NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 6, 2012

3:09 p.m.

REGULAR SESSION

SENATOR JOSEPH E. ROBACH, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT ROBACH: 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 ROBACH: We are joined today by Father Peter G. Young, of the Mother Teresa Community in Albany, to give our invocation.

REVEREND YOUNG: Let us pray.

We are proud of our elected leaders, as we were of Van Buren, Fillmore, Arthur, Cleveland, Theodore and Franklin Roosevelt. May we continue the greatness of their dedicated public service to all of our New York State citizens.

May we follow in the rich tradition in the Senators that first met in Kingston five days after the Declaration of Independence.

You, O God, have provided our Senators with outstanding examples to inspire

those in this Senate chamber for committed service to all of our New York State citizens.

Amen.

ACTING PRESIDENT ROBACH: Thank you, Father.

The reading of the Journal.

THE SECRETARY: In Senate, Friday, February 3rd, the Senate met pursuant to adjournment. The Journal of Thursday, February 2nd, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

The Secretary will read.

THE SECRETARY: On page 9, Senator Maziarz moves to discharge, from the Committee on Rules, Assembly Bill Number 8904 and substitute it for the identical Senate Bill Number 6054A, Third Reading Calendar 11.

ACTING PRESIDENT ROBACH: Substitution ordered.

THE SECRETARY: On page 9, Senator Lanza moves to discharge, from the Committee on

Rules, Assembly Bill Number 8906 and substitute it for the identical Senate Bill Number 6055, Third Reading Calendar 12.

ACTING PRESIDENT ROBACH: Substitution ordered.

THE SECRETARY: On page 9, Senator Saland moves to discharge, from the Committee on Rules, Assembly Bill Number 8908 and substitute it for the identical Senate Bill Number 6121, Third Reading Calendar 16.

ACTING PRESIDENT ROBACH: Substitution ordered.

THE SECRETARY: On page 9, Senator Skelos moves to discharge, from the Committee on Rules, Assembly Bill Number 8900 and substitute it for the identical Senate Bill Number 6126, Third Reading Calendar 18.

ACTING PRESIDENT ROBACH: Substitution ordered.

THE SECRETARY: And on page 12, Senator Golden moves to discharge, from the Committee on Cities, Assembly Bill Number 8691A and substitute it for the identical Senate Bill Number 6118A, Third Reading Calendar 78.

ACTING PRESIDENT ROBACH:

Substitution ordered.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Mr. President, I believe Senator Breslin has something to say.

ACTING PRESIDENT ROBACH: Senator Breslin.

SENATOR BRESLIN: Thank you, Mr. President.

On behalf of Senator Peralta, I move to amend Senate Bill 677B by striking out the amendments made on 1/24/12 and restoring it to its previous print number, 677A.

ACTING PRESIDENT ROBACH: So ordered.

SENATOR BRESLIN: Thank you, Mr. President.

On behalf of Senator Espaillat, I move that the following bill be discharged from its respective committee and be recommitted

with instructions to strike the enacting clause: Senate Number 6071.

ACTING PRESIDENT ROBACH: So ordered.

SENATOR BRESLIN: Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Thank you, Senator Breslin.

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Marcellino, on page 14 I offer the following amendments to Calendar Number 116, Senate Print 4272A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT ROBACH: The amendments are received, and the bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On page 9 I offer the following amendments, on behalf of Senator Hannon, to Calendar Number 35, Senate Print 5880, and ask that said bill retain its place on the Third

Reading Calendar.

ACTING PRESIDENT ROBACH: The amendments are received, and the bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: On behalf of Senator Flanagan, Mr. President, I move to amend Senate Bill 4689B by striking out the amendments made on 12/9 of 2011 and restoring it to its original print number, 4689.

ACTING PRESIDENT ROBACH: So ordered.

SENATOR LIBOUS: Thank you.

And, Mr. President, on behalf of Senator Larkin, on page 14 I offer the following amendments to Calendar Number 120, Senate Print Number 4239, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT ROBACH: The amendments are received, and the bill will retain its place on the Third Reading Calendar.

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT ROBACH: Senator Libous.

SENATOR LIBOUS: Could we now please have the reading of the noncontroversial calendar.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 11, by Member of the Assembly Heastie, Assembly Print 8904, an act to amend the Insurance Law.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the same date and in the same manner as Chapter 597 of the Laws of 2011.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 12, by Member of the Assembly Lopez, Assembly Print Number 8906, an act to amend the Insurance Law.

ACTING PRESIDENT ROBACH: Read

the last section.

THE SECRETARY: Section 4. This act shall take effect on the same date and in the same manner as Chapter 559 of the Laws of 2011.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 16, by Member of the Assembly Weisenberg, Assembly Print Number 8908, an act to amend Chapter 594 of the Laws of 2011.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 18, by Member of the Assembly Silver, Assembly Print 8900, an act to amend the Insurance Law.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the same date and in the same manner as Section 5 of Chapter 598 of the Laws of 2011.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 42, by Senator Nozzolio --

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT ROBACH: The bill is laid aside.

THE SECRETARY: Calendar Number 47, by Senator Fuschillo, Senate Print 2597, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first of November.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54. Nays, 2. Senators Montgomery and Perkins recorded in the negative.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 51, by Senator Fuschillo, Senate Print 4070, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT ROBACH: Announce the results.

THE SECRETARY: In relation to Calendar Number 51, those recorded in the negative are Senators Adams, Krueger,

Montgomery, Perkins and Squadron.

Ayes, 51. Nays, 5.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 63, by Senator Flanagan, Senate Print 4391A, an act to amend the Penal Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 2. Senators Montgomery and Perkins recorded in the negative.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 78, by Member of the Assembly Heastie, Assembly Print Number 8691A, an act to amend Chapter 602 of the Laws of 2011.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 83, by Senator Ball, Senate Print 5270, an act to amend the Penal Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 2. Senators Duane and Perkins recorded in the negative.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number

88, by Senator Robach, Senate Print 565A, an act to amend the Alcoholic Beverage Control Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 97, by Senator Marcellino, Senate Print 947, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 106, by Senator Little, Senate Print 343, an act to amend the Highway Law.

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT ROBACH: The bill is laid aside.

THE SECRETARY: Calendar Number 107, by Senator Marcellino, Senate Print 944, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 113, by Senator Seward, Senate Print 2371, an

act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 115, by Senator Bonacic, Senate Print 3099A, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number

117, by Senator Fuschillo, Senate Print 4488A, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT ROBACH: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 123, by Senator Gallivan, Senate Print 4828, an act to amend the Social Services Law.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Squadron recorded in the negative.

ACTING PRESIDENT ROBACH: The

bill is passed.

THE SECRETARY: Calendar Number 126, by Senator Golden, Senate Print --

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT ROBACH: The bill is laid aside.

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

SENATOR LIBOUS: Thank you, Mr. President.

In a moment here we'll be going over the controversial reading of the calendar, and we'll be taking the bills in order. If we could just wait a second.

ACTING PRESIDENT ROBACH: If we can ring the bell and get the members to the chamber, we will shortly be starting the controversial calendar.

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT ROBACH: Senator Libous.

SENATOR LIBOUS: If we could start the controversial calendar with Calendar Number 106, please.

ACTING PRESIDENT ROBACH: We will

start the controversial calendar.

The Secretary will read Calendar Number 106.

THE SECRETARY: Calendar Number 106, by Senator Little, Senate Print 343, an act to amend the Highway Law.

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT ROBACH: Senator Little, an explanation has been asked for.

SENATOR LITTLE: Thank you. Thank you, Mr. President. I'm really pleased to be able to explain this piece of legislation.

This legislation is supported by the Adirondack Park Local Government Review Board, the Adirondack Conservation Council, and the Adirondack Association of Towns and Villages.

What currently has happened and has brought the need for this piece of legislation is, as you know, the Adirondack Park is in my district. It's certainly one of the most beautiful parks in the State of New York. The State of New York owns 3 million of the 6 million acres within the park. But it

is not an empty park. There are over 100 towns within that park, there are many roads and highways, county roads, state roads and town roads within that.

What has happened is the DEC and the state has used the laws in County Law -- in Section 212 of the Highway Law. Let me give you an example. So since the 1970s the state has bought hundreds of thousands of acres of land and put it into the Forest Preserve and they've become part of the park.

If they bought a thousand acres from Mr. Smith and a thousand acres from Mr. Jones on this side, and there is a town road that runs through it, and the town road has existed for 50 to 100 years, Mr. Jones and Mr. Smith get compensated for the land that the state purchased, it becomes part of the state park, and now the DEC decides to close the road regardless of what the town has to say.

I have two towns who have most recently had this happen, the Town of Horicon and the Town of Wells. Both of those towns have been plowing this road, maintaining the road. It is a dirt road. However, the DEC, in

taking the land on both sides, which became part of the Forest Preserve, closes the roads over the objection of the town.

Now, in the Adirondack Council's objection I will tell you they say: "The decision to close the road was the product of an open public process in which a draft of the Unit Management Plan, or UMP, was made public. A public meeting was held, DEC received public comments, and a final UMP was then submitted to the APA for approval."

I will tell you, at all of those public meetings, the town and many different organizations that I've spoken about spoke against closing the road. However, the decision to close the road was then made final.

"The fact that one town board disagreed with the outcome is hardly grounds for a wholesale revision of the current law."

Let me add that the town board are the only elected officials in this process. Everyone else is DEC, APA, appointed people.

You know, if there was a possibility of the state of being able to do adverse possession against the state, the town

certainly could have done so. But you can't do that against the State of New York.

And despite the fact that they've plowed this road, they've maintained these roads for years and years -- one of them goes back to -- the West River Road in the Town of Wells goes back to when the Town of Wells was formed. So that road has been in existence for years.

They decided to close it because it is in the Forest Preserve and land on both sides. Basically, they're taking away public access to that part of the Forest Preserve. Because I don't want to insult anyone, but probably only half the people in this room could walk into that Forest Preserve without being able to have that road once the road is closed. The disabled can't. Maybe people with heart conditions would not be able to get in it.

I even had someone say to me once, "You know, the older I get, the more I agree with you, because I realize that I'm not going to have access to the Forest Preserves because I will not going to be able to walk in and do

it."

You can't use motorized vehicles, you can't do -- this road allows for people to get into the New York State Forest Preserve that is being paid for by the New York State taxpayers.

What I am saying here is that you cannot close that road without the approval of the town. And I would hope that you will all support this bill.

Thank you.

ACTING PRESIDENT ROBACH: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you.

And it isn't, Senator Little, that I don't empathize with you, because I can tell you I had a very similar situation when I was the mayor of my community and was having a minor war with the Department of Transportation on something quite similar, roads that we had always maintained and that we were trying to make safer, and we were not able to.

So it isn't that I don't empathize with you. But it's just that this issue has quite broader implications than just

this particular situation that you have.

Because this bill removes from the DEC its authority to make a final determination as to the management of the highways in the Adirondack Park. And it's not just the highways. I think this could set a dangerous precedent. It could weaken the DEC's ability to regulate in a Forest Preserve area.

There are a lot of procedural safeguards to their decision-making and there's the opportunity for open meetings, public hearings that have been built into the DEC decision making. And it's because I think that the issue is really much larger, though I empathize with the issue that you raise. But I think it is a dangerous precedent to say that the DEC's regulations will not be listened to, will not be obeyed in the Forest Preserve areas.

So I'll be voting no, and I think there's at least a dozen other people who I recognize in the past have voted no on this issue also.

Thank you.

ACTING PRESIDENT ROBACH: Thank

you, Senator.

Senator Squadron.

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

Would the sponsor yield for a question?

ACTING PRESIDENT ROBACH: Senator Little, will you yield for a question?

SENATOR LITTLE: Yes, I would.

SENATOR SQUADRON: Thank you so much.

And I appreciate the sponsor's description of the abandonment situation that the Town of Wells went through. As I read this bill, it also applies not just to abandonment of roads, as that example did, but also to change in the locations of roads, for example. Is that correct?

SENATOR LITTLE: It could change the location of roads.

But what we have seen is it closes roads. Which, you know, you have to start considering the safety issues, and for people who live and have used that road to get to one location or another have to go another way.

But basically it takes away public access to the Forest Preserve.

SENATOR SQUADRON: If the sponsor would yield for another question.

ACTING PRESIDENT ROBACH: Do you continue to yield?

SENATOR LITTLE: Yes, I'll be glad to yield.

SENATOR SQUADRON: Thank you.

If this bill were to pass and a town wanted to change the location of a road within the Forest Preserve -- so, in other words, there would be a road that had previously been used and they wanted to cut a new one -- would that be in the town's purview? Would DEC have anything to say about that if this bill passed?

SENATOR LITTLE: Well, I suppose they would have to find other land for a new road. And hopefully they would work with the town.

What we're saying here is there is no consideration of the town which has plowed and taken care of this road and it has been part of the road system within the town, in

some cases for over a hundred years. And people have used this road.

And, you know, they put it in the unit management plan that we are now in Forest Preserve, and Forest Preserve wilderness area cannot have motorized vehicles. Therefore, they closed the road.

And as the example I gave of the one owner on one side and the one on the other, they both got compensated for the purchase of that land. But because the road was in the center, the state takes it.

SENATOR SQUADRON: Thank you. If the sponsor would continue to yield.

ACTING PRESIDENT ROBACH: Do you continue to yield, Senator Little?

SENATOR LITTLE: Yes, I continue to yield.

SENATOR SQUADRON: Thank you.

And the town would have the authority, if this bill were to pass, relative to abandonment and DEC would lose all their authority? So the town alone would have the authority without any other oversight in the forest?

SENATOR LITTLE: Oh, no, the Adirondack Park Agency has total oversight in the park for everything that takes place within the park, and they work with DEC.

But I think that they would have to start considering the town and the wishes of the town and the people of the town who elected the town board who have objected to the closure of this road. And that's not being taken into consideration.

And the precedent is that we're only talking about the roads within the Adirondack Park. And as I said, they're not major highways, and there are instances where they are in the middle of Forest Preserve. I don't think many of you have Forest Preserve in your districts, so it's not going to happen. However, it has happened in two towns in my district, over the objection of the local government and the residents and the people who live in those towns.

And, you know, it just seems so unfair that you don't consider the needs of the town and the home rule and work with the town board.

But the people that went to all these hearings and objected -- you know, I mean, everyone -- the Adirondack Mountain Club opposes this legislation. I mean, they'd like it just to be a lot of hiking through the park. Well, that's wonderful for hikers and for people who can do it.

But let's consider some of the disabled, some people with heart conditions, some small children, people with small children. They'd like to be able to -- at this point you could drive on this road, park at an area that's set aside, and then hike. They want you to walk three, four, five, six, seven, 10 miles in and then hike. And not everyone can do that.

SENATOR SQUADRON: Thank you very much.

On the bill, Mr. President.

ACTING PRESIDENT ROBACH: On the bill.

SENATOR SQUADRON: I think what the case of Senator Little brings up in terms of a town's authority and wishes being completely ignored is a good one and a strong

one and one that I would like to be supportive of.

Unfortunately, in addition to that, this bill gives carte blanche to any local government on a Forest Preserve in the Adirondack Park -- that really is one of the jewels of this state and one of the singular priorities of this state to protect -- and it takes away the state's power to protect it.

It's not just about abandonment of roads in the case of the Town of Wells and the other situation in the sponsor's district, it's also relocating a road, arguably cutting a new road, changing the location of the road. And I think that's one of the major concerns here.

Secondarily, it doesn't just give the town a say where they don't have one today, it actually takes away the say of the state agency, of DEC, as well.

And so I certainly would be supportive of a bill that was about the abandonment of roads, was about protecting the local elected officials' and local governments' role with abandonment of roads. This bill unfortunately goes beyond that, and that's why

I'm not going to be able to support it.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Senator Little.

SENATOR LITTLE: Thank you, Mr. President. If I could just respond, just for a point of clarification.

When it talks about relocation, you're not going to be able to relocate any new road in the Forest Preserve. So there won't be any relocation of a road within the Forest Preserve. We're talking about the absolute closure of the road, closure of accessibility to that section of the Forest Preserve.

ACTING PRESIDENT ROBACH: Seeing no other Senator wishing to be heard, debate is closed.

The Secretary will ring the bell.

Senator Libous.

SENATOR LIBOUS: Mr. President, just on the roll, so that we can move the progress along, members need to be in their seat while we're counting votes, and then they can scurry across the chamber and talk to each other.

But for right now, if members could get to their assigned seats, we can call the roll. Senator Hannon?

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT ROBACH: Announce the results.

THE SECRETARY: In relation to Calendar Number 106, those recorded in the negative are Senators Adams, Avella, Ball, Dilan, Duane, Espaillat, Hassell-Thompson, Krueger, LaValle, Montgomery, Oppenheimer, Parker, Peralta, Perkins, Rivera, Serrano, Squadron and Stavisky.

Ayes, 43. Nays, 18.

ACTING PRESIDENT ROBACH: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, at this time could we go to Calendar Number 42, please.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 42, by Senator Nozzolio, Senate Print 478, an act to amend the Executive Law.

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT ROBACH: Senator Breslin has asked for an explanation, Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, this measure excludes evergreen trees from the list of combustible materials and allows them to be placed in public buildings.

ACTING PRESIDENT ROBACH: Senator Krueger.

SENATOR KRUEGER: Thank you, Mr. President.

Well, last year we had a rousing debate on this bill, so I'm not going to ask Senator Nozzolio the questions again from last year, I'll just speak on the bill.

ACTING PRESIDENT ROBACH: Senator Krueger on the bill.

SENATOR KRUEGER: Thank you.

While live evergreens that have been cut down and put in pots can be beautiful, they are also, according to any number of national studies involving fire safety and fire hazards, they are ranked one of the highest hazards for drying out and catching fire, particularly when electronic ornaments are placed on them, making it all the more likely that a dried-out, dying evergreen tree can cause a fire.

I do not believe that the Building Code or the Fire Code of New York State should be overridden to allow an increased risk of fire from allowing live evergreen trees in government buildings.

As we know, because of budget cuts we are finding there are fewer and fewer government staff in these buildings to handle any of the maintenance responsibilities on a daily basis. And I would hate to support legislation that could in fact lead to a tragic fire in one of our government buildings throughout the State of New York.

I'll be voting no. Thank you,

Mr. President.

ACTING PRESIDENT ROBACH: Thank you, Senator Krueger.

Seeing no other Senator wishing to be heard, the debate is closed.

Senator Nozzolio.

SENATOR NOZZOLIO: To explain my vote.

ACTING PRESIDENT ROBACH: Let's get on the roll call and we'll get right back to you.

Ring the bell.

The Secretary will read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT ROBACH: Senator Nozzolio to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President and my colleagues, I would like to thank all my colleagues who are

supporting this measure.

I'd also like to refer to a news release of November 2011 from the New York State Department of Agriculture and Markets. Commissioner Darrel Aubertine, along with Office of General Services Commissioner RoAnn Destito, welcomed this last Christmas season a number of evergreen growers to the Capitol, where they donated trees and breathes to decorate the Capitol and the Executive Mansion for the holiday season.

It seems what's good enough for the Governor or the Commissioner of the Office of General Services and the Commissioner of Agriculture should be good for the entire government.

And I thank this body for supporting the evergreen growers of this state, who grow the best Christmas trees possible, and that I think that they certainly will be glad that this body supports their efforts.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Thank you, Senator Nozzolio.

Announce the results.

THE SECRETARY: In relation to Calendar Number 42: Ayes, 59. Nays, 2. Senators Adams and Krueger recorded in the negative.

ACTING PRESIDENT ROBACH: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President, I believe's one other bill on the controversial calendar, Calendar Number 126.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 126, by Senator Golden, Senate Print 6087A, an act to amend the Education Law.

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT ROBACH: An explanation has been requested.

Senator Flanagan.

SENATOR FLANAGAN: Thank you, Mr. President.

Senator Breslin, this bill is an amendment to Education Law Section 414. And that section of the law has to do with the use of schoolhouse and grounds surrounding that

schoolhouse. It's not a particularly lengthy section of law, but it is quite direct in its application and its language.

And we are amending that section of the law to provide some additional language that specifically deals with a number of court cases that have taken place over the last 16 to 18 years, all the way up, all the way back down, all the way back up, and all the way back down.

So this is codification of two Supreme Court cases in particular, generally referred to as the Good News Club and the Lamb's Chapel. And the specific language that we're adding into the bill that I think is the part most people are paying attention to is Section 3 under sub (c) of Education Law 414. And I don't think I necessarily need to read it, but it essentially codifies those cases and amends that section of the law.

I think it's very important to mention a couple of other things that I believe to be very important. I believe local school boards and school districts should have latitude and discretion. I believe under the

old law and with the application of this new statute they will continue to have that discretion.

There are some current concerns about what type of activities may take place within the school. I want to specifically reference an existing section of the law that I think is dispositive in many ways, and that is Section 414, the last sentence, which speaks to what may be done by boards.

And it says: "In the grounds and other property of the district, when not in use for school purposes or when the school is in use for school purposes if, in the opinion of the trustees or board of education, that use will not be disruptive of normal school operations."

So if we did nothing on the law, there's still an inherent power for school boards to have flexibility and discretion to control activities within the boundaries of the school community.

ACTING PRESIDENT ROBACH: Thank you, Senator Flanagan.

Senator Krueger.

SENATOR KRUEGER: Thank you, Mr. President.

Will Senator Golden answer questions on his bill, please.

ACTING PRESIDENT ROBACH: He hasn't spoken yet on the bill.

SENATOR KRUEGER: But he's the sponsor of the bill, Mr. President.

ACTING PRESIDENT ROBACH: He really doesn't need to yield because he hasn't spoken.

SENATOR FLANAGAN: Mr. President, I'd be happy to answer questions on the bill.

ACTING PRESIDENT ROBACH: Senator Flanagan is a co-prime. If you'd like to direct your question to him, that would be great.

SENATOR KRUEGER: Thank you, Mr. President.

Can Senator Flanagan answer why Senator Golden won't speak on his bill or answer questions on his bill?

ACTING PRESIDENT ROBACH: That's not germane, Senator Krueger. Do you have a question on the bill?

SENATOR KRUEGER: I have any number of questions, yes, thank you, Mr. President.

But just for the record, it's a little confusing to me that the sponsor of a bill would neither explain his bill or agree to answer questions on his bill, for the record.

ACTING PRESIDENT ROBACH: Senator Krueger, I think it's very appropriate, as a co-prime sponsor of the bill and the chairman of the Education Committee -- Senator Flanagan did an excellent job of explaining the bill, and I'm sure he'll do an excellent job answering your question.

SENATOR KRUEGER: Thank you, Mr. President.

Senator -- I guess let me rethink. Will the cosponsor of the bill please cede to a question.

ACTING PRESIDENT ROBACH: Senator Flanagan, will you yield for a question?

SENATOR FLANAGAN: Yes, I will.

SENATOR KRUEGER: Thank you.

Is this bill intended to apply throughout the State of New York or simply to a

specific locale within the State of New York?

SENATOR FLANAGAN: Statewide.

SENATOR KRUEGER: It's a statewide bill, thank you.

If the cosponsor would continue to yield. And we don't have co-prime sponsors, so I gather as a cosponsor of the bill would he continue to yield.

ACTING PRESIDENT ROBACH: Senator Flanagan, will you continue to yield?

SENATOR FLANAGAN: Yes, Mr. President.

SENATOR KRUEGER: The City of New York doesn't actually have a local board of education. So does this bill not apply to the City of New York?

SENATOR FLANAGAN: No, the bill does apply to the City of New York.

SENATOR KRUEGER: Mr. President, if through you Senator Flanagan would continue to yield.

SENATOR FLANAGAN: Yes, I will.

SENATOR KRUEGER: So whom in the City of New York would be making the determination as described in this bill?

SENATOR FLANAGAN: You know, Senator Krueger, that's actually a very good question. And I would reference for you, given how we have adopted and enacted and modified and amended statutes, this was a question that was raised internally.

And I can also tell you that there are at least 20 other sections of law that I'm looking at -- Election Law, Public Authorities, Education Law in about 15 different capacities that speaks to the New York City Department of Education, New York City School District, and makes reference to the Board of Education and community school boards even though there have been changes to the law.

So the applicability is clearly statewide, and it is determined by -- it also includes the City of New York.

SENATOR KRUEGER: Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT ROBACH: Senator Flanagan?

SENATOR FLANAGAN: Yes, I will.

SENATOR KRUEGER: I appreciate that answer, but it doesn't answer my

question.

In the City of New York, if this bill were to become law, who would be the entity or entities making decisions about whether or not a specific religious organization could use a school building for their activities?

SENATOR FLANAGAN: I believe it would be the New York City Department of Education.

SENATOR KRUEGER: Mr. President, if through you I could ask the sponsor an additional question.

ACTING PRESIDENT ROBACH: Senator Flanagan?

SENATOR FLANAGAN: Yes.

SENATOR KRUEGER: So again, for the record, as you as a cosponsor read this bill it would be the City Department of Education who would have the authority to approve or disapprove any religious organizations's request to use a city school building for their religious meetings?

SENATOR FLANAGAN: Yes.

SENATOR KRUEGER: Thank you.

Through you, Mr. President, if the cosponsor would continue to yield.

SENATOR FLANAGAN: Yes, I will.

SENATOR KRUEGER: Thank you.

I believe there was a change between the first version of this bill and the A print of the bill wherein, while the word "religious worship activities" was removed from the text, it remains in the title. And so I would like a clarification, if I could, of the definition of a religious meeting that is not involved with religious worship as intended by this bill.

SENATOR FLANAGAN: I'm sorry, Senator Krueger, could you just repeat that last part?

SENATOR KRUEGER: Certainly.

So the original version of the bill talked about religious worship meetings in schools, the original version of the bill. Version A amended -- removes the word "worship" and replaces it with "religious meetings." And yet the term "religious worship meetings" remains in the title.

So can you explain to me what the

difference between the original bill and the A print of the bill is when it comes to worshiping or not worshiping on Sundays in schools?

SENATOR FLANAGAN: Well, we can get into probably some type of discussion about what a title in a bill means. I think the statutory language is what would predominate if there were ever any question of interpretation, particularly if this went to litigation.

So the amended version of the bill speaks to religious meetings. The amended version of the bill takes language from the Good News Club case and the Lamb's Chapel case frankly right out of those decisions and puts it in the bill and speaks to religious conduct and religious viewpoint. It does not speak to "worship" in the language of the bill whatsoever.

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

ACTING PRESIDENT ROBACH: Senator Flanagan, do you continue to yield?

SENATOR FLANAGAN: Yes.

SENATOR KRUEGER: Thank you.

So there's been a number of different law precedents cited. The City of New York's law precedent is the Bronx Household case, which has recently been resolved, saying that the Board of Education in the City of New York, currently recognized as the Department of Education, has the authority to disapprove religious congregations holding meetings, worship services in schools on school grounds.

And yet this bill says it it's not about worship services, it's about religious congregations holding meetings in school buildings.

Can you define for me the difference between a congregation having a religious meeting in a school facility on a Sunday versus a congregation having religious worship services in a school building on a Sunday?

SENATOR FLANAGAN: No, I can't.

SENATOR KRUEGER: Mr. President, through you, if the sponsor could yield.

ACTING PRESIDENT ROBACH: Senator

Flanagan, do you continue to yield?

SENATOR FLANAGAN: Yes, I will.

SENATOR KRUEGER: Does the sponsor think they are two different things, or are they the same thing?

SENATOR FLANAGAN: Senator Krueger, if I look -- and I'm sure, as a student of the legislative process, that you have endeavored to do your own research -- there are a number of court cases in I guess like the synthesis of this legislation. There are Supreme Court cases, there are Appeals Court cases. I reference with hopefully a modicum of humor that this has been all over the courts.

What we tried to do was take the language from the Supreme Court cases, codify it into New York State law, make it applicable statewide. And we specifically did not delve into the question of defining worship, just as the courts have not done so, including the Supreme Court of the United States.

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

ACTING PRESIDENT ROBACH: Senator Flanagan, do you continue to yield?

SENATOR FLANAGAN: Yes, I will.

SENATOR KRUEGER: Thank you.

And again, the Senator is right, there have been any number of court cases in any number of courts. The Supreme Court has ruled, under the federal Constitution, public schools may be used for certain types of activities related to religion, including instruction and discussion of religious ideas, the singing of hymns, and even prayer.

But the conduct at issue in the Bronx Household case, which is the recent case that was decided, that clearly is triggering this piece of legislation at this time, is actually quite different. The Bronx Household case was over the use of a school for religious services as if the school were actually a church.

So my question again to the Senator, in the context of this bill, can he explain to me the difference between a religious service for worship in a school building on a Sunday by a congregation versus a

religious meeting in a school by a congregation on a Sunday?

SENATOR FLANAGAN: Senator Krueger, what we endeavored to do was to take the language and the holdings of the two Supreme Court cases that I've cited, put them into state law.

I believe that I've made clear through your questioning that the New York City Department of Education would be an arbiter, in your particular instance, for your local school district, but by extension by local boards of education frankly throughout the rest of the state. So there is a certain amount of latitude and discretion for that decision to be made at the local level.

None of those court cases define worship. And I'm not so sure that you want John Flanagan or Senator Krueger defining worship for people, because -- I'll put it loosely in the category of "beauty is in the eyes of the beholder" -- how one person worships may be vastly different from another. That could include verbal conduct, that could include nonverbal conduct.

So I believe that there is enough discretion for the New York City Department of Education, and through the chancellor, to make those decisions.

What we are saying is that if you look at those cases, you cannot have a limitation on free speech. And it speaks to religious conduct and religious viewpoint.

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

ACTING PRESIDENT ROBACH: Senator Flanagan, do you continue to yield?

SENATOR FLANAGAN: Yes, I do.

ACTING PRESIDENT ROBACH: Senator Krueger.

SENATOR KRUEGER: Would the cosponsor agree with me that it is inherent on our role as legislators under the Establishment Clause of the Constitution to not give rise to a sufficient appearance of endorsement of any religion or religious activities, and that if we were to do so that would in fact violate the Establishment Clause of the Constitution?

SENATOR FLANAGAN: Well, that's a

lovely hypothetical, but I'm not going to answer it because it has nothing to do with this bill. This bill is about free speech.

And if you want to bring in another piece of legislation and talk about the Establishment Clause, that's certainly your prerogative. But in the context of what we're offering here, this is not about the Establishment Clause, and that was not the crux of those court cases to begin with.

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

ACTING PRESIDENT ROBACH: Senator Flanagan, do you continue to yield?

SENATOR FLANAGAN: Yes, I will.

SENATOR KRUEGER: I don't agree with the cosponsor that this is exclusively in the domain of free speech, because while he refuses to answer the question what is religious worship, clearly this relates to religious activities by congregations in schools on Sunday.

SENATOR FLANAGAN: Senator Krueger, if I may. I have no problem with

having a colloquy and answering questions, but please don't characterize my comments.

The problem is you didn't like my answer. I answered your question, you just didn't like the answer. So if you want to get into that type of discussion, I'll be as deferential as possible, but don't mischaracterize my words.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Senator Krueger.

SENATOR KRUEGER: Mr. President, for the record, the cases that Senator Flanagan cited earlier in his discussion were in fact Establishment Clause cases, not freedom of speech cases. So I actually think that I am on point by raising the issue of the Establishment Clause of the U.S. Constitution.

And again, I can agree I am frustrated by his previous answer, but it's because I don't have an answer from Senator Flanagan. I am trying to understand the difference in definition between a religious worship service in a public school by a congregation on a Sunday and a religious

meeting by a religious congregation in a public school on a Sunday.

So yes, I am frustrated by the inability of the cosponsor to answer the question what is the difference between the two. But nonetheless, I am perfectly happy to move on with my questions about why I am concerned that this clearly does pass the line of separation of church/state and why the State of New York should not pass this legislation, even though I agree neither of us seem to be that clear on the definition of what the religious activities to take place would be.

The Supreme Court in 1971 established --

ACTING PRESIDENT ROBACH: Do you want to go on the bill, Senator Krueger?

SENATOR KRUEGER: No, I'm going to continue with a question, I'm sorry. If through you the cosponsor would yield.

SENATOR FLANAGAN: I do.

ACTING PRESIDENT ROBACH: Thank you.

SENATOR KRUEGER: Thank you.

In 1971 the Supreme Court

established a test for determining whether such a violation of the Establishment Clause has occurred: In order to avoid becoming entangled in religion, the conduct of government must have a secular purpose.

If the sponsor would yield, do we think that this bill is to ensure expansion of free speech for a secular purpose?

ACTING PRESIDENT ROBACH: Senator Flanagan, the question has already been asked. Would you yield and answer that, please?

SENATOR FLANAGAN: I'm sorry, can you repeat the question?

SENATOR KRUEGER: Certainly.

According to the Supreme Court 1971 decision for establishing whether or not there's a violation of the separation of church/state, they gave three tests. I asked you the first test: In order to avoid becoming entangled in religion, the conduct of government must have a secular purpose.

Do we think that this bill and the requirement on boards of education and departments of education to make this determination have a secular purpose? Is this

bill relating to a secular purpose for religious organizations having non-worship meetings in our schools on Sundays?

SENATOR FLANAGAN: I believe this bill is about protection of free speech and equal access.

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

ACTING PRESIDENT ROBACH: Will you continue to yield, Senator Flanagan?

SENATOR FLANAGAN: Yes, I will.

ACTING PRESIDENT ROBACH: He will.

SENATOR KRUEGER: So again, for the record, even though all of the cases cited in fact involve the Establishment Clause of the U.S. Constitution and the Supreme Court has determined that there are tests to be applied for separation of church/state under the Establishment Clause and that government should avoid becoming entangled in religion in the conduct of government -- and Test Number 2 was "must have a principal or primary effect that neither advances or inhibits religion."

Does the cosponsor believe that this bill neither advances nor inhibits religion in a government building?

SENATOR FLANAGAN: Yes.

SENATOR KRUEGER: Thank you.

And if the sponsor would continue to yield.

ACTING PRESIDENT ROBACH: Senator Flanagan?

SENATOR FLANAGAN: Yes, I will.

SENATOR KRUEGER: And the third test of the Supreme Court in defining separation of church and state, or the role of religious institutions within government, is to not foster an excessive entanglement with religion.

Given the fact that we can't even agree on what a religious meeting versus a religious worship service in a government building on a Sunday by a congregation is, does the cosponsor actually believe that this is not fostering an excessive entanglement in the definitions and functions of religion?

SENATOR FLANAGAN: I'm sorry, Senator Krueger, repeat the last part of the

question.

SENATOR KRUEGER: The third test assigned to us by the Supreme Court is that the activities by government vis-a-vis religion must not foster an excessive entanglement with religion.

Do you see the Senate passing this bill giving authorization for congregations to hold religious non-worship services in government buildings on Sundays as to not have anything to do with fostering an excessive entanglement in religion by the government?

SENATOR FLANAGAN: I don't think this has anything to do with an excessive entanglement with government and religion. It's very clear.

And I have great respect for the Constitution. And I have no idea what case you're citing if that's from 1971. I know the cases I'm looking at are 30 years beyond that. So it would be interesting to know what the name of that case is, because it might be referenced in some of the cases that I'm talking about.

But I do know this. The Good News

Club case did not define worship. I know the Lamb's Chapel case did not define worship either. I know that the Second Circuit Court of Appeals and all the other related cases have not defined worship either.

And I know there are 24 sponsors of this bill from the City of New York. And I say this with a measure of sincerity and respect, it would probably be very difficult to get unanimity amongst those 24 members as to what "worship" means.

But do I think that promotes excessive entanglement of religion with government? Absolutely not. Because to answer that question in any other way would presuppose that I am actively and my colleagues are actively looking to violate the Constitution. Nothing could be further from the truth.

SENATOR KRUEGER: On the bill, Mr. President.

ACTING PRESIDENT ROBACH: On the bill, Senator Krueger.

SENATOR KRUEGER: I am sorry that the sponsor of the bill, Senator Golden, refused to participate in this discussion today

or to answer questions on his own bill --

ACTING PRESIDENT ROBACH: Senator Krueger, I don't mean to interrupt you. But you know what -- I was going to wait till the end, but since you keep citing this, for clarity for all our Senators --

SENATOR KRUEGER: Yes, please.

ACTING PRESIDENT ROBACH: -- let me just read to you, because we have very good dialogue here and follow the rules.

In Rule Number 9 of the Senate, Section 4, subchapter (b), in the middle of the paragraph, it's in the rules he couldn't answer the question if he wanted to: "Furthermore, it shall not be an order for a Senator with the right to the floor to ask another Senator to yield for a question unless such Senator has previously spoken during debate on the matter."

So in all fairness, following the rules, it's really not relevant, germane or has anything to do with this.

So now that we've clarified that, I hope you'll stick to the bill. Thank you.

SENATOR KRUEGER: I appreciate the clarification of the rule and the fact that

the Senator who was the sponsor of the bill, Senator Golden, has the right not to answer questions on his bill.

It doesn't change the fact that I'm disappointed that he didn't choose to participate in defending his own bill. So I don't believe I am nongermane to the point.

ACTING PRESIDENT ROBACH: Well, in regard to yielding, it would be totally germane and against our rules, if it matters to you.

SENATOR KRUEGER: Thank you. And yet I'm now on the bill rather than asking any more questions about the bill.

This is clearly a bill that walks a very fine line and in my opinion crosses over the line of the separation of church/state.

I agree it is very difficult to define what is religious worship, which I think we all would agree is not allowed to take place in a public school, hence the change of language in the A print of the bill to a religious meeting of a congregation of the same people in the same place at the same time of each week wherein they usually traditionally

have religious worship meetings.

It is an extraordinarily dangerous thing for government to move down the road of recognizing any kind of established church or religious activity in our public institutions. It is perhaps most disturbing to cross that line when it comes to schools where children come and go, sometimes on weekends as well, have an expectation and their parents have an expectation that this is a public school intended to provide constitutional public education and other activities, but that these are not religious institutions.

And in fact, in the New York City case, an additional issue that was raised was the fact that because of the scheduling of school-related activities that really only certain types of religions were even allowed to take advantage of the ability to participate in their worship services in school buildings, and that is because only certain religions have their worship services on Sundays. Which again, for New York City, is basically the only day of the week when school buildings have some amount of free space available for other

community activities.

So it's both a discrimination against those who practice religions that don't have their worship or non-worship services by their congregations on a Sunday, but it also clearly, in this legislation, intends to allow the continuation of worship services in public schools that the courts have ruled, in the Bronx Household case -- excuse me, I'm saying Bronx Household, but that's not the name of the case. One second. In the, excuse me, what is named the Bronx Household of Faith. Excuse me. It was Bronx Household, but Bronx Household of Faith case -- where it was clearly determined that the City of New York Department of Education had the authority to not allow religious congregations to have their religious worship meetings by congregations in their school buildings.

The reason for this bill is to override or attempt to override this court decision that took 16 years ago to decide. The Supreme Court has chosen not to review this case, I believe on the grounds that the Supreme Court has in fact decided any number of cases

that have made clear the importance of the separation of church/state and does not allow religious organizations to provide for their religious worship activities in public schools.

I know that there are I believe the Senator said 24 members of this house who have become cosponsors. I am hoping people will read the materials carefully and think about this.

In my own city last week there were more City Council members who initially decided to cosponsor a resolution, a nonbinding resolution on this piece of legislation, and after debate and review and discussion many of them realized sometimes things are not as simple as they seem and that this would be a mistake for the City of New York to move forward in supporting this legislation, be it the Mayor's office or the City Council.

So there is a great deal to debate about the State of New York taking a significant leap forward in its historical positions that there is no government-recognized religion, that government should not become entangled in the activities of the

religion, that there shall never be any confusion about whether the government endorses or supports any specific religion or even religion, and that that is the fundamental reason why we should not pass this legislation and we should not leave to some degree to the discretion of individual boards of education to make these tough decisions.

Because in fact here on the floor of the Senate today I can't define a worship service versus a religious meeting. My colleague Senator Flanagan said he can't define that. The Supreme Court has made a best effort to define when government is overstepping and crossing into that territory.

But to put into the law at the state level the situation where individual school boards throughout the State of New York might find themselves in litigation over the definition of what is religion, what is a worship service, whom is a congregation, and whether or not they can say no, is to some degree in my opinion not only the wrong decision by this house, but it's punting answers we can't answer for ourselves to a

local, most often volunteer level.

So in fact there are people who are supporting this bill. There are also organizations that represent school boards all over the state that are opposed to this bill. And I think because they recognized that the passage of this law -- in addition to all the other complications of what is state-recognized religion, what is worship in a school versus not worship by a congregation on a Sunday, that they are extremely concerned that this not land in their laps.

And I agree with them, it shouldn't land in their laps. We should be the ones who make the tough decisions about when is the Constitution of the United States being violated, what is the separation of church/state, what is the meaning of worship, does that violate our separation of church/state if people are participating in activities in our public schools for religious purposes but there's no definition of what it is so how will these local school boards even confront this question.

There are excellent memos in

opposition that raise many, many issues and cite many court cases that have gone through our U.S. courts and our state courts over the last 50 years. I would urge this house not to leap before it looks. Don't jump into a situation where you are voting for a bill that, in fairness, you may have trouble understanding. I think the two of us so far who have debated are having some trouble understanding what the meaning of the bill is.

So I would urge my colleagues to vote no on this bill today.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Thank you, Senator.

Senator Malcolm Smith.

SENATOR SMITH: Thank you very much, Mr. President. On the bill.

ACTING PRESIDENT ROBACH: On the bill.

SENATOR SMITH: Mr. President and colleagues, I appreciate the sensitivity of this issue. I appreciate the dialogue between Senator Flanagan and Senator Liz Krueger. Obviously this debate goes back as far as 1802

when Thomas Jefferson wrote that letter to the Danbury Baptist Church Association on the separation between church and state.

Perhaps we have come to a point where we may have to revisit what we now have described as that separation between church and state. And anecdotal as it may seem, think about small things, such as when you look at your dollar bill, it says "In God We Trust." When you take an oath, you raise your hand and say "so help me God." When you get sworn in on this floor, you put your hand on the Bible.

So this may be a time where we may have to revisit, as we are revisiting the way we redefine the relationship between government and community today that our Governor has so aptly put to our attention.

But the fact of the matter, Mr. President, is I think sometimes we get a little bit too caught up in what was debated here on the floor. The fact of the matter is these are real lives that these institutions are saving and helping.

We are in very challenging times, Mr. President. And it is these institutions

that your constituents go to on that weekend that need sometimes that little mental help, that needs that little support because they had a challenging week when they may have lost their that job or someone in their family may have lost their job. They need some type of support. I daresay all of you have gone to your religious institutions somewhere at some point and walked out of there feeling mentally stronger because of what was imparted to you by that particular reverend or pastor who had a sermon or whatever that day.

All they're saying is, Give us the opportunity to help. They are helping those individuals that we can't help anymore. We don't have member items. We barely get capital. And so all these organizations are trying to help those people that we can't give something to look forward to. They're not asking you to abject to your faith or belief. You can still practice your religion. You can still have your belief and all that you were grown on.

But think about the lives of the individuals that these people are impacting.

That is all they are saying. Senator Flanagan, Senator Golden, it's not about either one of them. It's about those 1200 churches that are meeting and trying to help people move through the challenging parts of their life.

Colleagues, we're going to very shortly celebrate Valentine's Day. So have a heart.

(Laughter.)

SENATOR SMITH: Let them go ahead and do what they're trying to do to save other people's lives. It's not hurting you. All they're saying is let us do our job, just like we do.

Mr. President, I'll be voting aye for the bill.

ACTING PRESIDENT ROBACH: Thank you, Senator Smith.

Senator Diaz.

SENATOR DIAZ: Thank you, Mr. President.

Honestly, Senator Malcolm Smith almost made me cry.

Today I'm glad and I am happy that that side, the Republican members of the Senate

who control -- I'm sorry, I should have said on the bill. I didn't say on the bill.

The Republican members that control this Senate have taken the cry of churches in the City of New York that happens to be mainly concentrated in the Democratic areas and that most of their members are Democrats. It is commendable that the Republican Party and Senator Golden, especially Senator Golden, took this issue and in three weeks of session, in less than three weeks of session, this body already has taken this bill to the committee, passed it in the committee, and today have brought this bill to the Senate floor. Amazing.

The City of New York, the City Council is controlled by Democrats, and they still are playing with it. And not even a lousy resolution can they approve to help these churches that are located in Democratic areas.

The other chamber, controlled by Democrats, they are playing games too. Thank you, Senator Golden. Thank you, Senator. Thank you to all my colleagues here, to my Democratic colleagues that will be supporting

this bill today. This shows something, especially to the ministers in the City of New York, sometimes you have to know who your friends are when you are in need. And today you are showing here something.

I don't know if this is going to be a one-house bill. It might be a one-house bill, according to what I see. Nonetheless, nonetheless, what's happening here today is an indication of people that are concerned with the suffering. Because this is not only one religion, this is -- any religion could rent it.

And by the way, Mr. President, Mr. President, it's also proper to find out if the City of New York Department of Education rents or leases spaces from religious organizations to teach children. According to my knowledge, the City of New York Department of Education rents and leases spaces from churches, from New York organizations, to send the children there to teach them. So you English-speaking people have a saying that says whatever is good for the goose, it should be good for the gander too.

And I don't see why a congregation can't rent an auditorium on Sunday and on Saturday when the churches are not being used, rent and pay whatever the Department of Education charges, and rent that space, that auditorium, and use it. There's no children there, there's no school there, nothing is happening there. They are paying the rent, they're paying for security, they're paying for cleaning. The City of New York needs the money.

Also, the New York City Housing Authority that was having the same problem, immediately they solved the problem and said, you are allowed to do it. So one department of the city says it's okay, and the other department of the city says it's not okay.

So thank you again, Senator Golden, and members of that chamber for moving so fast in this issue. We are sure that the members of the clergy in the City of New York, at least the ones that I could get in contact with, will know that you have done a great job, a job that should be commendable.

And to all my Democratic

colleagues that will be voting for this today, thank you. We appreciate that. I'm a pastor, I'm a minister. I don't need to rent a school auditorium because the congregation that I pastor has its own building, so we don't have that problem. But there are people and other not only churches, again, religious organizations. Whatever it is, whatever faith they believe in, they could do this.

Thank you, Mr. Chairman. Thank you for this opportunity. And I'll be voting yes.

ACTING PRESIDENT ROBACH: Thank you, Senator Diaz.

Seeing no other Senator wishing to be heard, the debate is closed. The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT ROBACH: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: Yes, I just wanted to clarify a couple of points, legal points that were raised.

The comment was made repeatedly to Senator Flanagan that this was an Establishment Clause of the Constitution case. Well, what this law does is basically codify a procedure that was found to be constitutional by the United States Supreme Court.

One of the cases that's been referred to was the Lamb's Chapel case, and the question, as stated by the court: Did the district violate the First Amendment freedom of speech when it denied Lamb's Chapel the use of school premises to show religious-oriented films? It didn't say anything about -- it really had nothing to do with the establishment of religion.

The other case, the Good News Club case, the question was did the Milford Center School violate the First Amendment free speech rights of the Good News Club when it excluded the club from meeting after hours at the school. If a violation of the First Amendment occurred, was it justified by Milford's concern

that permitting the club's activities would violate the Establishment Clause? They never got to that second issue because they found that it would have been a violation of the First Amendment rights.

So this is a First Amendment case. The bill complies with the rulings of the United States Supreme Court. And we're on good solid grounds.

And also about discriminating against different religions. The rule of the school districts are simple, you can't disrupt school activities. And whether it's one church or another church, it doesn't matter what church that is. You can gain access to the school, if this bill becomes law, if you don't disrupt school activities. It's blind in relation to what religions we're talking about.

So the bill is constitutional. The bill is a good bill. And I vote aye.

ACTING PRESIDENT ROBACH: Thank you, Senator DeFrancisco. You'll be recorded in the affirmative.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank

you, Mr. President. To explain my vote.

So that there is no question, I certainly consider myself a Christian and I'm very, very much guided by my spiritual and my religious teaching, both personally as well as in my work. So there's no question there.

But I do think that this is a slippery slope. And let's be very clear, we're not talking free speech here. I want to read a couple of sentences from one of the memos that I have. It says: "The Bronx Household case developed as a result of an effort by an evangelical church to use a public school building on Sunday for the purpose of conducting religious worship services."

That's what the case was about. And that's what we argue today, that we want to give them an opportunity to continue to use the schools for their worship services.

I got your two-minute signal there.

I also want -- another sentence from this same memo, it says: "Pastor Jack Roberts, who was a named party in the Bronx Household case, has stated the goal quite

clearly of the movement in this country. It says, May there be a church in every school in New York City and grow to a large size for the glory of God." That's what this is all about.

Mr. Chairman, for that reason, I want to make sure that we continue to maintain a strong foundation in this country, based on our Constitution, that we separate the secular from the religious. I vote no.

ACTING PRESIDENT ROBACH: Senator Montgomery will be recorded in the negative.

Senator Stavisky.

SENATOR STAVISKY: Thank you, Mr. Chairman. To also explain my vote.

I'm troubled by this legislation because I recognize the need for churches to have a place to meet. It's probably a function of the real estate market and the high price of the real estate market in New York City that has caused this problem.

And the schools are a very convenient place to meet. In fact, I have here a description of the costs that every group -- not just the churches, but every group pays. Do you know who it costs to rent the athletic

field or the auditorium? Any of those facilities, it's $12 an hour. That's hardly market rate. Hardly market rate.

My major problem is with the First Amendment and the Establishment Clause, and that's been discussed at great length.

I know that the Department of Education permits religious meetings, they permit free expression of thought, they permit all sorts of meetings. But there is a distinction, in my mind, between a religious worship service and a meeting. And I have a problem there.

The fact, as I said, that they're not paying market value, and nobody is. Perhaps the New York City Department of Education may want to revisit that issue, although it seems to me we ought to be having the schools available for -- at this low price for groups that obviously can't afford fair market value.

So there is no profit to the Department of Education, and in fact I suspect they are subsidizing it. These groups do provide the pass-through, so-called

pass-through expenses, whether it be the custodial fee, the insurance costs. The security, the insurance, all of these issues are paid by each group representing the costs that are passed through.

So we have to distinguish between a worship service, which under the Establishment Clause of the United States Constitution, the First Amendment, I'm not sure this meets that test. And for that reason, Mr. President, I vote no.

ACTING PRESIDENT ROBACH: Thank you, Senator Stavisky. You will be recorded in the negative.

Are there any other Senators wishing to explain their vote?

Senator Golden.

SENATOR GOLDEN: Thank you, Mr. President.

I rise and thank the good chair of Education, John Flanagan, for his debate, and John DeFrancisco, Senator John DeFrancisco, on his explanation of our Constitution.

This amendment, Section 414 of the Education Law, is to provide the school

district shall not adopt or interpret resolutions or policies for the use of schoolhouses, grounds, or other properties of the school district that would result in exclusion or limitations of the free exercise of religion, speech, during non-school hours, even when students may be present.

This is about equal access. I hear about $12.50 and, you know, a $12 an hour. You know, we have thousands of groups that use our schools, all different groups -- for ESL, for education. And yes, this would allow for religious services. And these religious churches, given over $1 million a year just to 60 churches that we're talking about.

I've listened to about discrimination. There's 300 empty schools, 400 empty schools on Saturdays in the City of New York. After school there are hundreds of schools empty, not being utilized, that could be utilized at any time.

The Supreme Court did not rule on worship, but some here in this body feel we should. Well, we shouldn't. And we should

have equal access for all.

When these schools -- and this lawsuit is 18 years old. These churches have been in these schools for tens of years, since the 1980s, when our communities were burning down. When we seen the unfortunate reality of people being -- 2100 people killed in the streets of the City of New York, we begged for these churches to come in to help to stabilize our communities. And now we want to put them out.

Ladies and gentlemen, we need to give them equal access, more churches in our schools. Give them the free speech that they're inclined and should have.

And I vote yes. Thank you.

ACTING PRESIDENT ROBACH: Announce the results.

THE SECRETARY: In relation to Calendar 126, those recorded in the negative are Senators Duane, Krueger, Montgomery, Oppenheimer, Perkins, Squadron, and Stavisky.

Ayes, 54. Nays, 7.

ACTING PRESIDENT ROBACH: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Before everybody runs out of the chamber, we have several very important announcements.

Is there any further business at the desk at this time?

ACTING PRESIDENT ROBACH: There is none, Senator Libous.

SENATOR LIBOUS: Mr. President, today we have a birthday of one of our colleagues. Let's wish Colonel Bill Larkin a very, very happy birthday. Senator Larkin.

(Applause.)

SENATOR LIBOUS: Mr. President, could you please call on Senator Hassell-Thompson at this time, please.

ACTING PRESIDENT ROBACH: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

There will be an immediate meeting of the Democratic Conference in Room 315.

ACTING PRESIDENT ROBACH: Senator Libous.

SENATOR LIBOUS: Mr. President, I

just want to make note that when we adjourned last week, I said that we would reconvene today, the day after the Giants would win the Super Bowl. And they did. And I just want everybody to know that.

But we will not convene until tomorrow; we will stand adjourned until Tuesday, February 7th, at 11:00 a.m.

ACTING PRESIDENT ROBACH: There will be an immediate Democratic conference in Room 315.

And on motion, the Senate stands adjourned until Tuesday, February 7th, at 11:00 a.m.

(Whereupon, at 4:42 p.m., the Senate adjourned.)