NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 10, 2010

3:47 p.m.

REGULAR SESSION

SENATOR CRAIG M. JOHNSON, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

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

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

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

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

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

ACTING PRESIDENT JOHNSON: The reading of the Journal.

The Secretary will read.

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

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Klein.

SENATOR KLEIN: Madam President -- I'm sorry, Mr. President.

ACTING PRESIDENT JOHNSON: Out of order, Senator Klein.

(Laughter.)

SENATOR KLEIN: I have several motions.

First, on behalf of Senator Parker, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Number 1935, Senate Number 2080, Senate Number 2083.

ACTING PRESIDENT JOHNSON: So ordered.

Senator Klein.

SENATOR KLEIN: On behalf of

Senator Thompson, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Number 7518.

ACTING PRESIDENT JOHNSON: So ordered.

Senator Klein.

SENATOR KLEIN: On behalf of Senator Breslin, on page number 29 I offer the following amendments to Calendar Number 482, Senate Print Number 7408, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT JOHNSON: So ordered.

Senator Klein.

SENATOR KLEIN: On behalf of Senator Addabbo, on page number 20 I offer the following amendments to Calendar Number 366, Print Number 5447B, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT JOHNSON: So ordered.

Senator Klein.

SENATOR KLEIN: On behalf of Senator Savino, on page 13 I offer the following amendments to Calendar Number 196, Senate Print Number 2311B, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT JOHNSON: So ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, on behalf of Senator Addabbo, I wish to call up Print Number 6910, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT JOHNSON: The Secretary will read the title of the bill.

THE SECRETARY: Calendar Number 236, by Senator Addabbo, Senate Print 6910, an act to amend the Election Law.

ACTING PRESIDENT JOHNSON: Senator Klein.

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

ACTING PRESIDENT JOHNSON: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT JOHNSON: The bill is restored to Third Reading Calendar.

Senator Klein.

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

ACTING PRESIDENT JOHNSON: Amendments received.

Senator Klein.

SENATOR KLEIN: Mr. President, on behalf of Senator Ruth Hassell-Thompson, I wish to call up Calendar Number 245, Assembly Print Number 8873.

ACTING PRESIDENT JOHNSON: The Secretary will read the title.

THE SECRETARY: Calendar Number 245, by Member of the Assembly Gibson, Assembly Print Number 8873, an act to amend the Social Services Law.

ACTING PRESIDENT JOHNSON: Senator Klein.

SENATOR KLEIN: I now move to reconsider the vote by which this Assembly bill was substituted for Print Number 3754 on

3/15.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT JOHNSON: Senator Klein.

SENATOR KLEIN: I now move that Assembly Bill Number 8873 be recommitted to the Committee on Social Services and that the Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT JOHNSON: So ordered.

Senator Klein.

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

ACTING PRESIDENT JOHNSON: Amendments received.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe Senator Libous also has some amendments.

ACTING PRESIDENT JOHNSON:

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President and Senator Klein.

On behalf of Senator Morahan, Mr. President, on page 28 I offer up the following amendments to Calendar Number 471, Senate Print Number 7432, and I ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT JOHNSON: So ordered.

SENATOR LIBOUS: Thank you.

ACTING PRESIDENT JOHNSON: Senator Klein.

SENATOR KLEIN: Mr. President, I believe there's a resolution at the desk by Senator Breslin. I ask that the resolution be read in its entirety and move for its immediate adoption.

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

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

ACTING PRESIDENT JOHNSON: The Secretary will read.

THE SECRETARY: By Senators Breslin, Savino and Peralta, legislative resolution objecting to the furlough language in the emergency appropriation legislation for the period of April 1, 2010, through May 19, 2010, and requesting Governor David A. Paterson resubmit the emergency appropriation legislation without including language that would authorize the Governor to impose furloughs on certain state employees.

"WHEREAS, The Governor submitted to the New York State Senate and to the New York State Assembly an emergency appropriation bill, Governor's Program Bill Number 250, for the period through May 20, 2010; and

"WHEREAS, Unless such bill is passed by both houses of the Legislature and signed by the Governor, New York State government would be forced to shut down because necessary expenditures would not be authorized and could not be made; and

"WHEREAS, Notwithstanding the need to pass the emergency appropriation bill to

ensure continued operation of state government, without consultation with the Senate the Governor inserted in such emergency appropriation bill a provision which mandates a nonconsensual furlough to apply to select employees of the executive branch, resulting in their loss of one day's pay in direct contravention of their respective collective bargaining agreements; and

"WHEREAS, The unions representing these employees have negotiated collective bargaining agreements that are currently in full force and effect which establish the terms and conditions of their members' employment in accordance with the New York State Constitution, the United States Constitution, and the Taylor Law of the State of New York, which grants public employees the right to organize and enter into binding collective bargaining agreements with the state and its municipal agents; and

"WHEREAS, The Governor has not sought to reach a voluntary furlough agreement with any of the unions representing the workers subject to these provisions to resolve

outstanding concerns; and

"WHEREAS, The furlough is estimated to impact 100,000 workers, the vast majority of which make under $50,000 per year; and

"WHEREAS, The language in the bill requiring a one-day furlough is contrary to the laws and public policy of this state; and

"WHEREAS, This Legislative Body believes it is not reasonable or fiscally necessary to impose furloughs on unionized state employees in violation of their existing collective bargaining agreements in order to address the budget crisis; and

"WHEREAS, There are other alternatives available that can address the fiscal challenges faced by the state which do not violate the public policy of the state, the New York State and the United States Constitutions, the Civil Service Law, the Taylor Law, and union contracts; and

"WHEREAS, This Legislative Body may not alter an appropriation bill submitted by the Governor except to strike out or reduce or add items of appropriation; and

"WHEREAS, In order to avoid a

shutdown of all the state's essential services the Legislature has little choice but to vote for the provisions of the emergency appropriation bill, notwithstanding its objections to the furlough provision of the bill; now, therefore, be it resolved

"RESOLVED, That this Legislative Body pause in its deliberations to object to the furlough language in the emergency appropriation language for the period of April 1, 2010, through May 19, 2010, and requesting Governor David A. Paterson resubmit the emergency appropriation legislation without including language that would authorize the Governor to impose furloughs on certain state employees; and be it further

"RESOLVED, That this Legislative Branch pause further to request Governor David A. Paterson grants a message of necessity and a message of appropriation for such new bill to ensure that the bill can be voted on by the Senate on Monday, May 10, 2010; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted

to the Honorable David A. Paterson, Governor of the State of New York; Lieutenant Governor Richard Ravitch; Speaker of the New York State Assembly, Sheldon Silver; and Assembly Minority Leader Brian Kolb."

ACTING PRESIDENT JOHNSON: Senator Breslin.

SENATOR BRESLIN: Thank you, Mr. President.

This resolution relates to the Governor's Program Bill 250. That's what we commonly refer to as the extender bill. And contained in that bill this week is a furlough provision for 100,000 New York State employees.

Those 100,000 employees, most of whom make less than $50,000, have mortgage payments, tuition payments, payments to buy food each week. Their union members have negotiated contracts that didn't include any discussion of furloughs. It's collective bargaining under the Taylor Law. An opportunity was had to discuss furloughs, but it wasn't. There's been no emergency created where the Governor said, "Come on in, let's

sit down, let's discuss it." This is a unilateral decision by the Governor.

And it's a unilateral decision by the Governor to force us to vote against the extender bill.

Now, what if we voted against that extender bill -- an extender bill that has health insurance for every employee in the State of New York, and if we voted against that extender bill and it failed, everyone would be without health insurance. Someone who might need an operation the next day would have to pay for it themselves.

Motor vehicle departments would be closed down. State Police would be at an impasse. Construction projects, all construction projects would not be paid. Health and Medicaid would be affected, $1.45 million, which includes 250 hospitals, 400 nursing homes.

The Department of Taxation and Finance would be unable to collect revenues, would in fact be unable to bring in receipts. Things like the Association for the Blind, the School for the Deaf would have temporary

closures. And it goes on and on and on.

No one expects to us close down state government. They've tried it in other states: Michigan, New Jersey, Tennessee, Pennsylvania. The U.S. government tried it. And in each of those states, there was a lot of politics that went into it. But they didn't get to the final consideration -- who gets hurt. The people of the State of New York get hurt.

So to include this furlough provision in that extender creates chaos, total chaos. And what this resolution would do, it's asking the Governor: Governor, take back your extender provision which includes the furloughs, take it back today and reissue today another extender without the furlough provisions. Otherwise, many will be faced with a choice, and that choice could include closing state government. In order, some would say, to pander to a few.

My view is that the unions are on correct footing and when they bring this appeal, after we pass the extender, they will be successful in court.

But we cannot close state government. So this resolution again says, Governor, please take your extender bill back, amend it today, give us an extender bill without the furlough provision, and we will pass it. Albeit we may only pass it 32 to 30, but we will pass it.

So I urge everyone to vote in favor of this resolution to send a message to the Governor, a polite message, that the extender bill as presented today is wrong and to give us an extender bill that will provide basic services without hurting those 100,000 employees.

Thank you, Mr. President.

ACTING PRESIDENT JOHNSON: Thank you, Senator Breslin.

Senator Klein.

SENATOR KLEIN: Thank you, Mr. President.

I want to thank Senator Breslin for bringing forth this resolution and explaining it so eloquently.

Certainly emotions are running high. Our budget is late. We have over a

$9 billion budget deficit. But I still think it's incumbent upon us to act in a rational fashion. And that means coming up with a budget that is balanced and that reflects the needs of New Yorkers.

The reading of the law on furloughs is very, very clear. When they're negotiated outside a collective bargaining agreement, they're illegal. It was tried in California recently. It was also recently tried in Maryland; again, ruled unconstitutional.

And those who remember their history remember when then-Governor Cuomo tried to put forth a pay lag, that was also struck down as a violation of collective bargaining and a violation of the Taylor Law.

So clearly the Governor trying force our hand through this budget extender doesn't do anyone any good. We want government to continue to run, even though on a weekly basis. We want to make sure that unemployment insurance continues to go to those who need it. We want to make sure Medicaid monies still go through our hospitals so they continue to run.

So today, by voting on this extender, I think we're doing the best we can for state workers as well as our constituents who want to see government run on a daily basis. It's just unfortunate that part of that very important extender also includes a furlough which is clearly illegal.

So again, I want to thank Senator Breslin. And of course I vote yes on this resolution.

ACTING PRESIDENT JOHNSON: Thank you, Senator Klein.

Senator Savino.

SENATOR SAVINO: Thank you, Mr. President.

I also rise in support of this resolution, and I want to thank Senator Breslin and Senator Peralta for cosponsoring it with me.

You know, before I came to the Senate I spent the previous 15 years of my life in the New York City public-sector labor movement, 10 years directly working for a municipal union, sitting at the bargaining table many times, in good times and in bad,

negotiating work rules, negotiating salaries, negotiating benefits, protecting the services that our members provided to the public and the jobs that they themselves had.

I actually went to school and got a degree -- Tommy, I did -- in labor relations, from the Cornell Industrial School of Labor Relation. And I learned a few things both at Cornell and at the bargaining table in the City of New York. It takes two to make a bargain; it only takes one to break it.

In 2007 the Governor entered into a collective bargaining agreement with the state workforce where he agreed to certain conditions that would go forward for the length of that contract, including a 4 percent pay raise that was due on April 1st.

The forecast for the State of New York was pretty dire then too. The State Comptroller at the time talked about out-year budget deficits and its impact. And yet and still, the Governor, in full knowledge of that, sat down and negotiated a contract.

Under the Taylor Law in New York State, wages, hours and terms and conditions

of employment are mandatory subjects of collective bargaining. And any attempt to change those are equally considered mandatory subjects of collective bargaining. They require formal negotiation and agreement, and then they are required to be taken back to the membership who ratified the original contract, be voted on again before they can be put in place.

None of that has happened here. In spite of the Governor's statements to the contrary that he has tried to get some concessions from the union, there has not been one single formal collective bargaining session between the state workers and the Governor's office. Perhaps they should go to Cornell's Industrial School of Labor Relations and learn a bit about labor negotiating.

Be that as it may, none of that has happened. The Governor has presented us here today a Hobson's choice. We can reject his illegal act -- which is what is in this budget extender, attempting to get us to legalize what is illegal under the law and what has been struck down in other states and what is

essentially settled law, that you cannot abrogate a collective bargaining agreement without concerted negotiation. That has not happened. And after today, I think it's going to be very difficult for the Governor to get any level of cooperation from the state workforce.

But he's asked us to legalize an illegal act. And I'm not happy about it. I don't think anybody in this room is happy about it. But the alternative is far worse. If we were to reject this extender bill and shut down government, it doesn't just affect the workers who collect a paycheck from the state who are facing an illegal furlough, it affects every other entity that is dependent upon the state budget, from our school districts to our hospitals to people who are on unemployment, people who are on cash assistance collecting money from the state under the safety net program. Neil outlined a whole host of institutions.

More importantly, for those state workers who are facing this furlough right now, if we shut down government, their health

insurance ceases. Heaven forbid one of them needs emergency surgery or has a baby or some other crisis in their life. It's not a risk I'm willing to take.

We need to do everything we can to call upon the Governor to send us a new bill eliminating this illegal action, and send him a clear message that we will not be party to his illegal activity and encourage him to actually sit down and negotiate. It is what the Taylor Law calls for, it is what the Constitution calls for.

And while is he busy on the radio criticizing people who won't come to the table, he hasn't opened the door and designated where the table is.

So I fully support this resolution, and I ask everyone to vote for it. And before I close, I just want to point out a couple of things. The Governor is estimating there are about 100,000 state employees who will be affected by this furlough. Of those 100,000 workers, the majority of them make under $40,000 a year. They can't afford a 20 percent pay cut.

There are 14,000 employees on the state workforce that make over $100,000 a year. They're predominantly MCs. And not to take anything away from the hard work of our management confidential employees, they're not being targeted for furlough. The Governor's excuse is, well, they gave up their 4 percent pay raise. They didn't give it up; he took it away from them. They don't have collective bargaining rights. The state workers and their unions do.

There are 6,856 identified employees who are disabled who are targeted by this furlough. That is going to be the impact on people -- the disabled, our lowest-paid employees, our secretaries, our data entry people. And yet the Governor's staff isn't being furloughed. 14,000 people earning more than $100,000 aren't going to be affected by that.

This is outrageous. We need to call on the Governor to stop this and to stop it today. I urge all of you to vote yes on this resolution.

Thank you, Mr. President.

ACTING PRESIDENT JOHNSON: Thank you, Senator Savino.

Senator Stavisky, on the resolution.

SENATOR STAVISKY: Thank you, Mr. President.

And thank you, Senator Breslin, for so eloquently discussing this resolution, and Senator Savino for your special insights into the problems involved in labor-management relations.

There's another group of people, though, that we forget about, the people employed in our higher education institutions. And I would like to remind the Governor that CUNY is not a state agency. The people who work for the City University of New York bargain collectively with CUNY, not with the state, and yet they are subject to this furlough.

The faculty, who teach on a 10-month basis, they are being subject to a furlough for work that has already been completed in many cases. Even as we meet here today, students are taking final exams.

Professors are grading the final exams, they're grading papers. And yet they're going to be subjected to the furlough that the Governor proposes.

And lastly, there are a great many part-time employees who, if they are furloughed, their healthcare benefits will be jeopardized. They earn part-time wages, and their income level will fall below the threshold and they will not be entitled to their healthcare benefits -- the hospitalizations, the prescription drugs and so on.

We have a terrible choice to make. And as so often happens, we try to make the less terrible choice, which is to vote for the furlough and hope that the courts act in an expeditious manner.

Thank you, Mr. President. And I urge a positive vote on this resolution.

ACTING PRESIDENT JOHNSON: Are there any other Senators that wish to be heard on the resolution?

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

aye.

(Response of "Aye.")

ACTING PRESIDENT JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT JOHNSON: The resolution is adopted.

Senator Breslin has indicated he would like to open the resolution up for cosponsorship by the entire house. Any Senator wishing not to be on the resolution please notify the desk.

Senator Klein.

SENATOR KLEIN: Mr. President, there will be an immediate meeting of the Finance Committee, followed by a meeting of the Rules Committee in the Majority Conference Room, Room 332.

Pending the return of the Rules Committee can we please stand at ease.

ACTING PRESIDENT JOHNSON: There will be an immediate meeting of the Finance Committee, followed by an immediate meeting of the Rules Committee in Room 332.

Pending the return of the Rules

Committee, the Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:11 p.m.)

(Whereupon, the Senate reconvened at 4:53 p.m.)

ACTING PRESIDENT JOHNSON: Senator Klein.

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

ACTING PRESIDENT JOHNSON: There is a report of the Rules Committee at the desk.

The Secretary will read.

THE SECRETARY: Senator Smith, from the Committee on Rules, reports the following bill direct to third reading:

Senate Print 7777, by the Senate Committee on Rules, an act making appropriations for the support of government.

ACTING PRESIDENT JOHNSON: All those in favor of adopting the Rules Committee report please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT JOHNSON:

Opposed, nay.

(No response.)

ACTING PRESIDENT JOHNSON: The Rules Committee report is adopted.

Senator Klein.

SENATOR KLEIN: Mr. President, at this time can we please go to a reading of the Supplemental Calendar 45A.

ACTING PRESIDENT JOHNSON: The Secretary will read.

THE SECRETARY: Calendar Number 507, by the Senate Committee on Rules, Senate Print 7777, an act making appropriations for the support of government.

ACTING PRESIDENT JOHNSON:

Senator Klein.

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

ACTING PRESIDENT JOHNSON: There is a message of necessity and appropriation at the desk.

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

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

(Response of "Aye.")

ACTING PRESIDENT JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT JOHNSON: The message is accepted.

Read the last section.

SENATOR LIBOUS: Lay the bill aside, please.

ACTING PRESIDENT JOHNSON: The bill is laid aside.

Senator Klein.

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

ACTING PRESIDENT JOHNSON: The Secretary will ring the bell.

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

The Secretary will read.

THE SECRETARY: Calendar Number 507, by the Senate Committee on Rules, Senate Print 7777, an act making appropriations for the support of government.

ACTING PRESIDENT JOHNSON: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. There's two amendments at the desk. The first one is by Senator Flanagan. I would ask that you waive its reading and call on Senator Flanagan, please.

ACTING PRESIDENT JOHNSON: Senator Flanagan, your amendment is here at the desk. Without objection, the reading is waived and you may speak on the amendment.

SENATOR FLANAGAN: Thank you, Mr. President.

Obviously, we're doing another extender bill today. And the amendment that I'll be offering on behalf of our conference today has to do with school districts, public schools, and non-public schools.

Last year we know in the context of the budget, outside the budget, there was a lot of discussion about the MTA, its financial

viability, and ultimately there was a plan that included the MTA payroll tax. And in that debate we had a lot of spirited discussion about what should happen with school districts.

I believe that what was done at the time was ill-advised, inappropriate, and not helpful to school districts. And there are those who say, "Well, you know, the school districts have to pay this payroll tax, but we're going to reimburse them." We could frankly have avoided this problem had we just never made it apply to school districts to begin with.

This amendment would change the law in two respects. Number one, it would effectively repeal the MTA payroll tax as it relates to school districts. We're adding a second portion to that which deals with non-public schools.

And I will say, in the spirit of trying to be cooperative and bipartisan, the second part of our amendment has to do directly with a bill that has been introduced but not moved yet by Senator Klein,

reimbursing or dealing with the non-public schools.

So public schools, non-public schools, get rid of the payroll tax and make this effective immediately so the Tax & Finance Department can treat it as an overpayment and a refund could go to the school districts right now.

Since the budget is not done, they think that the $60 million will be going to them, but they don't know. This would get it done right now and would avoid any question prospectively as we move into next year, so that school districts, both public and nonpublic, will not have to worry.

Mr. President, I move the amendment.

ACTING PRESIDENT JOHNSON: Thank you very much, Senator Flanagan.

Senator Klein.

SENATOR KLEIN: Mr. President, point of order.

ACTING PRESIDENT JOHNSON: Senator Klein, what is your point of order?

SENATOR KLEIN: According to

Article 7, Section 4 of the Constitution, the Legislature may add only single line item appropriations, stated separately and distinctly.

Because the items in this amendment are not single, distinct line items, the amendment is unconstitutional and therefore out of order.

ACTING PRESIDENT JOHNSON: Senator Klein, your point of order is affirmed and the nonsponsor amendment is ruled out of order.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I rise as I have the last five weeks, and I challenge the ruling of the chair because we believe that it is constitutional. Senator Flanagan's amendments have every right to be implemented into this particular budget appropriation. And I would challenge the ruling of the chair, please.

ACTING PRESIDENT JOHNSON: Senator Libous, would you like to make a motion to overrule the ruling of the chair?

SENATOR LIBOUS: Yes, sir, I

would.

ACTING PRESIDENT JOHNSON: Okay. Thank you.

SENATOR LIBOUS: By a showing of hands, please.

ACTING PRESIDENT JOHNSON: All those in favor of overruling the ruling of the chair please raise your hands.

Senator Flanagan, why do you rise?

SENATOR FLANAGAN: Mr. President, I'd like to be heard on the motion.

ACTING PRESIDENT JOHNSON: Senator Flanagan, on the motion.

SENATOR FLANAGAN: Okay. I ask that the roll call be withdrawn, at least temporarily. I'd like to be heard on the motion, please.

ACTING PRESIDENT JOHNSON: Senator Flanagan, you may be heard.

SENATOR FLANAGAN: Thank you, Mr. President.

I listened now and I listened before as we've done these extenders where Senator Klein has gotten up and made a point of order and talked about the nature of our

amendments being unconstitutional. And I don't want to sound like I'm splitting hairs, but I will say this. We're not changing anything, we're not deleting, we're not adding to or subtracting to appropriations that are in the bill that has been sent up by the Governor.

We believe and I believe very clearly that we can do this because we're adding something new. We didn't take an appropriation that the Governor said was a million dollars or something like that and reduce it or add to it, and we didn't delete it. We're introducing something that's brand-new.

And maybe the concept of bringing brand-new is something that we should be embracing. Because, ladies and gentlemen, all we're really trying to do here is help school districts. I believe at some point you're going to want to do the same thing.

So I believe that this amendment is in order. I don't believe it's unconstitutional in any respects. And again, I would move the amendment.

Thank you, Mr. President.

ACTING PRESIDENT JOHNSON: Senator Flanagan, thank you.

The ruling stands. All those in favor of overruling the chair please show by raising your hands.

The Secretary will announce the results.

THE SECRETARY: Ayes, 29. Nays, 32.

ACTING PRESIDENT JOHNSON: The ruling stands.

Senator Libous.

SENATOR LIBOUS: Yes, thank you, Mr. President. I believe Senator McDonald has an amendment at the desk. And if you would waive its reading and call on Senator McDonald.

ACTING PRESIDENT JOHNSON: Senator McDonald, your amendment is here at the desk. Without objection, the reading is waived and you may speak on your amendment.

SENATOR McDONALD: Thank you, Mr. President. I'm sure my colleagues know the amendment is the same one that I proposed

two weeks ago, and it's a confirmation of a Governor's house bill that was presented. It's about the New York Racing Association and the track seasons for the three tracks -- Belmont, Aqueduct, and especially Saratoga -- coming upon us.

It's been a tough year, a tough couple of years for our economy. Upstate New York State saw more than its fair share of negative economics. We're moving into the area where a $17 million loan to the New York Racing Association to deal with capital improvements in the three tracks, mostly Saratoga, becomes very important, as the season, for all practical purposes, is starting in the North Country. And I say North Country because it expands beyond Saratoga, it's up into the Adirondack regions.

It's so important that we send a signal that we're prepared to meet this season and that we send a signal to the business community, who is begging to pay us money, sales tax money, various forms of income taxes for the people they employ. They want to pay state taxes into our revenue stream that

desperately needs that money.

Now, I don't care if a bill comes down and somebody else's name is on it. I don't care if it's all the other side. I respect that. I understand this. What I care about is doing something for these tracks. It's especially damaging that the VLT process has been so tainted and gone so long that these three tracks and the horse industry and all the industries related to it -- tourism, the agricultural industry -- have been hurt by this.

I recognize that this will have a quote from a lawyer that says we can't vote on this. I recognize that. I'm disappointed by it. I'm disappointed on a lot of things I don't get to vote on, which I think is unfair. But it's especially unfair because my constituency, like your own, is made up of so many different people of different political parties. They're not asking for partisanship. They're not deviating from their own political philosophies -- many of them share yours. What they're simply asking for is an opportunity to work for the season.

It's important that revenue stream comes in because the way this budget process is going -- and there is no process -- we could be here back in November and December working on a budget, and we will be looking at revenue streams, such as sales tax collected throughout our great state.

And if we don't do something about these tracks, which should have been done years ago -- should have done this year with the VLT process, and probably a case should have been done in the last eight or nine years, since it was open -- we're going to be short revenue again.

Now, we're losing a million dollars a day. That's $365 million without having a VLT Aqueduct vendor. Nobody can get together on it. Simply amazes my constituency why this property has gone literally into the can.

So whatever the outcome of the ruling -- and I don't kid myself. It will be non-germane, out of order and some interpreted legal interpretation that will simply say to my voters we're not going to get to vote on this. So my response is going to be, Listen,

I understand the politics. I'm not going to say I agree with it, but I understand it. And I know it goes both ways. I respect that.

I am going to tell you folks if you mess around too much longer with the track seasons, there's going to be a lot of people in this room and down the hallway and in the Governor's office that are going to be responsible for people not making money, not being able to take care of themselves, and not giving us revenue that we desperately need to run this great state.

It's time we start doing something. So I've accepted the fact that this will not be voted on. I've accepted the fact that it's not germane, and that's the headline will be in my district. I've accepted the fact that it may be out of order. But I had no recourse. There's no joint budget, house meetings and joint conference meetings. There's no place that we can actually vote on a budget, a line item. I've never seen anything like this before.

So I appeal to you as responsible men and women to recognize this critically

important industry in upstate New York and indeed throughout our entire state. I don't doubt for a moment that you don't care about this industry. But I think brinksmanship is going to hurt a lot of innocent people, a lot of hardworking people that need better than this.

So before you call it out of order, I wanted to state there's never out of order when you have a chance to vote on something. Isn't that what we're here for?

Thank you, Mr. President.

ACTING PRESIDENT JOHNSON: Thank you, Senator McDonald.

Senator Klein.

SENATOR KLEIN: Mr. President, once again, point of order.

ACTING PRESIDENT JOHNSON: Senator Klein, what's your point of order?

SENATOR KLEIN: Mr. President, according to Article 7, Section 4 of the Constitution, the Legislature may only add single line item appropriations stated separately and distinctly.

Because the items in this amendment

are not single, distinct line items, the amendment is unconstitutional and therefore out of order. In theory, Mr. President, the bill is inconsistent with the basic executive budgeting.

ACTING PRESIDENT JOHNSON: Senator Klein, your point of order is affirmed and the nonsponsor amendment is out of order.

Senator Libous.

SENATOR LIBOUS: Mr. President, as I did just a few moments ago, I challenge the ruling of the chair on this issue.

ACTING PRESIDENT JOHNSON: Senator Libous, the ruling stands. All those in favor of overruling the ruling of the chair please signify by raising your hands.

Announce the results.

THE SECRETARY: Ayes, 29. Nays, 32.

ACTING PRESIDENT JOHNSON: The motion fails. The ruling of the chair is affirmed.

The bill is before the house.

SENATOR LIBOUS: Explanation.

ACTING PRESIDENT JOHNSON:

Senator Libous has requested an explanation of Senator Carl Kruger.

Senator Kruger.

SENATOR CARL KRUGER: An explanation of the bill, not of me.

What we have today in front of us is another emergency appropriation bill, the sixth since we failed to enact a budget. This bill provides for $3.6 billion in All Funds Appropriation, $837 million from the General Fund.

As the previous extenders from last week, it also denies the implementation of the 4 percent labor increase. And we are restoring some bridge and tunnel authority, plus there is an additional $5 million appropriated in bridge and tunnel work for state projects.

Additionally, as has been discussed in great length this afternoon, and part of the resolution that was adopted by our house, the Governor is calling for a furlough of state employees. Approximately 100,000 employees would be affected by this furlough, which we view to be unconstitutional. And the

expected saving, in his judgment, would be approximately $30 million a week.

ACTING PRESIDENT JOHNSON: Senator LaValle.

SENATOR LaVALLE: On the bill, Mr. President.

ACTING PRESIDENT JOHNSON: Senator LaValle, on the bill.

SENATOR LaVALLE: I'll yield to Senator DeFrancisco.

ACTING PRESIDENT JOHNSON: Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Kruger yield to a few questions?

ACTING PRESIDENT JOHNSON: Senator Kruger, will you yield to some questions from Senator DeFrancisco?

SENATOR CARL KRUGER: Absolutely.

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, Senator Kruger will yield.

SENATOR DeFRANCISCO: Senator Kruger, when we had this dialogue last week, I mentioned how it would be a little bit more difficult this week to support an extender for

those who had supported it in the past because we all knew that a furlough was going to be in it. And I mentioned also the fact that this furlough would obviously be extremely difficult to deal with and that it's important to get a budget done by today so we wouldn't have to go through this.

Can you tell me what leaders' meetings took place on the budget from last week this time till today?

SENATOR CARL KRUGER: I would be happy to.

On Friday, May 7th, there was a five-way meeting with an overview on transportation appropriation, for the sixth emergency spending bill.

On Thursday, May 6th, there was another five-way meeting, a general overview of the provisions in the sixth emergency spending bill as well as the Article 7 language bill.

There were several three-way meetings as well in the ensuing periods.

SENATOR DeFRANCISCO: Would Senator Kruger yield to another question?

ACTING PRESIDENT JOHNSON: Senator Kruger, will you yield?

SENATOR CARL KRUGER: Yes.

ACTING PRESIDENT JOHNSON: Senator DeFrancisco.

SENATOR DeFRANCISCO: Were those meetings among staff members or with the leaders present?

SENATOR CARL KRUGER: Staff.

SENATOR DeFRANCISCO: All right. So --

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, do you wish him to yield for another question?

SENATOR DeFRANCISCO: Yes, if he would, please.

ACTING PRESIDENT JOHNSON: Senator Kruger?

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

ACTING PRESIDENT JOHNSON: Senator DeFrancisco.

SENATOR DeFRANCISCO: So despite the fact that everyone knew the furloughs were going to be in the budget extender this week,

there were no three-way leaders' meetings in the last week; is that fair to say?

SENATOR CARL KRUGER: I think that's a fair assumption, yes.

SENATOR DeFRANCISCO: Would Senator Kruger yield to another question?

ACTING PRESIDENT JOHNSON: Senator Kruger, will you yield?

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

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, he will yield.

SENATOR DeFRANCISCO: Now, can this body, if you know, can this body intentionally, knowingly and willfully pass a bill that is determined to be unconstitutional and in violation of contract rights of an individual?

ACTING PRESIDENT JOHNSON: Senator.

SENATOR CARL KRUGER: Through you, Mr. President, I guess a response to your question is that that would be a matter that would have to be litigated.

SENATOR DeFRANCISCO: Would

Senator Kruger yield to another question?

ACTING PRESIDENT JOHNSON: Senator Kruger, do you yield for another question?

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

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, he does yield.

SENATOR DeFRANCISCO: Would you agree with the statement that the language in this extender bill requiring a one-day furlough is contrary to the laws and public policies of this state?

ACTING PRESIDENT JOHNSON: Senator Kruger.

SENATOR CARL KRUGER: Through you, Mr. President, as was indicated in the resolution that was supported by 32 of the Majority members of this house, we dealt with the issue of the furlough and our interpretation of what it meant.

Once again, we pass a bill and ultimately it's for the courts to determine the legality of the bills that we pass.

SENATOR DeFRANCISCO: On the

bill.

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: Of course it's up to the courts to determine when there's a dispute and when the dispute is brought before them. However, there was a unanimous vote moments ago on a resolution that basically had in it the language "the bill requiring a one-day furlough is contrary to the laws and public policy of this state."

And in fact, there were several speakers who basically said that, including Senator Savino. And I believe Senator Breslin mentioned it. The authors clearly agree with it, in view of the fact that they wrote it. And the whole body voted for this resolution basically acknowledging that fact.

And it seems to me that if everyone acknowledges it, you don't need a court determination to find that something is unconstitutional and violates the laws and policies of the State of New York. You've already made that determination by your unanimous vote.

And if that's the case, I can't see how anybody in good conscience, when they've made that decision, can vote for an extender which does exactly that, violates the provisions of the laws of the State of New York, and also the constitution and public policy.

But even more importantly, I believe that there's a lot of --

ACTING PRESIDENT JOHNSON: Senator Kruger, why do you rise?

SENATOR CARL KRUGER: I rise for a point of information.

ACTING PRESIDENT JOHNSON: Point of information, Senator Kruger. What is your point of information?

SENATOR CARL KRUGER: Thank you, Mr. President. Would the Senator yield for a question?

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, will you yield for a question from Senator Kruger?

SENATOR DeFRANCISCO: I'd be more than happy to yield to the point of information question.

ACTING PRESIDENT JOHNSON:

Senator Kruger, Senator DeFrancisco does yield.

SENATOR CARL KRUGER: Thank you.

Senator, in your judgment, what would be the scenario of events that would happen today if we did not vote for this extender?

SENATOR DeFRANCISCO: Well, first of all, it's not a today-or-nothing thing. That's why I was very careful last week when the whole world knew that there would be consequences this week when we voted on an extender, and those consequences included a furlough of some, not all, employees.

And I stated quite frankly -- and I reiterated today when I asked you those various questions -- that next week's going to be extremely interesting, so you'd better get to work and get the budget process going. I wasn't even calling for a public budget process last week, I was saying you've got to get the process open because you're going to find yourself in this bind.

So to suggest for one moment that

it's all or nothing today and, if we don't vote for an extender, the world's going to end -- that isn't what would make the world end. It would be the total lack of any kind of budget progress, not even a leaders' meeting when we had these dire consequences that were going to happen and we knew of it at least a week ago.

Worst-case scenario, we vote no on this proposal, then somebody's going to have to go back to the drawing board. Either somebody's going to decide that a budget is important or somebody's going to have to provide another extender. And it's not us. We don't provide the extenders. We're not the ones who call the public meetings. It's somebody else who happens to run this house. And those are the individuals that should be held responsible for not performing their duties.

SENATOR CARL KRUGER: Thank you, Senator.

ACTING PRESIDENT JOHNSON: Senator Kruger.

SENATOR CARL KRUGER: Once again,

through you, Mr. President.

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, will you yield for another question?

SENATOR DeFRANCISCO: Yes.

SENATOR CARL KRUGER: Now that we've made the speech, let's get --

SENATOR DeFRANCISCO: No, that wasn't a speech, it was an answer.

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, let Senator Kruger finish his question.

SENATOR CARL KRUGER: Well, there was a spin on the answer.

I'll try to encapsulize it. If we do not pass this extender today with the furloughs, as the Governor has pointed out, our choices today, furloughs or shut down -- that's what the Governor said, that's his quote -- what would be your position?

ACTING PRESIDENT JOHNSON: Senator DeFrancisco.

SENATOR DeFRANCISCO: My position is the same as it was for the last four weeks I voted no. Namely, that a budget process is

supposed to begin. It was supposed to begin after the Governor provided his January budget.

So my answer to you is that what happens is that the Majority leaders, the three New York City Democrats -- that didn't even go into the room this week, not being concerned about what's going to happen today if we're faced with passing an illegal, unconstitutional violation of public policy -- if it wasn't important enough for the three leaders to get in that room and start something constructive -- and by the way, I was just advised that the only meetings among staff were on the extender bill, not budget negotiations, to correct you. And I'm sure you were well aware of that.

But the fact of the matter is what would happen now is if the government shut down, it's because of a total lack of concern by the people running government in this state right now. And if it shut down, what would happen? You've got a few hours to get up there and start working and start doing something. Call a meeting. Maybe we can

participate and give you some advice on how to handle this thing, because you obviously can't do it.

So the problem is that we'd have to go back and try to get an extender that's constitutional and in support of public policy.

SENATOR CARL KRUGER: Through you, Mr. President.

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, do you yield for another question?

SENATOR DeFRANCISCO: Yes, of course.

SENATOR CARL KRUGER: So then it's your suggestion that we vote down this extender, shut down for, for all practical purposes, government as we know it to be at the moment, and now go upstairs and try to negotiate another, in your version, a constitutional extender.

SENATOR DeFRANCISCO: You know, maybe I'm not being clear. The choice didn't happen at 4 o'clock today when we got --

SENATOR CARL KRUGER: But that's

where we are right now.

SENATOR DeFRANCISCO: Well, that's where we are right now for one reason. Because you and your colleagues decided that it wasn't important enough to even have a staff meeting on the budget, let alone a three-way leaders' meeting, so you frittered away last Monday, Tuesday, Wednesday, Thursday -- probably went to a few fundraisers here and there -- Friday, Saturday, Sunday. And now you're going to say to us we're shutting down government?

SENATOR MONTGOMERY: Point of order, Mr. President.

ACTING PRESIDENT JOHNSON: Before you do, first I'm going to remind the members of the body to address through the chair. And second, I'm going to ask each member of the body to keep it within the bill itself and keep the personal out.

Senator Montgomery, why do you rise? Point of order? What's your point of order, Senator Montgomery?

SENATOR MONTGOMERY: My point of order was, Mr. President, that I thought that

the questions should go through you. And it sounded like we were boiling down to a floor fight, and I thought it inappropriate, so I wanted to bring that to your attention. And hopefully my colleagues will respond accordingly.

Thank you.

ACTING PRESIDENT JOHNSON: Thinking alike.

Senator Kruger.

SENATOR CARL KRUGER: Thank you, Mr. President. And it was never my intention to have an old floor fight. But again, through you, Mr. President.

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, do you yield for another question?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT JOHNSON: Senator Kruger.

SENATOR CARL KRUGER: Senator, regardless of how you try to characterize our cumulative efforts to reach a budget, my fact that I'm dealing with at the moment is a very simple question that I ask for you to give me,

as you asked me last week, for a simple yes or no answer.

Do you suggest that we vote against this extender and close down government this afternoon?

SENATOR DeFRANCISCO: First of all, I've been asking you questions for -- this is the sixth week, and you have never given me a simple any answer, let alone a simple yes or no answer.

But my answer is very clear. It came down to today because you didn't do your job. It would seem to me, it would occur that if someone had the time to write a resolution saying that this is going to be unconstitutional when you recognize it's going to be unconstitutional, then maybe someone in your conference, maybe one of the sponsors of the resolution, might have said to your leader, Hey, leader, we're going to be asked to do something that's illegal. We've got to start to negotiate.

And if you didn't have enough votes among your conference, maybe you could have asked a few of us to try to provide you with

enough votes to get the open conference committee meetings.

So since you frittered the week away, and actually since April 1 -- or actually since the Governor submitted the budget in January, since you've done nothing all this time, if you could suggest that by us voting no today, it's our fault that government is shut down, then you're in a different world than I am.

If we vote no, as I've said before, and some other brave soul on the other side decides enough is enough, that we've got to have a budget, not just extenders, then under those circumstances that means this would fail and you have time to try to work out another extender. And that's just the way it is.

And if you didn't have time, then the reason you didn't have time is because you wasted since January 15th or whenever the Governor submitted his budget and done nothing since then, even knowing for the last week that you have to vote on an illegal, unconstitutional bill that's against public policy.

SENATOR CARL KRUGER: Once again, through you, Mr. President.

ACTING PRESIDENT JOHNSON: Senator DeFrancisco --

SENATOR CARL KRUGER: So, Senator -- and as you pointed out, it's probably difficult for me to understand things, so maybe we should keep it simple.

In all practicality, you're suggesting that we renegotiate another extender, because that's just what you said, that we negotiate another extender.

SENATOR DeFRANCISCO: Sure, you can --

ACTING PRESIDENT JOHNSON: Senator Kruger, Senator DeFrancisco, I ask again --

SENATOR CARL KRUGER: Through the chair.

ACTING PRESIDENT JOHNSON: -- through the chair. Thank you.

SENATOR DeFRANCISCO: Yes, I'll yield. You could do a 12-hour extender. You could do a one-day extender. You can do extenders --

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, again, I ask you to do it -- Senator, the reference is through the chair.

SENATOR DeFRANCISCO: Okay, I'll look at you.

(Laughter.)

SENATOR DeFRANCISCO: I think you have to ask questions through the chair. You don't have to look at you when I'm speaking.

ACTING PRESIDENT JOHNSON: Please keep it through the chair.

SENATOR DeFRANCISCO: Unless is there a rule on that?

ACTING PRESIDENT JOHNSON: Thank you, Senator DeFrancisco.

SENATOR DeFRANCISCO: Well, I have a point of order. I'd just like to know what the rule is that I have to look at you when I'm speaking.

(Laughter.)

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, I have given you some leeway, but you are out of order right now. If you wish to --

SENATOR LIBOUS: No, Mr. President -- Mr. President, point of order.

ACTING PRESIDENT JOHNSON: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. He can direct his answer through the chair, but he could be looking up in the balcony when he does it. That's the rules of this house.

Certainly he is responding through the chair, Mr. President, because the questions come through the chair and the responses go through the chair. But he doesn't have to look at the chair when he responds through the chair.

Thank you, Mr. President. That's my point of order.

SENATOR DeFRANCISCO: Senator, I'll look at you --

ACTING PRESIDENT JOHNSON: Senator DeFrancisco, I'd like to address the point of order that was made by Senator Libous. Patience.

Senator Libous, I appreciate your point of order.

And, Senator DeFrancisco, you don't need to look at me. You can look at Senator Kruger or anybody else. My purpose here is to keep the decorum. And frankly the decorum at this point is degrading a little bit. So let's keep it in a civil tone. Let's stop doing the accusatory. Your point is well taken. You now may look at Senator Kruger. That is my ruling.

(Laughter.)

SENATOR CARL KRUGER: When God gives you lemons, you have to make lemonade.

SENATOR DeFRANCISCO: Come to think of it, I don't think I want to look at him, actually.

(Laughter.)

SENATOR CARL KRUGER: I don't blame you.

(Laughter.)

SENATOR DeFRANCISCO: But getting back to the point, the extender could be as short as people want it to be. The fact of the matter is that whatever it takes to get a budget process started, we've got to start it. And I'd like to now speak on the bill, if we

can.

SENATOR CARL KRUGER: Thank you, Mr. President.

ACTING PRESIDENT JOHNSON: Thank you, Senator Kruger.

Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: Okay. And what I was getting at is that we just had a Finance Committee meeting where there was a bill from Senator Serrano that said we should keep the parks open. Well, everybody wants the parks to be open, but there was no appropriation.

Everybody wants contractors to be paid, but there's no appropriation. Senator Flanagan wants the monies that are supposed to go back to the school districts for the MTA tax to go to the school district, but it's not in the bill, it's not germane. Senator McDonald wants the racing industry to continue going and create economic vitality in his region and throughout the State of New York, but we can't do that.

Everybody wants the school districts to have some idea as to what they're

going to get so they can send something to the people of their districts that will give them some intelligent way to vote on what monies they need.

And I can go indefinitely. The Blind School and the Deaf School that Senator Breslin was talking about that wouldn't get paid if this extender doesn't pay -- you know, they'd get paid if you had a budget. So would all the employees get paid if there was a budget. So the fact of "this extender has got to happen because things won't happen" -- if we had a budget, it would happen.

Now, I don't know what else -- other than the threat of furloughs that the Governor gave -- that we could possibly say that would convince somebody in the leadership role here that this is important. We're supposed to have budget conference hearings.

This is not -- people sometimes are concerned about the lack of bipartisanship in this house. You know, the comptroller happens to be a Democrat, and he's calling again for open conference meetings, it's the only way that maybe public dialogue will get this thing

going. He's the comptroller who's been waving red flags since the Governor presented his budget and before that, and he's still raising red flags. He's a Democrat. So we have a bipartisan position here that we've got to get the budget process going.

And it's also interesting that apparently there's going to be a vote today for an extender that's unconstitutional, against public policy, illegal -- there seems to be a pattern here. Because there's a 2007 reform package that says you've got to have open conference committees. And if you have to have open conference committees by law, then apparently that law doesn't bother anybody on the other side of the aisle. We'll just forget about that when it suits our purpose, and we'll come out when there's critical mass to tell everybody about what's happened.

But you can't get that critical mass until you meet. And if anybody -- a lot of people are pointing fingers, especially the Legislature, at the Governor. The Governor has submitted his budget. He doesn't have to

do a darn thing. It's the Legislature that has to pass a budget by April 1.

So the fact of the matter is there's more and more frustration. Each week, it builds. And if the tone gets louder and louder, it's the tone that we're hearing from our constituents. And it's justified.

So all we can do on this side of the aisle is keep urging the other side to vote on something that's constitutional, that's legal, follow a rule that's a law that everybody that was there in 2007 voted for because it was a great reform. Let's do what we're supposed to do and start the budget process.

I don't know, next week, if I was the Governor, I think I'd probably increase the furloughs or increase some other pressure point to see how far the Legislature has to be whipped before they're going to meet and have some kind of discussion and get a budget. Because we can't go on forever.

As a result -- each week, by the way, of the five preceding weeks, we've had more and more no votes. And there's going to

come a time hopefully when there's a brave soul on the other side of the aisle where we're not going to have enough votes and we'll be in that critical stage that Senator Kruger was concerned about. Apparently it's going to take that in order to get a budget done in this state, because there's no will in the leadership to do it.

So I urge everyone to vote no on this unconstitutional, illegal bill that also violates public policy, and instead follow the law that has been not followed since the Governor presented his budget, the 2007 reform bill.

So I intend to vote no. Thank you, Mr. President. I enjoyed looking at you during my time.

ACTING PRESIDENT JOHNSON: The feeling is mutual, Senator DeFrancisco. On looking at you.

Senator LaValle.

SENATOR LaVALLE: Thank you. On the bill, Mr. President.

ACTING PRESIDENT JOHNSON: On the bill, Senator Ken LaValle.

SENATOR LaVALLE: I think we are showing a lot of frustration and that's what happens when you try and fit square pegs into round holes.

There has clearly, over the last six weeks, been a process that is really kind of nonexistent. We I think are in agreement that we are in violation. The Majority knows this. The Majority has 32 votes. They control what goes on here. And we have not had conference committees. That's what the Budget Reform Act calls for.

So that process and the fact that we do not have transparency, we do not have public meetings with the Executive and the leaders -- I don't know, since I'm not one of the leaders, when the last time such a meeting took place. But I think that's crucial to have an open dialogue on where we are and what the problems are so that everyone can in some way participate.

So we don't have conference committees, we are not having leaders' meetings. So here we are, another week with an extender. Each of the extenders seem to

have a poison pill. And while people have been voting in favor, they're voting in favor because they don't want to go to the precipice on closing down government.

But each week, as Senator DeFrancisco indicated, people are getting more and more frustrated. And they're beginning to vote no each week. They're voting no because the contractors are not being paid. And at a time, and I've said this before, where we went through a whole period of time about shovel-ready projects -- now those projects have come to a halt.

We have in the State University projects that have come to a halt, and then we have City University being treated differently; their projects are moving forward. That does not seem to be fair to treat one region of the state one way because of an anomaly in the budget and then take another region of the state and treat them harshly, differently, particularly at a time when upstate and Long Island communities depend on those jobs and what is in the economy.

This week, everyone I think is in agreement -- and, you know, we could be, for one day, Court of Appeals or Supreme Court justices and say this is clearly impairing a contractual agreement. I hear from the union people that they would like to contribute in some way, they understand what the problem is. But they are saying to me that they are not being called to the table to negotiate. And if you have a contract, you know, you have to negotiate that contract.

Put that aside. We are dealing with real people. We are dealing with people physical, some of the lower salaried workers, some of the lower salaried workers at a time when the economy is so bad. People don't put on Facebook that in a family where there are two jobs, one of them are unemployed. They don't put on Facebook that they are close to going into foreclosure. And we're playing around with people's lives.

Single parents who are having a tough time in this economy, we're telling them take a furlough, take a cut? I don't understand. And I know that every person in

this room cares about the people that they represent.

Well, I want to tell you, we are not doing right by those people. We are not doing right. They are innocent bystanders because there is no leadership in putting a budget together.

And you know, I think it has to be said we had an election in '08. And that election clearly -- it's not something that we as Republicans particularly liked, but we elected a Democrat president, Democrat Congress, Democrat Governor, Democrat Senate, Democrat Assembly.

We don't have a budget. The three Democrat leaders -- and as Senator DeFrancisco said, they all happen to be from New York City -- have not come together to give a budget to the people. How much longer can we go on? The numbers I heard -- oh, we'll wait till April 15th, the numbers are going to hopefully percolate better. They didn't. And they're not going to get any better next week or the week after.

So it's unfair to, as Senator

Flanagan talked about, the local school districts, the university system, to the workers -- the workers, the core of our government, the core of our government. So I can't in good conscience support a budget that is going to hurt people. As my parents often said to me, and I don't mean to demean anyone in their status, but these are the people who give us the sweat from their brow, put themselves in harm's way.

And I'll tell you, there will be people, if this moves forward, who will be impaired and in peril within their family: Could lose their homes, and just, in some cases -- and you all know this. Everyone knows this -- some people are having a hard time putting food on the table. I hear all the time, well, you know, we have sandwiches now. That's the meal. And once in a while we'll jazz it up and do something better.

So when the vote comes, Mr. President, I am going to vote no on the bill.

ACTING PRESIDENT JOHNSON: Thank you, Senator LaValle.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President. Well, we're here again --

ACTING PRESIDENT JOHNSON: On the bill, Senator Marcellino?

SENATOR MARCELLINO: On the bill, Mr. President.

ACTING PRESIDENT JOHNSON: Thank you, Senator. Senator Marcellino, on the bill.

SENATOR MARCELLINO: We're here once again, another week has gone by, and we have another extender before us.

And in the past we've had extenders before, and I've voted to support some of them -- not this year, but in the past years when we had extenders -- because there was negotiations going on. We were doing something. Committees were meeting. Staff was meeting. The leaders would have weekly meetings with the Governor where, upon occasions, committee members and committee chairs would come in and give reports on their aspects of the budget. I know because I participated in some of those, down in the

Red Room on the second floor. And some of you have also been there.

But this year nothing seems to be happening. We're back again to pass another extender. And we're told if we don't, calamity, government is going to stop.

Well, I would suggest to you, Mr. President, that government has in effect stopped. Government has stopped. Because in June, I'm told by the comptroller -- whom I called over the weekend, and I asked him, "What's going to happen in June, Mr. DiNapoli? Are we going to run out of money, as you have said before, as the Governor has said before?" He said, "Yeah, it's possible. We could run out of money in June, no doubt about it. The state is not getting the revenues we hoped to get. That's declining. Nothing looks all that great. We could run out of money, as the Governor has said."

I said, "Well, then, what's going to happen?" "Well, then we'll have to make some selections as to who we'll pay and who we won't, what bills we'll pay and what bills we won't pay. We'll probably withhold payments

to school districts, payments to municipalities. We'll pick some bills to pay, and we'll pick some bills not to pay."

Just as right now we are picking some contractors to pay and some contractors not to pay. We are paying for work at CUNY, but we're not paying for work at SUNY.

We seem to be making choices here, but we're not making the real choice, and that is to get a budget done. We're not making a real choice to get a process started where true bipartisan negotiations go on and we negotiate a budget.

So the Governor throws into the situation, into the mix this time a suggestion for a furlough. We're going to furlough some workers. Again, some workers, not all workers. He's picking. Who's he picking on? The lowest-paid workers in the state workforce, those making less than $50,000 a year, those workers who have mortgages to pay those workers who are probably maxed out on their credit cards, those workers who have to put bread on the table, who have tuitions for their children who want to go to college.

They've got bills to pay. They've got choices to make.

Can you imagine if they decided to delay paying their taxes? What would happen if the people in this state said, "We want an extender. We're not going to pay our taxes this week because government is not working, and we don't feel we're getting our money's worth"? That ought to be a novel experience. That would be an amazing experience. You know darn well they'd be hauled off to jail.

There's something wrong here, Mr. President. We're not telling the schools what they're going to get, and yet they've got to get a budget done and voted on by May 18th. I know; I already cast my absentee ballot. The name of the game is we're not doing our job.

The MTA, they've got a budget problem. They've always got a budget problem, it seems, but this one is particularly onerous. And what are they doing? They're making cuts, again, on the weakest of the weak. They're cutting the Able Ride system, which provides rides for those who are

disabled, physically challenged, who need it -- senior citizens -- who have to go to dialysis treatments and other things, who need the help of this system of transportation for which there is no other. Yet they're cutting that system out. They're making choices -- again, on some people, not on others.

So we're not impacting everybody. I suggest to you a government that doesn't serve all of the people in effect serves none of them. We're here to represent and serve all the people, not just some people. And if we're going to do something for some people, we have to do it for all the people.

We need a budget. The taxpayers of this state need, want, and deserve a budget, a budget that cuts state spending, a budget that cuts taxes, a budget that will protect their lives and preserve their safety. They need, want, and deserve a budget, and it's up to us to deliver it.

It's up to the leadership and the Majority to get it done, to get committee meetings started, get negotiations going and stop this charade of budget extenders. I

voted against each and every one of them because it is a charade.

Don't tell me government is working today and if we don't vote for this and it doesn't somehow pass, government will have stopped. In effect, government has stopped, ladies and gentlemen, because it no longer is servicing, it is no longer serving all the people of our great state, it is only serving some of the people of this state. By selection. Not everyone. That's a mistake. That's wrong, and that's got to stop.

Mr. President, I fully intend to vote -- as I have on all the other extenders -- no on this extender. I want a budget. I would give you a caveat. I would support an extender if there was true, honest negotiations. If conference committees were ongoing and we needed the time, then I would vote for an extender that would carry us while we're doing the negotiations.

But as you heard here in the debate between Senator Kruger and Senator DeFrancisco, there is no discussions going on. There are no negotiations going on. That's no

good. We cannot support this system. We cannot continue doing this.

Mr. President, I respectfully say I will vote no on this extender, as I have on all the others. And if it comes up again next week, I'm going to vote no again, sir, until we get a budget process going.

Thank you.

ACTING PRESIDENT JOHNSON: Thank you, Senator Marcellino.

Senator McDonald.

SENATOR McDONALD: On the bill.

ACTING PRESIDENT JOHNSON: Senator McDonald, on the bill.

SENATOR McDONALD: Thank you.

I appreciate my colleagues' comments about the humanity of what's going on here. It's so discouraging to worry about my public. And I represent a large portion of the Capital District, which is without question where a majority of the state workers work. And as it was said, a lot of these people are lower-income people.

I know about being a lower-income person. I used to be a laborer in a steel

mill. So did my whole family. My father was. I was raised in an uneducated laborer, steel-mill family. As low as you can get on many occasions.

I worry about my public here in the Capital District paying for their apartments, paying for their mortgages, paying a car payment that they desperately need to get to work. There is no subsidized fares.

I worry about my people trying to educate their kids on a college loan. I worry about my people being able to pay to feed their families.

I'm looking at since April, since actually when the Governor proposed his budget, a shutdown in government. There is no government right now, and there is no budget. So talking about shutting down the government is only for lawyers. If you're not a lawyer, you want the bottom line, it's closed.

Construction jobs in upstate New York, construction jobs, people who want to work, they're out of work. School systems was mentioned. My school systems, they can't determine what the future is going to be, are

there unnecessary layoffs. Healthcare, same issue.

The MTA, last week I supported a resolution to reconsider laying off the lower working-class people in the Metropolitan Transportation Authority, as opposed to all those big salaried people that I read about in the New York City papers who are running this mass transportation authority.

Now I see that the lower working men and women in the Capital District are going to be furloughed. Just as an evolution, because we're doing nothing now and so you know it will reoccur and reoccur. And eventually, disaster for their families.

And I'm thinking to myself, why? If I were the public, I would say why are these people getting laid off, furloughed, especially in a story I see in a local television station where prisoners, Corcraft, making product in our prisons. We're paying them, and we're going to keep on paying them. But my people, who are law-abiding family people trying to get by, we're furloughing them. Don't abide by the rules, go to prison

and we'll pay you. You've got to be kidding me.

I can't tell these people that. I don't care if they're Democrats, Republicans, whatever they are. I know you care; we can't be doing this. I don't want to see the MTA laying off all the people at the bottom. I don't want to see construction workers out.

How come, the layperson will ask, the nonlawyer will ask, how come there is no legislative people being furloughed, staff people? How come it seems to be one or two unions, one or two, the executive? What is this? Are they a special breed, all of a sudden we turned on them? How come we haven't had a dialogue over a period of time about these people?

So we're doing to upstate what a foreign country couldn't do to us. We're undermining our economy.

Now, folks, I recognize politics plays a major issue. And I'm not saying, naively, it shouldn't. I recognize that. But we've crossed over this line of real people. Real people have real families. Real people

have to get by.

I come from real people. I'm not Republican or Democrat, I'm a real person before I'm anything. So my appeal is don't leave here tonight. Do what real people do when they're struggling to feed their families. Stay where we are till the job is done. This is ridiculous. Stay here, right now. We never should have left this place on April 1st. It gets worse and worse.

Don't call each other names. We're all friends, and I want to keep it that way. Let's stay and work, like I did in the steel mill. It isn't over till it's over. Do our job like real people. Don't turn on these people.

See what's happened to us? We let this economy make us turn on the people that we care about, we love, all of us do. Let's stay here and work. That's a challenge. Let's not go someplace after this session is over. Let's break into conference committees. Let's do an -- I will vote for an extender if it doesn't hurt real people. I am not here to destroy upstate New York, New York State, our

great state. I'm here to help people. That's a challenge. I'm here.

So when I see everybody walk out, that's what I'm telling my public. I'm telling all those people who are worried about their jobs -- construction, racing, schools, MTA, you name it, anyplace -- we walked away.

Now, I know we don't want to do that. So I'm appealing to you as just regular folk, real folk, let's stay here.

Thank you.

ACTING PRESIDENT JOHNSON: Thank you, Senator McDonald.

Senator Ranzenhofer.

SENATOR RANZENHOFER: Thank you. I'd like to echo some of those very --

ACTING PRESIDENT JOHNSON: Senator Ranzenhofer, on the bill?

SENATOR RANZENHOFER: On the bill.

ACTING PRESIDENT JOHNSON: Thank you, Senator.

SENATOR RANZENHOFER: I'd like to echo some of those very eloquent comments of some of my colleagues about this sixth

emergency appropriation bill.

Starting back in March, I have voted against these because I get the sense that nothing is being done. I don't believe in doing a budget extender if it's simply for the sense or for the purpose of extending it with no progress being made.

As you've heard before, there's no discussions, there's no dialogue, there's no public meetings. The only thing that's being done is things that are being done in secret. And if you recall last year what happened when the process was done in secret is we got a budget with $8.5 billion in new taxes, $12 billion in new spending.

Now, if I heard anybody tell me that, well, you know, the reason why we don't have a budget is because we're fighting to repeal that energy tax that you put on last year, well, I'd be with you on the extender. If you told me that we're fighting real hard to take away that health tax that you put on last year, that's a fight worth fighting. I'd be with you to extend that.

If you told me that we're fighting

to take away any of those 128 taxes that you put on last year, I'd say, well, that's a fight worth fighting. Let's extend it because we're going to try to eliminate those taxes that we put on last year. If you told me that we were trying to eliminate any of that $2,400 per family that you put on last year, I'd be with you. That's a fight worth fighting.

If you told me that you were fighting to cut spending so we weren't killing the average person that Senator McDonald was referring to, I'd be with you. I'd extend it in a heartbeat.

But all I hear is silence. I hear no public discussion, no private discussion. I hear the only explanation is, well, we'll tell you that something is going on when we have this critical mass, whatever this critical mass is.

Well, quite frankly, Mr. President, that's not an acceptable solution. If there was some progress on the horizon, I'd say yes, then it makes sense to extend it. But after seven weeks, six extenders, it's pretty obvious what's happening here, and that is

absolutely nothing. You're not fighting to lower taxes. You're not fighting to cut spending. You're not fighting for anything that the ordinary New Yorker wants.

When that happens, then I'll join you and vote to pass an extender. When I see some progress that you're getting close, I'll vote to pass an extender. When something is done in public and there's actually some negotiations and we're getting close, then an extender makes sense.

But at this point in time when there's no public dialogue, when you're shutting down construction projects on the roadways, when you're shutting down construction at SUNY, when you're killing the private sector by not funding these contracts and not funding private-sector people, then you're just hurting, as Senator McDonald said, the ordinary person.

So today, as on March 29th, April 12th, and every day between then and now when I voted against them because there is no progress, you're not fighting for the ordinary person, I voted against them, I'll be voting

no today as well.

Thank you, Mr. President.

ACTING PRESIDENT JOHNSON: Thank you, Senator.

Debate is closed.

The Secretary will ring the bells.

Read the last section.

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

ACTING PRESIDENT JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT JOHNSON: Senator Robach, to explain his vote.

SENATOR ROBACH: Yes, Mr. President, very quickly.

I just -- I rise to vote no for this. And I come from a little different place than some of my colleagues. This is my first time voting no on these extenders. And you've heard all those good reasons -- the damage, the chaos we're creating by not having a budget.

When I hear the questions answered in such a cavalier manner by the chairman of

Finance and see nothing in the media from the leadership to give any indication whatsoever that we're trying to get a budget done, I really don't feel I have any alternative. It would be better to shut government down for a day to make the leaders do their job and get a budget done.

People where I live expect us to do our job. Nothing is more important than the budget. I'm asked every day when we're going to get this done. And I want to let my colleagues know in New York City, I've heard it before offline, "People where we live don't care when the budget gets done." Guess what? They're starting to pay attention. I know they care where I live. I think they're starting to pay a little bit more attention to it where you live.

And I say this in the most nonpartisan way. This would have been the perfect year of all years to have conference committees and let the public know what tough choices we have to make in these tough times. Instead, what have we done? Just the opposite, gone underground. One leader, I

couldn't even tell you if he even cares about getting a budget done at all. We ask logical questions week after week with flippant answers and really almost like nobody cares if we get a budget done or not.

Well, you know what? Where I live, they do. I think where you live, they do too. And is the plan here really to do a budget by extender for the rest of the year? And if it isn't, what are we going to do to stop it?

The only thing I can do is take my one vote, along with several other colleagues, and try and put some pressure for the people that want us to do a budget and say: No more. Enough is enough. Let's get a budget. That's why I'm changing my vote to a no.

ACTING PRESIDENT JOHNSON: Senator Robach to be recorded in the negative.

SENATOR LIBOUS: Mr. President, are we on the vote right now?

ACTING PRESIDENT JOHNSON: We have called the roll. We are waiting for the results.

SENATOR LIBOUS: Are members in their seats?

ACTING PRESIDENT JOHNSON: I believe so, Senator Libous.

SENATOR LIBOUS: I believe not so, Mr. President. Don't members need to be in their seats, according to the rules?

ACTING PRESIDENT JOHNSON: Actually, you're not in your seat, Senator Libous, so --

SENATOR LIBOUS: I'm sorry?

ACTING PRESIDENT JOHNSON: You're not in your seat, Senator Libous.

SENATOR LIBOUS: Yes, I am, Mr. President.

ACTING PRESIDENT JOHNSON: You're standing in front of your seat. You're not sitting in your seat.

SENATOR LIBOUS: Well, at least I'm in front of my seat, Mr. President.

ACTING PRESIDENT JOHNSON: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 507 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell,

Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 29.

ACTING PRESIDENT JOHNSON: The bill is passed.

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

Senator Klein.

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

ACTING PRESIDENT JOHNSON: The Secretary will read.

THE SECRETARY: Calendar Number 74, by Senator Klein, Senate Print 2490D, an act to amend the Correction Law.

ACTING PRESIDENT JOHNSON: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 60th day.

ACTING PRESIDENT JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT JOHNSON: Senator Klein, to explain his vote.

SENATOR KLEIN: Thank you, Mr. President.

This piece of legislation I think is going to go a long way towards protecting all tenants in public housing around the State of New York.

Presently, even though in 1998 Congress banned subsidized housing for the most serious dangerous sexual predators, there's still 86 registered Level 2 and 3 dangerous sexual predators living in public housing throughout our state.

This legislation is a very simple and easy approach in making it easier for housing authority developments around our State of New York to be able to comply with this law.

First, the State Division of Criminal Justice Services will now be required to notify each public housing development around the state once a month with up-to-date information of dangerous sexual predators who are already living there or moving into the

facility.

It next treats public housing developments as vulnerable organizations, the same as daycare centers and schools, which now would require public housing developments around the state to be notified by local law enforcement when a dangerous sexual predator moves into the development.

So I think this is taking a comprehensive approach at notification, which I think at the end of the day will keep our families safe in public housing by having adequate notification.

I vote yes, Mr. President.

ACTING PRESIDENT JOHNSON: Thank you, Senator Klein.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 74 are Senators Duane, Hassell-Thompson and Montgomery.

Ayes, 58. Nays, 3.

ACTING PRESIDENT JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number

102, by Senator Thompson, Senate Print 1230A, an act to amend the General Municipal Law.

ACTING PRESIDENT JOHNSON: Read the last section.

SENATOR MAZIARZ: Lay the bill aside, please.

ACTING PRESIDENT JOHNSON: The bill is laid aside.

THE SECRETARY: Calendar Number 354, by Senator Stavisky, Senate Print 3603C, an act relating to reporting on the Tuition Assistance Program.

ACTING PRESIDENT JOHNSON: Read the last section.

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

ACTING PRESIDENT JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT JOHNSON: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number

378, by Senator Klein, Senate Print 5896D, an act to amend the Real Property Law.

ACTING PRESIDENT JOHNSON: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

ACTING PRESIDENT JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT JOHNSON: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 378 are Senators DeFrancisco, Flanagan, Golden and Lanza.

Ayes, 57. Nays, 4.

ACTING PRESIDENT JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number 381, by Senator Perkins, Senate Print --

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

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

THE SECRETARY: Calendar Number

416, by Member of the Assembly Gottfried, Assembly Print Number 7670, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT JOHNSON: Read the last section.

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

ACTING PRESIDENT JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT JOHNSON: Announce the results.

SENATOR LIBOUS: Mr. President, lay the bill aside.

ACTING PRESIDENT JOHNSON: The bill is laid aside. The roll call is withdrawn; the bill is laid aside.

THE SECRETARY: Calendar Number 445, by Senator Oppenheimer, Senate Print 6152B, an act to authorize the Village of Mamaroneck.

SENATOR LIBOUS: Lay it aside.

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

The bill is laid aside.

THE SECRETARY: Calendar Number 446, by Senator C. Johnson, Senate Print 6691, an act to amend the Tax Law.

ACTING PRESIDENT JOHNSON: Read the last section.

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

ACTING PRESIDENT JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT JOHNSON: Announce the results.

THE SECRETARY: Ayes, 60. Nays, 1. Senator Aubertine recorded in the negative.

ACTING PRESIDENT JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number 449, by Member of the Assembly Pheffer, Assembly Print Number 10260, an act to amend the Public Authorities Law.

ACTING PRESIDENT JOHNSON: Read the last section.

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

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT JOHNSON: The bill is laid aside.

THE SECRETARY: Calendar Number 456, by Senator Thompson --

SENATOR KLEIN: Lay the bill aside for the day.

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

THE SECRETARY: Calendar Number 466, by Member of the Assembly Schimel, Assembly Print Number 9992, an act to amend the Village of Plandome Heights.

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

Read the last section.

THE SECRETARY: Section 2. This act --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT JOHNSON: The bill is laid aside.

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

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

controversial calendar.

ACTING PRESIDENT JOHNSON: The Secretary will ring the bell. Members are all asked to come to the chamber for a controversial reading of the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 102, by Senator Thompson, Senate Print 1230A, an act to amend the General Municipal Law.

ACTING PRESIDENT JOHNSON: Senator Maziarz, why do you rise?

SENATOR MAZIARZ: Would the sponsor yield for some questions? We really don't need an explanation. If he would yield for just a couple of quick questions.

ACTING PRESIDENT JOHNSON: Senator Thompson, will you yield for Senator Maziarz for a few questions?

SENATOR THOMPSON: Sure.

ACTING PRESIDENT JOHNSON: Senator Maziarz, Senator Thompson does yield.

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

Senator, is there a home-rule message with this bill, according to Municipal

Home Rule Law Section 40?

SENATOR THOMPSON: No, there isn't. But I don't believe it's required.

SENATOR MAZIARZ: Okay. Senator -- Mr. President, through you, if Senator Thompson would continue to yield.

ACTING PRESIDENT JOHNSON: Senator Thompson, do you continue to yield?

SENATOR THOMPSON: Yes.

ACTING PRESIDENT JOHNSON: Senator Maziarz.

SENATOR MAZIARZ: Senator, has anyone in the Niagara County Legislature that appoints members to the IDA requested this particular legislation?

SENATOR THOMPSON: Through you, Mr. Chair. Yes, in the past, I have received requests from various members of the legislature requesting that we have this organization have representation the same way that they have a similar law that was created many years ago with the Erie County Industrial Development Agency, which includes the City of Buffalo.

SENATOR MAZIARZ: Would Senator

Thompson continue to yield?

ACTING PRESIDENT JOHNSON: Senator Thompson, do you continue to yield for Senator Maziarz?

SENATOR THOMPSON: Yes.

ACTING PRESIDENT JOHNSON: Senator Maziarz.

SENATOR MAZIARZ: Thank you.

Could you tell me which members of the county legislature?

SENATOR THOMPSON: There were a number. I can't recall all the different members. But there were a number of them over the last couple of years. And as I'm certain you're aware, that this bill we've been working on for a long time.

SENATOR MAZIARZ: Through you, Mr. President, would Senator Thompson continue to yield.

ACTING PRESIDENT JOHNSON: Senator Thompson, do you continue to yield to Senator Maziarz?

SENATOR THOMPSON: Yes.

ACTING PRESIDENT JOHNSON: Senator Maziarz.

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

Senator Thompson, I know that there are 19 members of the legislature there. Could you name just one that asked you for this particular piece of legislation?

SENATOR THOMPSON: Well, I know that there are a couple that I helped get elected over the years and I just can't remember which one. But I think most of the ones like Dennis Virtuoso and a number of them that are in Niagara County have supported the bill.

SENATOR MAZIARZ: Thank you very much.

Mr. President, on the bill.

ACTING PRESIDENT JOHNSON: Senator Maziarz, on the bill.

SENATOR MAZIARZ: Thank you very much, Senator Thompson.

Mr. President, this is a classic case of a solution in search of a problem. I've been involved in county government and an observer of county government in Niagara County for a long time. There has always been

a minority member on the Niagara County IDA appointed by both Democrat- and Republican-controlled county legislatures.

Senator Thompson is incorrect in his comparison with Erie County, because in Erie County the dedicated members of the Industrial Development Agency were all done at the request of the Erie County Legislature.

Now, the current president of the NAACP, we're talking about one particular individual. The current president is a good friend of mine, Bill Bradberry. He's a great guy. He really wants to be on the Niagara Frontier Transportation Authority. And if it hadn't been for the local Democratic Party chairman and the Assemblyperson who represents Niagara Falls killing his appointment he'd be there, where he really wants to be.

We don't know who the president is going to be in the future of the NAACP. It may be somebody who's not interested in being on this board. It may be somebody without a background in economic development. If this were an -- and I would say to the Senator that the only minority member of Niagara County

Legislature spoke to me today, reached out to me today and told me that they'd feel much more comfortable if they could have a representative of the Niagara Falls NAACP, not necessarily just the president, but a representative of it. And that's legislation that I think would be better than this particular bill before us today.

So I'm going to be voting in the negative, Mr. President, and I would ask my colleagues to join me. Thank you.

ACTING PRESIDENT JOHNSON: Thank you, Senator Maziarz.

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

Hearing none, the debate is closed. The Secretary will ring the bells.

Oh, I apologize, Senator Thompson.

SENATOR THOMPSON: Yeah, on the -- let me say just a couple of things.

First, I think it's important to note that this is a very important piece of legislation to make sure that we have representation on -- that this group does have representation on the board. My colleague

probably is unaware that the Niagara County chapter of NAACP was defunct and I actually helped get it reorganized.

Secondly, in Erie County they do have a number of dedicated seats. And I believe one of the authors -- the author of that bill is sitting in this chamber.

And part of the challenge is that the president of that organization is usually the official spokesperson. And so this is nothing unique.

And the reason why I embarked on this a couple of years ago is because people have said that periodically that some of these communities of color have a seat on that board, the same challenge as they had in Erie County. So we put forward this legislation to make sure that that organization would always have a seat at the table.

And this bill mirrors existing legislation that was passed by the Senate. And I should note that I believe this bill has also passed the Senate before unanimously. So I don't understand why -- what the hesitancy is about today. And I believe that, as I said

to folks who asked -- only one person that I know said they had a concern about it, and I said that let's get the bill passed. If the president of the NAACP is not interested, then maybe that's something that that organization should do.

But there's precedent for this in Erie County. It's been very successful. No one has complained about it. And I think the same -- if it's good enough for Erie County, it should be good enough for Niagara County too.

Thank you.

ACTING PRESIDENT JOHNSON: Are there any other Senators now wishing to be heard on the bill?

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT JOHNSON: Senator Volker.

SENATOR VOLKER: Mr. President, Senator Thompson, I have to say, this legislation is not identical to the Erie County legislation. And I think I passed the bill that enabled the NAACP to have a representative on it.

The difference between that bill and this bill is that this is the president of the NAACP. I don't know that we have ever done a bill since I've been here that designates a specific person to be on an authority. Normally we do an organization.

And you're right, there are organizations on the various IDAs and on the NFTA. But I would have to tell you that as far as I know, this is a different bill than the Erie County Legislature.

ACTING PRESIDENT JOHNSON: Thank you, Senator Volker.

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

Hearing none, debate is closed.

The Secretary will please ring the bells.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT JOHNSON:

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 102 are Senators DeFrancisco, Farley, Flanagan, O. Johnson, Lanza, Larkin, LaValle, Leibell, Maziarz, Nozzolio, Saland, Seward, Skelos, Volker, Winner and Young. Also Senator Libous.

Ayes, 44. Nays, 17.

ACTING PRESIDENT JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number 416, by Member of the Assembly Gottfried, Assembly Print Number 7670, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT JOHNSON: Senator Hannon, why do you rise?

SENATOR HANNON: On the bill.

ACTING PRESIDENT JOHNSON: Senator Hannon, on the bill.

SENATOR HANNON: I was struck by the fact that this bill, which would supposedly extend protection of law to unfortunate victims of prosecution, is just so ill-laid-out that it does not actually offer

any real protection to the individuals.

It's supposed to enable victims of sexual trafficking who are convicted of prostitution to get the conviction vacated. However, when you start to read the bill, it gives such empty rights -- it first of all says that the motion must be made with due diligence, unlike anything else in the Criminal Procedure Code, which spells out times, and then it says that the defendant has ceased to be a victim of such trafficking -- an almost impossible standard, to make a proof of a negative -- or has sought services for victims of such trafficking, but without the standards as to who would offer those services, and then subject to reasonable concerns for the safety of the defendant, et cetera, et cetera.

And what really disturbs me is this is, on a day we're supposed to be doing a budget, nothing more than an empty press release without sufficient standards for drafting, and giving false hopes to individuals as to they may seek protection under this when in reality it would be an

empty relief.

And so for that reason I think that I would vote against this until we have a decent implementation of the goals that are sought by the memo.

ACTING PRESIDENT JOHNSON: Thank you, Senator Hannon.

Senator Duane. Senator Duane, on the bill?

SENATOR DUANE: Thank you, Mr. President. Yes, on the bill.

The impetus for this bill actually is something that I thought about and felt was necessary. And I want to say that it was based upon information that I received, garnered, at probably the -- if not the best, one of the best hearings I have ever attended in my time here in the New York State Senate. It was incredibly informative and enlightening and eye-opening.

And it was a hearing which Senators Volker and -- Senator Padavan I know was there; I'm trying to remember what other Senators were there -- and I was there. And it was a hearing on human trafficking, on sex

trafficking. And it was very, very powerful, the hearing, and very -- as I say, it was in some ways life-changing for me, the information that I learned at this hearing.

And I think I even at the time told Senator Volker that it was, as I say, among the best hearings I have ever been to and involved with.

And that hearing led to excellent legislation which we passed here I want to say in 2007. And it was really -- I remember speaking on the floor when the bill came, to voice my admiration for and gratitude to the then-majority for bringing it to the floor. It was just an excellent piece of legislation, of which -- you know, as with virtually every piece of legislation that we pass in this house, it wasn't absolutely complete. There was more that could be done; maybe didn't have to be done, but could be done.

And one of the elements that I was most concerned with and concerned about the people who needed additional help beyond what was already in the legislation were those -- and mostly women; not exclusively, but mostly

women -- who were trafficked and forced into prostitution, in some cases kidnapped and brought here, in some cases brought here under false pretenses for the promise of high-paying jobs that didn't materialize. Some of the women -- many of them, maybe most of them had their passports taken away from them. And they were brought to a country, some of them without a tremendous amount of education even in their own country, and not knowing what the rule of law is here in our country.

And so many of these women are caught in the net of prostitution arrests and go through the criminal justice system. Often they've pled because they thought it was the thing that was best, in their best interests at the time.

And I just want to say one other thing, that, you know, sometimes it's in alternative newspapers but sometimes it's in mainstream newspapers and magazines you see ads with pictures of women who are offering the services of massage and more. But, you know, the myth that the vast majority of those women are happily engaged in this profession

is just exactly that, it's a myth. There's nothing.

If you really think about what is happening, if you really knew what had happened to these women, if people who used these services really knew the lives that these women lead, there would be nothing sexually enticing about it at all. It would be depressing and predatory and nothing happy, nothing pleasurable about it. It is exactly that, a myth. For the vast majority of these women, that they are subjugated into it.

And the irony is that one of the parts of that legislation that was so good, so excellent, was that we provide social services and -- I mean, I know that maybe people don't -- I mean, really, I know that people maybe don't care about what happens. But as I say, it was the best hearing, if not the best, one of the best hearings I've ever been to. And one of the things that came out of it is it's not enough just to prosecute the johns and the slave-traders and the pimps and the terrible people who do this to women. We also have to get these women on their feet.

And one of the things that we do is provide services for them, social services, counseling. Because what has happened to them is trauma. In some cases, we help them with education so that they can become productive citizens.

And the irony is that while we're providing all those services because we're convinced that this has happened to these women, we deny them a clean record or a cleaned-up record. So even if we're providing job training and social services, they're still handicapped in their ability to get a job because they have a record. And we're often loath to hire people that have records.

So what this bill does is it just -- it allows them the chance -- and just one time. You can't use it more than once. You can only use it once -- the chance to vacate the conviction so that they can actually go on to get the jobs that we believe they should be eligible to get because we've provided the services to get them the education and the training for that.

So I just want to say just a couple

of things about the bill, more things about it. It simply allows a person who's been victimized by sex trafficking -- maybe beaten, maybe raped, maybe has their passport taken, but terrible things, traumatized, victimized by pimps and the johns who have used them like they're less than human.

And if it's shown that under duress, and because of the fear of the consequences, that they weren't able at the time of trial to provide the proof that they were trafficked -- which is hard enough for anyone who's been arrested. But for these women -- and some men, yes, but for these women, mostly -- sometimes the first time in court with the pimp or the john or the trafficker sitting in court, of course they're not going to point out what's happened. They are scared. And maybe in their country of -- they don't know and can't understand even what's going on, and they are stuck with this record.

And even if afterwards we acknowledge that and we know that that's what's happened to them and we provide them

services to help them get a job, they can't get a job because they can't have that conviction vacated.

It doesn't cover people who are arrested, you know, for loitering for the purposes of prostitution or -- it doesn't even -- it provides the ability for some women who can show, one time only -- if they've already tried it at their trial, if they've already said in the trial "I was the victim of trafficking," they can't use it again. You only get one chance to use it. There's even a form that's provided which can be used but doesn't have to be used, by OTDA, that would help one time, one chance to have it vacated so they can go on and have a life free of having a record.

Which even beyond a job, so they don't to tell their -- if they don't want to, that they don't have to tell their children or their whatever that they have a criminal record because of something terrible that happened to them that had nothing to do with their own free choice, that was done under duress of pain or rape or death.

So one chance to have that vacated. And it goes along with the chance -- which we believe was the right thing to do, because we heard about at this hearing that they can go on and get education and job training to get a job and to be able to have a life. That's what this bill does.

So I just urge my colleagues to build upon the good work that we already did here, to do something else to actually acknowledge that human trafficking for the purposes of prostitution is a terrible thing and that we are actually taking one more step in the continuum of saying this is a terrible thing and allowing people to actually go on to have a productive life.

So I'm urging my colleagues to vote yes. It's the right thing. It's not even just the compassionate thing, it's the right thing. And it makes sense, and it's part of what we have already been doing in this house.

Thank you, Mr. President.

ACTING PRESIDENT JOHNSON: Thank you, Senator Duane.

Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

I want to thank my colleague Senator Duane for sponsoring the bill. And just again reiterate, I think, some of the points he was making and clarify one point that somebody raised already.

This bill can easily be implemented by our courts. And in fact the New York City Bar's Committee on Sex and the Law has submitted a memo in support clarifying exactly how the bill would be applied to allow victims of trafficking to request a court to vacate judgment against them for sex trafficking of certain prostitution offenses.

It all sounds very technical. But again, as my colleague Senator Duane was trying to point out, these are victims of human trafficking. This state and this country now have passed laws defining what human trafficking is, has verified that the dynamics of sex trafficking forces, again, usually women, young women into horrible, abusive-control situations where the recruiters and traffickers use battering, use

physical and sexual abuse, use psychological and economic abuse, use threats against these women, their family members. They use isolation, locking them up. They use forced drug use. And in fact in the human trafficking literature and documentation that we have seen in the Senate, traffickers employ and manipulate their victims in a form that is defined as torture by Amnesty International. So these women -- disproportionately young women, or even minors -- are tortured and forced into prostitution and a life of slavery.

And so what this bill does is it says they can go to our courts -- again, as Senator Duane has already said, one time -- and make an argument to have the charges that have been brought against them for prostitution-related offenses vacated from their criminal records.

Many times these are juveniles who should be treated as victims and who now are recognized under current law as victims. And yet if they have these charges that have been brought against them successfully in court,

perhaps before the State of New York wisely passed new laws in 2007, then they must live now a life with a record, a record of prostitution, as opposed to a recognition that they are in fact victims of abuse and torture. And all this bill does is it allows them to come back into court with evidence and get these charges vacated.

I know that New York State has a series of laws that allow the records to be sealed of juveniles, records to be expunged if one goes into court for many different types of charges. I do not understand how people could vote against a bill that would allow victims of torture and sexual exploitation and violence against them to go back into a court and ask a judge to vacate the previous order against them so that they can move on in their lives without a criminal record, with more likelihood that they can successfully find employment and lead constructive lives and try to put this trauma behind them.

I also ask my colleagues to vote for this bill. Thank you, Mr. President.

ACTING PRESIDENT JOHNSON: Thank

you, Senator Krueger.

Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

First let me thank Senator Duane for your very generous comments relative to the hearing that we all attended and that I and Senator Volker chaired dealing with the very, very difficult issue of human trafficking.

It took two years to get that bill finally agreed on with the other house and in law. And it is the toughest human trafficking bill in the nation, even more so than the federal law that it relates to.

During this hearing we had victims such as the type of person, individual, you described come before the committee and demonstrate the history of their having been trafficked into this country, the abuse they endured, the human bondage in which they were placed. We had district attorneys coming to us telling us about cases they were involved in. We also had representatives of the federal government there who were also

involved on a regular basis with the issue. So everybody participated.

And in the final analysis, the bill had the support of every human rights group, every advocacy group. There was nobody in opposition to it. And it became law.

Now, nothing would give me more pleasure, Senator Duane, to vote for your bill if it expanded upon the basic premise that a victim of human trafficking who becomes part of the sex trafficking industry would not suffer any consequences, either presently or in the future, by virtue of having been trapped into that ungodly situation. Because we said very directly -- and if you read the law, much of it deals with the victim. And in this case, the one you're dealing with, that woman is a victim. And a victim should not be punished more than they've already had to endure.

But unfortunately, as the district attorneys are pointing out to us, there is a technical glitch. And Senator Hannon described it to you.

Now, we could reach your objective

and get rid of that problem very easily. A few sentences in your bill changed and modified would bring us to a point where the district attorneys, who are the ones we rely upon in the courtroom to implement our sex trafficking bill -- and it's been used, by the way, in a number of instances since it became law.

I'm asking you to do a favor of the very people that you're advocating for. Take a day, look at your bill, read the memo from the district attorneys, talk to whatever counsel you feel comfortable with, make the changes, and I'm sure you'll get every member of this chamber to vote for it. But we cannot allow something that is worthy to become the basis by which we make a mistake, and we know what the mistake would be here.

I applaud your intentions. I support your initiative. Your heart's in the right place. Your motivation is exactly where it should be. But unfortunately, what we have got on paper in this bill is a problem. And we ought to deal with it.

You know, we all have a pride of

authorship. But sometimes if someone brings up an issue and says, Hey, there's a little error here -- or a big error, or a medium-sized error -- here's how we could correct it, we listen. And that's what I'm asking you to do.

ACTING PRESIDENT JOHNSON: Senator Volker.

SENATOR VOLKER: Yeah, very quickly.

Tom, I just want to say to you -- and what you said was absolutely correct. That is, that these people in many cases were treated horribly. And I am totally in agreement with what you said.

Except that the problem, we are told by prosecutors is and by people who are familiar with these cases, is that this bill really, the way it is written, could very well allow people who were really not a part of a sex trafficking business to use that as an excuse.

You know, we passed the toughest sex trafficking bill in the country. And the same people who helped us pass that bill are

now telling us that this bill, in their opinion, will weaken it. And I know you don't mean to do that. You're worried about the victims, and you should be. But I would have to say to you that I would have to vote against this.

I think the problem is that the committee, apparently some committee at the Bar of New York -- not the Bar Association. I couldn't believe that they did. It was a committee. Whatever the committee was, they must have read the bill thinking with their heart instead of their head.

But, you know, personally I commend you for this kind of bill. But I ask you -- I'm going to have to vote against it because all the federal and state prosecutors are telling us that this bill could be a real problem if it's not changed.

ACTING PRESIDENT JOHNSON: Are there any other Senators wishing to be heard on the bill?

Senator Schneiderman. Senator Schneiderman, on the bill?

SENATOR SCHNEIDERMAN: Yes, thank

you. On the bill, Mr. President.

I have to say, ladies and gentlemen, this is a very narrow addition to the program set up in the original bill that outlawed sex trafficking in New York State. And if you're proud of the work on that bill, I honestly don't see how you can possibly vote against this.

The New York State anti-trafficking law provided that the victims of sex trafficking would get counseling, would get support in their efforts to reintegrate themselves into society. But there was an omission in the original bill that is dealt with by Senator Duane's legislation, that you cannot reintegrate into society if you're walking around with a conviction.

And these 440 motions -- and, you know, my partner in justice here, Senator Volker, we've argued about 440 motions for many joyful years, and I'll be denied that pleasure next year. But there are a lot of less sympathetic people who are eligible to make 440 motions to vacate their conviction than the people this bill addresses.

In order to apply to have your conviction vacated under this bill, you have to prove that you were a victim of sex trafficking. That means you have to have been the victim of someone who provided illegal drugs, withheld or destroyed immigration documents, engaged in terror tactics. This is something that you have to prove to be eligible to make an application to vacate your conviction.

This only applies to demonstrated victims of sex trafficking. And the notion that we're going to pretend that we want to help these people reintegrate without giving them an opportunity to have a clean record so they can get a job, so they can get housing, so that perhaps they can continue with the process of applying to change their immigration status, this is -- we're talking about children, ladies and gentlemen. There are 4,000 children in New York City alone who are the victims of sex trafficking.

And if someone can prove that they are a victim of sex trafficking -- and I assure you, no one who's still a victim of sex

trafficking is going to make it into court for a 440 motion. Come on, you guys are not talking about the real world. You have to have escaped from the sex traffickers to get to court to make a 440 motion. I mean, this is just -- you know, you guys are not talking about reality.

You are going to deny these children who are victims the right to get a clean record? I think it is a major, major error. I would urge, Mr. President, that everyone vote in favor of this bill. This is a critical addition to the sex trafficking law. I thank Senator Duane.

And please, apply a little common sense as you're reading the statute and thinking about its implications. There is no one who's still the victim of the sex traffickers who's going to get into court to make a motion. You have to prove you were a victim of this horrendous crime.

For the children who are suffering today and want to try and get their lives back on track, please vote yes on this bill.

Thank you, Mr. President.

ACTING PRESIDENT JOHNSON: Thank you, Senator Schneiderman.

Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

I just first want to -- because I'm going to just speak for a couple of moments. And I take my colleagues on the other side of the aisle at their word that there's a memo from the district attorneys. And I hope that they'll pass it down the aisle now to me, because I have not seen this memo. I don't know of anyone on this side of the aisle that's seen this memo. And it's beyond news to me.

And I'm very upset about it because of course I want to craft the best possible legislation, and of course I want it to pass. And I don't know of this objection from the DAs. So I am hoping that they'll pass it along so that I can work off it and even know who to contact about it. Because I don't -- I haven't seen it, and no one on our side of the aisle, as far as I know, has seen said memo.

So it's odd and, you know -- so but

while it's I hope being, you know, shared, I want to -- you know, this goes exactly to the point that my colleague Senator McDonald was raising before about how it is that we intentionally or -- which I don't think we do. Well, I'll speak for myself. I don't do and I know there are other people in this house, including Senator McDonald and others, who would never intentionally victimize a person for even another day, whether it's on the budget or whether it's someone that wants to have their conviction vacated because they can't get a job and get on with their lives.

And that's what our intention was, was to help -- I mean, "victim" is almost too -- it's almost not the right word. Traumatized victims, brutalized victims. To be able to not just take advantage of the services which this legislation, you know, was intended to do, but to actually -- it's not even helping them, it's not holding them back. It's not special treatment. It's not holding someone back.

And, you know, believe me, I am -- I agreed with practically everything that

Senator McDonald had to say. And I am also frustrated at what's been happening with the budget process. I don't think there's anyone here who is not. But why would we then say that this bill, for one person, why would we punish one person who could have their wrongful conviction -- because they were convicted because of slavery -- vacated? Like, I don't get that. I don't get that.

So if there is such a memo and maybe even if there isn't, of course I would be willing to pull this bill back and make everybody wait longer, because promises of tomorrow -- I've been around a while. Tomorrow is not always tomorrow around here. If there is such a piece of paper that says what this objection is. Because I haven't seen it. And, you know, maybe there's a misunderstanding. Maybe it's about another piece of legislation. Maybe it's not about this. I mean, everybody makes mistakes like that. I understand that.

But we're here. We could pass this bill today --

ACTING PRESIDENT JOHNSON:

Senator Padavan -- Senator Padavan, why do you rise?

SENATOR PADAVAN: Would Senator Duane yield briefly?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT JOHNSON: For a question, Senator Padavan? Senator Padavan, for a question?

SENATOR PADAVAN: I'm going to try and phrase it in the form of a question so I don't violate the rules.

ACTING PRESIDENT JOHNSON: Fine.

SENATOR PADAVAN: Senator, did you know that the president of the DAs Association, by the name of Kate Hogan, DA, Warren County, communicated verbally today to our counsels -- not in memo form, but verbally -- the issues that you've heard raised by some of our members with regard to what they perceive and feel is a technical glitch, if you will, in the language that you've embodied in your law? Not with its intent, not with its goal. We already said that.

And if that is the case, would you give them the benefit of the doubt for a day to communicate that information to you so that you could consider incorporating what they think would be a modified language and deal with their problem? That is my question.

SENATOR DUANE: Mr. President, if I could just clarify the question.

ACTING PRESIDENT JOHNSON: Of course.

SENATOR DUANE: The question is the phone call was on behalf of the entire association of the DAs? Or is it just one DA? That's what I'd like clarification of, if that's okay, Mr. President.

ACTING PRESIDENT JOHNSON: Senator Padavan, could you please clarify for Senator Duane the question?

SENATOR PADAVAN: My understanding is that DA Hogan was speaking in her capacity as president of the DAs Association.

SENATOR DUANE: Through you, Mr. President, I do have a concern that I really -- and I can actually, you know, I'm a

good talker. There is time to verify whether this is the official position of the Association, because I can say more about the bill and why it's so important.

So I would like clarification on whether this is the official position of the DAs Association. Because I would hate to think that whoever it is in their association who tracks legislation missed this, since it passed the Assembly unanimously. So it is of concern to me that they were so off their game that they completely missed this piece of legislation.

So while that's being verified, precisely whether this is a DA or the association, I'd like to make a few more comments about the legislation, and I will take a moment to do that while we await word from the District Attorneys Association.

So, Mr. President, under this legislation -- there's a whole other area of this legislation that is incredibly important. And that is the issue of how it is that we actually go up the chain from those who are enslaved to get the actual traffickers. And

how it is that we are able to turn a victim -- and again, that word is too weak for who we're talking about -- that slave, that abused, raped, you know, really without a country, because they're without a passport, how it is that we are able to allow them to help us to get the kingpins, if you will, of human trafficking, sexual predatory trafficking.

And I strongly believe that this legislation is actually -- is it the biggest? No. But it is a tool that will help us to end, someday, human trafficking, particularly for the purposes of sexual enslavement and prostitution.

And, you know, really what this is, it allows just the smallest -- one time to make the presumption just the slightest bit stronger in order to allow a victim, and only deserving and only under very stringent circumstances, of which, as I say, OTDA even has a form for the court to use to look at, the victim to bring to court, to bring to the DA, to bring to the judge. One time. Because if they've said during the trial that they were the victim of human trafficking and they

are convicted anyway, they cannot bring it up again. That's it. That is it. It's one time that they're allowed to use this in order -- so if the claim has been made before during trial, they can't go back and do it again. Only, only this one time.

And again, I strongly believe that not doing this is one more acquiescence, acceptance of the stereotype -- not even a stereotype, the stupid fantasy of some people who are willing to pay for sex. And I don't mean to -- you know, there are people, listen we read about them in the newspapers all the time. There might even be people here who have actually used it. I'm not saying that anyone here is perfect or in the world, that people make mistakes. And I get that. I have made mistakes. Mistakes are made.

But what this is doing is to try to eliminate one more of the dumb ideas that people have that those happy-looking women in the back of an -- I mean, even New York magazine used to carry these ads until finally women's groups said, Why are you exploiting women like this who are being enslaved?

There's a newspaper here in this area, there's one in New York City which, if you look in the back of it, perpetuates that myth that these are happy women who love having sex with ugly men. Come on. I'm serious. That they love sex so much that they're willing to do it with anyone. I mean, it's absurd.

And not doing this bill -- maybe we'll do it tomorrow if there really is a problem with it. But it would be better to do it today if there isn't a problem with it. That we not be part of the myth that these are happy, mostly women doing this because they want to have sex with men who are willing to pay. It's just not true. It's just not true. Even if they act like it, that's part of the things that they have to do. Sometimes there are cameras in the room to make sure that they're smiling. But they're not really smiling, they're acting. Because they're not having a good time, they're basically being raped. And we're going to send them out into the world, send them out into the world with job training so they can't get a job because

they have a record. That's what we're doing by not passing this bill.

I could tell you stories. We heard stories. We heard stories at the hearing of Senator Padavan and Senator Volker of exactly that situation, where a young woman, sometimes her family, thinking that they were sending their daughter to a better life in the United States, some decent-paying job, maybe as a domestic worker or maybe as a secretary or a nurse, and the family bought into the myth that they were sending their daughter to a better life. And what they were doing was sending their daughter to a life of rape and degradation and slavery and fear and desperation. And their families did that, unintentionally.

And we make it so they can't even get a job to make enough money to visit their family after that. It is beyond -- you know, again, I'm waiting for confirmation. I would say pass the bill. If and when we get the confirmation, I'm happy to do a chapter amendment. We do it here all the time. All the time we do it. I'll talk to the Assembly

sponsor of the legislation. I didn't even care -- again, it was just something that I focused on. I thought it was an injustice that we needed to fix. I don't care. Similar to what Senator McDonald said, I don't care if the bill is under my name. Mr. President, you know that. Even on legislation which you and I have worked on, bipartisan legislation, I don't care whether my name is the caboose. I don't care if my name is not on it at all.

I care about the result. I care about ending this absurd myth that these are happy hookers who love having sex with middle-aged men that look like me. No, I don't think so, Mr. President. I don't think I could pay enough money. We're talking acting, Mr. President. We're not talking happy, happy, happy to see someone like me lumber into the room. They're smiling because there may be a camera on them. They're smiling because they're afraid not to, Mr. President.

I mean, you know, I realize that people think -- like, I'm not trying to be funny. It's -- you know, how would you like

to be in that position? How would you like it if you were forced to have sex with people against your will and then ended up with a criminal record on top of it? Where's the justice in that? You're right, it's injustice.

Now, I'm hoping that maybe -- has anyone reached the DAs Association in the meantime? No, I haven't gotten word. I'm just -- like you want to hear more bad stories? You want to hear about more terrible things? I'm a bottomless pit, a bottomless pit of bad things happening to people and how we continue to punish them with things like criminal records.

All right. So sometimes there are women whose families -- or who don't have a family, who are from orphanages, and who a trader comes with -- and we know that people think that the United States is the place where actually you can get ahead, where there are good jobs. Who wouldn't believe that if you had nothing else? If you were destitute, if you had no family, who wouldn't believe that about the United States? Right? And

it's true for a lot of people. But not for these women. Not for these women. They end up here -- sometimes they come here, they're snuck in, they never had a passport. Or they had the passport taken away from them and it's kept by the trafficker.

Imagine. Imagine, your family, your single parent can't take care of you and in some cases doesn't want to take care of you, and you end up in a home. Right? With other children. And you know what? You can't live there forever. It's off to the streets afterwards when you age out of it. Not so dissimilar to what happens in our country. But, okay, probably worse. And you are offered the chance to come to the United States, be a nurse's aide, get an education, maybe work as a domestic but then we'll help you to move up, to get a better-paying job. Maybe be a nanny. Who knows the promise that's made. Maybe a secretary. Who knows what the promise is.

And you go along. Right? And you go along. And you say, I'm going to go to the United States and I'm going to have a chance.

We know it happens. We know it happens. We heard about it happening. We heard about it at this hearing. We know about it. You read the -- I mean, it's known. Movies are made about it, television movies. Lifetime, the Lifetime Network came and testified about this because they just put a movie on about this exact kind of human trafficking. Right?

So then you come here and what happens to you is unspeakably terrible. And we took a huge, huge step -- again, thanks to the leadership of Senators Padavan and Volker. I mean, this is not an unknown issue in this house. Bipartisan. I know that the DAs know about it. I can't believe they don't know about it. They need to, I don't know, have someone follow -- or they need to watch us on TV, I don't know. They need to see what even gets passed in the Assembly, what happens in our committees. They need to do a better job, I guess. Far be it from me.

But other groups know about this. I mean, there are memos in favor from other groups -- the New York City Bar Association. Sanctuary for Families, which is probably the

premier domestic violence program, certainly in New York City. The Urban Justice Center. I mean, there's a list. Even, you know, the ones that represent those who are voluntarily whose job it is to be sex workers want to actually help those women who are doing it involuntarily. I mean, there's a broad coalition.

And I have nothing, not a word in opposition. Believe me, I have -- and you know, Mr. President, you know that I am willing to, happy to work with people on both sides of the aisle, with people on different sides of the issue outside this house. I am happy to try to craft legislation. We may not always agree -- we may not always agree, but I'm certainly willing to do my best to bring as many people into it as possible.

And I never heard from the DAs about this. I never heard from the DAs about this. It is news to me that the association has a position. Maybe there was a misunderstanding about -- I don't know. I'm absolutely willing to give the benefit of the doubt. The person that has brought it is

someone that I have enormous respect for on this issue, because it was the hearing that he put together with another Senator that actually opened my mind to how we could actually solve, in some way, this problem.

In some way I also thought we might actually be able to help a victim -- which is not a strong enough word -- a survivor to get a job for which we, through our programs in the state, have actually prepared them, invested in, and for which I believe we think they should be able to get a job. But they can't, because they have a record.

You know -- and you know what? If someone here hired that person and a newspaper said that Senator So-and-So hired a convicted felon, oh, boy, oh -- I mean, really. Right? Isn't that what would happen? Sure. Many of us would -- I don't even want to say risk that, would absolutely do that. But it's a thing. And sometimes it's unfair. And in this case, we know it's unfair and we could do something about it today.

If we have to do something about it tomorrow, I'll do it tomorrow. But I need to

know whether it's a real thing or whether it's just justice deferred for a day.

You know, I was speaking with someone who wants to be a Supreme Court judge, and her Supreme Court judge boss from several years ago --

ACTING PRESIDENT JOHNSON: Senator Duane --

SENATOR DUANE: -- said justice delayed is justice denied.

ACTING PRESIDENT JOHNSON: Senator Duane.

Senator Nozzolio, why do you rise?

SENATOR NOZZOLIO: Mr. President, will Senator Duane yield?

ACTING PRESIDENT JOHNSON: Senator Duane, will you yield for Senator Nozzolio?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT JOHNSON: Senator Nozzolio, Senator Duane will yield.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, my question to

Senator Duane is as follows. Does the legislation have any qualification relative to age of the -- as Senator Duane describes, of the victim, where the victim would, if a certain age -- and his discussion about children was certainly noteworthy. But is there an age restriction or qualification within this legislation?

ACTING PRESIDENT JOHNSON: Senator Duane.

SENATOR DUANE: Through you, Mr. President, I need some clarification on the question. Is the question regarding the age of the person who was -- while they were in slavery, if you will? Or is it about their age when they came with the -- to say "I would like to vacate this conviction"?

ACTING PRESIDENT JOHNSON: Senator Nozzolio, do you understand the clarification you're seeking?

SENATOR NOZZOLIO: My question is are those who are shielded from being allowed to vacate their convictions, are those limited to a certain age group? In other words, under 18, over 18? Where is the -- is there any

delineation in the legislation for qualifying those who are under the age of majority or of consent?

ACTING PRESIDENT JOHNSON: Senator Duane.

SENATOR DUANE: Through you, Mr. President. You know, I -- while I asked for the clarification, in a way there was no need to. You know, I think the answer is -- well, the short answer is no. Because there isn't a big difference between being victimized, enslaved, when you're 15 or if you're 25. You know, slavery is slavery.

However, we do know that those who are enslaved skew towards younger. But is there an age limitation for when you could go to have it vacated? Well, not specifically. But, you know, we have -- no. Not specifically, no.

SENATOR NOZZOLIO: Thank you, Mr. President.

ACTING PRESIDENT JOHNSON: Thank you, Senator Nozzolio.

SENATOR DUANE: In this legislation, no.

ACTING PRESIDENT JOHNSON: Thank you. Senator Duane, you continue to have the floor.

SENATOR DUANE: Yes, Mr. President. Now I have the floor, yes. And so I -- I -- I still am -- yeah, I'm waiting, because I don't -- you know, certainly someone has the phone number of someone who is involved with the DAs Association. You know, DAs are on duty -- there's night court everywhere, with DAs --

ACTING PRESIDENT JOHNSON: Senator Libous, why do you rise?

SENATOR LIBOUS: Mr. President, would Senator Duane yield for a question?

ACTING PRESIDENT JOHNSON: Senator Duane, will you yield for a question from Senator Libous?

SENATOR DUANE: Rarely do I not. Of course, Mr. President.

ACTING PRESIDENT JOHNSON: Yes, Senator Libous, Senator Duane yields.

SENATOR LIBOUS: Thank you, Senator Duane.

Senator Duane, are you willing to

lay the bill aside for a day if we could get this individual to reach out to you? I believe that I can arrange that. This is not a bluff. This is not -- we have some serious concerns about the legislation. And if she does not reach out to you within the next 24 hours, the bill can come back on the floor on Monday and we would do whatever we need to do on the floor.

And I believe I can arrange for you for her to speak with you, possibly this evening.

SENATOR DUANE: Through you, Mr. President. Before I answer, I need a clarification. This person, on behalf of the official DAs Association -- this person will be speaking on behalf of the official DAs Association?

ACTING PRESIDENT JOHNSON: Senator Libous, Senator Duane has asked for a clarification.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, the way I understand it -- and certainly, Senator Duane, this is

coming to me from secondhand from this person, because I don't want to be misrepresentative. But the legislative committee of the DAs Association met and they recommended against this bill and said that there was a technical flaw that they would be willing to sit down with the sponsor and get it corrected.

ACTING PRESIDENT JOHNSON: So, Senator Libous, does your question still then remain as to --

SENATOR LIBOUS: Yes, Mr. President. I'm not -- lookit, I'm not trying to give the sponsor a hard time. He certainly made his points. I believe we made our points. And all we're trying to do is say that this individual will reach out to him. And if for whatever reason matters can't be resolved, then he can bring it back on the floor.

ACTING PRESIDENT JOHNSON: Senator Duane.

SENATOR DUANE: Mr. President, I'm going to say -- before I give the answer, I will be very disappointed with the District Attorneys Association, I will be disappointed

if I am making the wrong decision here. And I cannot -- within the realm of civility, although I can't say that it won't be free-floating and somewhat misdirected.

Of course, with those provisos, yes. But I'm on a very short and tight timeline either to pass the legislation or to get it fixed if this is the DAs Association official position. And really, I shouldn't be accepting it because it's of a committee and not the association, because this bill has been around for a while and already passed the Assembly unanimously.

But my answer, with those qualifications, and maybe some more in the interests of time that I'm just not going to bother to say right now, the answer is yes.

ACTING PRESIDENT JOHNSON: Senator Libous.

SENATOR LIBOUS: Thank you.

ACTING PRESIDENT JOHNSON: Thank you, Senator Libous.

SENATOR DUANE: So I'm going to ask my floor leader and my deputy leader to ask to let it --

SENATOR KLEIN: Mr. President, could we lay the bill aside for the day.

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

SENATOR LIBOUS: Thank you.

ACTING PRESIDENT JOHNSON: Thank you.

Senator Klein.

SENATOR KLEIN: Mr. President, can we please lay the rest of the calendar aside for the day.

ACTING PRESIDENT JOHNSON: The remainder of the calendar is laid aside for the day.

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

SENATOR KLEIN: Mr. President, I have a motion. On behalf of Senator Huntley, on page number 24 I offer the following amendments to Calendar Number 426, Senate Print Number 6844, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT JOHNSON: So ordered.

SENATOR KLEIN: Please recognize

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. Mr. President, I wish to call up Calendar Number 344, Assembly Print 9070.

ACTING PRESIDENT JOHNSON: The Secretary will read the title of the bill.

THE SECRETARY: Calendar Number 344, by Member of the Assembly Hoyt, Assembly Print Number 9070, an act to amend the Real Property Law.

ACTING PRESIDENT JOHNSON: Can we have some order, please. We're still doing business of the Senate.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I now move to reconsider the vote by which this Assembly bill was substituted for Senate Print 7170 on April 14, 2010.

ACTING PRESIDENT JOHNSON: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT JOHNSON: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I now move that Assembly Bill Number 9070 be recommitted to the committee on Judiciary and that this Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT JOHNSON: So ordered.

SENATOR LIBOUS: Thank you, Mr. President.

ACTING PRESIDENT JOHNSON: Thank you, Senator Libous.

Senator Klein.

SENATOR KLEIN: Mr. President, could you please recognize Senator Volker.

ACTING PRESIDENT JOHNSON: May we please have some order in the chamber.

Senator Volker.

SENATOR VOLKER: Mr. President, I just wanted to remind everybody that tomorrow night is the Senate Club dinner at Jack's. And we'd appreciate it if all those who have already committed to come. I just don't want anybody to forget.

The Governor is coming. He's

gratefully agreed to come. And so we hope to see as many people as can tomorrow night at Jack's.

ACTING PRESIDENT JOHNSON: Thank you, Senator Volker.

Senator Klein.

SENATOR KLEIN: Can you recognize Senator Oppenheimer for an announcement.

ACTING PRESIDENT JOHNSON: Senator Oppenheimer.

SENATOR OPPENHEIMER: This is just a request for the other Senators. Someone walked out of the Green Room with my district office papers. So when you look through your papers, if you have Suzi district office papers, please get them returned to me.

ACTING PRESIDENT JOHNSON: So if you have Senator Oppenheimer's papers, please return them to Senator Oppenheimer.

Senator Klein.

SENATOR KLEIN: I just want to remind Mr. President I think there's a stalled car in the parking lot, license plate number --

(Laughter.)

SENATOR KLEIN: No, Mr. President. Is there any further business at the desk?

ACTING PRESIDENT JOHNSON: Senator Klein, other than the stalled car, the desk is clear.

SENATOR KLEIN: Mr. President, there being no further business, I move that we adjourn until Tuesday, May 11th, at 3:00 p.m.

ACTING PRESIDENT JOHNSON: There being no further business to come before the Senate, on motion, the Senate stands adjourned until Tuesday, May 11th, at 3:00 p.m.

(Whereupon, at 7:30 p.m., the Senate adjourned.)