NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 23, 2011

3:10 p.m.

REGULAR SESSION

SENATOR CARL L. MARCELLINO, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MARCELLINO: The Senate will come to order.

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

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

ACTING PRESIDENT MARCELLINO: The invocation today will be given by Father John Peter Rosson, of St. Mary's Roman Catholic Church, "Our Lady of the Lake," in Cooperstown.

REVEREND ROSSON: Good and gracious God, shine Your light on the most gifted areas of our lives. Give understanding of how to utilize our gifts effectively so that we may fulfill our calling and our destinies.

With joy and satisfaction, allow us to be helpers of humanity, exuding kindness, love and humility to lift up and improve the lives of others for the betterment of all Your people of New York

State, from Buffalo to Brooklyn.

Lord, we ask You to release in each of us Your creative spirit. We ask for open minds and open hearts, that we may be clever and inventive in identifying solutions to complex problems in our world and our Excelsior State.

We ask for Your wisdom and the perseverance necessary to develop significant life-changing ideas. Release all creativity You have placed within this chamber within each Senator, enabling us to draw others near as we endeavor to live together on this earth in solidarity.

We give thanks for the many blessings we receive from You, and especially the gift of companionship, that we do not have to make our journey alone.

Bless us as we meet to discuss the business of New York State. We offer this prayer in Your name.

Amen.

ACTING PRESIDENT MARCELLINO: The reading of the Journal.

THE SECRETARY: In Senate,

Sunday, May 22nd, the Senate met pursuant to adjournment. The Journal of Saturday, May 21, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MARCELLINO: 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 Breslin.

SENATOR BRESLIN: Thank you, Mr. President.

On behalf of Senator Krueger, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Number 5222.

ACTING PRESIDENT MARCELLINO: So ordered.

SENATOR BRESLIN: Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Libous.

If we can have some order in the house. Could you take conversations to the lounge, please. Thank you.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Young, I wish to call up her bill, Print Number 801, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 14, by Senator Young, Senate Print 801, an act to amend the Environmental Conservation Law.

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

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

SENATOR LIBOUS: Mr. President, I

now offer the following amendments.

ACTING PRESIDENT MARCELLINO: The amendments are approved.

SENATOR LIBOUS: Mr. President, amendments are offered on the following Third Reading Calendar bills:

Senator Maziarz, on page 19, Calendar Number 132, Senate Print Number 2913;

Senator LaValle, on page 21, Calendar Number 188, Senate Print Number 1449A;

Senator O'Mara, page 33, Calendar Number 401, Senate Print Number 4744;

Senator LaValle, page number 44, Calendar Number 530, Senate Print Number 1857;

Senator Gallivan, page number 45, Calendar Number 539, Senate Print Number 4133;

Senator Grisanti, page number 48, Calendar Number 586, Senate Print Number 3497;

Senator Johnson, page number 50, Calendar Number 606, Senate Print Number 4740A;

Senator Bonacic, page number 36, Calendar Number 441, Senate Print Number 4577;

Senator DeFrancisco, page number 48, Calendar Number 581, Senate Print Number 2857;

And Senator Zeldin, page 53,

Calendar Number 639, Senate Print Number 4600.

Mr. President, I now move that these bills retain their place on the order of third reading.

ACTING PRESIDENT MARCELLINO: The amendments are accepted and approved, and the bills will retain their place on the Third Reading Calendar.

SENATOR LIBOUS: Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: You're welcome, Senator Libous.

SENATOR LIBOUS: Mr. President, I believe that Senator Valesky has a privileged resolution at the desk. May we read its title and adopt the resolution at this time.

ACTING PRESIDENT MARCELLINO: The Secretary will read the title only.

THE SECRETARY: Legislative resolution by Senator Valesky, honoring Ardith Bennett upon the occasion of her designation as recipient of the 2011 Senior Citizen of the Year Award.

ACTING PRESIDENT MARCELLINO: All in favor of the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, at this time can we please take up the reading of the noncontroversial calendar.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 135, by Senator Golden, Senate Print 3151, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 180th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Squadron, to explain his vote.

SENATOR SQUADRON: Thank you,

Mr. President.

I want to commend the sponsor for this bill. It's a critically important bill that will literally save lives. I know the sponsor is aware of that. I know the City of New York has been pushing this bill for some time.

Just outside my district, but in the Williamsburg Hasidic Jewish community that I represent, a couple of weeks ago a 5-year-old boy, Joel Englander, was fatally struck by a truck on the street where he lives, playing with a group of children. His mother was watching the children.

And you can never know for sure how to prevent a tragedy like that after the fact. But the truth is a lot of folks think that these crossover, these convex mirrors would make a difference.

And in the name of Joel Englander, his father Wolff, their entire family, his remaining siblings, his mother, I want to thank the sponsor and thank this body for taking up this bill and passing it. It's rare that we have a bill that really will save lives, and this is one.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator. You will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 135 are Senators Farley, Griffo, Little, Ranzenhofer, Ritchie, Saland, Seward and Zeldin.

Ayes, 48. Nays, 8.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 195, by Senator Espaillat, Senate Print 3114A, an act to amend the Public Housing Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 223, by Senator Griffo, Senate Print 1707A --

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 267, by Senator Grisanti, Senate Print 3134, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator L. Krueger recorded in the negative.

In relation to Calendar Number 267, those recorded in the negative are Senators L. Krueger and Perkins.

Ayes, 55. Nays, 2.

ACTING PRESIDENT MARCELLINO: The bill is passed.

If we could again take conversations out of the room.

And if the members are going to vote no, please indicate clearly your position on the bill. It's not easy for the Secretary and his helpers to identify, so make sure your hand is up and you're clearly voting the way you wish to.

Continue reading, please.

THE SECRETARY: Calendar Number 304, by Senator Maziarz, Senate Print 241, an act to amend the Penal Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 305, by Senator Fuschillo, Senate Print 593A, an act to amend the Penal Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 7. This

act shall take effect on the first of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 311, by Senator Young, Senate Print 2838, an act to amend the Executive Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 412, by Senator Klein, Senate Print 614B, an act

to amend the New York State Urban Development Corporation Act.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

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

SENATOR KLEIN: Thank you, Mr. President.

This legislation would authorize the New York State Urban Development Corporation to offer loans and loan guarantees to help in the distribution of New York farm products to large food service areas.

One of the problems we've seen, even though there has been a proliferation of farmers' markets downstate, is that many inner-city neighborhoods still do not have access to fresh produce. When we look at the statistics in New York City that 38 percent of young people are either obese or overweight, clearly the problem

needs to be solved where these communities have greater access to farmers' markets.

This legislation will help do just that, providing farmers upstate with cheaper means of transporting their fresh produce to downstate consumers.

So, Mr. President, I vote yes.

ACTING PRESIDENT MARCELLINO: Senator Klein will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 428, by Senator Ritchie, Senate Print 3825, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 458, by Senator Seward, Senate Print 1684, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 459, by Senator Seward, Senate Print 1687, an act to amend Chapter 333 of the Laws of 2006.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 461, by Senator Libous, Senate Print 2401, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Rivera to explain his vote.

SENATOR RIVERA: Thank you, Mr. President.

I stand today to explain my vote to on this piece of legislation. For the rest of the session that we will have today, most of the bills that we will consider will be about either extending or, in this case, raising sales taxes or other taxes in different localities across the state.

And I stand today to say that I will

definitely bow to the knowledge of local elected officials on what is necessary in their particular counties and localities. But I rise today to point out the fact that here we are voting on the floor of the New York State Senate about raising sales taxes, which are the most regressive tax that we have, while we have had long conversations on this same floor about the fact we will not extend taxes on the wealthiest New Yorkers -- taxes that they are paying now, taxes that are not burdensome to them.

And yet we are sitting here saying that we are going to raise sales taxes in all sorts of counties across the state, thereby putting more pressure on working-class people across the state.

So I rise today -- again, I will bow to the knowledge of local elected officials about what is necessary in their counties. But I would ask folks to ask themselves, if we're going to be raising sales taxes, should we not be considering, should we not be speaking about how to extend taxes for wealthier New Yorkers, unburdensome taxes that are currently there, that will actually give us more much more revenue to

the state and to localities all across our great state.

ACTING PRESIDENT MARCELLINO: Senator Rivera, how do you vote, please?

SENATOR RIVERA: I'll be voting in the affirmative. Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Rivera will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 462, by Senator Seward, Senate Print 2716, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays,

1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 463, by Senator Libous, Senate Print 2752, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR LIBOUS: Lay it aside, please.

ACTING PRESIDENT MARCELLINO: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 468, by Senator Ranzenhofer, Senate Print 3399, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 469, by Senator Farley, Senate Print 3720, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 470, by Senator Farley, Senate Print 3721, an act to amend Chapter 489 of the Laws of 2004.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO:

Senator Parker to explain his vote.

SENATOR PARKER: Yes, to explain my vote, Mr. President.

We are here today voting on a bill that deals with mortgage recording tax. And a mortgage recording tax will raise the fees on what will it cost in that county to actually, you know, do work around mortgages and do sales around homeownership.

And as we talk about homeownership and the living conditions of the people of the State of New York, we should not forget that we only have a very short amount of time before the rent regulations in this state expire.

And particularly for New York City, it's going to mean literally millions of people who are out of homes, and being out of homes means that people will lose their jobs, people will not be doing well in school, it will have impacts on people's health. That in fact we are talking about a cataclysmic event for not just the City of New York, but the State of New York, if in fact we allow the rent regulations to expire on June 15th.

And so I'm calling on Senator Skelos

to bring a bill that actually strengthens the rent laws in the State of New York to the floor immediately so we have a vote on it so that we can in fact make sure that homeowners and renters alike can afford to live in their homes in this great state.

Thank you, Mr. President. I'll be voting nay.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Parker.

Senator Parker will be recorded in the negative.

Please announce the results.

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill passes.

THE SECRETARY: Calendar Number 471, by Senator Gallivan, Senate Print 3757, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 473, by Senator Farley, Senate Print 3770, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 476, by Senator Gallivan, Senate Print 3986, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 477, by Senator Little, Senate Print 3996, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 478, by Senator O'Mara, Senate Print 3997, an act

to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 479, by Senator Young, Senate Print 4021, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The

bill is passed.

THE SECRETARY: Calendar Number 481, by Senator Little, Senate Print 4049, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 483, by Senator Ranzenhofer, Senate Print 4164, an act to amend Chapter 579 of the Laws of 2004.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 485, by Senator O'Mara, Senate Print 4187, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 486, by Senator Little, Senate Print 4188, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 489, by Senator O'Mara, Senate Print 4232, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 490, by Senator O'Mara, Senate Print 4233, an act to amend Chapter 365 of the Laws of 2005.

ACTING PRESIDENT MARCELLINO: Read

the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 492, by Senator O'Mara, Senate Print 4482, an act to amend Chapter 366 of the Laws of 2005.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number

494, by Senator Maziarz, Senate Print 4495, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 495, by Senator Seward, Senate Print 4543, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 496, by the Senate Committee on Rules, Senate Print 4571, an act to amend Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Squadron to explain his vote.

SENATOR SQUADRON: Thank you, Mr. President.

We're running through a whole lot of bills here that I know are important to members across the state. Unfortunately, this bill is not sponsored by any member of this body, it's sponsored by the Rules Committee.

As we see, I think we have close to 30 bills today that are sponsored by members -- so far members of one party, but over the course of the day a bipartisan group of bills. I just

don't think that we should be having bills sponsored by the Rules Committee, passed by the Rules Committee. If a member of this body needs this bill, it's important to them, then that member should stand up and sponsor it.

I'm not going to be able to vote for a bill on behalf of Senator Rules. Senator Rules has not come and asked for my vote. I don't know about Senator Rules' constituents. So I vote no on this, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Squadron. You will be recorded in the negative.

Senator Liz Krueger to explain her vote.

SENATOR KRUEGER: Thank you. I would just like to go on record as ibid, I-B-I-D. I'll be voting no. Thank you.

ACTING PRESIDENT MARCELLINO: Senator Liz Krueger will be voting ibid. A negative, will be recorded in the negative.

Announce the results.

THE SECRETARY: In relation to Calendar Number 496, those recorded in the negative are Senators Dilan, Espaillat,

L. Krueger, Parker, Peralta, Rivera and Squadron.

Ayes, 53. Nays, 7.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 497, by the Committee on Rules, Senate Print 4572, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: In relation to Calendar Number 497, those recorded in the negative are Senators Adams, Dilan, Espaillat, L. Krueger, Parker, Peralta, Perkins, Rivera, and Squadron.

Ayes, 51. Nays, 9.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 501, by Senator Larkin, Senate Print 4627, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 503, by Senator Saland, Senate Print 4710, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Parker to explain his vote.

SENATOR PARKER: Thank you, Mr. President, to explain my vote.

I'm voting no on this bill, as I have on a number of the other bills that came on the calendar today, and, one, want my colleagues to know that this was not personal against their bills, nor am I trying to reject the wisdom of those county executives.

But I have sat in this chamber year after year after year and day after day after day in this session and heard people talk about unfunded mandates, talk about they're going to hold the line on taxes and how we're not going to raise taxes. And here we are, about 30 bills raising taxes of individuals in various counties in this state.

I think it's inconsistent. I think it's not the right way to go. If we're going to -- either we're going to be honest about having a real debate about how revenue is raised in this state or we're not. And yes, of course counties have the ability to raise them, but they don't have the ability to do it without us.

So you can't on one hand ask me to vote no on no additional mandates for your counties and on the other hand ask me to vote yes to tax people and get nothing for it. So you're

not providing any other additional service, you're not doing anything for anybody, all you're doing is making sure that you raise the taxes on individuals. And then at the same time giving a tax break to billionaires and millionaires through the state is not the right way to go.

We can do better than that, Mr. President. I vote no.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Parker. You will be recorded in the negative.

Announce the results, please.

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

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR OPPENHEIMER: To explain my vote.

ACTING PRESIDENT MARCELLINO: I'm sorry, Senator Oppenheimer, would you like to explain your vote? You want to save it for the next one?

(Laughter.)

SENATOR OPPENHEIMER: No, actually I was --

ACTING PRESIDENT MARCELLINO: The bill is passed, Senator.

SENATOR OPPENHEIMER: It's not major. All I'm going to say is that many of these are extenders. For the most part, most of them are extenders. These are sales tax, for the most part, or mortgage tax that have been around for years and years. And every two years we have to come back to the Senate and to the Assembly and ask to have them extended again.

It does seem a bit foolish to me that we do this every two years. I don't know why we don't simply in perpetuity just extend them. But it's sort of a way, I guess, to keep control over these taxes.

But they're merely, for the most part, extenders of what has been around for years.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer was already recorded in the affirmative. The bill has passed.

Continue reading, please.

THE SECRETARY: Calendar Number 559, by Senator Griffo, Senate Print 2322, an act

to amend the Penal Law.

SENATOR MONTGOMERY: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 627, by Senator DeFrancisco, Senate Print 3110, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 648, by Senator Ritchie, Senate Print 5157, an act in relation to the dissolution of the Oswego City Library.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 463, by Senator Libous, Senate Print 2752, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 475, by Senator Oppenheimer, Senate Print 3796, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 4. This

act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Libous, that concludes the noncontroversial reading of the calendar.

SENATOR LIBOUS: Thank you, Mr. President. Can we now go to the reading of the controversial calendar, please.

ACTING PRESIDENT MARCELLINO: The Secretary will read the controversial calendar.

Can we ring the bells, please.

The Secretary will read.

THE SECRETARY: Calendar Number 223, by Senator Griffo, Senate Print 1707A, an act to amend Chapter 912 of the Laws of 1920.

SENATOR KRUEGER: Explanation, please.

ACTING PRESIDENT MARCELLINO: Senator Griffo, an explanation has been requested by Senator Liz Krueger.

SENATOR GRIFFO: Thank you,

Mr. President. Thank you, Senator Krueger.

I'll be very brief in the explanation. What this essentially does is allow, in the State of New York, the mixed martial arts, which is a combination of wrestling, boxing and sparring. It is now in place in 45 other states.

It would place within the New York State Athletic Commission the responsibility for regulating the events and the participants to ensure safety and ring inspections and medical examinations.

ACTING PRESIDENT MARCELLINO: Senator Liz Krueger.

SENATOR KRUEGER: Thank you. Mr. President, if through you the sponsor would please yield.

ACTING PRESIDENT MARCELLINO: Senator Griffo, do you yield?

SENATOR GRIFFO: I do.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR KRUEGER: Thank you.

Would mixed martial arts as approved in this bill, 1707A, actually result in fighters

in this sport having to -- excuse me, being protected under federal and state laws to avoid exploitive and coercive promoter contracts, ensure that mixed martial arts fighters enjoy outside-the-ring protection from unscrupulous promoters, and basically parallel protections for boxers under federal law?

SENATOR GRIFFO: It's my understanding, Senator Krueger, that many of these fighters are covered. They are under contract by the organization, and there are a number of organizations. Much as Kleenex may be a brand name for tissue, the UFC is one brand name for mixed martial arts.

And under this, it is my understanding that they are afforded the same outside-the-ring protections, in many cases have better policies that are put in place as a result of their contracts to ensure and to satisfy any health concerns or issues that may be associated with an event.

And I'm not aware -- it is similar and mirrors what is done in professional boxing relative to promoters engaging in contracts. So I'm not aware of anything that would be

significantly different than already exists within some of the professional sports such as boxing.

SENATOR KRUEGER: Mr. President, if through you the sponsor would continue to yield.

ACTING PRESIDENT MARCELLINO: Senator Griffo, do you yield?

SENATOR GRIFFO: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR KRUEGER: It's my understanding that there is actual federal law, what's called the Ali Act passed in 2000, named after --

ACTING PRESIDENT MARCELLINO: Excuse me, Senator.

Can we please have some order in the house. Can we take the conversations out of the chamber.

Senator Smith, Senator Oppenheimer and the gentleman between you, please. Can we take it outside, please? Thank you.

Senator Krueger.

SENATOR KRUEGER: Thank you, Mr. President.

Again, 11 years ago Congress enacted the Muhammad Ali Boxing Reform Act, which does protect boxers from exploitive, oppressive, and unethical business practices in an industry that lacked a central body to establish standard business practices and an athletes' union to negotiate collective bargaining agreements.

My understanding is that this bill -- and then later on in 2003 New York State passed similar legislation applying to the state boxing. My understanding is no parallel protections would be applied if mixed martial arts were to become legal in our state. Are you not concerned about the record of violence and injury to fighters that have been well documented in this sport?

SENATOR GRIFFO: Well, I think -- Mr. President, through you. Senator Krueger, I think that we're always concerned about the safety of the participants as well as the fans. And I think that's one of the significant aspects of this bill, is that we understand and appreciate and respect the New York State Athletic Commission and want to ensure that they will be regulating each and every aspect of this.

And there have been a number of studies that have been done. In fact, I have a Johns Hopkins study from the School of Medicine that we know that in any sport where you engage in contact, there is a potential for an injury rate. And it was stipulated in that report that the injury rate in MMA competitions is compatible with other full-contact sports. And there is a very extensive report that talks about the efforts and things that go with the regulation of the sport to protect against those industries.

But the basic conclusion of Johns Hopkins was that this sport is in no way, even though there may be an impression based on the appearance of the matches -- but overall, the report from Johns Hopkins shows that the actual incidence of injury is not higher in this case.

SENATOR KRUEGER: Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Krueger on the bill.

SENATOR KRUEGER: I guess we could have dueling readings of reports. My reading of reports does not show a finding that this is not a more dangerous sport than many others. But

most of my concern is that we shouldn't be encouraging, by legalization, a sport that actually has as a requirement to do the most damage possible.

Research shows that there has been an undercount of the violence from this sport. Various studies have found, measuring the power of the punches applied in mixed martial arts upon a downed opponent, called ground and pound, that the punching power can be 910 kilos of force. Studies have shown that there is an underreporting of damage done to fighters in the sport in the media.

Ultimate fighting, being a fairly new phenomenon, does not have as much of a documented record of injury and death as boxing because it's not as popular, it's not as long-term as far as having a history, and not nearly as many people participate in mixed martial arts as in boxing.

But a recent article titled "When Broadcasters Fail to Show the True Picture," in Sports Illustrated, reports on how promoters and broadcasters constantly hide the results of vicious knockouts and other newsworthy events in

order to sanitize the violence of ultimate fighting.

Efforts by promoters to hide the danger of the sport has also been reported on ESPN. Quote, a school of thought that ultimate fighting -- excuse me, the ultimate fighting -- it's UFC. I'm not sure what the C stands for; one moment. The organization. That the UFC controls the telecast so fans will lose sight of the true nature of the physical damage being done. Some 13 deaths have been reported prior to the organization of the sport into current franchises. And the establishment of current rules don't allow the reported violence and outcomes of the harm and even the deaths to be confirmed.

Organized professional fights occurred in October 2007 when Sam Vázquez died in Houston, Texas, from brain damage suffered in a bout. And Douglas Dedge's death in 1998 in the Ukraine was also reported in the Times.

Of course ultimate fighting, if it had a longer history, would show more results of violence and long-term brain damage and death.

I think one of the things that

disturbs me most in comparing the rules of ultimate fighting with, say, the rules of boxing, which it's frequently compared to, is that in boxing there's a skill set that is measured in order to determine who is the winner and who is the loser of the bout, and sometimes the outcome is in fact a knockout punch or the harm done to either boxer.

But in ultimate fighting the measurement of the success of the bout is primarily knockout or submission, the amount of damage done to the opponent, the ground control -- meaning continuing to hit and do harm to the opponent when on the ground -- the takedown and the takedown's defense, and the level of aggressiveness displayed in the fight.

I know that we live in a society filled with violence. I know that children watch violence every day on TV. They can see the violence, they are already replicating the violence by performing attempts at mixed martial arts bouts on the streets and in playgrounds. I just don't believe that this state at this time should legalize this sport, which by definition gives a Good Housekeeping seal of approval to the

sport as it exists today.

I don't think we should pass a law that would allow ultimate fighting to take place in our state without even the standards and protections and rules that are mandated by federal and state law for the sport of boxing.

I don't think it is worth the few million dollars in tax revenue. I know we are supposed to stand here and talk about how critical all tax revenue is. But I think you have to balance the psychological and physical impact on our children and ourselves as a society here in New York State by if we were to support and encourage the legalization of a sport that clearly intends to make money off of the perception of extreme violence and the actual practice of extreme violence and extreme harm between the two men in the ring. Perhaps there's women's mixed martial arts, so I shouldn't be sexist. So the two people in the ring. I would have just as much concern about female mixed martial arts as male mixed martial arts.

I simply think New York should be proud of the fact that we have not allowed legalization up to this point and continue to

prevent this sport from being practiced legally for fundraising, for money-making purposes in the State of New York unless and until we establish very strict guidelines about what activities will be recognized and permitted in the ring and what protections, both in contracts and promotion and on behalf of fighters.

Who some people, I know, will stand up and say "They're choosing to go into the ring, they're choosing to participate in the sport. Why should you, Liz Krueger, say they shouldn't have the right to do it?"

Well, we as legislators endlessly, day in, day out, make tough decisions about what activities we're going to recognize as legal or illegal or approved. And I don't believe the State of New York at this time should make legal and approve formal mixed martial arts in our towns.

Thank you, Mr. President. I'll be voting no.

ACTING PRESIDENT MARCELLINO: Any other Senator wish to be heard on the bill?

Senator Parker.

SENATOR PARKER: Thank you,

Mr. President. On the bill.

ACTING PRESIDENT MARCELLINO: Senator Parker on the bill.

SENATOR PARKER: I'm actually rising to support this bill. As many of you know, I carried this bill last year. And I want to thank Senator Griffo for his leadership in making sure that this bill comes to the floor.

I think that there's some misunderstandings about this sport, about how it was developed and where we are today. I think some of the things that you've heard characterized were absolutely correct at the beginning of the sport. What's happened over time is that the sport has evolved and has taken up a lot more safeguards.

And so what you might have saw, if any of you watched and you saw like K-1 fighting, you know, those things, what you saw there is not what you see there. And some of the Shooto fights that you may see in Japan, what you see there is not what you see here. There's a lot more safeguards.

Part of the numbers that you were hearing Senator Krueger talk about, why they stop

at 2007 is that's when the new safeguards were actually put into place to make the sport more in line to what we see now in boxing. And so you don't see the kind of injuries and even the kind of violence that you once saw in the sport.

And so I think under the old circumstances I would not be standing here asking my colleagues to vote for this bill. But I think under the new rules I think that we certainly are seeing something that's worth us doing.

I want to repeat some of the things I said last year when I spoke on the bill. Because again, if we're going to talk about violence in sports and the effect on our young people in particular, we ought to have some consistency. And if we're going to in fact ban mixed martial arts, then we ought to ban football, we ought to ban hockey, we out to ban baseball. There's a lot more injury -- and we ought to ban boxing. Because there's certainly more injuries, frankly, in all of those sports than what you currently see in mixed martial arts.

In fact, the vast majority of mixed martial arts bouts are ended by submission. And

because they're ended primarily by submission -- it sounds kind of counterintuitive, but because it ends in submission as opposed to knockout, a submission is actually, long term, less injurious to an opponent than a knockout. Which, when you literally knock somebody out, what you're doing is literally rattling their brain such that the person loses consciousness. Right? Which is what you see again in boxing quite often, what you see in hockey a great deal.

You have two rules in hockey fights: Drop your equipment, and you can't hit once the person is on the ground. That's it. Other than that, you're all in. Right? That's something very different than what I think we want to promote.

What we have seen in baseball over the last couple of weeks, we just had a Yankee outfielder who got a concussion last night. We had another baseball player who has gotten hit with a pitch four times in his last six at bats. Right? Two of them were head shots. Right? And so I don't see us trying to ban baseball.

In regards to safety also, the Journal of Sports Science Medicine found that

through MMA fighters sustained half as many knockouts as boxers and thus fewer brain injuries. According to the NFL, there were 154 concussions in 2010 regular season. And that's 21 percent over the 127 concussions during the same span in 2009. And that's a jump of 34 percent from the 115 reported concussions through the eighth week of 2008.

So something like -- again, if we're going to talk about injuries and concussions and violence and collisions, you see a lot more in the NFL. And I'm certainly not -- there's no bigger NFL fan in here than I am, and I'm certainly not talking about banning it. But what I'm saying is that mixed martial arts has a lot less injuries than what you see in something like the NFL, which again we watch all of the time.

In hockey -- and I know there's a few hockey fans in here, Senator Kennedy -- 44 percent -- and we love the Sabres, right -- 44 percent of the roughly 80 reported concussions this season came from legal hits. Legal hits. So we're not even talking about fights. Right? That's a whole separate -- legal hits, 80 percent are coming with legal hits. So we're seeing

concussions all of the time.

And let me just say I talked about baseball a little bit before. They're not taking it nearly as serious in baseball. But more than a quarter of the 261 catchers -- there's 261 catchers in the major leagues, and more than a quarter of them report suffering concussions. Right?

So again, injuries are an inherent part of sports, period. And they're less in mixed martial arts than you see in some of the major sports like football, like baseball, like hockey.

We're behind every other state. So we talk about national trends, I'm not asking us to do something that no one else has done. Forty states, 40 states -- that's 90 percent of the states in the country -- have already made MMA legal. And when you're making it legal we're not simply just saying permit it, we're also creating safeguards.

So if you don't like the safeguards, right, we're the Legislature. We could actually pretend that we have some control over sporting in this state and we could actually add more

safeguards. And I'm happy to have that discussion and be engaged. I'm certainly sure that Senator Griffo is happy to be in those discussions about creating safeguards that further protect people participating in MMA in the State of New York.

But we can't ignore the economic impact of this sport. Upstate, every time that you do an MMA event in Buffalo, Senator Kennedy, or in Syracuse, Senator DeFrancisco, or in Rochester, Senator Robach, you're talking about $5.2 million per event. That's a lot of research for places upstate that are struggling.

In New York City, $11.3 million per bout -- sorry, per event. Not per bout, per event. So every time you have an event, New York City would be able to bring in $11.3 million. This is so profitable right now, Mr. President, that people are holding the events in New Jersey and having the press conferences in Times Square in New York City.

So New York residents are already viewing it. It's on cable, it's on television. Right? So we're not really safeguarding the public from it by not allowing it. All we simply

are doing is, one, overresponding to what I believe are irrational fears that are not substantiated by the science and, two, throwing away millions of dollars in economic opportunity that certainly could be coming to the State of New York.

I'm asking you to vote yes because there's an opportunity for us to both do something that's good economically for the State of New York and at the same time regulate a sport that in fact is safe already but even could be safer with the wisdom and adroit guidance of this body.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Grisanti.

SENATOR GRISANTI: I want to thank Senator Parker for having those statistics. It's 45 states, not 40 that actually have it.

I want to thank Senator Griffo for bringing this bill to the floor.

One of the things you've got to remember with regards to mixed martial arts is that the respect of the opponents that are in the ring is what actually drives this particular

sport. They are trained in either karate, they are trained in wrestling, they are trained in boxing. Which makes them, by fighting their opponent, less likely to create injury. They know where to strike, they know where to hit. They don't want to cause the damage such as boxing may cause, or football or hockey, when you're having a fight.

As far as the safety factor goes, the risk of injury, as Senator Parker pointed out, is far, far less than any other sport that is out there. The next fight for MMA actually at the Rogers Centre sold 55,000 tickets in a couple hours, for a total of $11 million. Toronto is only an hour and a half from Buffalo. That's $11 million that Buffalo is losing in economic benefit, not to mention benefits -- we've got restaurants, hotels, there's taxes that are brought to New York State. There's fees and permits, there's taxes that we get to collect in this state.

So the safety factor I believe has been shown. It is safe. The economic development you can't ignore. The money that's being brought to this state, you cannot ignore

that either. I vote in the affirmative for this bill.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Are there any other Senators wishing to be heard?

Senator Smith.

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

I rise just to briefly congratulate my colleague Senator Griffo. This has been a long time coming. You've heard the statistics that Senator Parker enunciated, as well as Senator Grisanti.

And I would just hope my colleagues recognize the importance of the sport. I know we have a couple of our champions that are here sitting on the sidelines -- not always sitting on the sidelines. But stand up so they can see what mixed martial arts looks like. And it's good to see you today.

So, Mr. President, I will be enthusiastically voting yes for Senator Griffo's bill.

ACTING PRESIDENT MARCELLINO: Are there any other Senators wishing to be heard?

Seeing none, the debate is closed. The Secretary will ring the bell.

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Libous.

SENATOR LIBOUS: Are we on the roll call yet?

ACTING PRESIDENT MARCELLINO: We haven't called the roll yet.

SENATOR LIBOUS: Are we going to be calling the roll momentarily?

ACTING PRESIDENT MARCELLINO: We are going to be calling the roll instantaneously.

SENATOR LIBOUS: Instantaneously, thank you. At this time, instantaneously, can we call the roll.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: To explain his vote: Senator Adams.

SENATOR ADAMS: Yeah, I'm going to vote for this bill. I think it's long overdue that we bring mixed martial arts here to the state, for several reasons.

I think Senator Parker raised a good point on how, in order to ensure safety in sports, we must bring sports out of the shadows and into the professional arena.

And I think that clearly the sport has evolved to the level that it's time to bring it to the State of New York, and I'm hoping others will see that as well.

So I'll be voting aye, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Adams. You will be recorded in the affirmative.

Senator DeFrancisco to explain his vote.

SENATOR DEFRANCISCO: Yes, I'm going to vote aye on the mixed martial arts bill. I just think the reasoning is inescapable.

The public wants this type of activity. The public has this type of activity

in 45 states. We in the State of New York are fighting with budget problems, and we're ignoring the ability not only to please people who want to see these activities or see these mixed martial arts events, and we're losing the revenue.

So it seems to me that it's a smart thing to do. It's the right thing to do. And lastly, it will be regulated in the State of New York when it begins and when these mixed martial arts events actually start happening.

So to me it's a very easy step to vote yes. It's logical, and it's the right thing to do. Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator DeFrancisco. You will be recorded in the affirmative.

Senator Zeldin to explain his vote.

SENATOR ZELDIN: Mr. President, I rise in the affirmative in favor of this bill.

First I want to commend Senator Griffo for his leadership. I think that maybe he deserves his own championship belt with the way that he has rallied support to this cause over the weeks and months since I've been in office.

Mixed martial arts, it's time for it

to come to New York. And I'm proud to be part of its effort today to legalize it here. I can see Madison Square Garden being filled up with contests, creating jobs, generating revenue, whether it's Western New York, upper New York, down in the city and elsewhere.

I think of staff members that are probably pretty excited right now as they watch me advocating on behalf of mixed martial arts. I think of people throughout the 3rd Senate District in Long Island, many my age who have become big fans. And now we've made a step in the right direction.

Once again, congratulations, Senator Griffo. You've done a lot to bring it to this point.

ACTING PRESIDENT MARCELLINO: Senator Zeldin will be recorded in the affirmative.

Please announce the results.

THE SECRETARY: In relation to Calendar Number 223, those recorded in the negative are Senators Bonacic, Breslin, Diaz, Farley, Fuschillo, Hannon, Huntley, L. Krueger, Lanza, LaValle, Marcellino, Oppenheimer, Perkins,

Ranzenhofer, Saland, Savino, Stewart-Cousins, and Young.

Ayes, 42. Nays, 18.

ACTING PRESIDENT MARCELLINO: The bill is passed.

The Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 559, by Senator Griffo, Senate Print 2322, an act to amend the Penal Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take --

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT MARCELLINO: I'm sorry, Senator Montgomery would like an explanation.

Senator Griffo.

SENATOR GRIFFO: Thank you, Mr. President.

I think that we've seen today in society many challenges that are confronting our figures of authority. And I've had some incidents in my district. We know that we should

have respect for authority and in some cases even fear. And when you see that diminished, when you lose respect or even when people don't fear, it causes concern.

And we've had incidents where law enforcement officers in the line of duty have been pushed around. And I think that's a very dangerous thing to happen.

So essentially what this bill will do, right now essentially if a law enforcement officer is physically accosted without any serious injury, it is strictly a violation. What this bill will do is create the crime of aggravated harassment. So that if you in any way intentionally come in contact with that officer and try to impede the enforcement of the rules and regulations that govern our communities, then you would be subject to this.

Because I think the rule of law is very essential to living in a free and democratic society. And when you have individuals who are charged with maintaining the peace being put at risk or physically abused, I think that's unacceptable. And that's a strong message that we should send.

ACTING PRESIDENT MARCELLINO: Senator Montgomery.

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

I'm looking at this bill and the language in the bill. I'm not sure that I understand what Senator Griffo is talking about when he says that he has so many police officers who have been pushed around.

ACTING PRESIDENT MARCELLINO: Are you on the bill, Senator Montgomery?

SENATOR MONTGOMERY: I'm on the bill.

ACTING PRESIDENT MARCELLINO: Senator Montgomery on the bill.

SENATOR MONTGOMERY: Okay, on the bill.

And I'm reading this language. I know he says, you know, the police officers are in such danger and they get pushed around and they get injured. And indeed, we all -- none of us want any police officer to be injured or certainly killed while on duty.

However, this bill that he is proposing here where he calls for a crime of

aggravated harassment of a police officer or a peace officer, you're guilty of that crime if you approach a police officer with the intent to harass or annoy or threaten or alarm a police officer.

So while he talks about the danger to the police officer, the language clearly is very, very different from physical harm. He is proposing that if you say the wrong thing, if the police feels threatened, feels that you're annoying him or her, you can be charged with an E felony of aggravated harassment of a police officer.

Now, Mr. President, some of us have more people in their districts who are more likely to receive this kind of charge than some of the others of us. So the way we look at this bill, I'm assuming, is very different. Senator Griffo's district may be very different from mine.

But I attended an event where a thousand people showed up over a weekend because they had all received -- from being subpoenaed, they had received court-ordered -- one of those. They were warrants. These are young people,

primarily, primarily young men of color, a thousand of them. And that's only the tip of the iceberg.

They came to a church to get their situation addressed so that they would not be automatically put into -- taken to the precinct and arrested because they had a warrant if there was any contact with a police officer.

Now, with this, any of those people being charged with this aggravated harassment of a police officer would automatically receive an E felony in addition to whatever desk warrant they had received.

So I have a particular objection to this. This is a target to certain people. We all know that there are certain communities in New York City, we have 600,000 stop-and-frisks. Most of them, the person hasn't done anything. However, there are another few hundred thousand cases where police officers stop a young person and that young person gets charged with some charge similar to this aggravated police harassment.

We cannot continue to go down this road. We cannot continue to allow police to do

the kind of policing that results in the harm of young people in certain communities because they can, because we allow them to, because we pass legislation which allows police to charge people with an E felony because they feel annoyed or they feel threatened or they say they feel threatened.

So this is a very, very dangerous legislation for us to be considering. I hope that people will hear how very, very bad this bill is and decide that we cannot allow ourselves to pass such legislation which is so very harmful to young people, particularly young people of color, particularly young men of color in certain neighborhoods in our state.

So, Mr. President, I vote no and I encourage my colleagues to join me in objecting and opposing this legislation.

ACTING PRESIDENT MARCELLINO: Senator Griffo, do you want to speak? Or do you want to let Senator -- Senator Diaz.

SENATOR DIAZ: Mr. President, would Senator Montgomery yield for a question or two?

ACTING PRESIDENT MARCELLINO: Senator Montgomery, will you yield?

I'm assuming she will.

SENATOR MONTGOMERY: I probably can't answer the questions about the motivation of this legislation because it's not my legislation. I'm simply opposing it. I just want to make that clear.

ACTING PRESIDENT MARCELLINO: With that caveat, she yields, Senator.

SENATOR DIAZ: Let me see if I hear you right. You are telling me -- see, my daughter is a police sergeant in the City of New York. You're telling me that if anyone is stopped by a police officer and that police officer thinks that the person has used foul language against the police officer, would that person be charged with this kind of law?

SENATOR MONTGOMERY: I would imagine, based on the language in this bill.

It says specifically that when a police officer feels harassed, annoyed, threatened or alarmed. So if that police officer is annoyed that someone cursed him when he stopped that person, that police officer could, based on this legislation, charge that person with an E felony for police harassment.

SENATOR DIAZ: Mr. President, would Senator Montgomery yield for another question.

ACTING PRESIDENT MARCELLINO: Senator, will you yield?

SENATOR MONTGOMERY: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: She will yield, Senator.

SENATOR DIAZ: My understanding of this bill was that the person has to physically assault a police officer. You are telling me now that that doesn't have to happen? Only if the police officer feels that, hey, you're annoying me, just because of that the person could be charged with an E felony?

SENATOR MONTGOMERY: Yes. Based on the language in this bill.

SENATOR DIAZ: One more question, Mr. President, if the Senator would yield.

ACTING PRESIDENT MARCELLINO: Senator Montgomery, will you yield for one more question?

SENATOR MONTGOMERY: Yes, I will continue to yield.

ACTING PRESIDENT MARCELLINO: She

will yield, Senator.

SENATOR DIAZ: Let me -- let me -- let me make myself clear, Senator Montgomery. You are telling this body that a police officer doesn't have to be physically assaulted, just the police officer just has to feel annoyed or just doesn't have to like the person and that person could be charged with an E felony?

SENATOR MONTGOMERY: Absolutely. If the police officer feels threatened, feels annoyed, feels harassed, this charge can be levied against that person.

SENATOR DIAZ: Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Diaz on the bill.

SENATOR DIAZ: I am a father, a proud father of my older daughter. She is a police officer in the City of New York. She's a police sergeant. And definitely I want her to be protected and to be respected.

However, after listening to Senator Montgomery's explanation of this bill and to think, to think that even myself, myself or anybody else could be stopped by a police officer

and, just because sometimes we move our hands or we do those -- many kind of gestures, and that police officer might feel disrespected, he or she might feel disrespected or annoyed because my gesture or my tone of voice or whatever, he doesn't like, and because of that I'm going to be charged with an E felony?

I thank Senator Montgomery for giving me that explanation. Because I was ready to vote yes for the bill, but after listening to her explanation there is no way I could vote yes for this kind of bill.

I always will ask for respect for a police officer. I always, even in my church, I ask my young people and the parishioners that when a police officer stop them, if they are driving, to put their hands on the wheel. And also always be respectful, calling them "yes, sir," "no, sir," "yes, ma'am," "no, ma'am," and do as they're told.

But if they might feel that -- the police officer might feel that he or she are being, you know, annoyed -- I don't like your mustache, I don't like your face, I don't like you -- and they're going to charge someone with

an E felony, this is something, something for us to think about it.

And I cannot support a bill like that. Thank you. I'm voting no.

ACTING PRESIDENT MARCELLINO: Senator Griffo.

SENATOR GRIFFO: Thank you, Mr. President.

Hopefully I can ease some of your concerns, Senator Diaz. Because I think there's still -- I'm going to try to clarify because there's still some confusion here.

And what Senator Montgomery might be doing is if you read -- and we discussed earlier the intent, the need to respect law and to abide by law. And then there's the causable action. And quite clearly the bill stipulates that the crime is considered a crime when there is shoving kicking, striking, or physical contact of the officer. Not verbally, but physical contact.

Now, the difference between the previous -- you know, the statutes that exist presently talk about assault and aggravated assault upon a police officer only when there is serious injury. So you can undertake those

arrests and charges if there was serious injury. If that contact resulted in a serious injury, then you'd have cause to make this type of charge.

What I am saying is sometimes it goes beyond that now. We've had experiences in our communities where people have had a disrespect and they have pushed officers. Maybe not really caused significant injury, but still, in my opinion, as that happens, if we condone that behavior, we see an erosion, in my opinion, of what we stand for as a society. And I think it's imperative and important that we continue to have respect for the authority figures who are trying to maintain the peace.

So this bill is clear. It only defines the crime as shoving, kicking, striking or physical contact.

ACTING PRESIDENT MARCELLINO: Senator Diaz, why do you rise?

SENATOR DIAZ: Mr. President, would Senator Griffo yield for a question.

ACTING PRESIDENT MARCELLINO: Senator, will you yield?

SENATOR GRIFFO: Sure.

ACTING PRESIDENT MARCELLINO: He's yielding.

SENATOR DIAZ: Senator Griffo, if I'm stopped by a police officer and there is no injury to the police officer but I am charged with an E felony by that officer, then the only two persons there are the police officer and myself. So it is my word against the police officer. There is no indication that there has been a physical assault on my behalf, just the police officer asserts that I assault he or she. So that had to be among the two of us, and then it is my word, without any physical evidence, it is my word against the word of the police officer.

SENATOR GRIFFO: Mr. President, through you. Senator Diaz, I believe that in the incidents that I have referred to there have actually been cameras that have captured the incidents. So obviously it is very clear. And I think this would reflect any other situation where you have interaction between an officer and a individual.

If there's no one else present, you all then can go before the criminal justice

system and that determination can be made accordingly.

But I believe in many cases now you are seeing a lot of proof or evidence of what took place on a specific area. So it's not just an individual's word. But you have cameras in many places right now that are capturing this, whether if they're on a car or they're on a building.

SENATOR DIAZ: Mr. President, will Senator Griffo yield for another question?

SENATOR GRIFFO: Sure.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR DIAZ: So in a case where there is no camera -- again, let me see if I can get you right, Senator Griffo. There is no camera. There is nothing to justify, nothing to justify or to verify the charges of the police officer. It's only his or her word against my word. Isn't that right?

SENATOR GRIFFO: Mr. President, through you. Senator Diaz, if it was a situation as you describe, it would then go to the credibility of the witnesses and the situation,

and that would have to be decided by the criminal justice system, whether it be the judiciary or the attorneys that are present in that situation after that.

SENATOR DIAZ: One more question and I'm finished.

ACTING PRESIDENT MARCELLINO: One more question, then he's finished.

SENATOR GRIFFO: I do.

ACTING PRESIDENT MARCELLINO: We have witnesses, Senator.

SENATOR DIAZ: Senator Griffo, you know, I represent people in some part of this state called the South Bronx. I don't think that I could have many cases or many indications where the word of one of the residents of the South Bronx of the City of New York are given more consideration than the word of the police officer. Even though, even though they could have been right. But it's always -- always the system in the city is always geared to believe the police officer more than the resident.

So you are asking us -- or no, let me rephrase. Are you asking us to have a leap of faith and just support this bill thinking that a

judge or someone will believe a black Puerto Rican guy with kinky hair and broken English, would believe that person better than a police officer? Are you asking us to have that leap of faith?

SENATOR GRIFFO: Mr. President, through you. Senator Diaz, I would hope that we all have some level -- while it's not perfect, that we do believe in the judicial system of this country. And when you have a situation like that, you still have that opportunity to present to a jury of peers. And there has to be unanimous verdict beyond a reasonable doubt.

So I think that, you know, the system is in place and can work. What we're trying to accomplish here is to ensure that we keep stability and preserve order in our society.

SENATOR DIAZ: I got to do one more question.

(Laughter.)

ACTING PRESIDENT MARCELLINO: Senator, we have witnesses now.

(Laughter.)

SENATOR DIAZ: One more question.

ACTING PRESIDENT MARCELLINO: One

more question. Will you yield, Senator?

SENATOR DIAZ: Senator Griffo, did you --

ACTING PRESIDENT MARCELLINO: Wait a second, wait a second.

Do you yield, Senator?

SENATOR GRIFFO: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR DIAZ: Senator Griffo, did you hear Senator Montgomery say that many cases of stop-and-search and this balance, on those cases, meaning that the majority, a great majority of those stop-and-search cases are among black and Puerto Rican, and many of them might be charged with annoying, annoying a police officer?

So if that is so, I don't see why, I don't see why, I don't know why, I don't know, I cannot visualize how could we vote for something like this.

Thank you, Mr. President.

SENATOR GRIFFO: Mr. President, through you. Senator Diaz, I respect your opinion. But again, I think there's a

mischaracterization here of the actual action here.

It cannot be just merely an annoyance or a conversation or a verbal altercation. There has to be some physical contact. And there has to be a point where beyond, as I said, the previous -- the statute that exists currently says if that contact occurs and there's an injury, you can press this charge.

What I'm saying is why do we want to wait to that level where there's that type of injury. If somebody is pushing a figure of authority who is charged with protecting and preserving the peace of our community, I think we need to assure that we do not condone that, that we find that unacceptable, and that the charges reflect that.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President. Would Senator Griffo yield for a question?

ACTING PRESIDENT MARCELLINO: Senator Griffo, do you yield?

SENATOR GRIFFO: I do.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR RIVERA: Thank you, Mr. President. Through you.

Are there charges that could be brought if there's a situation -- and as you pointed out, the current statute establishes assault and aggravated assault. Are there current statutes on the books that establish a lesser charge, maybe disorderly conduct for physical contact that occurs between someone who is speaking to a police officer and the police officer? Are there lesser charges that exist?

SENATOR GRIFFO: There are lesser charges, such as disorderly conduct or potentially even resisting arrest, but there are lesser penalties also. It would be a violation.

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

ACTING PRESIDENT MARCELLINO: Senator Rivera, on the bill.

SENATOR RIVERA: I thank you, Senator Griffo, for your answer. But based on it, I'm going to have to oppose this bill.

I certainly accept the statement that we want to make sure that police officers all over this state can perform their duties and keep us safe. But I have to absolutely agree with my colleagues, particularly with Senator Montgomery.

As we've pointed out, the bill does have language that refers to striking, shoving or kicking. However, it goes on to say "or otherwise subjects such person to physical contact." It seems to me that in certain instances where there might be some words exchanged, that if there is a reaction from the person who the police officer is speaking to, and this bill just defines physical contact, physical contact might be a slight shove.

It also does not specify whether the police officer has identified him or herself as such. If there is an undercover police officer that is entering into a battle of words with someone and someone says -- you know, says something and pushes them, all of a sudden it has turned into something else. Now that person who might have not even known that they were speaking to a police officer now finds themselves charged

with this particular charge.

I would say that I agree with the intent of the legislation that we want to make sure that we maintain respect for the rule of law across the state. But particularly considering the community that I represent, the communities that I represent and the issues that have presented themselves sometimes with law enforcement, I would have to oppose this bill.

I think that there's some changes that could be made to make it better or that there are laws that are currently on the books that can address the concerns that the legislations want to address.

Thank you, Mr. President. I will be voting in the negative.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Rivera.

Senator Adams.

SENATOR ADAMS: Thank you, Mr. President.

I have sort of mixed feelings on this bill, because no one should put their hand on a police officer while he or she is performing their duties. And I understand the spirit of

what Senator Griffo is doing. And so you sort of -- I have sort of -- I'm unclear on exactly how we can move forward with obtaining the goal of making sure that while the police officer is performing his duties he's not going to be interfered by a member of the public.

But I think Senator Montgomery raised a very important point. When you have 600,000 young people in New York City who are stopped, questioned, and frisked -- and many of those cases from those stop, question, and frisks, many of those cases grew to arrests. And the arrests were based on police officers charging the young people with disorderly conduct, resisting arrest, and assault on a police officer. They were actions that were not initiated by the initial stop, they were actions that initiated during the stop.

So there's a real concern that a police officer can make a simple stop grow into an arrest and physical contact.

And I think we have good laws on the books that protect officers. When a person assaults an officer, that's automatically a felony, assault on a police officer. And even if

the injury is minor, it's a felony. And resisting arrest is not a violation, as I think it was reportedly stated. It's not a violation, it's a misdemeanor. A person cannot resist arrest.

So with the goal of ensuring that when a police officer is carrying out his function, he's not interfered by a member of the public, I think we have some good laws on the books that would ensure that if someone assaults a police officer or resists arrest by a police officer, he or she will be arrested and there are laws on the books that protect that.

To take the principles of harassment and turn it into a felony, that's concerning to me. Because one thing we don't want to do in America, we don't to want to outpace other countries in the largest number of people who are incarcerated. Because incarceration should be reserved for the worst among our society. Not people who had a bad day, not people who are angry.

We don't want to get in the business of merely incarcerating people because we stopped them at a traffic stop and they were angry

because we stopped them. I've stopped people during my 22-year policing career where I could have easily arrested the person because he was outraged because I was giving him a summons or I told him he couldn't walk down a certain street.

But do we want to make a felony for every member of our public? Our correctional facilities should be reserved for the worst among us. They should be preserved for those who commit predatory crime -- rape, robbery, burglary, homicide, kidnapping. Should it be reserved for someone that had a dispute with a police officer or someone that just merely lost his temper?

If he does lose his or her temper to the point that they assault a police officer, put the handcuffs on them. If they lose their temper to the point that they resist arrest of the police officer, put the handcuffs on them.

But to push a felony -- and we need to really understand, that's a permanent indicator on your record. So for the rest of your life. You know, a felony is like a bad marriage. It never goes away.

(Laughter.)

ACTING PRESIDENT MARCELLINO: I wouldn't know.

(Laughter.)

SENATOR ADAMS: So to permanently give an individual a felony so every time he fills out an application to get a job he has to indicate it, "I have a felony" -- if he or she wants to become a schoolteacher, in some jurisdictions he can't become a schoolteacher. He won't be able to become a barber, he won't be able to sell real estate, he won't be able to have anything that requires a license. That's a lot.

And so, you know, I think that I'm going to vote no on this bill. I understand the desire of what Senator Griffo is attempting to do. And I would encourage any bill that will prevent people from interfering with the action of a police officer. No one should be permitted to do so.

But police officers are taught to have thick skin. Because they know, when they encounter the public, that many times in encounters with the public the public is going to be irate. No one is happy when you're driving

down Highway 87 and you're pulled over and you get hit with a speeding ticket. You're not going to say "Thank you, Officer." No one is happy if an officer comes to your home and he or she is telling you "Turn the music down."

No one is happy in an officer encounter. In the overwhelming number of encounters a police officer will have with the public, it's going to be very tense environments. And nobody is happy after that.

But we don't want to get to the point where we believe, as a state, that incarceration is the answer to all our questions. Let's protect our officers, but at the same time we have to be able to make the right calls that we're not incarcerating too many New Yorkers for just minor infractions or bad days.

So I'm going to vote nay on this bill. I understand what the sponsor is attempting to do. I commend him for doing something to ensure the safety of our police officers and peace officers. But I believe that this is going a bit too far. I'm going to vote nay on the bill.

ACTING PRESIDENT MARCELLINO: Senator Espaillat.

SENATOR ESPAILLAT: Yes, would the sponsor yield for just a couple of brief questions.

ACTING PRESIDENT MARCELLINO: Senator Griffo, do you yield?

SENATOR GRIFFO: Sure.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR ESPAILLAT: Thank you, Senator Griffo.

You mentioned that in fact there are some laws in the books already to deal with some instances where there is not a very happy interaction between the general public and police officers. Particularly you mentioned the fact that there is a resisting arrest in the books, and often we see also the obstruction of government administration.

But those two charges usually follow, are followed when there is an apprehension for another charge. So if someone commits a crime or is in the process of committing a crime and the police officer sees

that person and they try to stop him from doing so, and if they resist arrest or they obstruct the officer from conducting his or her duties, those two charges usually follow another criminal act.

But this particular bill doesn't propose that that is the case. In fact, it proposes that this is a stand-alone charge that could come at any time. A felony charge, is that correct?

SENATOR GRIFFO: That is correct. Mr. President, through you, that is correct, Senator Espaillat.

Again, it's predicated on what could be taking place. As you indicated, in many cases there is a crime being committed and an officer engages as a result of that. But there also could be a situation where there may be a fight on the street and the officers go to the fight to just break it up. And in the process of that, if you cannot control the situation and if you cannot maintain order, and if people feel that they could just physically abuse an officer that's in uniform and not pay attention to the commands that are being issued, I think that's a

problem.

SENATOR ESPAILLAT: I don't think that many of us -- if the Senator will yield.

SENATOR GRIFFO: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR ESPAILLAT: I don't think that many of us would object if the language of the bill itself was clear and precise in saying if a police officer is physically assaulted or if an aggravated assault occurred.

But in fact the language of the bill says if the police officer is harassed or annoyed. Those two acts fall very far and apart from a physical injury sustained by a police officer or aggravated assault or an assault. In fact, you know, it may be very well be that somebody is being arrested, somebody's spouse is next to them and they're upset and maybe they yell at the officer or perhaps they curse at the officer. And at that point that person could be arrested for this particular E felony. So I think that that's where the problem lies.

SENATOR GRIFFO: Mr. President, Senator Espaillat, if I may, again I want to

reiterate that potentially there may be some misreading of this in the sense that there's an indication that the intent, when we discussed it, was that we want to preserve law and order. But specifically the causable action here that we are putting on in order to be charged with this specific crime would be shoving, kicking, striking, physical contact.

It would not be a verbal kind of rhetoric that may take place or somebody may say something to somebody. So it really has to be the physical contact.

And again, the difference is right now, if that physical contact resulted in an injury, that charge exists. And I am saying that why do you want to wait. Let's prevent that injury and let's ensure people respect and pay attention to the rules of law that govern our society, and as a result protect those officers and give them that additional resource in order to continue to preserve the peace.

SENATOR ESPAILLAT: Mr. President, just one more --

ACTING PRESIDENT MARCELLINO: Senator Griffo, do you yield?

SENATOR GRIFFO: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR ESPAILLAT: In my work in the criminal justice field prior to coming to the State Legislature, I saw many cases of young men and women that were arrested for what would normally be a desk appearance ticket. Those charges were primarily theft of services, jumping the turnstile or things of that nature, that very small nature.

However, almost undoubtedly, in every case when they were booked -- handcuffed, fingerprinted and booked -- it was because there were two other charges attached to that infraction. And almost undoubtedly, every time those charges were resisting arrest and obstructing government administration.

I am very concerned that if this new law passes those will not be the charges. It will be an E felony charge that will permanently remain on the life of those individuals forever.

I think that laws are in the books already to address those other cases. And perhaps if the bill was more precise just to

specifically state that it would be physically harming a police officer, I will be able to vote for this. But in this case I will be voting in the negative, Mr. President.

ACTING PRESIDENT MARCELLINO: Seeing no other Senator wishing to be heard -- Senator Huntley wishes to be heard.

SENATOR HUNTLEY: Yes, Mr. President.

I am sure that Senator Griffo has good intentions. But I represent a district too where there's a lot of --

ACTING PRESIDENT MARCELLINO: Senator Huntley on the bill.

SENATOR HUNTLEY: -- stop-and-frisk which turns into major, major court cases for stop-and-frisk. I think we have the largest number in the city.

And also in my district, down through the years, I've seen a lot of unfair justice. I think justice should go both ways. I'd have to refer to what Senator Diaz said. When they stop someone, when they stop a young Afro-American man with nappy hair, he is never going to be the one that they're going to listen

to. And I'm saying this from experience, watching and seeing, because we have a lot of very unfair justice.

Perhaps we can change the bill a bit. But I just feel like we're just creating criminals when we don't have to.

Thank you.

ACTING PRESIDENT MARCELLINO: And seeing no other Senators wishing to be heard, debate is closed.

Ring the bells, please. Would all Senators please return to the chambers so we can get the vote going.

Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the first of November.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Please, those in the negative, raise your hands high so we can see them. Thank you.

Senator Parker, you want to explain your vote?

SENATOR PARKER: Thank you,

Mr. President. To explain my vote.

ACTING PRESIDENT MARCELLINO: Excuse me one second, Senator.

Can we have some order, please.

Thank you.

SENATOR PARKER: Thank you, Mr. President.

First let me thank my colleague Joe Griffo, who I think has all the best intentions with this bill. I agree with him that we ought to be doing everything we can, as some of my other colleagues have mentioned, to protect police and peace officers through the state.

I'm not clear that this bill does what we need it to do. On one hand, we're actually calling the bill harassment. And when you define harassment, harassment can be actions that don't necessitate a physicality. So following somebody, annoying them, threatening them, all that don't involve physicality, can be defined and in fact are defined as harassment in the law.

When you read 120.8 of the Penal Law, it actually defines assault on a peace officer or police officer, fireman, or emergency

medical service professional. So we actually already have a law that defines assault.

So today you're asking us to vote on a bill that you're calling harassment, but you're defining it in the context of assault that 120.8 already exists.

So this bill seems duplicative to me. It doesn't really do anything further to protect these men and women who do so much for us. And so this seems like a solution looking for a problem. I vote nay.

ACTING PRESIDENT MARCELLINO: Senator Parker will be recorded in the negative.

Please announce the results.

THE SECRETARY: In relation to Calendar Number 559, those recorded in the negative are Senators Adams, Diaz, Dilan, Duane, Espaillat, Grisanti, Huntley, L. Krueger, Montgomery, Parker, Peralta, Perkins, Rivera, Serrano, Squadron, and Stewart-Cousins.

Ayes, 44. Nays, 16.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Thank you,

Mr. President. Could we quickly return to motions and resolutions.

ACTING PRESIDENT MARCELLINO: Motions and resolutions.

SENATOR LIBOUS: On behalf of Senator Seward, I wish to call up his bill, Print Number 1683, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 16, by Senator Seward, Senate Print 1683, an act to amend the Environmental Conservation Law.

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

ACTING PRESIDENT MARCELLINO: Please call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

SENATOR LIBOUS: Mr. President, I offer up the following amendments.

ACTING PRESIDENT MARCELLINO: The amendments are accepted.

SENATOR LIBOUS: Mr. President, on

behalf of Senator Fuschillo, on page 19 I offer the following amendments to Calendar Number 138, Senate Print Number 3451, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: So ordered.

SENATOR LIBOUS: Mr. President, is there any further business at the desk at this time?

ACTING PRESIDENT MARCELLINO: There is no further business.

SENATOR LIBOUS: Thank you, Mr. President.

There being no further business, I move that the Senate stands adjourn until Tuesday, May 24th, at 3:00 p.m.

ACTING PRESIDENT MARCELLINO: On motion, the Senate stands adjourned until Tuesday, May 24th, at 3:00 p.m.

(Whereupon, at 5:10 p.m., the Senate adjourned.)