NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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4:01 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 CRAIG 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 CRAIG 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 CRAIG JOHNSON: The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Monday, June 7, the Senate met pursuant to adjournment. The Journal of Sunday, June 6, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe there's a report of the Judiciary Committee at the desk. I ask that it be read at this time.

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

The Secretary will read.

THE SECRETARY: Senator Sampson, from the Committee on Judiciary, reports the following nominations.

As a judge of the Court of Claims, Honorable M. William Boller, of Elma.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

SENATOR KLEIN: Mr. President, please move the nomination.

ACTING PRESIDENT CRAIG JOHNSON: Senator Volker.

SENATOR VOLKER: Mr. President -- thank you, Senator Klein -- M. William Boller,

otherwise known as Bill Boller, has been a friend of mine as long as I can remember, and his mother and father were very close to my mother and father.

But more important than anything, he has been an excellent justice of the peace -- or, as we call them, village or town justices now -- for many years, and then later became a judge in the Court of Claims. He is recognized I think by most of the legal people in Erie County as one of the finest judges I think ever to have served in the judiciary.

As I said, he came from a fine family. He has a wife who has been extremely helpful to him, and he has two children who try to keep him in line. And what I would like to say is that the Governor has done this state an immense favor by reappointing Bill Boller to the Court of Claims.

So congratulations and good luck in the future.

ACTING PRESIDENT CRAIG JOHNSON: Senator Maziarz.

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

I want to join my colleague Senator Volker in seconding this excellent nomination by Governor Paterson. Judge Boller has done just a great job in the Court of Claims. He was a great jurist back in local government when he was a town justice. I've known him for many years.

And I'm certain that he will continue that level of excellence for another term in the Court of Claims.

Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator.

Senator Ranzenhofer.

SENATOR RANZENHOFER: Mr. President, I'd like to join my colleagues in talking about Judge Boller. I've known Judge Boller for somewhere between 20 and 30 years -- it's been so long, I don't know.

But he is an excellent representative from Western New York, has a fine reputation as a judge on the bench for being firm and fair, respecting everybody that comes before him, has a great record of service as a lawyer with Erie County and also

as a town judge and obviously with his continuation as a judge in the Court of Claims and also acting Supreme Court.

I'm very proud to move his nomination forward and to vote for him today.

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

Seeing none, the question is on the motion to confirm the nomination of M. William Boller, of Elma, as a judge of the New York State Court of Claims. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT CRAIG JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG JOHNSON: The motion carries. The nomination is confirmed.

Judge Boller is joined in the gallery today by his wife, Ann.

Congratulations.

(Applause.)

ACTING PRESIDENT CRAIG JOHNSON:

The Secretary will continue to read.

THE SECRETARY: As a judge of the Court of Claims, Honorable John J. Brunetti, of Baldwinsville.

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Madam President, please move the nomination.

ACTING PRESIDENT SAVINO: Senator DeFrancisco on the nomination.

SENATOR DeFRANCISCO: Yes, I would like to second the nomination of John J. Brunetti for the Court of Claims.

I don't think there's been anyone who's ever come before this body that's had such a broad range of experience that has made him the great judge that he is.

He started off early on in his career while practicing law as a law clerk for a Supreme Court judge. He was back in private practice, then he was the first assistant district attorney for Onondaga County. Then he went to the U.S. Attorney's office, he did some work here in the Senate as a Senate counsel, and he's been on the bench for 15

years. It doesn't seem possible that it's been 15 years, it just doesn't seem possible.

But from what everyone says in Onondaga County, as acting Supreme Court judge in the Criminal Part, he is an outstanding, outstanding judge. Great judicial temperament, gives each side a fair shake, and there is nobody in the state that has a better handle of the criminal law than John Brunetti does. He's published a book, New York Confessions, that's been published by Matthew Bender, which is a definitive source on confessions in New York State.

So from a professional standpoint, there's no one who is more deserving than John Brunetti to be reappointed as a Court of Claims judge.

From a personal standpoint, I've known John for very many years. We practiced together for a while, we're good friends. And there is nobody also who is of greater integrity or intelligence and just a good, good man than John Brunetti.

So I'm taking a lot of time today and I didn't in the prior nomination processes

because I think this will be the last time he's going to be nominated for this position unless we change the age rules in the State of New York. So I wanted to make sure the record was clear on what a great choice the Governor has made for a Court of Claims judge in John J. Brunetti.

Thank you.

ACTING PRESIDENT SAVINO: Senator Volker.

SENATOR VOLKER: Madam President, I too want to praise the Governor for renaming John Brunetti. Except for a short downfall when he was counsel to Senator DeFrancisco -- you know, I mean, we all have our little problems -- he has been all the way through a respected person, a person with brilliance and integrity.

I dealt with him a great deal because he dealt a lot in criminal justice. And everybody I've talked to tells me that he's probably one of the finest Court of Claims judges on the bench. And I want to congratulate him and congratulate the Governor on his reappointment.

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

Seeing none, the question is on the motion to confirm the nomination of John J. Brunetti, of Baldwinsville, as a judge of the Court of Claims. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

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

Congratulations.

(Applause.)

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Madam President, if I may just interrupt the nominations, I believe there's a resolution by Senator Flanagan. I know he has a special guest that has to be on her way. I ask that the title of the resolution be read and move for its immediate adoption.

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

SENATOR KLEIN: Yes, it has, Madam President.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Flanagan, legislative resolution congratulating Elisabeth Zamarelli of Stony Brook, New York, upon the occasion of being named 2010 Ms. New York Senior America.

ACTING PRESIDENT SAVINO: Senator Flanagan.

SENATOR FLANAGAN: Thank you, Madam President.

Senator Klein, thank you for the indulgence. I appreciate everyone allowing me to introduce our guest.

We all have occasions where we have people come up from our district, and today I have a distinguished guest from Stony Brook, out in Suffolk County on Long Island. And, Doctor, if you would please stand, I want to

introduce to the body Ms. Senior New York 2010, Dr. Elisabeth Zamarelli, who has a very impressive resume.

First of all -- and I'm going to say this because she's Ms. Senior New York; I think I can get away with it -- she is 69 years old and she's still working full time as a teacher. She is a special ed teacher, has a doctorate in special education, four children, six grandchildren. She volunteers a lot locally. She's an auxiliary police officer. We've had an exciting day having her here.

Now, she won not only Ms. Senior New York, but in that contest she was also awarded Ms. Congeniality. And Lord knows we could use some of that around here.

So to Dr. Zamarelli, I want to just introduce you to the body, wish you well and congratulate you.

She will be representing the State of New York in the national competition in Atlantic City. And welcome to the Senate.

DR. ZAMARELLI: And we're going right to the top!

(Applause.)

DR. ZAMARELLI: I hope to represent all of us in the most prestigious manner that I can. And I can only speak so highly of what I've seen here today, and that I can bring back to my students, and hopefully they can get the opportunity someday that I have had to come here and share a few moments of history with you.

Thank you so much.

(Applause.)

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

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The resolution is adopted.

Senator Flanagan has indicated that he would like to open up the resolution to cosponsorship by the entire house. Anyone not

wishing to be on the resolution please see the desk.

Senator Klein.

SENATOR KLEIN: Madam President, can we please return to the judicial nominations.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Honorable William C. Donnino, of Syosset.

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Madam President, please move the nomination.

ACTING PRESIDENT SAVINO: Senator C. Johnson.

SENATOR CRAIG JOHNSON: Thank you very much, Madam President. I wish to rise to second the nomination of Judge William C. Donnino and welcome him to the Senate chamber.

My family and my wife's family, in particular, has had the privilege of knowing Bill Donnino for 30 years. He is an outstanding jurist, like all the judges who

are here today getting renominated. We're going to hear that quite a bit.

And like Senator Volker in congratulating and thanking Governor Paterson, I too want to thank the Governor for renominating Bill Donnino. He serves really as a mentor, not just to the new judges who come to Nassau County but to the new lawyers. He's extremely patient, extremely fair-minded in his court, somebody who all lawyers and practitioners of the bar can look up to.

I want to congratulate him. I also want to take the opportunity quickly to congratulate Judge Grella, Judge Mangano, and Judge Zweibel. My father-in-law happens to have known Judge Zweibel the longest, for over 40 years -- actually, almost 50 years, and they go back to college. It's really a privilege for me to have the opportunity to vote on and confirm all these great jurists.

So I wish to congratulate all of them, and I wish you the best of luck.

Thank you very much.

ACTING PRESIDENT SAVINO: Senator Volker.

SENATOR VOLKER: I too would liking to congratulate Bill Donnino and thank the Governor.

I first met Bill Donnino, I know how long ago it was because it was the first year that I was here in Albany, and Bill Donnino was then one of the top counsels to Nelson Rockefeller. And he was the first of Nelson's people to argue with me and the Republican conference over the Rockefeller Drug Laws. And needless to say, we were back and forth on it quite a bit. He was much better, of course, than I was because I was very young and I really wasn't that good.

But Bill and I remained friends over the years. I consulted him on a number of occasions on various items relating to statutes in Albany and in New York City. And I just want to say that he didn't disappoint anyone.

He was a fine -- he is a fine jurist. And I have to say that the Court of Claims probably in New York, as a group, is as good a group of judges at that level as any in the country.

And I congratulate you, Bill, and good luck.

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

Seeing none, the question is on the motion to confirm the nomination of William C. Donnino, of Syosset, as a judge of the New York State Court of Claims. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

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

Congratulations, Judge Donnino.

(Applause.)

ACTING PRESIDENT SAVINO: The Secretary will continue to read.

THE SECRETARY: As a judge of the Court of Claims, Honorable Philip M. Grella, of Medicare.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

SENATOR KLEIN: Mr. President, please move the nomination.

ACTING PRESIDENT CRAIG JOHNSON: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President. Just quickly, I just want to rise and second the nomination of Judge Grella.

He has certainly distinguished himself as an outstanding jurist in the last number of years while serving on the Court of Claims and other parts as well. Prior to that, for many years, over 25 years, Judge Grella has distinguished himself as a tough, hardline prosecutor from the Nassau County District Attorney's office.

But equally as important, he's a man that loves and respects his community and loves his family as well. And it's an honor for me to rise and second his nomination.

Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Fuschillo.

Any other Senators wishing to be heard on the nomination?

Seeing none, the question is on the motion to confirm the nomination of Philip M. Grella, of Merrick, as a judge of the New York State Court of Claims. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT CRAIG JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG JOHNSON: The motion carries. The nomination is confirmed.

Congratulations, Judge Grella.

(Applause.)

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will continue to read.

THE SECRETARY: As a judge of the Court of Claims, Honorable Robert K. Holdman, of Bronxville.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

SENATOR KLEIN: Mr. President, please move the nomination.

ACTING PRESIDENT CRAIG JOHNSON: Are there any Senators wishing to be heard?

Senator Lanza on the nomination.

SENATOR LANZA: Thank you, Mr. President. Thank you, Senator Klein. I proudly rise to second the nomination and support the reappointment of the Honorable Robert Holdman.

I've known Judge Holdman for most of my adult life. We attended Monsignor Farrell High School together. And even back then, he stood out from the crowd as a person of honor and integrity, someone who always stands by what is right. The kind of person you'd always want on your side.

And since then, he's certainly distinguished himself in his professional career. As a Bronx Assistant District Attorney, he rose to national distinction as a prosecutor in the Child Abuse and Sex Crimes Bureau.

Let me just say this about my good friend Judge Holdman. As I've said before here in this chamber, when it comes to the work we do as Senators, I don't think it's more important or perhaps there is no more important time for us to get it right than

when it comes to the confirmation of judges. And I want you all to know and assure you that in voting to support this confirmation of Judge Holdman, you can't ever get it more right. This is precisely the kind of person we want serving as judge in this state.

And I'll pay him the compliment I paid him during committee, which is to say this. In his courtroom, nothing less than justice will ever occur.

It is my proud honor to once again vote in favor of this confirmation and to congratulate my good friend Judge Holdman, his wife and his family.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Lanza.

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

Seeing none, the question is on the motion to confirm the nomination of Robert K. Holdman, of Bronxville, as a judge of the New York State Court of Claims.

All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT CRAIG JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG JOHNSON: The motion carries. The nomination is confirmed.

Judge Holdman is joined in the gallery today by his wife, Catherine.

Congratulations, Judge Holdman.

(Applause.)

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will continue to read.

THE SECRETARY: As a judge of the Court of Claims, Honorable Guy J. Mangano, Jr., of Atlantic Beach.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

SENATOR KLEIN: Mr. President, please move the nomination.

ACTING PRESIDENT CRAIG JOHNSON: Are there any Senators wishing to be heard on the nomination?

The question is on the motion to confirm the nomination of Guy J. Mangano, Jr., of Atlantic Beach, as a judge of the New York

State Court of Claims. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT CRAIG JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG JOHNSON: The motion carries. The nomination is confirmed.

Judge Mangano is joined in the gallery today by his wife, Maria Fasulo; father, Honorable Guy Mangano, Sr.; and friend Pat Pope.

Congratulations.

(Applause.)

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will continue to read.

THE SECRETARY: As a judge of the Court of Claims, Honorable Nicholas V. Midey, Jr., of Manlius.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

SENATOR KLEIN: Mr. President, please move the nomination.

ACTING PRESIDENT CRAIG JOHNSON:

Are there any other Senators wishing to be heard?

Senator Nozzolio, on the nomination.

SENATOR NOZZOLIO: Thank you, Mr. President. I'm proud to rise on behalf of this nomination.

Mr. President and my colleagues, that it has been a wonderful day when we have so many preeminent jurists from across the state. The nominee before us today is among that list, but one that from a very personal standpoint I am extremely proud to endorse his nomination.

Nick Midey comes from the same town that I grew up in, and we grew up together, a year apart in school, and played lacrosse and basketball together.

But far beyond that, he has brought, during his illustrious tenure on the bench, small-town values -- the values of small-businessmen, small farmers, those who make the economy grow each and every day. And that as former practitioner on Main Street -- we call it Fall Street in Seneca Falls -- Nick

practiced law with his father, in partnership, and did wonderful service for the greater Seneca Falls community through the years.

That Nick comes with a variety of experiences, whether it had been his tenure as public defender, his involvement as a counselor to municipalities, his involvement as a small-town practitioner with those businesses and individuals and enterprises that require good legal guidance, Nick was always there.

He's had a very good career as a judge on the Court of Appeals -- excuse me, the Court of Claims; I tried to promote him -- the Court of Claims, and that he is one that I know will continue in great stead as a public servant and a great judge of the Court of Claims.

Mr. President, I move the nomination with great support and wonderful appreciation for the job Nick Midey has done as a member of the Court of Claims.

Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Nozzolio.

Senator DeFrancisco on the nomination.

SENATOR DeFRANCISCO: Yes, I would also like to rise to second the nomination of Judge Midey. I don't know where he is. Where are you? Oh, there he is.

I didn't know Judge Midey before he went on the bench. I met him when he was first confirmed 15 years ago, I think. And since that time I got to know him. For a while his court was in the same building as my Senate district office in Syracuse. And we got to talk from time to time about various issues -- not relating to any cases that he had, but I got to know him extremely well.

And what Senator Nozzolio said really needs to be emphasized. There was a time when the people that got appointed to judgeships were people from large law firms and with many, many accolades from those who were the power players in a community. It's so great to see a man like Nick Midey, from a small law firm that he practiced with his father, who he loved dearly, and who has the family values of people in upstate New York

that you just can't describe unless you talk to him -- it's just heartwarming to know that he was given this opportunity. And not only given the opportunity, but has run with it and become an outstanding, outstanding judge.

So it's with great pleasure that I second the nomination of Nick Midey, and I wish him the best until his term is up and beyond.

Thank you.

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

The question is on the motion to confirm the nomination of Nicholas V. Midey, Jr., of Manlius as a judge of the New York State Court of Claims. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT CRAIG JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG JOHNSON: The motion carries. Congratulations.

(Applause.)

ACTING PRESIDENT CRAIG JOHNSON:
The Secretary will continue to read.
THE SECRETARY: As a judge of the Court of Claims, Honorable Norman I. Siegel, of New Hartford.
ACTING PRESIDENT CRAIG JOHNSON:
Senator Klein.
SENATOR KLEIN: Mr. President, can you please move the nomination.
ACTING PRESIDENT CRAIG JOHNSON:
Senator Griffo, on the nomination.
SENATOR GRIFFO: Thank you, Mr. President.
It's with great pleasure that I rise also to second the nomination of Judge Siegel. This is truly a remarkable individual who has enjoyed a distinguished career in both public and private practice and enjoyed great success throughout that career.
The judge also has been a truly active and engaged individual throughout all segments in our community. And I think that also is something of great note, because we need people of his reputation, which is one of great respect and integrity, to show that they

care. And Judge Siegel has always rolled up his sleeves and been involved with a number of organizations and a number of efforts to better our community.

But beyond that, he has done an extraordinary job in his court. He is an individual that I have come to know who possesses great intellect but also has a quick wit and has sage counsel. And I've enjoyed the opportunity to interact with the judge.

And things that I have heard from those who have appeared before him in his court I think are a great testament to his ability in the ten years that he has served. They've talked about the balance and the fairness that they receive in his court, and also the opportunity to be heard, that he actually would listen and, even though he may not be of the same mindset, gives you that opportunity to truly be heard and to determine and evaluate accordingly.

So today I am proud to stand here to talk to an individual who I know has got great respect and admiration throughout our community. And I am proud to second his

nomination.

He's the father of three children, six grandchildren, and he's here with his wife, Ann, today. So I want to thank the judge for his service, and I proudly second his nomination.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Griffo.

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

Seeing none, the question is on the motion to confirm the nomination of Norman I. Siegel, of New Hartford, as a judge of the New York State Court of Claims. All those in favor of the motion please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT CRAIG JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG JOHNSON: The motion carries.

Judge Siegel is joined today in the gallery by his wife, Ann. Congratulations.

(Applause.)

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will continue to read.

THE SECRETARY: As a judge of the Court of Claims, Honorable Ronald Zweibel, of New York City.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

SENATOR KLEIN: Mr. President, can you please move the nomination.

ACTING PRESIDENT CRAIG JOHNSON: Are there any Senators wishing to be heard on the nomination?

Seeing none, the question is on the motion to confirm the nomination of Ronald Zweibel, of New York City, as a judge of the New York State Court of Claims. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT CRAIG JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG JOHNSON: The motion carries. The nominee is confirmed.

Judge Zweibel is joined today in the gallery today by his wife, Eleanor, and

his son, Robert. Congratulations.

(Applause.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

SENATOR KLEIN: Mr. President, can we go back to motions and resolutions. I have several amendments.

ACTING PRESIDENT CRAIG JOHNSON: Returning to the order of motions and resolutions.

Senator Klein.

SENATOR KLEIN: First, Mr. President, on behalf of Senator Addabbo on page 22 I offer the following amendments to Calendar Number 417, Senate Print Number 4755, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

SENATOR KLEIN: Mr. President, on behalf of Senator C. Johnson, I wish to call up his bill, Print Number 7369, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will read the title.

THE SECRETARY: Calendar Number 413, by Senator C. Johnson, Senate Print 7369, an act to amend the Executive Law.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

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

ACTING PRESIDENT CRAIG JOHNSON: Amendments received.

SENATOR KLEIN: Mr. President, on behalf of Senator Schneiderman, on page number 29 I offer the following amendments to Calendar Number 576, Senate Print Number 7806, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON:

So ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, on behalf of Senator C. Kruger, on page 16 I offer the following amendments to Calendar Number 284, Senate Print Number 5956A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON:

So ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, can you recognize Senator Libous for a floor motion.

ACTING PRESIDENT CRAIG JOHNSON:

Senator -- Libous.

(Laughter.)

SENATOR LIBOUS: Mr. President, I have a floor motion. Not a privileged resolution.

ACTING PRESIDENT CRAIG JOHNSON:

Making sure.

Senator Libous.

SENATOR LIBOUS: Thank you,

Mr. President.

On behalf of Senator Maziarz, I move the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: 5871, please.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

SENATOR LIBOUS: Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Libous.

Senator Klein.

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

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

The Secretary will read.

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

As a member of the Continuing Care Retirement Community Council, Robert M. Chur,

of Clarence.

For promotion to Major General, New York Air National Guard, James W. Kwiatkowski, of Clarence Center.

As a member of the Board of Visitors for the New York State Home for Veterans and Their Dependents at Batavia, Richard G. Oleksyn, of Rochester.

And as members of the Board of Visitors for the New York State Home for Veterans and Their Dependents at Oxford, Louise Mary Platt, of Westford, and William E. Randall, II, of Marathon.

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger.

SENATOR CARL KRUGER: Thank you, Mr. President. Can we please move the nominations.

ACTING PRESIDENT CRAIG JOHNSON: Are there any other Senators wishing to be heard on this motion to confirm the nominations?

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

(Response of "Aye.")

ACTING PRESIDENT CRAIG JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG JOHNSON: The motion carries. The nominations are confirmed.

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

Communications and reports from state officers.

Motions and resolutions.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe there are substitutions at the desk. I ask that we make the substitutions at this time.

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will read.

THE SECRETARY: On page 14, Senator Addabbo moves to discharge, from the Committee on Elections, Assembly Bill Number 5707A and substitute it for the identical Senate Bill Number 5029A, Third Reading Calendar 211.

On page 19, Senator Montgomery moves to discharge, from the Committee on Finance, Assembly Bill Number 2563A and substitute it for the identical Senate Bill Number 6177A, Third Reading Calendar 358.

On page 34, Senator Oppenheimer moves to discharge, from the Committee on Education, Assembly Bill Number 10507A and substitute it for the identical Senate Bill Number 7584, Third Reading Calendar 644.

On page 37, Senator Little moves to discharge, from the Committee on Health, Assembly Bill Number 9829 and substitute it for the identical Senate Bill Number 6762, Third Reading Calendar 698.

On page 38, Senator Oppenheimer moves to discharge, from the Committee on Education, Assembly Bill Number 11064 and substitute it for the identical Senate Bill Number 7816A, Third Reading Calendar 702.

On page 38, Senator Oppenheimer moves to discharge, from the Committee on Education, Assembly Bill Number 11067 and substitute it for the identical Senate Bill Number 7819A, Third Reading Calendar 704.

On page 39, Senator Montgomery moves to discharge, from the Committee on Children and Families, Assembly Bill Number 8504 and substitute it for the identical Senate Bill Number 4388, Third Reading Calendar 710.

On page 39, Senator Sampson moves to discharge, from the Committee on Codes, Assembly Bill Number 6922 and substitute it for the identical Senate Bill Number 4536, Third Reading Calendar 712.

On page 39, Senator Parker moves to discharge, from the Committee on Codes, Assembly Bill Number 529 and substitute it for the identical Senate Bill Number 5923, Third Reading Calendar 713.

On page 39, Senator Schneiderman moves to discharge, from the Committee on Codes, Assembly Bill Number 7961 and substitute it for the identical Senate Bill Number 5963, Third Reading Calendar 714.

On page 39, Senator Peralta moves to discharge, from the Committee on Consumer Protection, Assembly Bill Number 2642C and substitute it for the identical Senate Bill

Number 7319A, Third Reading Calendar 718.

On page 40, Senator Squadron moves to discharge, from the Committee on Finance, Assembly Bill Number 10689A and substitute it for the identical Senate Bill Number 7613A, Third Reading Calendar 725.

And on page 41, Senator Dilan moves to discharge, from the Committee on Housing, Construction and Community Development, Assembly Bill Number 5667C and substitute it for the identical Senate Bill Number 7178A, Third Reading Calendar 758.

ACTING PRESIDENT CRAIG JOHNSON: Substitutions ordered.

Senator Klein.

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

ACTING PRESIDENT CRAIG 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 CRAIG JOHNSON: The Secretary will read.

THE SECRETARY: By Senator Oppenheimer, legislative resolution commending Linda and Jeff Solomon upon the occasion of their designation for special recognition by the UJA-Federation of New York and Westchester's Larchmont-Mamaroneck Campaign's Community Celebration in their honor on June 8, 2010.

ACTING PRESIDENT CRAIG JOHNSON: The question is on the resolution. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT CRAIG JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG JOHNSON: The resolution is adopted.

Senator Klein.

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

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

And I ask my colleagues right after Rules to come right back in the chamber so we can take up the active list.

ACTING PRESIDENT CRAIG JOHNSON: There will be an immediate meeting of the Rules Committee in Room 332.

Pending the return of the Rules Committee, the Senate will stand at ease.

But again, I reiterate Senator Klein's request that all members return to the chamber right after the Rules Committee meeting. Thank you.

(Whereupon, the Senate stood at ease at 4:35 p.m.)

(Whereupon, the Senate reconvened at 5:44 p.m.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

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

ACTING PRESIDENT CRAIG 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 bills:

Senate Print 2933, by Senator Duane, an act to amend the Transportation Law and the Public Authorities Law;

6819, by Senator Foley, an act to amend the Executive Law;

And Senate Print 7000B, by Senator Breslin, an act to amend the Insurance Law and the Public Health Law.

All bills ordered direct to third reading.

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

(Response of "Aye.")

ACTING PRESIDENT CRAIG JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG 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 calendar.

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 351, by Senator Sampson, Senate Print 87A, an act to amend the Tax Law and the State Finance Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 351 are Senators Flanagan, Marcellino, Nozzolio and Young.

Ayes, 56. Nays, 4.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 463, by Member of the Assembly Kavanagh, Assembly Print Number 6812, an act to amend the Social Services Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 463 are Senators DeFrancisco, Farley, Golden, Hannon, Larkin, LaValle, Leibell, Libous, Marcellino, Nozzolio, Ranzenhofer, Seward, Skelos, Winner and Young. Also Senator Bonacic. Also Senator Flanagan. Also Senator Little. Also Senator Fuschillo. Also Senator Saland. Also

Senator Griffo. Also Senator McDonald.

Ayes, 38. Nays, 22.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number 482, by Member of the Assembly Jacobs, Assembly Print Number 10219A, an act to amend the Insurance Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first of January next succeeding.

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Seward, to explain his vote.

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

This bill before us is an important piece of legislation that updates the standard reference compendia that is used to determine which cancer treatment drugs are reimbursable under insurance plans. And I did support the

legislation in the committee.

However, once the bill was reported from committee, it was amended and language was added, this language was added to the bill. In addition to the list of the compendia that is used, it now includes these words: "Or recommended by review article or editorial comment in a major peer-reviewed professional journal."

And I consider this language to be overly broad. And the inclusion of this language is contrary to the federal-level requirements, which call for a very comprehensive public review process that is required to be included in compendia that meet very specific, transparent regulations and rules.

You know, just because a drug has been recommended in an article or in, let's say, the New England Medical Journal does not make it appropriate or safe. And I have concerns that this overly broad language could result in experimental cancer treatments being utilized that have not been fully researched and have not been shown to be scientifically

proven.

So on that basis, Mr. President, I vote in the negative.

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

Are there any other Senators wishing to explain their votes?

Senator Breslin.

SENATOR BRESLIN: Yes, just briefly, Mr. President, I'd like to explain my vote.

Back in 1990, there was legislation that developed a compendia of resource documents so that if you wanted to use a particular cancer drug in an off-label way -- that is, for another form of cancer, not the primary one that it's generally used for -- you would refer to this compendia.

This legislation updates that compendium. And it does outline that if there are respected, recognized journals like the New England Journal of Medicine, that you can use that as a reference source as well, because the compendias are not dissimilar.

It has to be remembered that any of

these drugs being used have to be approved by the United States government beforehand.

Accordingly, I'll be voting in the affirmative.

ACTING PRESIDENT CRAIG JOHNSON: Senator Breslin to be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 59. Nays, 1. Senator Seward recorded in the negative.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

Secretary will continue to read.

THE SECRETARY: Calendar Number 485, by Senator Addabbo, Senate Print 5028B, Concurrent Resolution of the Senate and Assembly proposing an amendment to Section 2 of Article 2 of the Constitution.

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Those recorded in

the negative on Calendar Number 485 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 28.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number 544, by Senator Parker, Senate Print 6916A, an act to amend the Public Housing Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator DeFrancisco recorded in the negative.

ACTING PRESIDENT CRAIG JOHNSON:

The bill is passed.

THE SECRETARY: Calendar Number 620, by Senator Aubertine --

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

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

THE SECRETARY: Calendar Number 637, by Senator Stavisky, Senate Print --

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

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

THE SECRETARY: Calendar Number 642, by Senator Klein, Senate Print 5725, an act to amend the General Business Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number 652, by Senator Dilan, Senate Print 7617, an act to amend the Public Authorities Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

SENATOR MAZIARZ: Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Senator Maziarz, to explain his vote.

SENATOR MAZIARZ: To explain my vote.

I think this is a very good bill. You know, the canal runs all through my district. And, you know, the people work very hard on the canal. And I want to be congratulate Senator Dilan on bringing this bill forward.

Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Senator Maziarz to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 58. Nays, 2. Senators Duane and Griffo recorded in the negative.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 758, substituted earlier today by Member of the Assembly V. Lopez, Assembly Print Number 5667C, an act to amend the Multiple Dwelling Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

SENATOR LIBOUS: Lay the bill aside.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

The Secretary will continue to read.

THE SECRETARY: Calendar Number

759, by Senator C. Kruger, Senate Print 8080, an act to amend the Executive Law, the Real Property Tax Law, and the Tax Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

THE SECRETARY: Section 26. This act shall take effect immediately.

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

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 CRAIG JOHNSON: The Secretary will ring the bell.

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

The Secretary will read.

THE SECRETARY: Calendar Number 758, substituted earlier today by Member of the Assembly V. Lopez, Assembly Print Number 5667C, an act to amend the Multiple Dwelling Law.

ACTING PRESIDENT CRAIG JOHNSON: Senator Padavan, on the bill.

SENATOR PADAVAN: Thank you, Mr. President.

Much of what I'm about to say I've already discussed with the sponsor, Senator Dilan. But I think we have a very, very serious problem with regard to this legislation.

Let me preface my remarks by saying that I have, since its very inception, been a supporter of the Loft Law, as it's known, a bill, a statute that came into being to accommodate, in certain parts of the city, individuals that were residing in usually the second story of a taxpayer-type building zoned commercial or industrial. And those occupants in the main were artists, craftsmen, sculptors, and it was a place where they could

work and live.

And so the Loft Law was generated to accommodate them, since many landlords, having found difficulty to rent that space, were happy to rent to these artists and craftsmen. And then later on some of them had a different point of view, as the value of their property changed, but we had to protect those residents.

Having said all of that, however, the bill before us goes far afield of the original goals set in the Loft Law. And I have in front of me a two-page memo from the City of New York which, in part, I would like to read.

"The bill would extend coverage of the Loft Law to buildings that were illegally occupied for residential purposes during the period January 1, 2008 to December 31, 2009. The locations and numbers of these buildings are not specified in the legislation or supporting materials, and may be located anywhere in the City of New York. As a result, the bill would legalize presently unlawful residential uses in industrial and

commercial areas in all five boroughs of the city, from the Garment Center in Manhattan to the Steinway area of Queens, regardless of basic safety provisions of the building and fire codes and regardless of the underlying zoning."

So in effect, very directly, we have these dwellings that do not conform to local zones, meaning they are commercial or industrial and not residential. And as such, they do not meet all of the safety requirements that the building code requires for residential property, and those are usually fire code requirements. We've had a lot of tragedies in the City of New York with people occupying buildings contrary to the C of O, dying in the fires as a result.

"In sum, the bill would reward illegal conversions to the detriment of the safety and the quality of life of the residents of these buildings and would negatively affect the city's industrial employment and tax base.

"Unknown numbers of the buildings would be covered, regardless of the

appropriateness of the residential uses in the neighborhood, the appropriateness of the illegal units in the building or their proximity to other manufacturing uses, or the underlying safety of the units, fire or for residential use."

These are very, very compelling statements. They come from the City of New York. And obviously the Building Department and other agencies within the City of New York had an input into it.

Now, Senator Dilan has indicated to me that as a result of these concerns, chapter amendments are being prepared. I've not seen them, and so obviously I don't know their complete content. But if they address these concerns in some meaningful way, then obviously we should consider them.

But I suggest to the sponsor that in view of this statement, these facts that have been presented to us by the City, that it would be appropriate to put those chapter amendments together and bring this bill back with the chapter amendments and we'll consider it in the light of those changes or proposals.

To me, that makes a great deal of sense.

But I think to move forward on this bill today with this memo in front of us is a big mistake, and so I will be voting no.

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

Seeing none, debate is closed.

The Secretary will please ring the bells.

Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, to explain his vote.

SENATOR DILAN: Yes, thank you very much, Mr. President.

I just want to indicate that this bill makes four important changes to the Loft Law of multiple dwellings.

First, it makes the law permanent, and it also brings lofts and commercial

buildings that have been converted to residential use without proper certificates of occupancy under the Loft Law.

Also, it provides owners of newly covered buildings with two years to bring their buildings into compliance and allows them to legally collect rent during that period.

And lastly, it provides protections to tenants in newly covered buildings and allows them to have input into the legalization process necessary to bring these buildings to code.

Also, I just want to indicate that the memorandum that was issued by the City of New York is -- it was like a five-page memo and addresses issues that are not necessarily true. I don't know who put the memo together.

But in essence, to respond to Senator Padavan, the expected number of buildings that will be affected by the passage of this bill is about 300 buildings and will affect 3,036 units, mostly in Lower Manhattan and Brooklyn.

And safety is the major concern.

By doing this bill within two years, you will ensure that there will be fire safety within these buildings. And I urge my colleagues to vote for it. Thank you.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 758 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 28.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

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

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

ACTING PRESIDENT CRAIG JOHNSON:

Returning to the order of motions and resolutions.

Senator Klein.

SENATOR KLEIN: On behalf of Senator Serrano, on page 23 I offer the following amendments to Calendar Number 448, Senate Print Number 7128, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

SENATOR KLEIN: On behalf of Senator L. Krueger, on page 29 I offer to Calendar Number 581, Senate Print Number 4784, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

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

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein, the desk is clear.

SENATOR KLEIN: There being no further business, Mr. President, I move that we adjourn until Wednesday, June 9th, at

3:00 p.m.

ACTING PRESIDENT CRAIG JOHNSON: There being no further business to come before the Senate, on motion, the Senate stands adjourned until Wednesday, June 9th, at 3:00 p.m.

(Whereupon, at 6:08 p.m., the Senate adjourned.)