopted.

18 Senator Sampson has indicated that
19 he would like to open the resolution to joint
20 cosponsorship by the entire house. Any
21 Senator wishing not to be on the resolution
22 please notify the desk.

23 Senator Klein.

24 SENATOR KLEIN: Mr. President,
25 there will be an immediate meeting of the

1 Finance Committee, followed by an immediate
2 meeting of the Rules Committee in the Majority
3 Conference Room, Room 332.

4 Pending the return of the Rules
5 Committee, may we please stand at ease.

6 ACTING PRESIDENT BRESLIN: There
7 will be an Immediate meeting of the Finance
8 Committee in Room 332, followed by a meeting
9 of the Rules Committee.

10 Pending the return of those
11 committees, the Senate stands at ease.

12 (Whereupon, the Senate stood at
13 ease at 4:32 p.m.)

14 (Whereupon, the Senate reconvened
15 at 5:15 p.m.)

16 ACTING PRESIDENT BRESLIN:
17 Senator Klein.

18 SENATOR KLEIN: Mr. President, I
19 believe there's a report of the Rules
20 Committee at the desk. I move that we adopt
21 the report at this time.

22 ACTING PRESIDENT BRESLIN: There
23 is a report of the Rules Committee at the
24 desk.

25 The Secretary will read.

1 THE SECRETARY: Senator Smith,
2 from the Committee on Rules, reports the
3 following bills:

4 Senate Print 7678, by the Senate
5 Committee on Rules, an act to amend the
6 Education Law;

7 7686, by Senator Dilan, an act to
8 amend the State Finance Law; and

9 Senate Print 7689, by the Senate
10 Committee on Rules, an act making
11 appropriations for the support of government.

12 All bills ordered direct to third
13 reading.

14 ACTING PRESIDENT BRESLIN: All
15 those in favor of adopting the Rules Committee
16 report please signify by saying aye.

17 (Response of "Aye.")

18 ACTING PRESIDENT BRESLIN:
19 Opposed, nay.

20 (No response.)

21 ACTING PRESIDENT BRESLIN: The
22 Rules Committee report is adopted.

23 Senator Klein.

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

1 at this time.

2 ACTING PRESIDENT BRESLIN: The
3 Secretary will read.

4 THE SECRETARY: Calendar Number
5 123, by Member of the Assembly Lancman,
6 Assembly Print Number 2374A, an act to amend
7 the Judiciary Law.

8 ACTING PRESIDENT BRESLIN: Read
9 the last section.

10 SENATOR LIBOUS: Lay it aside.

11 ACTING PRESIDENT BRESLIN: The
12 bill is laid aside.

13 THE SECRETARY: Calendar Number
14 315, by Senator Stewart-Cousins, Senate Print
15 7129B, an act to amend Chapter 118 of the Laws
16 of 1969.

17 SENATOR LIBOUS: Lay it aside.

18 ACTING PRESIDENT BRESLIN: The
19 bill is laid aside.

20 THE SECRETARY: Calendar Number
21 346, by Senator Onorato, Senate Print 7053, an
22 act to amend the Labor Law.

23 ACTING PRESIDENT BRESLIN: Read
24 the last section.

25 THE SECRETARY: Section 3. This

1 act shall take effect immediately.

2 ACTING PRESIDENT BRESLIN: Call
3 the roll.

4 (The Secretary called the roll.)

5 ACTING PRESIDENT BRESLIN:
6 Announce the results.

7 THE SECRETARY: Ayes, 60.

8 ACTING PRESIDENT BRESLIN: The
9 bill is passed.

10 THE SECRETARY: Calendar Number
11 402, by Member of the Assembly Destito,
12 Assembly Print Number 8313A, an act to amend
13 the Executive Law.

14 ACTING PRESIDENT BRESLIN: Read
15 the last section.

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

18 ACTING PRESIDENT BRESLIN: Call
19 the roll.

20 (The Secretary called the roll.)

21 ACTING PRESIDENT BRESLIN:
22 Announce the results.

23 THE SECRETARY: Ayes, 60.

24 ACTING PRESIDENT BRESLIN: The
25 bill is passed.

1 THE SECRETARY: Calendar Number
2 403, by Member of the Assembly DelMonte --

3 SENATOR KLEIN: Lay the bill
4 aside for the day, please.

5 ACTING PRESIDENT BRESLIN: The
6 bill is laid aside for the day.

7 THE SECRETARY: Calendar Number
8 405, by Member of the Assembly Latimer --

9 SENATOR KLEIN: Lay the bill
10 aside for the day, please.

11 ACTING PRESIDENT BRESLIN: The
12 bill is laid aside for the day.

13 THE SECRETARY: Calendar Number
14 408, by Member of the Assembly Abbate,
15 Assembly Print Number 7173, an act to amend
16 the Executive Law.

17 ACTING PRESIDENT BRESLIN: Read
18 the last section.

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

21 ACTING PRESIDENT BRESLIN: Call
22 the roll.

23 (The Secretary called the roll.)

24 ACTING PRESIDENT BRESLIN:
25 Announce the results.

1 THE SECRETARY: Ayes, 60.

2 ACTING PRESIDENT BRESLIN: The
3 bill is passed.

4 THE SECRETARY: Calendar Number
5 409, by Member of the Assembly Rosenthal,
6 Assembly Print Number 5655, an act to amend
7 the Energy Law.

8 ACTING PRESIDENT BRESLIN: Read
9 the last section.

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

12 ACTING PRESIDENT BRESLIN: Call
13 the roll.

14 (The Secretary called the roll.)

15 ACTING PRESIDENT BRESLIN:
16 Announce the results.

17 THE SECRETARY: Ayes, 60.

18 ACTING PRESIDENT BRESLIN: The
19 bill is passed.

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

22 SENATOR KLEIN: Mr. President,
23 can we please go to a reading of the
24 controversial calendar.

25 ACTING PRESIDENT BRESLIN: The

1 Secretary will ring the bell.

2 The Secretary will read.

3 THE SECRETARY: Calendar Number
4 123, by Member of the Assembly Lancman,
5 Assembly Print Number 2374A, an act to amend
6 the Judiciary Law.

7 SENATOR BONACIC: Will the
8 sponsor explain the bill, please?
9 Explanation.

10 ACTING PRESIDENT BRESLIN:
11 Senator Klein, Senator Bonacic has requested
12 an explanation.

13 SENATOR KLEIN: Yes,
14 Mr. President.

15 This legislation requires each
16 commissioner of jurors, one for each county,
17 to collect demographic information on the
18 jurors who present for jury service. Some of
19 the information could include but is not
20 limited to a juror's age, ethnicity, age and
21 sex.

22 ACTING PRESIDENT BRESLIN:
23 Senator Bonacic.

24 SENATOR BONACIC: Will the
25 sponsor yield for a couple of questions?

1 ACTING PRESIDENT BRESLIN:

2 Senator Klein, do you yield to Senator
3 Bonacic?

4 SENATOR KLEIN: Yes,
5 Mr. President.

6 ACTING PRESIDENT BRESLIN:
7 Senator Bonacic.

8 SENATOR BONACIC: Senator Klein,
9 I'm under the impression that the Office of
10 Court Administration is doing this now. Is
11 this something different than what they're
12 doing in the jury pool when they come in?

13 ACTING PRESIDENT BRESLIN:
14 Senator Klein.

15 SENATOR KLEIN: Through you,
16 Mr. President. To my knowledge, in my
17 office's conversation with the Office of Court
18 Administration, they're not doing this. And
19 they support this specific legislation.

20 I think what you're getting at are
21 the broader terms that were used in the
22 original bill before the bill was amended,
23 they were opposed to. But they support this
24 legislation.

25 ACTING PRESIDENT BRESLIN:

1 Senator Bonacic.

2 SENATOR BONACIC: Can I ask
3 Senator Klein one more question?

4 ACTING PRESIDENT BRESLIN: Will
5 you yield to an additional question, Senator
6 Klein?

7 SENATOR KLEIN: Yes,
8 Mr. President.

9 ACTING PRESIDENT BRESLIN:
10 Senator Bonacic.

11 SENATOR BONACIC: Senator Klein,
12 when all of this information is finally
13 collected, what is the end game? What's the
14 next step?

15 SENATOR KLEIN: Well, a study put
16 out several years ago which showed that this
17 was a problem, that most juries and some
18 juries around the state, specifically
19 downstate, don't reflect adequately the people
20 who live there.

21 So this is a way to finally have
22 this information, which was never collected
23 before, done in a very easy way by just adding
24 another checkoff box on the existing
25 questionnaires that they distribute, and then

1 we can determine how we can potentially open
2 up the jury pool that much further.

3 Right now we're limited to voter
4 registration and other means as far as the
5 ways we get information or the way we can
6 actually pick jurors from specific lists. So
7 I guess in the long run we can see if the
8 claims that have been talked about are
9 actually warranted.

10 ACTING PRESIDENT BRESLIN:
11 Senator Bonacic.

12 SENATOR BONACIC: Another
13 question, Senator Klein?

14 ACTING PRESIDENT BRESLIN:
15 Senator Klein, will you yield to an additional
16 question?

17 SENATOR KLEIN: Yes,
18 Mr. President.

19 ACTING PRESIDENT BRESLIN:
20 Senator Bonacic.

21 SENATOR BONACIC: Okay, I want to
22 make sure I understand this. If I live in a
23 county where I have 25 percent of my
24 population is Asian, 25 percent is
25 Afro-American, 25 percent is Hispanic, and the

1 other 25 percent is Caucasian, is it the
2 ultimate goal, when we have a jury of 12, that
3 we have three members from each of those
4 races? Would that be the ideal goal of
5 eventually where we want to go with this
6 information?

7 SENATOR KLEIN: I don't think
8 that's what the goal is, Senator. But I do
9 believe that once we have this information --
10 and by the way, this legislation is only going
11 to require that we gather this information to
12 see if a lot of the claims that are out there
13 and the studies that we've seen in the past
14 are warranted.

15 ACTING PRESIDENT BRESLIN:
16 Senator Bonacic.

17 SENATOR BONACIC: Okay, on the
18 bill.

19 ACTING PRESIDENT BRESLIN:
20 Senator Bonacic, on the bill.

21 SENATOR BONACIC: I'm not going
22 to support this legislation for a variety of
23 reasons.

24 Number one, the courts have held
25 just recently, on March 30th of this year, in

1 Berghuis v. Smith, that unless you can show
2 there's systematic exclusion in your minority
3 pool, then it makes no difference what your
4 jury composition is. And there have been
5 attacks on verdicts because of racial
6 composition, and therefore the verdict should
7 be set aside.

8 And I don't generally support that
9 policy. I think regardless of the racial
10 composition, we're basically Americans. We
11 can come together on a jury deliberation, in a
12 common goal, and do justice. So I don't like
13 the basis of why you're collecting the
14 information.

15 And the second thing is the courts
16 have held if there's no attempt at systematic
17 exclusion, regardless of what the racial
18 composition of the jury is, you can't set the
19 verdict aside.

20 For example, it's hard to get
21 people to come to jury pools. They're busy.
22 And for some reason the commissioner of jurors
23 sends out these subpoenas to a generally
24 Afro-American community, and 95 percent of the
25 minority pool is Afro-American. And that jury

1 is all Afro-American, and there is an Asian or
2 a Caucasian or a Hispanic being tried. And
3 the verdict is -- they come together and they
4 make the verdict based on the facts to render
5 justice.

6 The court decision here, the
7 Supreme Court in the case that I cited, just
8 five weeks ago said unless can you prove
9 there's a systematic exclusion on how you've
10 put the people in the jury pool, it's never
11 going to support a motion to set aside a
12 verdict on racial composition.

13 So I think this is an exercise in
14 futility. The courts just recently are
15 closing the door on it. And to suggest that
16 the racial composition has got to reflect the
17 population of the county, it undercuts who
18 Americans are and how they can come together
19 and render justice. For that reason, I'm
20 voting no.

21 Thank you, Mr. President.

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

24 Are there any other Senators
25 wishing to be heard?

1 Hearing none, the Secretary will
2 ring the bell. Members are asked to come to
3 the chamber for the vote.

4 Read the last section.

5 THE SECRETARY: Section 3. This
6 act shall take effect on the 90th day.

7 ACTING PRESIDENT BRESLIN: Call
8 the roll.

9 (The Secretary called the roll.)

10 ACTING PRESIDENT BRESLIN:
11 Senator Klein, to explain his vote.

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

14 I just want to make sure my
15 colleagues are clear that, you know, this
16 legislation is not mandating any expansion of
17 any jury pool. It's just requiring more
18 information be gathered to see more ways we
19 can get more and more people eligible to be
20 jurors.

21 I think that certainly should be
22 the intent, based on a 2006 Citizen Action
23 study which showed that many people aren't
24 participating in the jury process.

25 So I think the combination of

1 having more information at the disposal of the
2 OCA can only help in getting more and more
3 people involved in the jury process. So of
4 course I vote yes, Mr. President.

5 ACTING PRESIDENT BRESLIN: Thank
6 you, Senator Klein.

7 Senator Klein will be recorded in
8 the affirmative.

9 Senator Farley, to explain his
10 vote.

11 SENATOR FARLEY: Before I explain
12 my vote, I'd just like to complain how long it
13 takes to get somebody to be able to vote on
14 this. I wish the members would be in their
15 seats so that they could vote. We wait and
16 wait and wait for them to come to the chamber.

17 I'm going to vote up on this bill.
18 But I do have some concerns that perhaps this
19 could be just another example of where the
20 court could change its mind in saying the jury
21 pool was not reflective of the community or
22 something and therefore we need a new trial.

23 But I will vote aye. But again,
24 Mr. President, I wish you could get them in
25 the room faster on a vote.

1 ACTING PRESIDENT BRESLIN: I'll
2 do my best, Senator Farley.

3 Senator Farley to be recorded in
4 the affirmative.

5 Announce the results.

6 THE SECRETARY: Those recorded in
7 the negative on Calendar Number 123 are
8 Senators Bonacic, Flanagan, Golden, Griffo,
9 O. Johnson, Lanza, Larkin, LaValle, Leibell,
10 Little, Nozzolio, Padavan, Saland, Skelos,
11 Volker and Young.

12 Ayes, 44. Nays, 16.

13 ACTING PRESIDENT BRESLIN: The
14 bill is passed.

15 THE SECRETARY: Calendar Number
16 315, by Senator Stewart-Cousins, Senate Print
17 7129B, an act to amend Chapter 118 of the Laws
18 of 1969, relating to a separate union free
19 school district.

20 SENATOR LIBOUS: Explanation.

21 ACTING PRESIDENT BRESLIN:
22 Senator Stewart-Cousins, an explanation has
23 been requested.

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

1 This is a bill that would allow the
2 Greenburgh North Castle Union Free School
3 District to establish -- which is, by the way
4 a Special Acts District -- to establish a
5 school for special needs children in Orange
6 County. It is hoped that about 155 residents
7 will be served by this school.

8 It is cosponsored by Senator
9 Larkin, who represents Orange County. And I
10 think he would certainly attest to the need
11 for --

12 SENATOR LIBOUS: Explanation
13 satisfactory.

14 SENATOR STEWART-COUSINS: Was
15 that enough?

16 ACTING PRESIDENT BRESLIN: Thank
17 you very much, Senator Stewart-Cousins.

18 Are there any other Senators
19 wishing to be heard?

20 Hearing none, the Secretary will
21 ring the bell.

22 Read the last section.

23 THE SECRETARY: Section 4. This
24 act shall take effect immediately.

25 ACTING PRESIDENT BRESLIN: Call

1 the roll.

2 (The Secretary called the roll.)

3 ACTING PRESIDENT BRESLIN:

4 Announce the results.

5 THE SECRETARY: Ayes, 60.

6 ACTING PRESIDENT BRESLIN: The
7 bill is passed.

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

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

13 ACTING PRESIDENT BRESLIN: The
14 Secretary will read the supplemental calendar.

15 THE SECRETARY: Calendar Number
16 475, by the Senate Committee on Rules, Senate
17 Print 7678, an act to amend the Education Law.

18 ACTING PRESIDENT BRESLIN: Read
19 the last section.

20 THE SECRETARY: Section 18. This
21 act shall --

22 SENATOR MONTGOMERY: Lay it
23 aside.

24 ACTING PRESIDENT BRESLIN: The
25 bill is laid aside.

1 THE SECRETARY: Calendar Number
2 477, by the Senate Committee on Rules, Senate
3 Print 7689, an act making appropriations for
4 the support of government.

5 ACTING PRESIDENT BRESLIN: Read
6 the last section.

7 SENATOR LIBOUS: Lay it aside.

8 ACTING PRESIDENT BRESLIN: The
9 bill is laid aside.

10 Senator Klein, that completes the
11 reading of the noncontroversial supplemental
12 calendar.

13 SENATOR KLEIN: Mr. President,
14 can we please go to a reading of the
15 controversial supplemental calendar.

16 ACTING PRESIDENT BRESLIN: The
17 Secretary will read.

18 THE SECRETARY: Calendar Number
19 475, by the Senate Committee on Rules, Senate
20 Print 7678, an act to amend the Education Law.

21 SENATOR MONTGOMERY: Explanation.

22 ACTING PRESIDENT BRESLIN: An
23 explanation has been requested, Senator Smith.

24 SENATOR SMITH: Thank you very
25 much, Mr. President.

1 This bill is an act that amends the
2 Education Law in relation to the powers and
3 the duties of Boards of Cooperative
4 Educational Services, to the operation and
5 management of and enrollment at charter
6 schools, and to increasing the cap on the
7 number of charter schools.

8 This bill, Mr. President, increases
9 the cap that strengthens our ability for Race
10 to the Top, it makes services for high-needs
11 students a critical part of the process, gives
12 priorities to students with special needs,
13 requires open board meetings for transparency
14 and accountability, prevents conflicts of
15 interest, requires public reports to be
16 reported, and also has a common application
17 process that develops a standard.

18 ACTING PRESIDENT BRESLIN: Thank
19 you, Senator Smith.

20 Senator Liz Krueger, on the bill.

21 SENATOR LIZ KRUEGER: Thank you,
22 Mr. President.

23 Will the sponsor yield to a
24 question?

25 ACTING PRESIDENT BRESLIN:

1 Senator Smith, will you yield to a question
2 from Senator Krueger?

3 SENATOR SMITH: Yes, I will,
4 Mr. President.

5 And, Mr. President, I also ask that
6 Senator Craig Johnson, who is also a
7 cooperating person on the bill with me, will
8 be available for questions as well.

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

11 SENATOR LIZ KRUEGER: Thank you.
12 Senator Smith, I understood your explanation,
13 but there's a lot of details in this bill.
14 And because it didn't go through the Education
15 Committee, the Senate didn't really have a
16 chance to review fully all of the changes to
17 state law that would be applied if this became
18 law.

19 Can you just clarify for me what
20 the role of for-profit corporations and
21 management companies would be in both
22 operating charter schools and also overseeing
23 the evaluation of charter schools?

24 SENATOR SMITH: Right. In this
25 particular bill, Mr. President, this bill does

1 not address the change in management of
2 private corporations. However, Mr. President,
3 the bill does allow for for-profit
4 corporations to manage charter schools with
5 regard to curriculum, with regards to the
6 management of their employees such as teachers
7 and maintenance.

8 ACTING PRESIDENT BRESLIN:

9 Senator Krueger.

10 SENATOR LIZ KRUEGER: Thank you.

11 Through you, Mr. President, if the sponsor
12 would continue to yield.

13 ACTING PRESIDENT BRESLIN:

14 Senator Smith, will you continue to yield?

15 SENATOR SMITH: Yes, Mr.

16 President.

17 ACTING PRESIDENT BRESLIN: You

18 may proceed, Senator Krueger.

19 SENATOR KRUEGER: Thank you very

20 much. So as I understand it, for-profit
21 companies could manage charter schools, or run
22 them, and they could in fact be responsible
23 for the evaluations of them.

24 Under this bill, either explicitly
25 or not dealt with in the bill, could I be a

1 staff and/or board member of a for-profit
2 charter school but also be the separate
3 for-profit company evaluating the outcomes in
4 the charter school? Would that be allowed?

5 SENATOR SMITH: Well, Mr.
6 President, through you, Mr. President, there
7 is the conflict of interest portion of this
8 bill which is very critical with regard to
9 those type of challenges. And I believe that
10 portion addresses her concern with regard to
11 conflict of interest.

12 ACTING PRESIDENT BRESLIN:
13 Senator Krueger.

14 SENATOR LIZ KRUEGER: Thank you,
15 Mr. President. If the sponsor would still
16 continue to yield.

17 ACTING PRESIDENT BRESLIN: Do you
18 continue to yield, Senator Smith?

19 SENATOR SMITH: Absolutely,
20 Mr. President.

21 ACTING PRESIDENT BRESLIN: You
22 may proceed, Senator Krueger.

23 SENATOR LIZ KRUEGER: Thank you
24 very much.

25 There was a previous bill that was

1 actually what we recall of S6468, which
2 sometimes is called the Sampson/Silver Charter
3 School Bill. And this bill has many of the
4 same sections but a number of changes or
5 exclusions from the previous bill.

6 Can you explain to me how this bill
7 deals with the question of co-location of
8 charters and public schools and
9 decision-making over where the schools will be
10 located, what happens if the existing public
11 school believes that it is not able to
12 accommodate an additional school or multiple
13 schools run by people in the same building?
14 How does this bill address those problems?

15 SENATOR SMITH: Through you,
16 Mr. President, this particular bill does not
17 address the issue of co-location. It leaves
18 it as it was in the former charter school
19 bills.

20 ACTING PRESIDENT BRESLIN:
21 Senator Krueger.

22 SENATOR LIZ KRUEGER: Thank you,
23 Mr. President. If the sponsor would please
24 continue to yield.

25 ACTING PRESIDENT BRESLIN: Would

1 you continue to yield, Senator Smith?

2 SENATOR SMITH: Absolutely,
3 Mr. President.

4 ACTING PRESIDENT BRESLIN: You
5 may proceed.

6 SENATOR LIZ KRUEGER: Mr.
7 President, through you. This bill says that
8 it would permit authorizing entities to grant
9 approval for the board of a single charter
10 school to offer a single grade at multiple
11 sites, with each additional site counted
12 against the cap.

13 I don't quite understand this. Are
14 we talking about physically a school being all
15 fifth grade, a school being all fourth grade,
16 a school -- how does that -- I don't
17 understand that. Could you explain that,
18 please?

19 ACTING PRESIDENT BRESLIN:
20 Senator Smith.

21 SENATOR SMITH: Yes, through you,
22 Mr. President. That reference that she is
23 talking about with regard to lock sites is a
24 charter school actually operating a particular
25 grade at one site and at another site. And

1 that would also account for -- toward the cap,
2 if you will.

3 The challenge that charter schools
4 have now which we are trying to address in
5 this bill has to do with multiple locations as
6 well as trying to deal with charters in
7 particular where they are sited.

8 ACTING PRESIDENT BRESLIN:
9 Senator Krueger.

10 SENATOR LIZ KRUEGER: Thank you,
11 Mr. President. Through you, if the sponsor
12 would continue to yield.

13 ACTING PRESIDENT BRESLIN: Will
14 you continue to yield, Senator Smith?

15 SENATOR SMITH: Yes,
16 Mr. President.

17 SENATOR LIZ KRUEGER: So it's
18 also my understanding that through this bill
19 there could somehow be some connection between
20 multiple charter schools for different not
21 necessarily grades but the categories of
22 school. So we usually define K through 5,
23 then 5 through 8 are middle school, then a
24 high school.

25 At least in the City of New York

1 right now, you would apply through a lottery
2 for the elementary charter school, and then
3 the assumption is you would apply separately
4 for a lottery into a middle school and/or a
5 high school. How would this work under this
6 bill for providing that people can take the
7 opportunity to apply to charters at different
8 grade levels?

9 ACTING PRESIDENT BRESLIN:

10 Senator Smith.

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

13 With regard to the question by my
14 colleague as it relates to multiple locations,
15 the challenge with the charter schools that we
16 addressed earlier has to do with multiple
17 locations. And if she's referencing -- and I
18 have a question of her if she's referencing
19 zone versus district.

20 Is that what you're referring to?

21 SENATOR LIZ KRUEGER: Well, I
22 understand the difference between zone and
23 district, at least as it applies to New York
24 City. We have zone elementary schools and we
25 have zone middle schools, but we don't have

1 zone high schools.

2 But I think in the example I was
3 asking you if there was a charter school --
4 oh, I don't know, the Liz Krueger For-Profit
5 Charter School Corporation that had 10
6 different schools. They would each apply one
7 for the cap, so you'd have 10 schools counted
8 toward the cap. But in this corporation I
9 might want children to start with my system
10 and then keep moving through my system.

11 Is that possible, or is there a
12 model where other children might attempt to
13 apply to the school, some in kindergarten,
14 some in the first grade, some at the
15 middle-school level, some at the high-school?
16 How would this work?

17 SENATOR SMITH: Through you,
18 Mr. President, many parents are concerned with
19 their children when they go into these charter
20 schools if in fact they can continue on and
21 not have to go into the public school system.

22 In addition, when you have an
23 operator of a school that operates the school
24 well, as opposed to having to apply for
25 another charter application, which is a very

1 cumbersome process, this bill allows for that
2 particular operator to open additional schools
3 under the performance of their current
4 charter, which we assume is doing well, which
5 is why it's been extended.

6 ACTING PRESIDENT BRESLIN:
7 Senator Krueger.

8 SENATOR LIZ KRUEGER: Thank you,
9 Mr. President. If the sponsor would continue
10 to yield.

11 ACTING PRESIDENT BRESLIN: Do you
12 continue to yield, Senator Smith?

13 SENATOR SMITH: Yes, sir,
14 Mr. President.

15 ACTING PRESIDENT BRESLIN:
16 Senator Krueger.

17 SENATOR LIZ KRUEGER: As I
18 understand your explanation, Senator, under
19 this bill, if this became law, a private
20 corporation, the Liz Krueger Charter School
21 Corporation, could have as many schools as a
22 public school system in any specific area.
23 Granted, in the City of New York, with 1100
24 public schools, obviously that couldn't be the
25 case, because there's even in your bill a

1 maximum I believe of 460 charter schools or
2 somewhere close to that.

3 But in a relatively smaller
4 geographic area -- say, Albany -- is it
5 conceivable that over time you could have one
6 company running a school system equal in size
7 to the public school system?

8 SENATOR SMITH: Through you,
9 Mr. President, I believe the bill has parts of
10 it that will not allow that to happen.

11 However, we also know the
12 authorizer would have to grant that. And we
13 suspect the authorizer would have a good eye
14 and overview of that process to make sure it
15 didn't occur.

16 ACTING PRESIDENT BRESLIN:
17 Senator Krueger.

18 SENATOR LIZ KRUEGER: Thank you,
19 Mr. President. If the sponsor would continue
20 to yield.

21 ACTING PRESIDENT BRESLIN: Do you
22 continue to yield, Senator Smith.

23 SENATOR SMITH: Yes,
24 Mr. President.

25 SENATOR LIZ KRUEGER: Thank you.

1 There was also some confusion, perhaps, about
2 the treatment of both special-needs
3 populations in this bill compared to existing
4 charter law and rules for English-as-a-second-
5 language students, this bill, to previous
6 charter law. So I'll try to take it apart.

7 Under existing charter law, what
8 are the requirements for serving children with
9 special needs or educational -- so sorry. The
10 term is -- it's three letters. It involves
11 children who have special -- IEPs. Thank you
12 very much, Chair Oppenheimer.

13 So there's one rule under current
14 law about treatment for children with IEP, and
15 I believe that changes in this law. Can you
16 explain how it changes?

17 SENATOR SMITH: Through you,
18 Mr. President. Under existing law, we are
19 required, charter schools are required to
20 service that population.

21 ACTING PRESIDENT BRESLIN:
22 Senator Krueger.

23 SENATOR LIZ KRUEGER: Thank you,
24 Mr. President. If, through you, the sponsor
25 would continue to yield.

1 ACTING PRESIDENT BRESLIN: Do you
2 continue to yield, Senator Smith?

3 SENATOR SMITH: Yes,
4 Mr. President.

5 ACTING PRESIDENT BRESLIN: You
6 may proceed, Senator Krueger.

7 SENATOR LIZ KRUEGER: As I read
8 the new bill, they would be required to serve
9 at least 50 percent of children with
10 disabilities and English-language learners as
11 a ratio of the percentage of those children in
12 the school district or zone. So as I'm
13 reading the law under your bill, charter
14 schools would have to serve at least
15 50 percent of the children, not 50 percent of
16 the children in their school.

17 But if -- I'll make this up. I'm
18 already the for-profit company, so I can't be
19 the school district. So in the Malcolm Smith
20 School District, if 20 percent of the children
21 are defined as special needs and 20 percent of
22 the children are defined as ELL, English
23 language learners, that means that under your
24 law any charter school would have to be
25 serving at least 10 percent special needs and

1 10 percent ELL? Is that a correct analysis?

2 ACTING PRESIDENT BRESLIN:

3 Senator Smith.

4 SENATOR SMITH: Thank you,
5 Mr. President. Through you, Mr. President,
6 this particular bill allows charter schools to
7 give admission preference to students with
8 disabilities and students who are
9 English-language learners and mandates
10 enrollment preference for charter schools
11 serving under half of the percentage of
12 students in the school district or the
13 community district in which that charter
14 school is located.

15 SENATOR LIZ KRUEGER: Through
16 you, Mr. President, if the sponsor would
17 continue to yield.

18 ACTING PRESIDENT BRESLIN: Will
19 you continue to yield, Senator Smith, to
20 Senator Krueger?

21 SENATOR SMITH: Absolutely,
22 Mr. President.

23 SENATOR LIZ KRUEGER: I believe
24 you were agreeing with me. So I just want to
25 double-check that the charter schools would

1 have to serve at least 50 percent of the
2 students with these definitions in any given
3 district.

4 ACTING PRESIDENT BRESLIN:
5 Senator Smith.

6 SENATOR SMITH: Through you,
7 Mr. President, not necessarily agreeing, but
8 they would have to give a preference, as I
9 formerly stated.

10 SENATOR LIZ KRUEGER: I'm sorry,
11 I didn't hear you.

12 SENATOR SMITH: That's a
13 designated preference, as I formerly stated.

14 SENATOR LIZ KRUEGER: As a
15 designated preference. So --

16 ACTING PRESIDENT BRESLIN:
17 Senator Krueger.

18 SENATOR LIZ KRUEGER: Thank you.
19 Excuse me, Mr. President. Through you, if the
20 sponsor would continue to yield.

21 ACTING PRESIDENT BRESLIN: Do you
22 continue to yield, Senator Smith?

23 SENATOR SMITH: Yes,
24 Mr. President.

25 SENATOR LIZ KRUEGER: Thank you.

1 So again, let's go back to my
2 hypothesis that in any given geographic area
3 there might be a large enough number of
4 charter schools to not necessarily equal but
5 come close to equalling the number of public
6 schools. But under this law, the charter
7 schools would only have an obligation to
8 provide preference for admission for half the
9 number of children in these categories,
10 children who have special needs and/or
11 children with ELL needs.

12 So does that mean in the public
13 schools, by definition, they would end up with
14 double the percentage of children with special
15 needs and with ELL needs?

16 SENATOR SMITH: Through you,
17 Mr. President. Her assumptions are correct.
18 But remember, Mr. President, there is a
19 lottery. And these students also could be
20 accepted through the lottery as well.

21 ACTING PRESIDENT BRESLIN:
22 Senator Krueger.

23 SENATOR LIZ KRUEGER: Thank you.
24 Thank you very much. If the sponsor would
25 continue to yield.

1 ACTING PRESIDENT BRESLIN: Do you
2 continue to yield, Senator Smith?

3 SENATOR SMITH: Yes,
4 Mr. President.

5 SENATOR LIZ KRUEGER: So again,
6 my understanding -- you're right, it's a
7 lottery, it could be a hundred percent of the
8 children with special needs and/or a hundred
9 percent of the children who are ELL that could
10 be accepted through the lottery. But the
11 mandate is only up to 50 percent.

12 And so I believe that my math is
13 right that it could leave the public school
14 system with dramatically greater percentages
15 of children with special needs and
16 dramatically greater percentages of children
17 who have English as a second language issues
18 that need to be resolved. Is that your
19 understanding also?

20 SENATOR SMITH: Through you,
21 Mr. President. Yes, Mr. President, for my
22 colleagues as well as many of the advocates
23 and those who even oppose the bill, whether
24 it's the UFT or NYSUT, that was a big concern
25 of many of them. There were no basic

1 requirements before. And in trying to address
2 their particular needs, we move that up to a
3 percentage, yes.

4 ACTING PRESIDENT BRESLIN:
5 Senator Krueger.

6 SENATOR LIZ KRUEGER: Thank you.
7 If, through you, Mr. President, the sponsor
8 would continue to yield.

9 ACTING PRESIDENT BRESLIN:
10 Senator Smith, do you continue to yield?

11 SENATOR SMITH: Yes,
12 Mr. President.

13 SENATOR LIZ KRUEGER: Thank you.
14 My understanding also from this
15 bill is that it would allow charter schools to
16 provide alternative sites for children with
17 special needs, either for services for
18 children with special needs or an entirely
19 separate school for children with special
20 needs.

21 Could you clarify that for me?

22 SENATOR SMITH: Yes,
23 Mr. President. Yes, it would do so. But this
24 is in the spirit of the concern about
25 saturation. And by giving the charter school

1 the ability to have other locations, other
2 sites, it will obviously ameliorate some of
3 that concern about pressing the students that
4 are in that current location against the wall
5 in terms of space and location, being
6 sensitive to that need.

7 ACTING PRESIDENT BRESLIN:

8 Senator Krueger.

9 SENATOR LIZ KRUEGER: Thank you.

10 And certainly there are justifiable
11 reasons to have special services for children
12 with special needs off-site or subcontracted.
13 And obviously in the public school system we
14 even sometimes separate out children with
15 special needs into separate buildings and
16 separate schools, and I certainly recognize
17 that from the City of New York.

18 But under this law, could the
19 following scenario happen? A consortium of
20 separate charters that are each approved
21 individually under the cap, and approved by
22 either -- by one of the, I guess, two options
23 we're keeping in place with this bill, a
24 Regents approval or a SUNY approval process --
25 could a group of charters who are not

1 otherwise related from a corporate perspective
2 pool all of their special needs children into
3 some other location somewhere outside all of
4 their buildings?

5 SENATOR SMITH: Through you,
6 Mr. President. No, I don't believe so. But
7 that was also assumed that there would be that
8 kind of interest to do such, and I doubt
9 charter operators would do so.

10 ACTING PRESIDENT BRESLIN:
11 Senator Krueger.

12 SENATOR LIZ KRUEGER: If through
13 you, Mr. President, the sponsor would continue
14 to yield.

15 ACTING PRESIDENT BRESLIN: Do you
16 continue to yield, Senator Smith?

17 SENATOR SMITH: Yes,
18 Mr. President.

19 ACTING PRESIDENT BRESLIN: You
20 may proceed.

21 SENATOR LIZ KRUEGER: Mr.
22 President, I read the bill and it seemed to me
23 fairly vague about whether or not charter
24 schools could do that, which is why I'm very
25 concerned.

1 And so I'll ask the sponsor again,
2 what in the bill would prevent that situation
3 from happening? Let's say in the City of
4 New York the charter schools from throughout a
5 fairly large geographic area, five boroughs,
6 8.5 million people, making the determination
7 that they were going to find one, two, three
8 locations and define them as the places where
9 these special needs children go to so that
10 they've met their state obligation but don't
11 actually have, then, what we define I think
12 more as a normal community-based public school
13 where children with diverse needs and at
14 different levels of learning all get served
15 together. Your bill doesn't stop that.

16 SENATOR SMITH: Through you,
17 Mr. President. Yes, obviously the schools
18 have to still follow IP rules. But more
19 importantly, what would make sure that
20 wouldn't happen is we still are required to
21 follow federal law.

22 ACTING PRESIDENT BRESLIN:
23 Senator Krueger.

24 SENATOR LIZ KRUEGER: Thank you.
25 Through you, Mr. President.

1 ACTING PRESIDENT BRESLIN: Will
2 you continue to yield, Senator Smith?

3 SENATOR SMITH: Yes. Absolutely,
4 Mr. President.

5 SENATOR LIZ KRUEGER: Thank you.
6 Under your bill, who's reviewing
7 the charter schools to make sure that they are
8 meeting the requirements of the law both on
9 acceptance, on services provided, on outcomes,
10 on the money, the public money being spent and
11 accounted for? What's the process for that?

12 SENATOR SMITH: There is -- one,
13 Mr. President, they're required under this
14 bill to provide public reports on that. Two,
15 obviously you have the Regents as well as
16 SUNY, and then you have the localities over a
17 million.

18 And more importantly,
19 Mr. President, these charters, as they have
20 done, their boards, in addition. But what's
21 critical for this, Mr. President, is the
22 accountability and transparency that's in here
23 that's required, similar to the public school
24 system.

25 ACTING PRESIDENT BRESLIN:

1 Senator Krueger.

2 SENATOR LIZ KRUEGER: Thank you,
3 Mr. President. If the sponsor would continue
4 to yield.

5 ACTING PRESIDENT BRESLIN: Will
6 you continue to yield, Senator Smith?

7 SENATOR SMITH: Yes.

8 SENATOR LIZ KRUEGER: Thank you.
9 Could publicly traded companies run
10 charter schools under this law?

11 ACTING PRESIDENT BRESLIN:
12 Senator Smith.

13 SENATOR SMITH: Through you,
14 Mr. President, no.

15 SENATOR LIZ KRUEGER: I'm sorry I
16 didn't hear. Excuse me.

17 SENATOR SMITH: No, not that I'm
18 aware of.

19 SENATOR LIZ KRUEGER: No, they
20 couldn't?

21 SENATOR SMITH: Not that I'm
22 aware of.

23 ACTING PRESIDENT BRESLIN:
24 Senator Krueger.

25 SENATOR LIZ KRUEGER: Through

1 you, Mr. President, if the sponsor would
2 continue to yield.

3 ACTING PRESIDENT BRESLIN: Do you
4 continue to yield, Senator Smith?

5 SENATOR SMITH: Yes,
6 Mr. President.

7 SENATOR LIZ KRUEGER: Since the
8 bill doesn't explicitly lay out the
9 definitions of a for-profit corporation or
10 management company, how do we know a publicly
11 traded company couldn't run charter schools?

12 ACTING PRESIDENT BRESLIN:
13 Senator Smith.

14 SENATOR SMITH: Mr. President,
15 that is why we have our overseers, such as
16 SUNY, Board of Regents, in addition to the
17 charter's board as well.

18 ACTING PRESIDENT BRESLIN:
19 Senator Krueger.

20 SENATOR LIZ KRUEGER: Through
21 you, Mr. President, if the sponsor would
22 continue to yield.

23 ACTING PRESIDENT BRESLIN:
24 Senator Smith?

25 SENATOR SMITH: Yes,

1 Mr. President.

2 SENATOR LIZ KRUEGER: Thank you.

3 So you listed out a number of
4 entities who might or could or would evaluate
5 how the money is spent, how the students are
6 doing, how the students are accepted, whether
7 there's retention, whether they're moved
8 off-campus to some other sites. Is there no
9 role for the State Comptroller or, in the City
10 of New York, the City Comptroller in actually
11 looking at how these monies are spent and
12 these children are educated?

13 ACTING PRESIDENT BRESLIN:
14 Senator Smith.

15 SENATOR SMITH: Through you,
16 Mr. President, we know the Appellate Court,
17 Mr. President, has made a ruling on that, and
18 obviously we understand what that position
19 was.

20 But it is clear that the
21 Comptroller has the right and has the
22 authority to audit charter schools if he so
23 chooses to.

24 ACTING PRESIDENT BRESLIN:
25 Senator Krueger.

1 SENATOR LIZ KRUEGER: Thank you,
2 Mr. President. If the sponsor will continue
3 to yield.

4 ACTING PRESIDENT BRESLIN: Do you
5 continue to yield, Senator Smith?

6 SENATOR SMITH: Yes, absolutely.

7 ACTING PRESIDENT BRESLIN:
8 Senator Krueger.

9 SENATOR LIZ KRUEGER: Thank you.
10 Can you just clarify again this
11 50 percent versus 75 percent lottery
12 application process and how that works?

13 ACTING PRESIDENT BRESLIN:
14 Senator Smith.

15 SENATOR SMITH: Through you,
16 Mr. President, I was just conferring with
17 counsel.

18 And what my colleague is referring
19 to is once the schools hit a 50 percent
20 enrollment piece of special ed students in
21 surrounding areas, at that point they are
22 allowed to -- until they get to 75 percent, I
23 should say -- at that point, right, then
24 they're allowed to?

25 ACTING PRESIDENT BRESLIN:

1 Senator Krueger.

2 SENATOR LIZ KRUEGER: I'm sorry,
3 I have to ask the Senator to repeat himself.
4 Either I didn't hear or I didn't quite
5 understand.

6 ACTING PRESIDENT BRESLIN: Would
7 you repeat your answer, Senator Smith?

8 SENATOR SMITH: The question was
9 the 50 percent/75 percent enrollment; correct?
10 Fifty percent enrollment of special ed
11 students around them. Once we hit that mark,
12 then that's when we'll -- and when we get to
13 75 percent, we're allowed to go back to the
14 50 percent. That's as simple as it is.

15 ACTING PRESIDENT BRESLIN:
16 Senator Krueger.

17 SENATOR LIZ KRUEGER: Thank you.
18 Maybe there's another interpretation, so I
19 will -- I also believe there's some attempt in
20 this bill -- excuse me. Through you,
21 Mr. President, if the sponsor would continue
22 to yield.

23 SENATOR SMITH: Absolutely.

24 SENATOR LIZ KRUEGER: Thank you
25 very much. There was also something about if

1 the schools had failed to meet their
2 obligation to hit the 50 percent mark for
3 serving the special-needs children and
4 children with English-language needs, that
5 their target would be raised to 75 percent.
6 Am I misunderstanding that portion of the
7 bill?

8 ACTING PRESIDENT BRESLIN:

9 Senator Smith.

10 SENATOR SMITH: Yes, through you,
11 Mr. President, if I can just read that section
12 of the bill my colleague is referring to.

13 It simply requires that charter
14 schools which are found to be serving less
15 than 50 percent of the population of students
16 with disabilities and English-language
17 learners represented in the school district of
18 the location to automatically admit students
19 in these subgroups outside of the lottery
20 until all applicants are admitted or the
21 population reaches 75 percent, to give you a
22 little more language.

23 ACTING PRESIDENT BRESLIN:

24 Senator Krueger.

25 SENATOR LIZ KRUEGER: Thank you,

1 Mr. President. If the sponsor would please
2 continue to yield.

3 ACTING PRESIDENT BRESLIN: Do you
4 continue to yield, Senator Smith?

5 SENATOR SMITH: Of course,
6 Mr. President.

7 SENATOR LIZ KRUEGER: Thank you.

8 SENATOR SMITH: Mr. President,
9 just to ask my colleague that I'm probably
10 going to refer to Craig Johnson. There is
11 something I have to take care of off the
12 floor. So I will take a few more questions
13 and then Senator Johnson.

14 SENATOR LIZ KRUEGER: Thank you.
15 I think I only have a few more questions,
16 Senator.

17 ACTING PRESIDENT BRESLIN:
18 Senator Krueger.

19 SENATOR LIZ KRUEGER: So on this
20 issue I understand how you evaluate the
21 population for a school when we're talking
22 about elementary schools, at least in the City
23 of New York, where we have what's called zone
24 schools. But in my understanding, in the bill
25 the zone for high schools -- so for charter

1 high schools, under this law, the zone would
2 be the City of New York. So how would this
3 50 percent be applied to lotteries for high
4 schools in the City of New York?

5 ACTING PRESIDENT BRESLIN:

6 Senator Smith.

7 SENATOR SMITH: Thank you,
8 Mr. President. One moment.

9 Thank you, Mr. President. Through
10 you, Mr. President, they would have to reach
11 the citywide total. They would have to reach
12 the citywide total.

13 ACTING PRESIDENT BRESLIN:

14 Senator Krueger.

15 SENATOR LIZ KRUEGER: Thank you.

16 Sorry, just thinking. I know other
17 people have additional questions so I don't
18 want to take up everyone's time.

19 I guess on the bill, Mr. President.

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

22 Senator Krueger on the bill.

23 SENATOR LIZ KRUEGER: Thank you
24 very much. Thank you for your responses,
25 Senator. And I feel that I will have more

1 questions, but I won't take up the time on the
2 floor.

3 Here's my dilemma today. I'm not
4 an opponent of charter schools by definition,
5 and I think that they can be excellent
6 alternatives for public schools. But I also
7 worry about going too far too fast.

8 I'm not concerned about raising the
9 cap. And my understanding is that for Race to
10 the Top issues, which we also must confront in
11 this Legislature within the next few weeks,
12 the only portion of this bill that applies to
13 the debate around the Race to the Top federal
14 funds is the cap. Everything else in this
15 bill is a separate discussion and not relevant
16 for being approved or not being approved for
17 federal money.

18 I'm frustrated that we're not
19 sitting either around a table somewhere or on
20 the floor of the Legislature today discussing
21 what we need to do to change our laws to
22 assure that we can compete for Round 2 Race to
23 the Top money, because it's up to
24 \$700 million. And most of us are pretty
25 simple about these things: If there's federal

1 money to be gotten, we would like to get it
2 here in New York State. And we certainly need
3 it for our public school system.

4 But I just want to go on record, I
5 do not see this bill as a bill that resolves
6 our Race to the Top legislative assignment.
7 And so I worry that this pulls us off the
8 discussion that is very time-sensitive and
9 pulls us off the questions about changing a
10 cap to a whole new scenario of accountability
11 or a lack thereof when talking about spending
12 what may be greater and greater amounts of
13 public education money in a system -- with all
14 due respect to the Senator, the sponsor of
15 bill -- that we don't have enough answers for.

16 The language is too vague. The
17 question of whether for-profit companies who
18 are publicly traded can in fact run our school
19 system; the question of whether the people who
20 are good at doing audits, the comptrollers of
21 the state and of counties and of the City of
22 New York, have a role to play in evaluating
23 what is going on with public monies; the
24 concern -- and it's a big concern for me --
25 that the same entities or the same people who

1 might run these charter school companies might
2 also run the companies who are assigned to do
3 the evaluation of the charter schools.

4 It has been brought to my attention
5 in my raising concerns over the last few
6 days -- because we've only had a couple of
7 days to look at the bill -- that the same
8 complaints can be made of the public school
9 system and that we need to reform the public
10 school system. So, for the record, no
11 disagreement. We need to do better with our
12 public school system also.

13 But I am very concerned that not
14 dealing with that question and not dealing
15 with the Race to the Top question, we're here
16 on the floor of the Senate being asked to vote
17 for or against a bill that doesn't have enough
18 answers to the real concerns I have about
19 accountability: Accountability for the money,
20 accountability for who will be running the
21 schools, accountability for who will close
22 down the bad charters -- because all the
23 research shows and recent newspaper stories
24 show there are good charters and there are bad
25 charters. And I don't see anything in this

1 bill that makes more explicit than current law
2 what can be done and who has the authority to
3 take a school that isn't working and close it
4 down.

5 And I was hoping that the next time
6 this house dealt with the question of
7 expanding charters or defining reform of
8 charter schools, that that would be up front
9 and central for us: Who had the authority to
10 say, No, it's not working, we don't care if
11 it's a five-year authorization or a five-year
12 plus whatever time it took to get started
13 authorization, that government -- because
14 government is responsible for the public
15 education of our children, and government is
16 who's funding both the public school system
17 and the charter school system -- that we would
18 do better at getting clarification for how
19 government would evaluate what was happening
20 what worked, what didn't work, both in charter
21 schools and public schools, and would be held
22 accountable to immediately fix the problems
23 that they saw. And I don't see that in these
24 bills.

25 I do see much broader options

1 available to charters. And I've been told, in
2 fairness, that the reason charters work so
3 well in many parts of the State of New York
4 and the country is because they're allowed
5 more independence and freedom to innovate, to
6 adjust for the needs of children, to be
7 creative. I think that's the right answer.

8 My frustration is we live at the
9 same time where government, for its public
10 school system, seems to be dictating just the
11 opposite. We don't allow them to innovate.
12 We don't allow them to be creative. We don't
13 allow them to go off-script.

14 And so I find an irony in how we,
15 the government, are approaching what's
16 different and better about charities versus
17 public, that we want to allow all these
18 options for charter schools and yet we don't
19 want to allow any of these options for the
20 public school system. And I don't actually
21 understand that.

22 So I feel that this requires more
23 research, greater debate, more analysis of
24 this bill, how it's written, what it will and
25 will not allow. And that in fact what we

1 should be spending our time on this week is
2 understanding what the State of New York needs
3 to do in order to be more successful in
4 competing for Race to the Top monies or if we
5 even agree that that's what we should be
6 doing.

7 I just want to repeat, on the
8 record, this bill doesn't address the
9 questions for Race to the Top. Because I
10 think there is confusion out there. And I
11 don't want anyone to choose to vote yes or no
12 on this bill because they think they are
13 voting for or against changes in the state law
14 that will get us federal dollars from the Race
15 to the Top.

16 I don't believe I have enough
17 satisfactory answers to the questions in my
18 mind about this bill, so I will be voting no.

19 Thank you, Mr. President.

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

22 Senator Oppenheimer, on the bill.

23 SENATOR OPPENHEIMER: Yes. Yes,
24 on the bill.

25 Well, I'll be joining my colleague

1 and voting no. And certainly several
2 interesting discussions just took place, and
3 there's philosophical issues which were very
4 interesting. And it would have been very
5 welcome to be able to discuss them at greater
6 length.

7 I will say of this bill that there
8 are many parts that I do support. In fact, I
9 was seeing at least seven which were my
10 stand-alone bills, and of course I support
11 them -- having BOCES provide services to
12 charter schools and doing the duration of a
13 charter for five instructional years. Because
14 as it is now, they usually count the first and
15 second years of the charter when the school is
16 first being formed, they're not doing any
17 instruction. So we changed the bill to say
18 that it would have to be -- the charter's
19 duration had to be for five instructional
20 years.

21 We dealt with conflicts of
22 interest. We talked about retaining students
23 who are at risk of educational failure. We
24 talked about just bringing in more students
25 who were ELL students or learning disabled

1 students or more seriously disabled students.
2 And a lot of that is in this bill, and I'm
3 very pleased with that.

4 But there are some things that have
5 been left out and need to be negotiated. And
6 those are things like the current exemption
7 from auditing by our Comptroller. In this
8 bill, it still stays with the Board of
9 Regents. And it is felt that since all our
10 school districts in New York State are audited
11 by the Comptroller, that it seems logical and
12 necessary to also audit charter schools in the
13 same way.

14 Issues of co-location are not
15 mentioned in this bill, even though
16 co-location, when a chart school takes over a
17 floor or two of a public school, it is
18 co-locating with this regular public school.
19 And there are many issues that have to be
20 dealt with in co-location.

21 And suggestions have been made that
22 perhaps if we had a list of maybe 20 or 30 or
23 40 schools specifically, let's say, in
24 New York City, where there was additional
25 space within the schools, and then we would be

1 able to co-locate in that additional space in
2 the schools and perhaps offer something to the
3 existing schools. Perhaps we will fix your
4 roof or we will fix your bathrooms or we will
5 do something to make the process of the two
6 schools locating in one school work more
7 cooperatively with one another and make them
8 more welcomed into the school.

9 The issue of oversaturation is not
10 mentioned in this bill, and I think that's a
11 serious one. It's particularly serious for
12 right where we are now, in Albany, and
13 particularly serious for Buffalo, where a huge
14 percentage of the students of that area are
15 choosing to go to charter schools and
16 therefore greatly reducing the number of
17 children in the regular schools and causing
18 enormous dislocation.

19 So those are a few of the things
20 that are concerning me. But I guess what
21 concerns me the most is that I felt
22 negotiations were going on fairly well between
23 all the entities and we had seen several
24 concessions being made by the teachers unions
25 and by the school administrators and by the --

1 we hope by the charter people, the supporters
2 of charters.

3 And the idea was to try and bring
4 as many entities together so that our
5 application to Race to the Top would be a
6 strong one and, as has been mentioned earlier,
7 is not just -- it is certainly not just adding
8 numbers to charter schools, it is adding
9 accountability. And even Arne Duncan, who is
10 our Secretary of Education in the United
11 States, he has said that also, that the
12 accountability issue is much more important
13 than just growing numbers.

14 And we were working in a direction,
15 I felt, that we were going to be able to
16 present something that was very substantial
17 and had a good deal of agreement among all the
18 parties involved. I feel that this will be a
19 distraction, to say the least. I think it
20 will drive us further apart instead of
21 bringing us all together.

22 And my request was that we could
23 hold off for another week or maybe two weeks
24 and see what could be achieved by everybody
25 working together, which has been happening.

1 So I'll be voting no, because I think this
2 is -- it's much too early. If we had waited
3 those two weeks, I probably would have been
4 able to vote yes. But under the
5 circumstances, I think it's more divisive than
6 it is helpful.

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

9 Senator Diaz, on the bill.

10 SENATOR DIAZ: Will the sponsor
11 yield for a question or two, please?

12 ACTING PRESIDENT BRESLIN:
13 Senator Johnson, will you yield to a question
14 from Senator Diaz?

15 SENATOR CRAIG JOHNSON: I will.

16 ACTING PRESIDENT BRESLIN: You
17 may proceed, Senator Diaz.

18 SENATOR DIAZ: Thank you.
19 Senator Johnson.

20 SENATOR CRAIG JOHNSON: Senator
21 Diaz.

22 SENATOR DIAZ: Will you please
23 tell me, enlighten me about where are the
24 charter schools located in majority districts?

25 SENATOR CRAIG JOHNSON: Sure.

1 Thank you. Through you, Mr. President,
2 charter schools obviously -- and public
3 charter schools, may I add -- are located
4 throughout the state: Buffalo, Albany, about
5 five on Long Island. But the predominant
6 amount happen to be in New York City, areas
7 like Harlem, South Bronx, Brooklyn. So the
8 concentration right now we see are
9 predominantly in New York City.

10 SENATOR DIAZ: Mr. President,
11 would the sponsor continue to yield.

12 ACTING PRESIDENT BRESLIN:
13 Senator Johnson, will you yield to another
14 question from Senator Diaz?

15 SENATOR CRAIG JOHNSON: Of course
16 I do.

17 ACTING PRESIDENT BRESLIN: You
18 may proceed, Senator Diaz.

19 SENATOR DIAZ: So you are telling
20 me that the majority of charter schools are
21 located in black and Hispanic neighborhoods
22 and that black and Hispanic children are the
23 ones taking advantage of it?

24 SENATOR CRAIG JOHNSON: Through
25 you, Mr. President, let me just -- if my words

1 don't necessarily do it, let me offer some
2 statistics provided to me by the New York City
3 Department of Education as well as the Charter
4 Schools Institute from SUNY, State University
5 of New York.

6 According to the New York City
7 Department of Education, 90 percent of
8 students in public charter schools are either
9 black or Hispanic. Those are the New York
10 City-authorized schools.

11 In terms of SUNY, who authorizes as
12 well, as you know, 91 percent of those
13 students in SUNY-authorized public charter
14 schools are identified as students of color.

15 Let me also add, Senator Diaz, that
16 of the SUNY schools, 76 percent of the
17 students in SUNY charter schools qualify for
18 free or reduced lunch. In New York City,
19 according to the New York City Department of
20 Education, in the charter public schools
21 71 percent of charter students are eligible
22 for free or reduced-price lunch. And that's
23 as compared to 61 percent of students
24 citywide, those in the district schools.

25 ACTING PRESIDENT BRESLIN:

1 Senator Diaz.

2 SENATOR DIAZ: Mr. President,
3 will the sponsor continue to yield, please?

4 ACTING PRESIDENT BRESLIN: Do you
5 continue to yield, Senator Johnson?

6 SENATOR CRAIG JOHNSON: Of
7 course, Senator Breslin.

8 ACTING PRESIDENT BRESLIN: You
9 may proceed.

10 SENATOR DIAZ: So, Senator
11 Johnson, this bill requires the charter
12 schools to be doubled to 460. That means that
13 if we could, from 200, go from 200 to 460,
14 you're telling me that children in my
15 district, parents in my district, the 32nd
16 Senatorial District that I represent, black
17 and Hispanic in the majority, that the parents
18 in my district will get more opportunities to
19 get their children to a charter school to get
20 a good education and to have what other people
21 have that we don't have?

22 SENATOR CRAIG JOHNSON: Through
23 you, Mr. President, the answer is yes.

24 SENATOR DIAZ: Will the sponsor
25 yield.

1 ACTING PRESIDENT BRESLIN: Will
2 you continue to yield for another question?

3 SENATOR CRAIG JOHNSON: Of
4 course, Mr. President.

5 ACTING PRESIDENT BRESLIN: You
6 may proceed, Senator Diaz.

7 SENATOR DIAZ: So you are telling
8 me again, Senator Johnson -- I have to see if
9 I can get you right -- you are telling me that
10 by doing this and voting in favor of this bill
11 to expand charter schools, the black and
12 Hispanic community, the black and Hispanic
13 parents, the black and Hispanic children would
14 benefit?

15 SENATOR CRAIG JOHNSON: Through
16 you, Mr. President, the answer is yes.

17 But let me expand, because I think
18 what's being lost so far in this debate is how
19 all of New York State's children and all of
20 New York State's parents will benefit.

21 Remember where we are, ladies and
22 gentlemen, right now in terms of education
23 here in New York State. Right now we are in
24 the midst of a nationwide competition known as
25 Race to the Top. And if we may, let's go back

1 a little ways to January of this past year,
2 because I think it's important that we get out
3 on the floor of the Senate what happened in
4 January when a bill was thrown into committees
5 in the Senate and in the Assembly on the claim
6 to get Race to the Top dollars. And that bill
7 would have done no such thing.

8 We are competing right now against
9 a number of states when it comes to education
10 reform in order to qualify for \$700 million.
11 And guess what? Out of that \$700 million,
12 more than 99 percent of that money will go to
13 traditional public schools. So the schools in
14 Senator Diaz's district, Senator Krueger's
15 district, Senator Oppenheimer's district, my
16 district, the traditional public schools will
17 have access to that money, \$700 million.

18 But we need to compete for that.
19 And if you look how well we did last time, we
20 came 15th out of 16 states for that money.

21 Well, we need to improve our score.
22 And there are multiple ways to do it. There
23 are some ways that it seems that it will never
24 happen, some ways that are off the table when
25 it comes to improving our scores. But there

1 are other ways we can do it. And this is one
2 way. This is one way to do it.

3 And so yes, Senator Diaz, we have
4 the opportunity to put additional public
5 charter schools into your district, should
6 they qualify -- because they need to go
7 through an application process, a rigorous
8 application process that at Senator Perkins'
9 hearing in detail went through how that
10 process goes about.

11 But what's important to recognize
12 and what the studies show, from Hoxby and from
13 the recent CREDO study that was released in
14 January 2010, is that your students will
15 benefit from these schools.

16 Thank you.

17 SENATOR DIAZ: Mr. President, on
18 the bill.

19 ACTING PRESIDENT BRESLIN:
20 Senator Diaz, on the bill.

21 SENATOR DIAZ: Mr. President and
22 ladies and gentlemen, there is a saying "Put
23 your money where your mouth is." And there
24 are some people saying that they always care
25 for the black and Hispanic and the minority

1 children and that they're all looking out for
2 the best.

3 Here is an opportunity that we
4 could show, as Democrats, as Republicans, that
5 we could really show that we care for
6 children. Not for people personally, for
7 power for people, but for children. And to
8 give some parents in the City of New York, in
9 my district, the opportunity to send their
10 children to a good school and to get a good
11 education and to compete, not to be left
12 behind.

13 And today, I am proud and have to
14 congratulate Leader Sampson, John Sampson, for
15 the courage, the initiative, the caring for
16 children in the State of New York and to
17 present this bill, to allow this bill to come
18 to the floor.

19 And I am proud and honored -- to
20 me, it's an honor, Mr. President, it's an
21 honor to me that this body and Chairman
22 Sampson have given me to go back to my
23 district, to look at the parents of the
24 children in my district and tell them I voted
25 for more charter schools and I want to give

1 you the opportunity that you deserve. I'm
2 proud and honored. This is the biggest honor
3 they're giving me, the biggest honor they're
4 giving me, telling me to go back to my
5 district to tell all the little Juanas -- like
6 Congressman Serrano used to say, little Juana
7 and Luisa and Pepe in my district, telling
8 them: We did it for you. We're opening doors
9 for you children. Go enjoy it.

10 And in fact, if I cannot do
11 anything else, I'll be more than happy to do
12 this. And I ask all of you to think of
13 children first, children first, and to vote
14 for this bill and to allow this bill to go
15 through and to give the parents in my district
16 the opportunity that they deserve. That's all
17 we're asking for. We're not asking for more.
18 We're not asking for more than for whatever we
19 get.

20 So we are going to stop and don't
21 give the opportunity to people to decide to be
22 able to do this? This is a great opportunity.
23 This is the opportunity of our life. And I am
24 going to be part of history. And I am
25 honored, again, happy to be part of this

1 history today with voting for more charter
2 schools. We voted to give the parents in my
3 district opportunity, we voted for the
4 children in my district. I'm honored. I will
5 face them and tell them, with my head high:
6 "I voted for you. I did it for you. We did
7 it."

8 Thank you, Mr. President.

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

11 Senator Montgomery, on the bill.

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

14 I would just start by reminding all
15 of us that we all, every single one of us in
16 this room, have been through an educational
17 system. That's what separates America from
18 most of the other parts of the world,
19 especially those parts of the world where
20 there is no such thing as access for all
21 citizens. So I'm proud to be an American
22 today.

23 We are talking about the
24 underpinning of America, democracy. And that
25 is education, free education. That is what

1 America represents. And through that, there's
2 access to other things in America that America
3 has to offer all of its citizens. But
4 education is the access to those things.

5 So we're not talking about a
6 program that is for my district or Senator
7 Diaz's district or Senator Savino's district.
8 We're talking about the underpinning of the
9 American society. And it is what Martin
10 Luther King and other people that were part of
11 the so-called civil rights movement, it was
12 part of the women's rights movement, it was
13 part of the human rights movement, as of
14 today -- access to education.

15 So I think we need to be very,
16 very, very careful about what we do to make
17 changes that are fundamental to changing that
18 system. And certainly there are parts of the
19 system that I would like to see changed. I do
20 not like what public education represents
21 totally, but I'm willing to work on positive
22 and constructive involvement. But I certainly
23 would want to make sure that we preserve it.

24 I want to say that I too supported
25 the Sampson/Silver bill that was introduced

1 in -- I believe in March. It was S6468. I am
2 not in favor of the bill that is before us
3 today. Why? Because I believe that there are
4 important and significant aspects to the issue
5 of the charter school system that we need to
6 be responsibly addressing. And the bill that
7 we have before us does not address those.

8 The accountability I think is
9 extremely important. How that system is
10 funded, how it is accountable. We're talking
11 about public dollars, public tax dollars going
12 into another system. We need to understand
13 and have accountability for what that system
14 does, both with the funding as well as with
15 the children that are in there.

16 It is my understanding that the
17 charter school movement has gone to court to
18 oppose the Comptroller having access to audit
19 them. I think that is clearly a problem for
20 us.

21 I think that we have not, in this
22 bill -- there is no restriction for for-profit
23 organizations actually sponsoring and managing
24 charter schools. I think we need to be
25 extremely cautious about the fact that if we

1 allow for-profit involvement in the charter
2 school in public education, we're moving
3 toward privatization. For-profit
4 organizations are for profit. And so I think
5 we need to be very careful. I'm very
6 concerned about that.

7 I think that we need to also
8 understand who's managing our schools. Are
9 these charter schools being managed by outfits
10 that are from outside of our state, outside of
11 the community, and do not have the same
12 interests, they do not have the same interest
13 as the communities of the schools that are
14 located? This is really, I think, an issue
15 that we need to be talking about.

16 We have these charter schools --
17 ostensibly, the charter school movement was
18 started to be an experimental movement giving
19 us a picture of what kinds of things make a
20 difference -- improve education, give us a
21 road map, a blueprint for improving our public
22 school system.

23 We have not yet seen that the State
24 Ed Department has been able to take the best
25 practices from the charter school system and

1 begin to translate those and transfer those to
2 the larger system so we can benefit from the
3 so-called improvements of the charter school.
4 We need to make sure that what we're doing is
5 actually funding a system that is indeed
6 actually better for our children.

7 And let me just say this,
8 Mr. President. I have here a report of two
9 schools in my district, P.S. 15 and P.S. 256,
10 Benjamin Banneker. P.S. 15 is in Red Hook.
11 They have had to give up a good part of their
12 school, including six full rooms and six
13 half-rooms, to accommodate a charter school.
14 These rooms include academic classrooms, a
15 computer room, a science lab, and an
16 occupational therapy room, a speech and
17 language room, a professional development
18 room, the special education office, and a room
19 used by Good Shepherd Services for individual
20 and family counseling. That's one school
21 giving up all of that space for a charter
22 school. It has created havoc in that
23 community. It is absolutely awful.

24 And on top of that, this fall the
25 Department of Education in New York City

1 announced that the charter school would stay
2 in the building until 2015 and expand its
3 grades, occupying more space each year and
4 forcing P.S. 15 to shrink its size.

5 That's what's happening in New York
6 City all over the city. I have other schools
7 in my district that have had the same fate.
8 And that's what the mayor of New York City has
9 decided is his process of siting charter
10 schools. We think that needs to be addressed.
11 It was addressed in 6468, Senator Sampson's
12 bill. This Rules bill has no such reference.

13 The Sampson/Silver bill authorized
14 only not-for-profit EMOs. They prohibited
15 EMOs -- that's the management organizations --
16 that are charter operators from working with
17 school districts.

18 There are a number of safety
19 measures in the bill that Senator Sampson
20 introduced earlier. This Rules bill has none
21 of those.

22 And, Mr. President, this is very,
23 very serious. This is a step that we must not
24 take, expanding this charter system without
25 funding, without oversight, without

1 transparency, and without even isolating the
2 things that we know are good about charter
3 schools and using those, transferring those
4 and figuring out a way to benefit all of the
5 schools in the state that are failing.

6 So I'm going to be voting no on
7 this bill because I think this is the wrong
8 thing to do, the wrong decision. And if we do
9 the wrong thing, if we don't address the
10 issues that are being raised here tonight now,
11 we stand a chance of this system getting so
12 far out of hand, so far out that we will not
13 be able to address it logically as a
14 legislature.

15 For us in New York City, it will be
16 the same thing as we have with giving the
17 education system control to the mayor. This
18 is another one of those giant steps, and I
19 think we need to be very, very, very much more
20 careful and thoughtful and we should not be
21 doing this in this way.

22 So, Mr. President, I'm going to
23 have to vote no. Thank you.

24 ACTING PRESIDENT BRESLIN: Thank
25 you, Senator Montgomery.

1 Are there any other Senators
2 wishing to be heard?

3 Senator Golden, on the bill.

4 SENATOR GOLDEN: Thank you,
5 Mr. President.

6 I rise to explain and to say thank
7 you for a bipartisan bill here today that is
8 going to be passed here in the Senate. And
9 hopefully it will be passed in the Assembly
10 and the Governor will sign it into law.

11 It raises the cap of the number of
12 charter schools from 200 to 460. And it's to
13 be shared by SUNY, who gets 230 schools, and
14 the Board of Regents and the local school
15 districts get the additional 230 schools.

16 In this bill, 115 charter slots to
17 be available for the City of New York. This
18 bill responds to President Obama's call for
19 high-quality charter public schools as a
20 critical component of that Race to the Top.
21 It expands again that number from 200 to 460,
22 or about 10 percent of the total public
23 schools here across the State of New York,
24 about 4600 schools.

25 By lifting that cap, that 10

1 percent of all public schools in this state,
2 the legislation will enable New York to
3 qualify for a maximum number of points related
4 to charter schools, and therefore giving us
5 the opportunity for Round 2 funding of
6 \$700 million, of which 50 percent of that
7 grant will be received and will go to the
8 New York State Department of Education to
9 implement programs that are in that grant.
10 And the other 50 percent will be allocated to
11 local school districts, based upon their Title
12 I student enrollment to help support efforts
13 to improve that student performance.

14 Independent research has repeatedly
15 found that New York City's charter schools
16 dramatically outperform noncharter schools
17 serving the same mix of students. A recent
18 study by a research group in Stanford
19 University, which has previously called out
20 the weakness in the charter schools
21 nationwide, identified New York's group of
22 charter schools as a beacon.

23 On January 10, 2010, in a New York
24 Times editorial it discussed "why charter
25 schools in New York City are outperforming

1 charters elsewhere as well as their local
2 'traditional' school counterparts."

3 This legislation would also enact
4 significant reforms through increased
5 accountability and transparency of New York's
6 charter schools and enhance the ability of
7 these charter schools to serve special ed kids
8 and to serve the ELL and give these students
9 admission priorities to schools that serve low
10 numbers of these students with special needs.

11 It requires the charter board
12 members to meet the same conflicts of interest
13 and ethics requirements as traditional school
14 board members. And it establishes uniformity
15 and oversight in the lottery and application
16 process.

17 As many of you will remember, back
18 in the '80s and '90s and the early 2000s there
19 were two brothers, they set up this
20 foundation, and they would give out these
21 grants, these \$2500 grants. And there were a
22 relatively low number of grants that they
23 would give out each and every year. Do you
24 know how many parents would line up for those
25 applications? Hundreds of thousands would

1 fill out those applications.

2 And, ladies and gentlemen, nothing
3 has changed. Not in the '80s, not in the
4 '90s, not in the 2000s. Our education
5 standards have gotten better. Our children
6 are getting a better education. But I have to
7 tell you, ladies and gentlemen, our greatest
8 treasures are our assets and our greatest
9 assets are our children.

10 And those parents of today will do
11 anything to make sure that their child gets a
12 good education. And it's up to each of us
13 here today to allow for that opportunity, to
14 allow for those parents to have that
15 competition, for our educational system to
16 have that competition to be able to check, to
17 be able to have those checks and balances and
18 be able to see what's good, what's bad, what
19 works and what doesn't work.

20 Ladies and gentlemen, this is a
21 good day for all of us. This is a good day
22 for each child across this state. There are
23 3 million kids that attend school systems
24 across this great state. Out of that
25 3 million, a small number will go to charter

1 schools. But there are lines, ladies and
2 gentlemen, to get into those charter schools
3 and waiting lists to get into those charter
4 schools. The question is why.

5 I've heard some of my colleagues
6 say that the Department of Education hasn't
7 been able to take those good practices and to
8 be able to insert them into our educational
9 system today. Well, they should do that.
10 They should take the good practices and give
11 every child across the state its
12 opportunities. We owe it to those treasures.
13 We owe it to the greatest assets of this great
14 country. We owe it to those children.

15 I vote aye, Mr. President.

16 ACTING PRESIDENT BRESLIN:

17 Senator Espada, on the bill.

18 SENATOR ESPADA: Thank you,
19 Mr. President.

20 I rise because I'm very familiar
21 with the subject matter, in that my first
22 profession coming out of Fordham University
23 was as a licensed bilingual teacher in the
24 public school system, both in the early grades
25 and in high school.

1 And growing up in the public school
2 system, we often referred to 110 Livingston
3 Street, the very centralized education system
4 in the City of New York. Then we move towards
5 the '60s and '70s, where the battle was fought
6 on the ground for decentralization, what role
7 would communities have, parents have in
8 designing an educational system for their
9 children.

10 Now, while we can start in the '60s
11 and the '70s, you can go further back in the
12 great American immigration stories at Ellis
13 Island and how new immigrants came to this
14 country, through New York City, the city I'm
15 most familiar with, and sought to design a
16 system of education that linguistically and
17 culturally and otherwise would achieve
18 mainstreaming them into the greater American
19 society.

20 We're here today because there is a
21 schism and the least of those priorities,
22 quite frankly, has often been our children.
23 We can wax eloquent about children; we're all
24 professional orators and elected officials, we
25 know how to do that. But the truth of the

1 matter is that there are some folks in the
2 shadows, there are some serious power
3 struggles that we have to bring out of those
4 shadows. Because the truth is that children
5 are not being heard here today, for the most
6 part. Teachers are not necessarily being
7 heard here, for the most part, nor those
8 principals or parents or those children
9 waiting on line.

10 We do have to have a bill before
11 this house that deals with the role of
12 for-profits, that deals with the role of
13 management firms, that deals with the role of
14 evaluating educational outcome, that deals
15 with conflicts of interest, that deals with
16 co-location, that deals with educational
17 policy about high-needs children, special
18 needs children.

19 And let me pause. As I became a
20 father and I had a job as a teacher, my kids
21 could not and should not and did not go to
22 that public school system that was available
23 to them. Because the fact of the matter was
24 that given their learning disabilities, I
25 would have been involved in malpractice as a

1 parent to put them in an educational system
2 that was ill-equipped to deal with their
3 special needs.

4 And so when we talk about an
5 interest in defining special needs, in
6 defining English-as-a-second-language students
7 and their educational struggles, let's not
8 just focus in on this charter school failure
9 to deal with admissions policies. I've been
10 around too long. We have to deal with
11 1 million children who have 60 percent of the
12 English language students, failing out of the
13 public school system.

14 And so it is an educational failure
15 that we all have to deal with. Whether we
16 talk about a public school charter experience
17 or a public education experience, those that
18 come to this country in search of the great
19 American dream, we're failing them. And both
20 systems have not lived up to their
21 obligations. And both powers, whether they be
22 the affluent, philanthropic, well-intentioned
23 charter school folks or whether it be the
24 principals or teachers union, have failed.

25 Because if we just focus in on how

1 to turn public education money into an
2 economic or for-profit opportunity, or if we
3 talk about protecting teachers at all costs
4 and jobs at all costs and having tenure be
5 redefined so that the worst teachers can
6 continue to teach children, and so that when
7 we attach merit to whether or not folks keep
8 their job, that conversation can be had.

9 In other words, the politics and
10 the polarization is the reason why we have to
11 pass one-house bills. And so this debate has
12 to get stimulated by more than just passing
13 one-house bills. We have to have a real
14 conversation about having children first, as
15 Senator Diaz indicated.

16 And in doing that, we look forward
17 to a bill that our leader, Senator Sampson,
18 and that Assembly Leader Silver could put
19 before both houses that will deal with
20 accountability, transparency, audits, student
21 accomplishments.

22 And yes, there is this notion that
23 somehow we have to get stimulated, motivated,
24 energized because we're in some Race to the
25 Top. Again, both sides of this huge equation

1 are losing, and in the middle is the
2 educational abyss where our children lie,
3 where their educational failures could be
4 countered by private institutes but mostly the
5 parents that sit anxiously awaiting the day
6 when they truly could have options.

7 So that, yeah, there's a public
8 monopoly on education, there's a challenge, a
9 challenge to that system which is incomplete
10 in that you haven't dealt well with high-needs
11 students, we have created a battle for space
12 in our public school systems. This angst,
13 this incredible anger that builds up in these
14 public hearings that I've been to is only a
15 by-product of the fact, again, that we haven't
16 done our job.

17 Whatever we do, we have to have a
18 bill that deals with the issues of access,
19 issues of what defines educational
20 achievement, issues of co-location, issues of
21 getting capital into use for charter schools.
22 Yes. Yes. The reason why you have these
23 co-location battles is because we don't have
24 the facilities available for this true
25 competition or this true option to fully

1 blossom.

2 And so they're both public schools.
3 One goes by the name of charter schools. One
4 has a tremendous support in the private
5 sector, and the philanthropic dollar has found
6 it.

7 And the big public challenge to
8 this house and to the Assembly, the
9 Legislature and the Governor, is to deal with
10 all of the elements that would make for a
11 resolution in time for Race to the Top, yes,
12 but in time so that next September, when the
13 new class of students seeks admission into
14 these schools, that they can truly have a
15 choice.

16 I will be supporting this bill,
17 Mr. President, because I think it starts the
18 conversation. It doesn't finish it for sure.

19 ACTING PRESIDENT BRESLIN: Thank
20 you, Senator Espada.

21 The debate is closed.

22 The Secretary will ring the bell.

23 Read the last section.

24 THE SECRETARY: Section 18. This
25 act shall take effect immediately.

1 ACTING PRESIDENT BRESLIN: Call
2 the roll.

3 (The Secretary called the roll.)

4 ACTING PRESIDENT BRESLIN:
5 Senator DeFrancisco, to explain his vote.

6 SENATOR DeFRANCISCO: Thank you,
7 Mr. President.

8 I know there's some controversy
9 about this bill and the unions are not in
10 favor of it. However, we're in a financial
11 disaster right now in the State of New York,
12 where we're going to run out of money by June.
13 It's just a shame we didn't pass a bill to put
14 our application for Race to the Top money at
15 the top of the pile a few months ago, and then
16 we might have had some more money to count on
17 for this year's budget.

18 So I'm voting yes on this to
19 enhance our application for federal money, up
20 to \$700 million, to replace the cuts that
21 otherwise would be necessary for education.
22 And I'm doing this in favor of the teachers,
23 those teachers which will otherwise be laid
24 off and not be able to teach our students if
25 we don't get the funding that we need to

1 provide to our districts.

2 So I vote aye. Thank you.

3 ACTING PRESIDENT BRESLIN:

4 Senator DeFrancisco will be recorded in the
5 affirmative.

6 Senator Thompson, to explain his
7 vote.

8 SENATOR THOMPSON: Thank you,
9 Mr. President, for recognizing me today.

10 I just wanted to speak about this
11 issue for a moment because charter schools and
12 traditional public schools are very important
13 institutions. While we know that this is a
14 one-house bill today and probably will not
15 pass the State Assembly, I think it does begin
16 a needed debate.

17 And although I'm not voting for the
18 bill -- because largely I believe it has today
19 distracted us from the efforts to finalize the
20 state budget -- this bill, however, does take
21 some steps forward in terms of making reforms
22 and providing more accountability. But the
23 challenge for this bill is that still falls
24 short.

25 It falls short in certain key

1 areas -- to make sure that the State
2 Comptroller will have the ability to do audits
3 of charter schools. It also falls short as
4 well in making sure that we address the
5 saturation language of oversaturation in
6 certain communities. Hopefully, as we move
7 forward, as well that it will address reforms
8 that are needed on the public school side.

9 There was a report that was issued
10 today by the teachers and some of their
11 supporters that talk about what the charter
12 schools do wrong or don't do effectively. And
13 I believe that there are things that the
14 public schools need to address and that they
15 can learn and pick up from some of the charter
16 schools.

17 For example, one of the things that
18 many people have heard me talk about is
19 parental involvement. I ran for the Senate on
20 the issue of parental involvement. Whatever
21 happens as a result of this or doesn't happen
22 as a result of this must address the issue of
23 the high rate of students dropping out in the
24 state, the low literacy rates, bad test scores
25 and low rates of parental involvement. Those

1 are the four cornerstone issues that I hold
2 dear to my heart.

3 And so I support both school
4 systems. However, this is not the best way to
5 do it. And particularly as we move forward,
6 we need to have a more transparent process.

7 Thank you, and I vote no.

8 ACTING PRESIDENT BRESLIN:
9 Senator Thompson to be recorded in the
10 negative.

11 Senator Stavisky, to explain her
12 vote.

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

15 I'm not going to repeat what was
16 said here, except a misconception was said.
17 The Stanford Center for Research on
18 Educational Outcomes, which studied the
19 charter school movement nationally -- and is,
20 incidentally, one of the most comprehensive
21 studies on charter schools -- they found that
22 fewer than one-fifth of the charter schools
23 nationally offered a better education
24 comparable to the local schools, about half
25 offered an equivalent education, and more than

1 a third, 37 percent -- and this is the
2 respected institute at Stanford University --
3 37 percent of the charter schools were
4 significantly worse.

5 And it seems to me that that's what
6 it's about. To do kids do better in a charter
7 school? In my opinion, they do not.

8 And I support the public schools,
9 and I vote no.

10 ACTING PRESIDENT BRESLIN:
11 Senator Stavisky will be recorded in the
12 negative.

13 Senator Saland, to explain his
14 vote.

15 SENATOR SALAND: Thank you,
16 Mr. President.

17 Mr. President, I certainly believe
18 in competition. Competition in all avenues of
19 the life I think is ultimately healthy and
20 produces a better product.

21 Some of you may recall at the time
22 that we increased the charter cap, we passed
23 the portion of the budget containing the
24 education funding and the education language
25 with one dissenting vote. And I was

1 intimately involved in those negotiations
2 because at the time I was the Education chair.
3 And I was that lone dissenting vote.

4 And the reason for my dissenting at
5 that time had nothing to do with the concept
6 of charter schools, but it had everything to
7 do with the fact that there was no effort to
8 provide local control, something that in some
9 40-plus percent of the states that have
10 charters is permitted by operation of law.

11 And I continue to believe that
12 that's critically important. I welcome the
13 city's embrace of charter schools. If it
14 works for them, that's fine; they're funding
15 it. They're a dependent school district, and
16 they're funding it in substantial part.

17 I do think, however, that local
18 school districts -- or, as the feds call them,
19 LEAs -- should have some say in whether or not
20 a charter school is in fact permitted to be
21 part of their school program because they in
22 fact are bearing a substantial portion of the
23 cost.

24 So for that reason, Mr. President,
25 I will be voting in negative on this bill.

1 Thank you.

2 ACTING PRESIDENT BRESLIN:

3 Senator Saland to be recorded in the negative.

4 Senator Montgomery, to explain her
5 vote.

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

8 In addition to the questions that
9 I've already raised, I sure would like to know
10 what is the rush.

11 And another question that I have is
12 that most of the people, most of the Senators
13 in here don't have any charter schools in
14 their areas. And Senator Golden doesn't have
15 any in his district. And so most of you don't
16 even -- this is not even the issue that they
17 have to concern themselves about as it relates
18 to education in their districts.

19 But certainly I do. And I also
20 know that schools don't fail by themselves.
21 Their communities have an environment that
22 doesn't support success.

23 So now I see -- another question I
24 have is that we have people on Wall Street who
25 have put together a fund, a pool, which they

1 intend to use against people who they view as
2 being against charter schools. Now, why would
3 people on Wall Street, the hedge fund people,
4 be so interested in these children when they
5 are the reason why we had so many foreclosures
6 in the communities where those children with
7 failing schools live?

8 So there's something very strange
9 about this whole issue. And it doesn't seem
10 like it's so much for the children. I don't
11 see the same people who are so interested in
12 children now, I have not seen them ever in my
13 life standing up for what's good for those
14 children, especially those children that they
15 claim need these charter schools so much.

16 I'm not against charter schools.
17 But I must say, on behalf of my son to all of
18 his teachers -- there are some that I could
19 name here, they were wonderful. He was a
20 public school student. He did very well, and
21 he is still doing well. I thank the public
22 school system in this state and in my city.

23 So I'm voting no because I don't
24 see the rush to take money out of a system
25 that we should be improving and send it away

1 to a system for which there is no
2 accountability or transparency. I vote no.

3 ACTING PRESIDENT BRESLIN:

4 Senator Montgomery will be recorded in the
5 negative.

6 Senator Perkins, to explain his
7 vote.

8 SENATOR PERKINS: Thank you very
9 much, Mr. Chairman.

10 You know, no one here is against
11 money coming to schools for education, if
12 that's what it's really for. We are tying
13 this legislation to something called Race to
14 the Top, \$2 billion of public money that will
15 be spent without any auditing, without any
16 oversight by the Comptroller.

17 For me, it's not simply about Race
18 to the Top. I think that, for me, this is
19 more like race to the trough. It's more like
20 folks seeing an opportunity to get some public
21 dollars without the kind of scrutiny, without
22 the kind of transparency, without the kind of
23 accountability that we would not allow in any
24 other sector of public government but for this
25 charter sector, and we are opening up the

1 floodgates in that regard.

2 Now, I know that a lot of us are
3 concerned about the failure of our traditional
4 public schools and are appreciative of those
5 instances when the charter schools have proven
6 themselves to be successful. But if you read
7 the New York Times this Sunday, you'll find
8 that the story is not that clear. It's a very
9 murky record, to say the least. If you read
10 the New York Times from last week you'll find
11 that it's about the money, for many.

12 And many of you I hope have
13 received what it is I sent out to you that
14 spells it out from the perspective of the
15 Times. And also you might want to make note
16 of the Times Union this weekend, where they
17 have a featured article "For the Kids,"
18 underscoring again that it's about the money
19 and not about the kids.

20 So I can't vote for this. I think
21 that there's something cynical about this type
22 of legislation that does not speak to some of
23 the reforms that have been written about in
24 the public papers and that my hearings brought
25 out, particularly when we talk about

1 co-location, where in some communities there
2 are serious confrontations about this type of
3 situation.

4 ACTING PRESIDENT BRESLIN:

5 Senator Perkins --

6 SENATOR PERKINS: I also want --

7 ACTING PRESIDENT BRESLIN:

8 Senator Perkins, how do you vote?

9 SENATOR PERKINS: -- in
10 conclusion, to also talk about the saturation
11 issues and the fact that the cherry-picking
12 with respect to special ed children that's
13 taking place.

14 So I'm going to be voting against
15 this. I look forward to another episode where
16 we can move forward in a more responsible,
17 more creative way to make sure that if we're
18 going to have charters or any kind of public
19 schools that they are responsive, with the
20 type of transparency and accountability that
21 we would expect in any other part of public
22 service.

23 Thank you.

24 ACTING PRESIDENT BRESLIN:

25 Senator Perkins will be recorded in the

1 negative.

2 I remind people that there is two
3 minutes to explain your vote.

4 Senator Craig Johnson, to explain
5 his vote.

6 SENATOR CRAIG JOHNSON: Thank you
7 very much, Mr. President.

8 First, let me say this to clarify
9 for the record. Senator Stavisky, the study
10 that you cited was the national CREDO study
11 that did not even look at the New York City
12 charter schools. CREDO then did the study of
13 the New York City charter schools which
14 Senator Golden commented about, and they
15 praised the New York City charter schools. So
16 you're looking at a national study.

17 Very similarly, in the New York
18 Times piece this past week, what people
19 pointed out is that nationally, when you don't
20 have the accountability or the transparency,
21 you have problems. The same piece, though,
22 said that experts praised New York State's
23 accountability and transparency and said we do
24 a better job here in New York State.

25 So when you grab those studies,

1 make sure you're looking at the ones that talk
2 about New York State versus the national
3 studies.

4 But we're getting off the point.
5 We talk about studies and we talk about
6 for-profits, and we can all cite particular
7 things. It's about the kids. It's about the
8 parents. It's about the fact that we have
9 Race to the Top, we have the ability to secure
10 \$700 million, and to do so we have to do
11 particular things.

12 The \$700 million, 99 percent of it
13 will go to traditional public schools. Those
14 will help Velmanette Montgomery's school
15 districts. Those will help Liz Krueger's
16 school districts. Those will help Marty
17 Golden's school districts. It will help all
18 of our school districts. We lose sight of
19 that fact.

20 The fact is is that access to
21 quality education should not be predetermined
22 by somebody's zip code. And charter schools,
23 public charter schools help children,
24 predominantly African-American and
25 Hispanic-American communities, get a better

1 education. If you don't believe me, go to the
2 Harlem Success Academy, like I did, and see
3 how these kids are succeeding. Who now have a
4 25 percent population of special ed kids, who
5 scored 100 percent on their math scores and
6 97 percent on their English scores. One of
7 the best schools in the state, public schools.

8 But let me say this, finally. If
9 you have qualms, if you have questions, I urge
10 you to go see the movie called "The Lottery."
11 It's a very simple film. It involves --

12 ACTING PRESIDENT BRESLIN:

13 Senator Johnson --

14 SENATOR CRAIG JOHNSON: It
15 involves --

16 ACTING PRESIDENT BRESLIN:

17 Senator Johnson, how do you vote?

18 SENATOR CRAIG JOHNSON: -- four
19 families and talks about their struggles and
20 their desire to get into these schools and
21 have access to education these kids can't get
22 today.

23 I vote yes.

24 ACTING PRESIDENT BRESLIN: Thank
25 you, Senator Johnson. You will be recorded in

1 the affirmative.

2 Senator Onorato, to explain his
3 vote.

4 SENATOR ONORATO: Thank you,
5 Mr. President.

6 I rise to support this bill. I
7 think it's a wake-up call, finally, for the
8 public education system to get their act
9 together.

10 I have probably the first charter
11 school in Queens County, located in Woodside,
12 and I have the most diversified district
13 perhaps in the State of New York, where we
14 have 130 different languages spoken in my
15 area. And I have more and more requests than
16 I can possibly handle with recommendations
17 that they allow me to write a letter of
18 recommendation to get them into the charter
19 school that I have located in my district.

20 So I'm voting with my constituents
21 who want a chance to give their children the
22 same opportunity as the children that are
23 already attending the charter school in
24 Woodside. I vote yes.

25 ACTING PRESIDENT BRESLIN:

1 Senator Onorato will be recorded in the
2 affirmative.

3 Senator Diaz, to explain his vote.

4 SENATOR DIAZ: Thank you,
5 Mr. President.

6 I remember, Mr. President, many
7 years, many years ago when there was no
8 charter schools and three reverends, three
9 ministers, Reverend Floyd Flake from Brooklyn,
10 Reverend Wyatt Tee Walker from Manhattan, and
11 myself, we conducted a press conference at
12 City Hall asking Albany to approve charter
13 schools. Way back. And now we -- I'm proud
14 of what I did, I'm proud of what I'm doing.

15 But, Senator Golden, I heard that
16 you don't have a charter school in your
17 district and you are voting for it. Senator
18 Golden, Senator Padavan, you guys that don't
19 have my color skin, you guys that don't have
20 charter schools, you are voting to help my
21 children in my district.

22 I would like to extend an
23 invitation to you, Golden, and to you,
24 Padavan, to come to the South Bronx, to my
25 charter school, and pay a visit with me. You

1 will see the parents. You will see the
2 happiness. You will see the victory that we
3 have achieved.

4 So anytime, you will be welcome to
5 come with me. I am inviting you right now to
6 come to my district and meet the parents of my
7 district.

8 Thank you for your vote today. I'm
9 voting yes.

10 ACTING PRESIDENT BRESLIN:
11 Senator Diaz will be recorded in the
12 affirmative.

13 Senator Stewart-Cousins, to explain
14 her vote.

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

17 I rise because I think we can do
18 better. I know that we are talking about our
19 children, and I think it should be clear that
20 I don't think anyone in this chamber is
21 against charter schools. But I again repeat
22 what has been repeated over and over again.
23 It is the investment in our future. If New
24 York City is doing it right, it can be
25 codified, it can be put in our legislation.

1 Because there are many schools that are doing
2 it wrong.

3 And if we have an opportunity to
4 begin a conversation, we should begin it, but
5 we shouldn't end it at a place that we know
6 won't accomplish the goals. We want our
7 children to be educated. Every single child
8 does not want to stand in line in a lottery
9 hoping against hope that education is in their
10 future, a quality education that can allow
11 them to sit in these chambers.

12 And if we can do better and if we
13 have an opportunity to race to the top and
14 actually get to the top by creating language
15 and creating transparency and accountability
16 as well as opportunity, we ought to do that.

17 So I at this point will vote no. I
18 look forward for a real discussion, a
19 continued conversation and a race to the top
20 that actually includes all children in
21 New York State.

22 ACTING PRESIDENT BRESLIN:
23 Senator Stewart-Cousins will be recorded in
24 the negative.

25 Senator L. Krueger, to explain her

1 vote.

2 SENATOR LIZ KRUEGER: Thank you.

3 Just for the record, sometimes the
4 rhetoric gets hot when we're passionate about
5 issues, and I respect that. But to clarify,
6 just once and for all on the record, this bill
7 doesn't get us the Race to the Top money. The
8 Race to the Top has a series of evaluations
9 that we need to do better on.

10 Based on the findings from our
11 rejection, we only could have received an
12 additional 12.6 points in our application for
13 Race to the Top based on raising the charter
14 cap. I think it's fine to raise the charter
15 cap; 12.6 points isn't getting us the money.
16 We still have the assignment. So the argument
17 this bill, yes, means \$700 million is a false
18 statement.

19 Second, this money can't be used
20 to -- the Race to the Top money, if we get it,
21 can't be used to avoid teacher layoffs.
22 That's not what it's there for.

23 So just two points. You can
24 support charter schools or not support charter
25 schools, you can debate what we need to do for

1 Race to the Top money, and we need to continue
2 that. But this bill doesn't get us
3 \$700 million, although I would love to get us
4 \$700 million, and you can't use that
5 \$700 million to avoid layoffs. We still have
6 an obligation to deal with the tough decisions
7 in the state budget quickly.

8 I'll be voting no, as I said
9 before. Thank you, Mr. President.

10 ACTING PRESIDENT BRESLIN:
11 Senator L. Krueger will be recorded in the
12 negative.

13 Senator Schneiderman, to explain
14 his vote.

15 SENATOR SCHNEIDERMAN: Thank you,
16 Mr. President.

17 I look forward to being able to
18 vote for a bill to lift the cap on charter
19 schools. I think the needs for further
20 reforms have been discussed today.

21 But I have to say, listening to the
22 debate, the thing that disturbs me the most
23 about this is that while I think that there
24 may be, as some have suggested, some people
25 interested in education for bad reasons,

1 frankly, I think the overwhelming majority of
2 people on both sides of this issue are
3 concerned about kids and are concerned about
4 schools and do want what's best for our
5 children.

6 This is an issue that has become
7 very polarized. And I think that in fact most
8 of us here would look forward to a bill that
9 would enable us to lift the cap. I hope that
10 we can get back to the negotiations, as
11 Senator Oppenheimer spoke about. My
12 understanding is that there was a lot of
13 progress being made on the issue of having a
14 unified approach to the Race to the Top
15 application.

16 But I would urge all my colleagues,
17 there's a difference between an opponent and
18 enemy. And demonizing anybody in this debate
19 probably doesn't serve us well. So I'm going
20 to vote no on this bill. I look forward to
21 being able to vote yes on a bill down the road
22 that has some further reforms.

23 Thank you, Mr. President.

24 ACTING PRESIDENT BRESLIN:

25 Senator Schneiderman will be recorded in the

1 negative.

2 Announce the results.

3 THE SECRETARY: Those recorded in
4 the negative on Calendar Number 475 are
5 Senators Breslin, Duane, L. Krueger, LaValle,
6 Montgomery, Oppenheimer, Padavan, Perkins,
7 Saland, Schneiderman, Serrano, Stachowski,
8 Stavisky, Stewart-Cousins and Thompson.

9 Ayes, 45. Nays, 15.

10 ACTING PRESIDENT BRESLIN: The
11 bill is passed.

12 The Secretary will read.

13 THE SECRETARY: In relation to
14 Calendar Number 477, Senator C. Kruger moves
15 to discharge, from the Committee on Finance,
16 Assembly Bill Number 10924 and substitute it
17 for the identical Senate Bill Number 7689,
18 Third Reading Calendar 477.

19 ACTING PRESIDENT BRESLIN:
20 Substitution ordered.

21 THE SECRETARY: Calendar Number
22 477, by the Assembly Committee on Rules,
23 Assembly Print Number 10924, an act making
24 appropriations for the support of government.

25 ACTING PRESIDENT BRESLIN:

1 Senator Klein.

2 SENATOR KLEIN: Mr. President, is
3 there a message of necessity and appropriation
4 at the desk?

5 ACTING PRESIDENT BRESLIN:
6 Senator Klein, there is a message of necessity
7 and appropriation at the desk.

8 SENATOR KLEIN: Mr. President, I
9 move to accept the message at this time.

10 ACTING PRESIDENT BRESLIN: The
11 question is on the acceptance of the message
12 of necessity and appropriation. All those in
13 favor please signify by saying aye.

14 (Response of "Aye.")

15 ACTING PRESIDENT BRESLIN:
16 Opposed, nay.

17 (No response.)

18 ACTING PRESIDENT BRESLIN: The
19 message is accepted.

20 Please read the last section.

21 SENATOR LIBOUS: Excuse me,
22 Mr. President.

23 ACTING PRESIDENT BRESLIN:
24 Senator Libous, why do you rise?

25 SENATOR LIBOUS: Thank you. I

1 believe there's an amendment by Senator
2 LaValle at the desk. I would ask that you
3 waive its reading and call on Senator LaValle,
4 please.

5 ACTING PRESIDENT BRESLIN:

6 Senator LaValle's amendment is here at the
7 desk. Without objection, the reading is
8 waived and you may speak on the amendment.

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

11 There is an inequity in the bill.
12 This amendment tries to or does make it fair
13 and equitable between the State University and
14 the City University.

15 Under this budget, City University
16 construction projects can move forward.
17 Effective May 1, SUNY construction projects
18 have come to a halt. Needless to say that
19 workers, contractors throughout this state are
20 in a neutral position, are not working, are
21 not moving on projects that need to come to
22 completion.

23 Our laws make an attempt to be
24 equitable and fair. And clearly the budget
25 bill before us treats one system fairly and

1 the other system, State University, unfairly.

2 This is analogous to the situation
3 where contractors throughout the state had to
4 cease to work on their road projects and other
5 projects in the state.

6 So this amendment corrects that
7 inequity that I can only assume was done
8 through some oversight. Thank you.

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

11 Senator Klein.

12 SENATOR KLEIN: Mr. President,
13 point of order.

14 ACTING PRESIDENT BRESLIN:
15 Senator Klein, you may proceed.

16 SENATOR KLEIN: According to
17 Article 7, Section 4 of the Constitution, the
18 Legislature may only add single line-item
19 appropriations stated separately and
20 distinctly. Because the items in this
21 amendment are not single, distinct line items,
22 the amendment is unconstitutional and
23 therefore out of order.

24 ACTING PRESIDENT BRESLIN: Senat
25 or Klein, your point of order is confirmed and

1 the nonsponsor amendment is out of order.

2 SENATOR LIBOUS: Mr. President --

3 Mr. President -- Mr. President --

4 ACTING PRESIDENT BRESLIN:

5 Senator Libous.

6 SENATOR LIBOUS: Thank you for
7 recognizing me. I'd like to challenge the
8 ruling of the chair, Mr. President. Because
9 as I mentioned last week and the previous week
10 and the previous week before that, we believe
11 that the amendment is not out of order. We
12 believe that --

13 ACTING PRESIDENT BRESLIN:

14 Senator Libous, would you like to make a
15 motion to overrule the ruling of the chair?

16 SENATOR LIBOUS: Yes,
17 Mr. President, I would.

18 ACTING PRESIDENT BRESLIN: All
19 those in favor of overruling the ruling of the
20 chair please signify by raising your hands.

21 Announce the results.

22 THE SECRETARY: Ayes, 27. Nays,
23 31.

24 ACTING PRESIDENT BRESLIN: The
25 motion fails.

1 SENATOR DeFRANCISCO: Point of
2 order.

3 ACTING PRESIDENT BRESLIN:
4 Senator DeFrancisco.

5 SENATOR DeFRANCISCO: I thought
6 there was a reform that said that there's no
7 empty-chair voting in the State Senate any
8 longer.

9 ACTING PRESIDENT BRESLIN: You're
10 right. Senator Robach -- you're referring to
11 Senator Robach?

12 SENATOR DeFRANCISCO: Well,
13 that -- we can concede Senator Robach. But
14 there's not too many chairs that are -- there
15 are a lot of chairs empty on that side. You
16 must have not looked to the left.

17 ACTING PRESIDENT BRESLIN: When
18 voting on a motion with a show of hands, it is
19 those people who are showing their hands.

20 SENATOR DeFRANCISCO: So under
21 those circumstances you don't have to be in
22 your chair, is that the ruling? If that's the
23 case --

24 ACTING PRESIDENT BRESLIN:
25 Senator Klein.

1 SENATOR KLEIN: Mr. President,
2 just to clarify Senator DeFrancisco's point,
3 that's only on controversial bills where a
4 member has to be in their seat.

5 ACTING PRESIDENT BRESLIN:
6 Announce the results.

7 THE SECRETARY: Ayes, 29. Nays,
8 31.

9 ACTING PRESIDENT BRESLIN: The
10 motion fails.

11 The main bill is before the house.

12 SENATOR DeFRANCISCO:
13 Explanation.

14 ACTING PRESIDENT BRESLIN: An
15 explanation has been requested.

16 Senator C. Kruger.

17 SENATOR CARL KRUGER: How did I
18 guess?

19 This bill is once again another
20 extender covering the period from May 4th to
21 May 11th. And it is a bill with \$2.3 billion
22 in an All Funds appropriation and \$622 million
23 in the General Fund appropriation.

24 ACTING PRESIDENT BRESLIN:
25 Senator DeFrancisco.

1 SENATOR DeFRANCISCO: Yes, before
2 I ask Senator Kruger to yield, I'm speaking to
3 all the people who left the chambers. This is
4 going to be a very brief discussion, in view
5 of the lateness of the hour. And if people
6 would stay close so we don't have to wait a
7 half an hour for those chairs to be filled.

8 ACTING PRESIDENT BRESLIN: It is
9 hoped that everyone will stay close so that
10 when the vote comes it will be expeditious.

11 SENATOR DeFRANCISCO: Would
12 Senator Kruger yield to a question?

13 ACTING PRESIDENT BRESLIN:
14 Senator Kruger, will you yield to a question
15 from Senator DeFrancisco?

16 SENATOR CARL KRUGER: Yes.
17 Through you, Mr. President.

18 SENATOR DeFRANCISCO: If I asked
19 you the same questions that I've asked you in
20 previous weeks concerning the progress of the
21 negotiations that are being held privately
22 between the three New York City leaders,
23 whether or not -- would your answers be that
24 the negotiations are ongoing, that you can't
25 give us any specifics, the reasons you can't

1 give us specifics is because the negotiations
2 are sensitive and the negotiations change from
3 time to time and you don't want to upset the
4 rhythm of the negotiations and as soon as we
5 meets a critical mass we will hear from the
6 leadership and have a budget bill to be
7 discussed after it's already negotiated?
8 Would that be the --

9 SENATOR CARL KRUGER: Give that
10 man a cigar.

11 (Laughter.)

12 SENATOR DeFRANCISCO: Would that
13 be your answer?

14 SENATOR CARL KRUGER: In all
15 forms, yes.

16 SENATOR DeFRANCISCO: Okay.
17 Would he yield to one last question?

18 ACTING PRESIDENT BRESLIN: Would
19 you yield to one last question?

20 SENATOR CARL KRUGER: Yes, I
21 will, Mr. President.

22 SENATOR DeFRANCISCO: Senator
23 Kruger, do you have anything to add to
24 enlighten us as to what's happened from last
25 week to this week?

1 SENATOR CARL KRUGER: No.

2 SENATOR DeFRANCISCO: Thank you.

3 On the bill.

4 ACTING PRESIDENT BRESLIN:

5 Senator DeFrancisco, on the bill.

6 SENATOR DeFRANCISCO: Now, I did
7 that simply, quite frankly, to move the
8 process along, because I think it was pretty
9 obvious what the answer was going to be from
10 prior weeks.

11 But I just wanted to add a couple
12 new things that have developed over the last
13 week as far as things that may be relevant in
14 getting an open public process going.

15 Point number one is that the
16 Associated General Contractors on April 30th
17 brought a lawsuit against the state for
18 withholding payments as well as bid awards on
19 highways. And these payments relate to
20 districts all throughout the State of
21 New York, contractors not getting paid --
22 earning interest, by the way, for nonpayments
23 that are due from the State of New York, which
24 will further exacerbate the state's cash flow
25 position.

1 Number two, there is such a thing
2 as SUNY constructions that take place, and
3 there's a very short window for SUNY projects
4 to be done. There's only a 90-day recess, and
5 that's the only construction window unless
6 you're going to displace students. This work
7 is going to be not done, we're going to lose
8 the construction window, and we're going to
9 have projects that were stalled for another
10 year in order to get to that window.

11 Number three, Senator LaValle in
12 his motion indicated another upstate/downstate
13 dichotomy, and not a good one. I won't
14 restate all the other ones we've brought up
15 over the last year and a half, but this one is
16 a serious one. Because of the statute, CUNY
17 projects can go forward -- CUNY, from the City
18 of New York, they can go forward. SUNY
19 projects cannot.

20 Now, if that isn't a disparity
21 between upstate and the downstate area that
22 clearly controls this budget process that has
23 gone nowhere and is over a month late now,
24 then I don't know what does display that
25 disparity.

1 Lastly and most importantly, while
2 whatever is not going on continues to not go
3 on behind closed doors, the Comptroller has
4 advised us and advised the world that by the
5 end of May -- it's not too far off, it's three
6 more extenders -- the General Fund balance in
7 the State of New York is going to be
8 \$500 million. And the DOB estimates that the
9 short-term investment pool and other sole
10 custody accounts will be \$1 billion short as
11 of June, making emergency bill payments and
12 the payments to the schools unable to be paid
13 made. So although we get the same answers to
14 our same questions week after week, this is
15 serious business.

16 And the most -- and lastly, the
17 thing I almost forgot, the Governor has
18 mentioned furloughs of state employees. And
19 he's threatened next week that if we don't
20 handle the furlough bill as a stand-alone
21 bill, it's going to be part of the extender
22 next week.

23 Now, that's going to put a lot of
24 people in a very difficult vote. Do you vote
25 to not have an extender as long as it has

1 furloughs for state employees? It's going to
2 be a very difficult vote.

3 So I'm urging everyone, in view of
4 all of those factors, in view of the fact that
5 no progress has been made, we're over a month
6 late, that we vote no at this time -- not wait
7 till next week when we have to furlough
8 employees -- so that we can make sure we get a
9 budget. And a budget is necessary for all of
10 us for many reasons, in addition to the
11 reasons I gave you.

12 So I'm going to vote no when the
13 vote is called today on this bill. Thank you.

14 ACTING PRESIDENT BRESLIN: Thank
15 you, Senator DeFrancisco.

16 Senator Flanagan, on the bill.

17 SENATOR FLANAGAN: Thank you,
18 Mr. President. On the bill.

19 I'm going to refrain from asking
20 questions and just make a couple of points
21 relative to the education portion of this
22 budget.

23 Last week when we did the extender,
24 there was about \$2.5 billion appropriated in
25 aid to education. All meritorious, all

1 valuable, all beneficial to our school
2 districts. Last week we offered an amendment
3 to allow for the employee liability reserve
4 funds to be used as the Governor had proposed,
5 as the Senate Democrats had proposed, and as
6 the Assembly Democrats had proposed, and the
7 amendment was defeated along party lines.

8 Last week, or as we came into this
9 week, the Governor sent up two bills -- an
10 appropriation bill, which we have before us,
11 and an Article 7 bill, which very simply would
12 have allowed for the use of those funds.

13 So I marvel at the discussion that
14 we've had today talking about charter schools
15 and the Race to the Top and public policy and
16 education, and we spent about two hours
17 talking about \$700 million that we may get.
18 And I think that discussion was worthwhile.

19 But it is appalling to me that
20 we're standing here now and we are not going
21 to take up a bill that was introduced by the
22 Majority. That's a bill, ladies and
23 gentlemen, that everyone knows doesn't cost
24 the State of New York a dime. It doesn't cost
25 the financial plan anything. The Comptroller

1 has come out and said there's over
2 \$400 million available to over 251 school
3 districts in the State of New York where they
4 could access that money to help prevent
5 layoffs, help reduce their tax levy, and help
6 the overburdened property taxpayer in the
7 State of New York.

8 You failed to get it out here on
9 the floor. That's a \$400 million member item,
10 like that [snapping fingers] that goes right
11 to school districts that would be very
12 beneficial to the vote that's coming up the
13 third Tuesday in May.

14 So as we move ahead, I can
15 guarantee you I'm going home and I'm putting
16 the blame right at the Senate Democrats' door
17 and the Assembly Democrats' door, because the
18 chance is there, it's a no-brainer, it should
19 have been done.

20 And I give credit to the Governor
21 because he listened, he listened and put it in
22 his appropriation bill. We should have acted
23 on it. It should be here now, it could be
24 chaptered tonight and school districts could
25 plan accordingly and benefit the property

1 taxpayers. But you chose not to do the right
2 thing, and they're going to be hurting as a
3 result.

4 I'm going to vote no.

5 ACTING PRESIDENT BRESLIN: Thank
6 you, Senator Flanagan.

7 Senator Marcellino, on the bill.

8 SENATOR MARCELLINO: Thank you,
9 Mr. President. On the bill.

10 As I have on all the other extender
11 bills that have come before us, I fully intend
12 to vote no on this bill. I don't believe we
13 need an extender, I know we need a budget.
14 It's that simple. We need an on-time budget,
15 we're a month past that deadline, and frankly,
16 from what I'm hearing, absolutely nothing
17 seems to be happening. Talk to people on the
18 other side, they say they're not talking to
19 us. Talk to people here, they don't know
20 whether they're talking to them.

21 We are not getting the facts here.
22 And there doesn't seem to be any movement
23 moving along.

24 Where the Governor is picking to
25 pay certain projects -- if it's federal money,

1 those workers who are lucky enough to be on
2 that job will get paid. If it's state money
3 or local money with some state add, those
4 workers will not work. Now we're picking and
5 choosing which families are going to have
6 bread on the table or not. I think that's
7 outrageous and not credible.

8 SUNY is not going to get its
9 projects. These are projects with new
10 buildings, repairs and maintenance of existing
11 buildings that are necessary. Infrastructure,
12 roads, all that not being done.

13 Now, Senator Little before was
14 mentioning at one of our conferences that some
15 of the asphalt plants upstate will close down
16 when the weather starts getting cold. Which
17 means those projects for road improvements and
18 the like are not going to be able to move
19 ahead because there's not going to be any
20 asphalt. Well, that's going to be great.
21 More workers unemployed, more people not
22 getting a paycheck.

23 School districts, as our colleague
24 Senator Flanagan just pointed out, have a vote
25 coming. They're not sure what to do. Will

1 they take a high number, a low number? What's
2 their state aid? What's going to impact their
3 levy? What's going to impact their taxpayers?
4 They don't know. They can't answer the
5 question. They call me, I say I don't know.
6 I go and ask my colleagues on the other side,
7 and they don't know. So we're getting no help
8 from anybody.

9 This is not a healthy situation.
10 This is not a good situation for any one of
11 us. And it looks bad, it smells bad and it is
12 bad, quite honestly. Nobody can say this is a
13 good thing. And I don't hear that happening.
14 We're not moving forward in the right
15 direction. The taxpayers are saying "What are
16 you doing? Where's my budget? What's the
17 deal? What are we going to do here?" And all
18 we're getting is stall, stall, stall. Not
19 helpful.

20 Mr. President, I'm going to vote no
21 on this extender, and I intend to vote no on
22 every extender until we get a budget. Because
23 we don't need extenders, we need a budget.

24 ACTING PRESIDENT BRESLIN: Thank
25 you, Senator Marcellino.

1 Senator Saland, on the bill.

2 SENATOR SALAND: Thank you,
3 Mr. President.

4 Mr. President, I believe it was
5 about three weeks ago when we did another
6 extender bill -- and this is starting to seem
7 like Groundhog Day -- that I stood up and
8 said, "I've always supported extenders but at
9 some point in time I'm not sure if I can
10 continue to support extenders."

11 That point in time has arrived. We
12 have passed with the great fanfare, great
13 patting ourselves on the back in 2007 a budget
14 reform act. And that Budget Reform Act was
15 supposed to take us away from the bad old days
16 and set us on a course where late budgets
17 would now be a thing of the past.

18 Well, they're a thing of the
19 present, and they seem to be going on here
20 now, today, interminably. And it seems like
21 there's nothing in sight, no light at the end
22 of the tunnel.

23 The simple fact of the matter is
24 that bill, as best as I can recall, was much
25 heralded everywhere. We gave ourselves a lot

1 of credit, in bipartisan fashion, for
2 accomplishing it. It was the beginning of a
3 new day. It was a reform. And that reform
4 has been absolutely, totally ignored. And
5 instead, we get week by week these extenders.

6 And what we're doing is trying,
7 somehow or other, to delay the inevitable.
8 Dealing with the absolutely horrible fiscal
9 plight that we find ourselves in, perhaps
10 closing our eyes and trying to wish it away --
11 perhaps some of us would prefer putting our
12 heads in the sand and maybe it will go away.

13 It is not going to go away. It
14 will be here until we deal with it. No
15 extender is going to get us any closer to a
16 resolution. It requires the ability to make
17 difficult decisions and make them now. Nobody
18 enjoys that prospect. But delaying of its
19 inevitability merely compounds the problem.

20 So why not, why not do what we were
21 sent here to do and surprise people by showing
22 that we can do it and get to the task of
23 passing a budget? Is that not our
24 responsibility? The Governor has given us his
25 budget. Where is the legislative response?

1 I look around the other side of the
2 aisle, I don't think there's eight to 10
3 people sitting in the chamber. This is an
4 extender. It's supposed to be important
5 stuff. This is the stuff that's supposed to
6 keep us going. Well, the simple fact of the
7 matter is it's not keeping us going, it's
8 merely digging the hole deeper as we mire in
9 our own mess. It's time for us to act.

10 Mr. President, I cannot support
11 another extender. I will not support another
12 extender. I implore this body, I beg this
13 body to accept our responsibilities and get
14 the job done. Delay is not an ally, it just
15 causes more pain.

16 Thank you, Mr. President.

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

19 The debate is closed.

20 The Secretary will ring the bell.

21 Read the last section.

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

24 ACTING PRESIDENT BRESLIN: Call
25 the roll.

1 (The Secretary called the roll.)

2 ACTING PRESIDENT BRESLIN:

3 Senator LaValle, to explain his vote.

4 SENATOR LaVALLE: Thank you,
5 Mr. President. Very briefly.

6 All of us have heard throughout the
7 preceding months about having projects that
8 are shovel-ready. Shovel-ready, those were
9 the magic words. Here we have projects that
10 are being stopped. Others that should be
11 online have never made it across the line.

12 It is shameful. And I don't know
13 what the Governor is thinking to pit one area
14 of the state, New York City, against those
15 communities outside of New York City who will
16 be hurt by not having their construction
17 projects moving forward.

18 I vote no.

19 ACTING PRESIDENT BRESLIN:

20 Senator LaValle will be recorded in the
21 negative.

22 Senator Stavisky, to explain her
23 vote.

24 SENATOR STAVISKY: Yes. I vote
25 aye.

1 The budget resolution which we
2 passed in this chamber took the SUNY
3 Construction Fund off-budget so that it would
4 be comparable to the CUNY Construction Fund.
5 And I might remind you that everybody on the
6 other side of the aisle voted against that.

7 Thank you. I vote aye.

8 ACTING PRESIDENT BRESLIN:
9 Senator Stavisky will be recorded in the
10 affirmative.

11 Senator Owen Johnson, to explain
12 his vote.

13 SENATOR JOHNSON: I am voting
14 against this temporary budget measure, as I
15 did last week.

16 And I discovered that we did have a
17 procedure for conference committees to deal
18 with issues like this, but we don't use that.
19 We have a new system now we learned from
20 China. It's called the Chinese water torture.
21 And every week you drop a little piece of the
22 budget on top of the people of this state and
23 try to keep them happy. They're not happy.
24 They don't like that procedure.

25 Ten days from now, we have the vote

1 on the school budgets. The schools don't know
2 what money they have. They can't plan their
3 budgets accordingly. Every municipality has
4 the same thing, every business has the same
5 problem.

6 So we can't go on like this. It's
7 totally outrageous, it really is. And we had
8 lamentations years ago about three men in a
9 room. At least they got something done.
10 Where's our three men? Where's anybody
11 working on this budget?

12 It's terrible. I'm voting no.

13 ACTING PRESIDENT BRESLIN:

14 Senator Owen Johnson will be recorded in the
15 negative.

16 Senator Griffo, to explain his
17 vote.

18 SENATOR GRIFFO: Mr. President,
19 thank you.

20 I have voted against the extenders
21 because I believe that we need a budget. And
22 I was disappointed today with the Senate
23 Finance chair when he chuckled, actually, when
24 he was responding to the question that Senator
25 DeFrancisco asked because it was the same

1 question, indicating that there are ongoing
2 negotiations. And yet the Assembly Majority
3 Leader says that not the case. The Lieutenant
4 Governor says that's not the case.

5 So where are we? What are we
6 really doing here? You asked the people to
7 entrust you, to put you in charge. You're in
8 charge, and you're not getting the job done.
9 People don't care about the past, that there
10 were late budgets before. They want to know
11 what you're doing now, today, to meet the
12 challenges that are there before us.

13 I think this is unacceptable, to
14 ignore, purposely, deadlines, to wilfully
15 violate the Budget Reform Act of 2007. Get
16 your act together. Let's get the job done.

17 I vote no.

18 ACTING PRESIDENT BRESLIN:
19 Senator Griffo will be recorded in the
20 negative.

21 Announce the results.

22 THE SECRETARY: Those recorded in
23 the negative on Calendar Number 477 are
24 Senators DeFrancisco, Flanagan, Golden,
25 Griffo, Hannon, O. Johnson, Larkin, LaValle,

1 Leibell, Little, Marcellino, Maziarz,
2 Nozzolio, Padavan, Ranzenhofer, Saland,
3 Seward, Skelos, Volker, Winner and Young.

4 Ayes, 39. Nays, 21.

5 ACTING PRESIDENT BRESLIN: The
6 bill is passed.

7 Senator Klein, that completes the
8 reading of the controversial supplemental
9 calendar.

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

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

14 SENATOR KLEIN: There being no
15 further business, Mr. President, I move that
16 we adjourn until Tuesday, May 4th, at
17 3:00 p.m.

18 ACTING PRESIDENT BRESLIN: There
19 being no further business, the Senate is
20 adjourned until Tuesday, May 4th, at 3:00 p.m.

21 (Whereupon, at 7:51 p.m., the
22 Senate adjourned.)