NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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11:10 a.m.

REGULAR SESSION

SENATOR JOSEPH A. GRIFFO, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT GRIFFO: The Senate will come to order.

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

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

ACTING PRESIDENT GRIFFO: Joining us today to offer the invocation is Pastor Fitz Moodie, of the New Life Pentecostal Church in Spring Valley.

PASTOR MOODIE: Thank you.

I want to say thanks to my Senator, Senator David Carlucci, for inviting my wife and I to do the invocation, to offer thanks and to meet some of the greatest people in New York.

Could you bow your heads.

Our Father and God, we are so thankful unto You for this day. A people, Lord, that You have chosen, a people that You ordained, a people that You have predestinated for this hour. God, and they ask to invite Your very presence among them as they do

business for Your people.

Lord, I pray Your blessing upon each and every one. I pray Your direction. I pray that You guide, Lord, every heart and belief right now, because this day we are living in the last hour when men need to know who You are.

So, Lord, You have provided people that have been blessed to lead this state. God, give them strength, and as You give them strength, give them the sight that they will behold and see and they will lead and direct as You bid them to do.

Thank You, Lord, for this hour. And I know, Lord, deep in my heart that You have chosen the right people. Now I pray Your anointing and Your blessing upon each and every one that whatever decision they make is a decision to help this state, this nation, and a people such as this.

We thank You for your blessing as You open this session.

In Your name, we pray. Amen.

ACTING PRESIDENT GRIFFO: Thank you, Pastor.

The reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 13th, the Senate met pursuant to adjournment. The Journal of Monday, March 12th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT GRIFFO: 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 LIBOUS: Mr. President, one second, please.

Mr. President, I believe there's a resolution at the desk, Number 3176. It was previously adopted by the house on February 7th. May we have the title read and then please recognize Senator Carlucci.

ACTING PRESIDENT GRIFFO: The

Secretary will read.

THE SECRETARY: Legislative Resolution Number 3176, by Senator Carlucci, memorializing Governor Andrew M. Cuomo to proclaim March 2012 as Irish-American Heritage Month in the State of New York.

ACTING PRESIDENT GRIFFO: Senator Carlucci.

SENATOR CARLUCCI: Mr. President, today I rise to ask Governor Cuomo to proclaim March 2012 as Irish-American Heritage Month in the State of New York.

Since the early days of our nation's founding, the Irish-American experience has been ingrained in our history, our journey, and our very soul. Irish-Americans have stood tall with George Washington's army against the evils of tyranny and oppression, served with courage against our enemies in World War I and II, and answered the call to defend our nation during these current turbulent times.

Irish-Americans have always heeded the call to protect our beloved nation. We will never forget those who have paid the ultimate sacrifice, like Navy Seal Lieutenant Michael P.

Murphy, who received the first Congressional Medal of Honor for the current conflict in Afghanistan.

For generations Irish-Americans have placed an abiding faith in the same cherished values that their ancestors in Ireland have long held dear to their hearts -- a commitment to family, faith, country, and an opportunity for all.

New York State has welcomed its people with open arms. Millions of Irish-Americans arrived to our shores in New York City in the mid-19th century right here at Ellis Island. They sought to escape hunger and injustice that plagued them back home, but remaining optimistic, always looking for a better future and a brighter tomorrow, never forgetting their roots, but always embracing the land that they love.

Irish-Americans have made invaluable contributions to our society. Through their sweat and tears, they have laid miles of railroad tracks and have driven us to new frontiers, erected skyscrapers and built bridges to take us into the 21st century, and enhanced

the quality and importance of a decent education for all to enjoy.

These trailblazers have always been our leaders and our visionaries, particularly women. Irish-American women have marched our nation to new heights never imagined, like Colonel Eileen Collins, the first woman to command a space shuttle. They have shown us the meaning of healing and compassion, like Annie Sullivan, the teacher of Helen Keller, who has inspired us to persevere in the face of adversity.

Simply put, New York State would not be where we are now without the contributions that Irish-Americans have made to our state.

And it is so fitting that as we approach St. Patrick's Day, as we look to celebrate this special day on March 17th, we remember that this is an occasion to be enjoyed by all New Yorkers regardless of ethnicity. We will stand together as one people, one nation, one state to declare this month as Irish-American Heritage Month.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank

you, Senator Carlucci.

As noted, the resolution has been previously adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, I believe we have some very special guests with us today. And if you would at this time call on Senator Smith for the introduction.

ACTING PRESIDENT GRIFFO: Senator Smith.

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

Colleagues, Mr. President, I rise this morning --

ACTING PRESIDENT GRIFFO: Senator Smith, one second, please.

Can we have some order in the house, please.

Senator Smith.

SENATOR SMITH: Yes, thank you.

I rise this morning -- yesterday, Mr. President, we unanimously passed a resolution which essentially developed a city-state relationship with the Yunnan Province and Chongqing in China. A number of our colleagues

expressed the importance of the mutual relationship between China and New York and what it would do not only for our economy but also for our cultural and educational exchange opportunities.

Today we have the pleasure of having the consul general, who is with us, Sun Guoxiang, who is here.

Sun Guoxiang, would you please rise?

He is the consul general of China. And I would just ask that our body afford him the opportunity to welcome him to the floor. The most prestigious Senate body in the country of the United States, Mr. Sun Guoxiang.

(Applause.)

SENATOR SMITH: Mr. President, Mr. Xiang, just a little bit of his background.

He is now consul general to the People's Republic of China here in New York. From 2008 to 2011, he was ambassador extraordinaire of the People's Republic of China to the Socialist Republic of Vietnam. 2006 to 2008, he was the ambassador extraordinaire of the People's Republic of China to the Republic of

Turkey. 2002 to 2006, he was the ambassador extraordinaire of the People's Republic of China to the Democratic Socialist Republic of Sri Lanka and concurrently to the Republic of Maldives. And in 1993 to 2002, he was the deputy director, director, and then deputy director general of the Department of Asian Affairs, Ministry of Foreign Affairs. He has a background that is second to none.

I can best say "Ni hao" to the consul general. And again, we welcome you here to the State of New York. We look forward to that sister-state relationship. We know that so goes New York, so goes China, so goes the world. Thank you very much for being here.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator Smith.

And again we want to extend our warm welcome, indeed, our pleasure and privilege to host Consul General Sun Guoxiang. Ni hao.

I now call upon Senator Maziarz to speak.

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

I just want to join in welcoming Mr. Xiang. It was great to see him here.

And just to agree with my colleagues Senator Smith and Senator Griffo on the importance of what our relationship between New York State and the Chinese consulate general can bring to both of our respective governments. Thank you, and welcome.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I also rise to express my welcome and also the gratitude for the warmth with which we were received in China. And to also say that Senator Smith has been a great representative of this chamber and the United States in his Chinese relationships.

And we're honored to have you here today. And there's an awful lot that can happen between the United States and New York State and China, and we certainly look forward to expanding that relationship.

Thank you very much, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Stavisky.

SENATOR STAVISKY: Thank you, Mr. President.

And I too want to welcome the delegation again. Once again, I'm delighted that I represent a very large Chinese-American constituency in downtown Flushing.

But not to outdo my colleague Senator Smith, let me say to you "Xian nian kuai le."

ACTING PRESIDENT GRIFFO: Thank you, Senator Stavisky.

As noted, the resolution has been previously adopted. Again, we extend the privileges of the house to our distinguished guests.

Senator Libous.

SENATOR LIBOUS: At this time, Mr. President, we'd like to go to the noncontroversial reading of the calendar.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 300, by Senator Little, Senate Print 824, an act

to amend the Executive Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first of January.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 311, by Senator LaValle, Senate Print 5343, an act to amend the Education Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 317, by Senator Diaz, Senate Print 108, an act to amend the Penal Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first of November.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 318, by Senator Nozzolio, Senate Print 474, an act to amend the Correction Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: In relation to Calendar Number 318, those recorded in the

negative are Senators Hassell-Thompson, Montgomery, and Rivera.

Ayes, 55. Nays, 3.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 319, by Senator Young, Senate Print 744A, an act to amend the Correction Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 319 are Senators Hassell-Thompson, Montgomery and Perkins. Excuse me, Senator Hassell-Thompson in the affirmative.

Ayes, 56. Nays, 2.

ACTING PRESIDENT GRIFFO: The bill is passed.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes,

Mr. President. I would like to ask, the bill that we just voted on, 319, I was not recorded in the negative, was I?

ACTING PRESIDENT GRIFFO: You were recorded in the negative, Senator Montgomery.

SENATOR MONTGOMERY: On 319 I'm not negative. I'm in the affirmative. I was on the wrong bill.

ACTING PRESIDENT GRIFFO: The Secretary will reannounce the results to reflect the --

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT GRIFFO: Senator Libous.

SENATOR LIBOUS: I think, on behalf of the Senator, if we could have unanimous consent to change her vote.

ACTING PRESIDENT GRIFFO: Without objection, so granted.

SENATOR MONTGOMERY: Thank you.

THE SECRETARY: In relation to Calendar Number 319 --

ACTING PRESIDENT ROBACH: Senator Perkins, why do you rise?

SENATOR PERKINS: I would like

unanimous consent to have my -- I want to vote yes on 319. Thank you.

ACTING PRESIDENT ROBACH: Senator Libous? Without objection.

THE SECRETARY: In relation to Calendar Number 319: Ayes, 57. Nays, 1. Senator Hassell-Thompson recorded in the negative.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 320, by Senator Saland, Senate Print 1418, an act to amend the Correction 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.)

ACTING PRESIDENT ROBACH: Senator Rivera to explain his vote.

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

This is one of the bills that I

have debated in the Crime Victims, Crime and Corrections Committee many times, and I will do so on the floor of the Senate as well.

The issue with bills of this type is that they are not specific to the type of sex offender that we are speaking of. Level 1, 2 and 3 sex offenders need to be distinguished in bills like this.

This current bill, what it does is it relates to the employment of sex offenders. Now, I certainly agree with everyone in this chamber that when we're talking about predators and dangerous sex offenders that we should have all sorts of restrictions about where they can work or where they live.

But I do think that when it is not specified, when the level of sex offender is not specified in a bill of this type, that we must actually raise alarm, because a Level 1 sex offender and a Level 3 sex offender are very different cases.

So I wanted to make sure that that was stated for the record. I will be voting in the negative, Mr. President.

SENATOR LIBOUS: Mr. President,

can we have some order.

Senator Rivera has the floor. I'm having difficulty, there's a lot of conversations going on, please.

ACTING PRESIDENT GRIFFO: I would ask members to please take their conversations outside the chamber, staff also to conduct themselves appropriately.

Senator Rivera will be recorded in the negative.

Announce the results.

THE SECRETARY: In relation to Calendar Number 320, those recorded in the negative are Senators Hassell-Thompson, Huntley, Montgomery, Perkins and Rivera.

Ayes, 54. Nays, 5.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 321, by Senator Alesi, Senate Print 1927, an act to amend the Correction Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Perkins recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

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

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, I'm about to make some announcements, and I think it's very important for members to heed these announcements. Obviously, if you're in the chamber, you'll hear me shortly. If you're not in the chamber, I hope you're somewhere where you'll hear this or your staffs will get the message to you.

But I just want to kind of give you an outline for the day. We're going to stand at ease shortly, Mr. President, and we're going to go to conference committees. And I'll read off which committees and what time and where they'll meet in a minute.

And then I would ask members to come back to the chamber at about 2:30, and at that time I would plan on giving you the second phase as to how the schedule will pan out for the day.

So the conference committees, the B series of conference committees will take place at 12:30. The Mental Hygiene Committee: Senators McDonald, Larkin, Klein, Carlucci, Ball, Huntley, Rivera, Hearing Room A. That's Mental Hygiene, Hearing Room A.

Transportation, in Hearing Room B. Senators Fuschillo, Nozzolio, Lanza, O'Mara, Young, Dilan and Smith. That's in Hearing Room B, Transportation.

In Hearing Room C, Human Services/Labor: Senators Robach, Gallivan, Saland, Savino, Alesi is the alternate, Montgomery, and Squadron is the alternate.

I believe that I should have said this. In the Mental Hygiene, Senator Ball is the alternate, Senator Rivera is the alternate. In Transportation, Senator Young is the alternate and Senator Smith is the alternate.

That's at 12:30, those meetings.

Mental Hygiene in Hearing Room A; Transportation, Hearing Room B; Human Services/Labor in Hearing Room C.

At 1:30. Economic Development in Hearing Room A at 1:30, Senators Alesi, Bonacic, Griffo, Marcellino, Ritchie is the alternate, Perkins, Kennedy is the alternate. That's Economic Development in Hearing Room A.

Health, in Hearing Room B, will be Senators Hannon, Golden, Young, Valesky and Larkin as the alternate, Senator Krueger, and Senator Peralta as the alternate. That's Health in Hearing Room B.

Education, in Hearing Room C.: Senators Flanagan, Lanza, Ranzenhofer, Seward, Senator Saland is the alternate, Senator Addabbo, Senator Huntley is the alternate. That's Education in Hearing Room C.

Government and Local Assistance in the Assembly Parlor. Government and Local Assistance will be in the Assembly Parlor. Senators Farley, Little, Martins, Zeldin, Senator Robach as the alternate, Senator Stewart-Cousins and Senator Avella as the alternate.

Economic Development, Health,

Education, General Government will commence at 1:30. At 12:30, Mental Hygiene, Transportation, Human Services.

Mr. President, if members could come back at 2:30, there's a good possibility at that time there will be a Rules Committee meeting and I'll be able to kind of outline where we're headed from there.

So at this time, Mr. President, in lieu of the meetings that I just announced, the Senate will stand temporarily at ease.

ACTING PRESIDENT GRIFFO: The announcements are so noted, and the Senate stands at ease.

(Whereupon, the Senate stood at ease at 11:32 a.m.)

(Whereupon, the Senate reconvened at 5:03 p.m.)

ACTING PRESIDENT GRIFFO: The Senate will come to order.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be a meeting of the Rules Committee at 5:45 in the Majority Conference Room.

ACTING PRESIDENT GRIFFO: Meeting

of the Rules Committee in the Majority Conference Room, Room 332.

SENATOR SKELOS: And the Senate will stand at ease.

ACTING PRESIDENT GRIFFO: We will continue to stand at ease.

(Whereupon, the Senate stood at ease at 5:04 p.m.)

(Whereupon, the Senate reconvened at 6:24 p.m.)

ACTING PRESIDENT GRIFFO: The Senate will come to order.

Senator Libous.

SENATOR LIBOUS: Mr. President, for the purposes of planning for the long evening ahead of us -- the very long evening ahead of us -- the Senate will continue to stand at ease until 7:30.

And, Senator Breslin, do you want to make an announcement?

ACTING PRESIDENT GRIFFO: Senator Breslin.

SENATOR BRESLIN: Yes, there will be a conference in the Democratic Conference Room immediately after retrieval of food, if it's

here.

ACTING PRESIDENT GRIFFO: There will be a meeting of the Democratic Conference in the Democratic Conference Room.

SENATOR LIBOUS: And we will reconvene at about 7:30.

ACTING PRESIDENT GRIFFO: The Senate stands at ease until approximately 7:30.

The Senate is at ease.

(Whereupon, the Senate stood at ease at 6:25 p.m.)

(Whereupon, the Senate reconvened at 9:10 p.m.)

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: Can we return to motions and resolutions, please.

ACTING PRESIDENT FLANAGAN: Motions and resolutions.

SENATOR LIBOUS: Mr. President, on behalf of Senator Maziarz, on page 14 I offer the following amendments to Calendar Number 254, Senate Print 168, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Gallivan, on page 13 I offer the following amendments to Calendar Number 238, Print Number 6069, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Libous.

SENATOR LIBOUS: Mr. President, can we please return to reports of standing committees. I believe there's a report of the Rules Committee at the desk.

ACTING PRESIDENT FLANAGAN: Reports of standing committees.

The Secretary will read.

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

Senate Print 6696, by Senator Nozzolio, an act to amend the State Law; and

Senate 6698, by Senator Skelos, Concurrent Resolution of the Senate and Assembly proposing an amendment to Article 3 of the Constitution.

SENATOR LIBOUS: Mr. President, I move to accept the report of the Rules Committee.

ACTING PRESIDENT FLANAGAN: All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Those opposed, nay.

(Response of "Nay.")

SENATOR BRESLIN: Point of order.

ACTING PRESIDENT FLANAGAN: The Rules report is adopted.

Senator Breslin.

SENATOR BRESLIN: We don't have the supplemental on our desks, Mr. President. That is the point.

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: To the Senator's point, neither do we. And we have not taken up the bills yet, we're just accepting the report of the Rules Committee at this time. And I believe

they're being passed out. And by the time we get to the reading of the noncontroversial calendar with Calendar Number 363, I believe it will be on the desks.

ACTING PRESIDENT FLANAGAN: Senator Libous, the Rules report has been accepted, and we await the further distribution of the supplemental calendar.

SENATOR LIBOUS: Thank you.

(Pause.)

SENATOR LIBOUS: Mr. President, does everybody have a copy of the calendar now?

ACTING PRESIDENT FLANAGAN: Senator Libous, the calendar has been fully distributed throughout the house.

SENATOR LIBOUS: Thank you, Mr. President.

At this time can we have the noncontroversial reading of Calendar Number 21A, please.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 363, by Senator Nozzolio, Senate Print 6696, an act to amend the State Law.

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT FLANAGAN: The bill is laid aside.

THE SECRETARY: Calendar Number 364, by Senator Skelos, Senate Print 6698, Concurrent Resolution of the Senate and Assembly.

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT FLANAGAN: The bill is laid aside.

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

SENATOR LIBOUS: Thank you, Mr. President. Can we now have the controversial reading of Calendar Number 21A.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 363, by Senator Nozzolio, Senate Print 6696, an act to amend the State Law.

ACTING PRESIDENT FLANAGAN: Senator Dilan, I apologize. Senator Dilan, why do you rise?

SENATOR DILAN: I rise to ask several questions of the sponsor.

SENATOR LIBOUS: Senator Flanagan,

can we ask for some order in the chamber, please. Let's have the doors closed, ask members to be in their seats. And I would ask the Sergeant-at-Arms to make sure that staff members are not going in and out of the chamber for this very important debate that we're about to take up.

ACTING PRESIDENT FLANAGAN: Senator Libous, your points are well-taken.

And Senator Dilan, if I may -- Senator Skelos, why do you rise?

SENATOR SKELOS: I thought it was going to pass unanimously, and that's why I didn't get up sooner. But with your permission, Senator Dilan, if I could just make an opening statement, and then of course you can ask --

SENATOR DILAN: Oh, yes.

SENATOR SKELOS: Thank you very much.

ACTING PRESIDENT FLANAGAN: Senator Dilan, thank you.

Senator Skelos.

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

Today this Legislature is

fulfilling its constitutional responsibility to redraw state legislative districts based on population shifts over the last 10 years.

I thank Senator Nozzolio, the cochair of the Legislative Task Force on Demographic Research and Reapportionment, Mike, for your good work.

We take our responsibility seriously, and the plan before you meets several goals. It's fair and legal, it complies with the State Constitution, the U.S. Constitution, state and federal laws, and the Voting Rights Act.

The population of each district is well within the standards required by the Supreme Court. The plan preserves the cause of existing districts; the vast majority of new districts contain three-quarters of their old districts.

Our plan respects communities of interest, including the Orthodox Jewish community in Brooklyn, the growing Asian-American community in Queens, and urban interests in and around the City of Buffalo. We create the first ever Asian-American majority Senate district in Queens, and we're very proud of that. We've maintained or strengthened African-American

majority districts throughout New York City and maintained Hispanic populations where they reside.

The plan creates a 63th seat, as required by the Constitution of the State, Article 3. The 63rd seat is rooted in the Capital District and Upper Hudson Valley and will give another voice to the people who live in this area.

The plan was crafted after 23 public hearings across New York, a level of public involvement that was unprecedented. We listened to what communities were saying about our proposed lines and made many changes based on the input. Two pairs of Senate seats which were initially paired in the similar districts have been uncoupled and no longer will face primaries. As a result, this is an even stronger reapportionment plan and one I believe you can support.

Today we are also reforming the process to achieve historic and lasting change, and we thank Governor Cuomo for his leadership on this.

Our position has always been that

in order to change the process, you must change the State Constitution. That's why we're pleased we will give first passage to an amendment that creates a truly independent commission. Democrats and Republicans in both houses, majorities and minorities, will each get two appointees, giving them equal voices on the commission, and those appointees will pick the remaining two representatives.

The amendment mandates public hearings to encourage public input and requires a timely review and approval process, and it eliminates LATFOR.

This amendment and this plan is a significant step forward and one that we can all be proud of.

So at this time, Mr. President, I guess Senator Dilan will have some questions of the sponsor, Senator Nozzolio.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Skelos.

Senator Dilan.

SENATOR DILAN: Mr. President, I rise to ask several questions of the sponsor of the bill.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you yield to Senator Dilan?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan, Senator Nozzolio yields.

SENATOR DILAN: Thank you very much, Senator Nozzolio.

After 23 hearings and several business meetings of the LATFOR commission, we're here today to discuss the product or the nonproduct that was produced by LATFOR. And also I would like to discuss what was not accomplished by this commission.

So today's plan was introduced late Sunday evening. It marks the first time that LATFOR did not meet before a redistricting bill was submitted or introduced. Why, then, was a LATFOR meeting called for this morning after the task force plan was already in?

SENATOR NOZZOLIO: Mr. President, the New York State Legislative Task Force on Demographic Research and Reapportionment is the LATFOR that Senator Dilan is referring to. It

was established by Chapter 45 of the Laws of 1978. It is a task force that consists of six members, including four legislators, of which Senator Dilan is one, and two nonelected citizen representatives.

I serve as the Senate's cochairman of the task force upon designation by our Majority Leader, Senator Skelos. The other cochairman is Assemblyman Jack McEneny. The remaining members, Senator Dilan, Assemblyman Robert Oaks and citizens representatives: Senator Skelos's appointee, Welquis Ray Lopez, and Speaker Silver's representative, Roman Hedges.

I certainly know that Senator Dilan and I traveled across this state together. We conducted 23 hearings in virtually every corner of the state. And I believe the plan that was ultimately put forward by a vote today in LATFOR of 4 to 1, a bipartisan vote, was put forward as the next step in the process.

That the legislation was created, in particular, in compliance with all appropriate laws and legal precedents and protects minority voting rights. I'll be glad to discuss those

further. But in direct response to Senator Dilan's question, Mr. President, this measure was reported by LATFOR in a 4-to-1 vote in a bipartisan fashion to proceed to the next step, which is consideration by the Senate and Assembly.

SENATOR DILAN: Mr. President --

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: -- would he continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: I'll be happy to yield.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: With reference to my first question, I believe the question was why were the bills introduced before there was a vote by LATFOR.

SENATOR NOZZOLIO: Mr. President, the measure, as you can see, is a very extensive and very technical measure before us that redistricts 150 Assembly districts and now

63 Senatorial districts. It is well over 200 pages -- it is 253 pages, one of the largest legislative measures that we have to consider by this house.

That the measure was put forward in bill form and considered by LATFOR. I should hasten to add this was not a bill considered by the Rules Committee until it was enacted by LATFOR.

SENATOR DILAN: Would he continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan, Senator Nozzolio continues to yield.

SENATOR DILAN: When were these plans drafted? Do you have a date?

SENATOR NOZZOLIO: Pardon me, Senator?

Mr. President, I would ask respectfully to Senator Dilan to repeat the question.

ACTING PRESIDENT FLANAGAN: Would you please repeat the question?

SENATOR DILAN: The question was, when was the plan drafted? Does Senator Nozzolio have a date?

SENATOR NOZZOLIO: Mr. President, this plan was put forth -- again, complying with population standards, adherence to strict redistricting principles, including preserving the cores of traditional districts and maintaining traditional communities of interest. This plan put forward after the original 14 hearings were conducted by LATFOR. It was put forward in the middle of January, and that an additional nine hearings were conducted following the original pronouncement of the plan.

SENATOR DILAN: Would he continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: There have been

countless comments made in public by both you and the other cochair with regards to "We are working out the details" or "We are reaching an agreement." When were you handed a Senate proposal?

SENATOR NOZZOLIO: Throughout this process, Mr. President, the task force continually encouraged public input. We sought to increase public participation in the process. For the first time in our state's history this task force put forward an Internet interactive website that sought detailed information on the Internet, enabling the public to provide their input directly as well as put forward their own plans to the task force.

Each public hearing of the task force was video recorded, and the recordings were available for viewing on the website. At every hearing we encouraged the public to submit redistricting plans for the Senate, Assembly, and Congress.

I'm pleased to tell you that I believe this plan was the result of a very open and transparent and accessible process and, I believe, one of the most open and accessible in

the history of the State of New York.

I checked today that on the LATFOR website there were 156,512 visits to the LATFOR website. Including and within that group who visited there were also 1,831,523 hits to the LATFOR website.

The citizens have had considerable participation or ability to participate in this process. That an initial 14 hearings were held across New York State to solicit the input of residents, community organizations, and local officials. The first round of hearings were held in Syracuse, Rochester, Albany, White Plains, Binghamton, Buffalo, Queens, the Bronx, Brooklyn, Manhattan, Staten Island, Farmingdale, Old Westbury and Plattsburgh.

The task force placed 37 public service announcements in newspapers around the state, including foreign language newspaper with ads placed in Chinese, Korean and Spanish. Other public service advertisements were placed in the African-American community as well as newspapers serving the Indo-Caribbean-American community.

Over 356 people registered to speak at the 14 public hearings that we conducted as

LATFOR. In addition, hundreds of citizens submitted written statements and letters to the task force via mail, email, and faxes.

Senator Dilan's question asked for the draft release of a plan. After those initial 14 hearings, a draft plan for the State Senate and Assembly district lines were put forward on January 26, 2012. Subsequently, after the release of that plan, an additional nine public hearings were conducted in Albany; the Bronx; Brooklyn; Manhattan; Queens; Smithtown, Long Island; Syracuse, Rochester and Buffalo.

So there was certainly a huge amount of public opinion that was considered by LATFOR before the plans were put forward, during the consideration of those plans, and during the second round of hearings.

SENATOR DILAN: Would he continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Senator Nozzolio, I just want to step back one second because I think I heard you say that these plans were released on January 26. I also heard you say that for the first time we've had an interactive website.

I would just first, with respect to the first point, I believe that after we held the 14 hearings in the second round I believe there were some revisions that were made to the original proposals. And I was handed a book with maps only this morning at the LATFOR meeting.

So was there a second set of proposed lines that were released? And I believe that that was my question. And my question was, when were you handed that plan, and what was the date? I don't believe it was January 26.

With reference to the second point with respect to the Internet, it lacked being interactive. It was the same website that was used 10 years ago by LATFOR. There was nothing interactive with respect to that.

On many occasions I requested at business hearings with respect to having live-streaming of the hearings. I also wrote

several memos to both cochairs requesting the same, never getting a response. Is that how you recall that?

ACTING PRESIDENT FLANAGAN: Senator Dilan, I believe there were two questions there.

SENATOR DILAN: Two points.

ACTING PRESIDENT FLANAGAN: Which one would you rather Senator Nozzolio answer?

SENATOR DILAN: Both.

(Laughter.)

ACTING PRESIDENT FLANAGAN: He said he would yield to an additional question.

Senator Nozzolio.

SENATOR NOZZOLIO: I'd be happy to yield, Mr. President.

SENATOR DILAN: It's going to be many questions.

SENATOR NOZZOLIO: And would Senator Dilan be so kind as to repeat both questions?

SENATOR DILAN: You know, I will do this, I will repeat the question once. But I've noticed that on many occasions I'm asked to repeat the question, and that happened many times

during the course of the 23 hearings. But I will separate the questions, Mr. President.

The first question was, When were these plans drafted and do you have a date? And I'm making reference to after the second round.

SENATOR NOZZOLIO: Senator Dilan's question, Mr. President, I'd be happy to answer. That I tried to make the point that from the very first meeting of the task force, following the initial put-forward of plans, that this was a work in progress, that taking public input was a very important part of that process and that we continued to take public input.

At Senator Dilan's request and suggestion, which I thought was a very good one, during the second round of hearings we actually had those hearings not just in the daytime but also in the evening to allow a greater citizen participation. And those who were working during the day who might not be able to attend a hearing during daytime hours were afforded the opportunity in many of our second round of hearings because we conducted them in the late afternoon through the evening process.

Each public hearing -- though I

must add, Senator Dilan, it's different this year than 10 years ago. First of all, the Internet interaction was not available 10 years ago. The technology was not yet available. And the fact that each hearing was video recorded and the entire log of hearings, the video and the transcript for those hearings, were placed on the LATFOR website so citizens could review the hearings. If they couldn't attend, they'd at least be able to attend through the Internet, watch the hearings that had taken place in the past, and make their judgments on those hearings as they viewed them on the website.

That this plan was finalized after the second round of hearings, which concluded a few weeks ago, and that the metes and bounds of the process are extensive. And those metes and bounds were put together in legislative format, and that that format was completed and the bill was introduced upon its completion earlier this week.

SENATOR DILAN: Mr. President, does the Senator continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Again, with respect to timing, when did you first have a Senate plan in hand to agree upon internally or negotiate internally with the Assembly majority or even the Governor?

SENATOR NOZZOLIO: Mr. President, I'm not certain what Senator Dilan is asking, but I hope that this is responsive to his question.

That this is part of a long process, a process that began with the initial review, continued after the first drafts of plans were put forward -- I already cited the date of that delivery -- and then continued throughout the nine additional hearings that were held. They were completed just towards the end of February.

And, throughout that process, we continued to take input from the citizens who were interested in the process. And that the plans that were put forward were placed in legislative form earlier this week.

SENATOR DILAN: Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Does the Senator continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: I know that -- I believe I'm making myself really clear. The question that I asked was, when did you have the plan in your hand to negotiate with the Assembly and/or the Governor?

I know during the course of many weeks, when I was wondering what was going on, when I would ask when are we having a business meeting or when are we going to put something before the commission, all I would hear is that we are negotiating. I heard this from both cochairs.

So my question is, when did you receive that proposal to negotiate with all

parties involved?

SENATOR NOZZOLIO: Mr. President, this measure before us today was not the result of a negotiation. This was the result of a process.

What Senator Dilan may be confused with is the discussions that occurred during the congressional redistricting, which were discussions that were reflective of the master's plan as the master put forward a plan for congressional redistricting. To my knowledge, there were discussions with the Assembly about congressional redistricting, and that those conversations may or may not have reached the Governor; I do not know.

But what I do know is that the plan before us was not negotiated either with the Assembly or with the Governor. Rather, this plan that was put forward was a plan put forward by the Senate exclusively. And this plan, at least as far as I know, was put forward to have the consideration and ultimate approval of the LATFOR commission.

SENATOR DILAN: Would he continue to yield?

ACTING PRESIDENT FLANAGAN:

Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN:

Senator Dilan.

SENATOR DILAN: One more question on this point and then I'll move on.

But I know I'm not confused. And I believe that I can distinguish between the congressional lines that the federal court, I believe, will ultimately draw, perhaps as soon as tomorrow.

But my reference are to the state lines, the Assembly and the Senate. I believe that there were discussions between both cochairs and perhaps maybe even the leaders with respect to the same. And I know the process, and I know that for many cycles with respect to redistricting and reapportionment it has been the tradition that the Senate draw its lines and the Assembly draw its lines. So maybe there isn't much negotiation that goes on, but there are discussions.

So again, my question was, when did

you receive the plan to have those discussions?

SENATOR NOZZOLIO: Mr. President, these are the lines that are before us today, both the Assembly and Senate lines that were developed by LATFOR.

I am not familiar with the negotiations that Senator Dilan is asking about, and that I originally thought he was talking about news accounts that discussed negotiations or alleged -- alluded to negotiations regarding the congressional plans.

This was not a negotiated situation that we have before us rather than it is a plan that was the outgrowth of a -- what I believe a very open process that heard from hundreds of citizens. And that is a process that culminated in the completion of the plan that's before us today.

SENATOR DILAN: Mr. President, if he would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN:

Senator Dilan.

SENATOR DILAN: Just one comment before the question. And that is that I know as recently as last week and also this week I did hear news accounts with respect to negotiations. And I also heard certain comments by the Governor indicating that the second proposal showed improvement and they seemed fairer. There was also discussion about an amendment, constitutional amendment, commissions.

So apparently there were some negotiations that were going on. If you were not part of those negotiations, I would like to hear that.

SENATOR NOZZOLIO: Mr. President, I believe that certainly that these plans, our initial plan that was put forward for Senate and Assembly lines was certainly public, and that many had the opportunity to review those plans, including the Governor of the State of New York.

That those plans, in my opinion, were first drafts, and that as we proceeded to the second round of hearings and finalized the plans those certainly were made public. And it was our intention to make those plans as in total

and full compliance with the United States Constitution and the Constitution of the State of New York, the Voting Rights Act, and all other applicable federal and state statutes.

We also established a number of successes regarding improvements in deviations and looked to other issues that I'd be glad to discuss about the merits of this plan, particularly in what this plan does to preserve, protect, and restore in some cases those minority majority districts, the 13 of them in New York State.

SENATOR DILAN: Mr. President, would the Senator continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Senator, why after receiving the census data in March of 2011 did the decision to comply with the prisoner census law not come until August 2011?

SENATOR NOZZOLIO: Mr. President,

at the very first LATFOR hearing that took place in July of 2011 I was asked the question whether or not the Senate was going to comply with I believe it is Section 20 -- Part 20 of Chapter 57 of the Laws of 2010. That's otherwise known as the prisoner recounting measure.

My comments then were my comments throughout this process, that I believe strongly that LATFOR needed to comply with the letter and spirit of every statute at the state and federal level relevant to redistricting. That this statute, regardless of its cumbersome nature, regardless of the fact that it did not provide with it one single regulatory advice, that nonetheless LATFOR must comply with that statute.

I made it very clear, said it many times, said it at many hearings that this task force, as long as I was to serve as a cochair, was to comply to the letter and spirit of the prisoner recounting law.

I'm happy to say, Mr. President, that LATFOR was successful in ensuring that both the letter and spirit of Part 20 of Chapter 57 of the Laws of 2010 was literally complied with and within the spirit of that law. That members of

the task force took it upon themselves to roll up their sleeves and go through the over 50,000 prison inmates in our state, go through records of detention for those prisoners and determine, even though there was no census-oriented question on the application when someone is placed in prison -- this is a job for the United States Census, to locate prisoners not at the place of their incarceration but at the place of their last known address.

I should parenthetically add that the states that have adopted this process have scrapped it because of some of the questions regarding it. But New York went ahead at the direction of LATFOR and counted every single prisoner possible: First, taking away every prisoner in every correctional facility in this state to not be counted, then codifying -- it's called geocoding -- every single prisoner who had a last known address and placing that prisoner at the site of their last known address.

That was a very difficult task and one that I'm very proud to say that had complied with in every possible way. For Senator Dilan to suggest otherwise is just not the case. That I

believe that this task force fully complied with the law, fully complied with its spirit, did a yeoman's job even without any regulatory guidance, even without any statutory insight or direction, and should be complimented for its work in complying with this statute.

SENATOR DILAN: Mr. President, does the Senator continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR DILAN: First of all, I recall the first few hearings that we held where I asked questions with respect to the prisoner reallocation law and also wrote both cochairs a letter with regard to compliance. I was told that it was not the Senator's issue, that that was Commissioner Fischer's issue, the Commissioner of Corrections.

And also I know that Maryland and Delaware successfully and timely implemented similar legislation.

Also, I merely asked the question as to why it took so long from March to August.

I didn't suggest anything. I actually commend the commission that after the first few hearings they finally saw the sunshine and said they would comply. So the question was asked of timing, nothing else. I made no suggestion. But we'll move on.

I would like to know why did the decision to increase the size of the Senate come another four months after that, meaning after August.

SENATOR NOZZOLIO: Senator, the question is?

SENATOR DILAN: The question is, why did the decision to increase the size of the Senate come another four months after there was a decision to comply with the prisoner law? Meaning four months after August.

SENATOR NOZZOLIO: Mr. President, the decision that governs the size of the Legislature, both the Assembly and the Senate, is found in the New York State Constitution, Article 3, Section 4.

It's very straightforward for the Assembly. The Assembly is fixed at 150 members in the State Constitution.

The formula that has been followed by the courts is dependent on final population numbers. And that counsel who represented the Senate in 2002 issued a memo in 2012 regarding the propriety of establishing a 63rd seat. The memo from our counsel is on the LATFOR website, and that decision to create a 63rd seat is, in accepting the counsel's advice, a constitutionally sound decision, one that was established by the same counsel who provided the legal analysis for the New York State Senate in 2002.

SENATOR DILAN: Will the Senator continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Senator Nozzolio, why were my requests during the first round to determine the size of the Senate early were denied or ignored?

As you recall, many times during

the course of the first round I had asked what are we basing the plans on, 62 or 63. At that time I also indicated that the public had a right to know and those that were interested in submitting plans should know are we basing it on 62 or 63. All those requests were denied during the first round.

Many submitted plans to LATFOR based on 62. So why were those requests ignored or denied?

SENATOR NOZZOLIO: Mr. President, those requests of Senator Dilan, which are bona fide, were neither ignored nor denied. That the submission to counsel, the analysis by counsel was not completed until later in the calendar year 2011.

SENATOR DILAN: Does he continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: During the course

of the first and second round there were many who testified against a 63rd seat, there were many who indicated that -- and submitted formulas that indicate that no matter how you look at the formula, you would get 62 if you use it consistently. And if you use the formula in another way, because there's like two formulas, you may get 62 or 64.

How did you determine or anyone determine that the size of the Senate should be 63?

SENATOR NOZZOLIO: Mr. President, counsel's opinion, which I believe is extremely thorough -- the analysis in checking and cross-checking is that we believe the counsel's opinion is constitutionally sound. It's a provision on the LATFOR website. Everyone is free to analyze that provision.

SENATOR DILAN: Does he continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN:

Senator Dilan.

SENATOR DILAN: I would like to know, when the decision was made to increase the size of the Senate to 63, were the numbers or the data for prisoners also calculated in that formula, with the prisoners being allocated to their home districts?

SENATOR NOZZOLIO: Senator Dilan's question to me is right on target, that -- and I think it answers his line of questioning just made previous. That the population counts are critical to the analysis done relative to whether or not New York and its Constitution requires the addition of a 63rd seat in the Senate based on population growth.

May I add parenthetically, Mr. President, the population of the State of New York did grow in the last 10 years. People think that because New York lost two congressional seats that the population of New York actually declined. In fact, that's not the case. The population of the State of New York grew almost by half a million people. It's about 487,000 or so additional census counts in 2010 from the year 2000.

The prison count, which basically requires prisoners to be taken away from the place of incarceration to the location of their last known address, is relevant to this discussion.

And that that prison count issue, as Senator Dilan well knows and was very much a part of -- and a very positive part of, I should add -- that Senator Dilan knows that the prison count, as hard as we pushed and as much as we could be established, was not completed until the end of 2011. That's when the final analysis of our attorney was done and completed and put forward on the LATFOR website regarding whether or not there should be a 63rd Senate seat.

SENATOR DILAN: Will he continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Very simply, my question was, was that data used in the

calculation of determining the size of the Senate. That's all I asked.

SENATOR NOZZOLIO: Mr. President, I beg Senator Dilan's pardon. Would you be so kind to ask Senator Dilan to repeat the question?

ACTING PRESIDENT FLANAGAN: Senator Dilan, I apologize. Would you be kind enough to repeat the question for Senator Nozzolio?

SENATOR DILAN: Sure. Just simply, I wanted to know if the prisoner data was used in calculating the size of the Senate. That's all I asked.

SENATOR NOZZOLIO: Mr. President, it's my understanding that the counsel who provided the analysis looked at both options, the option of counting as done by exclusively the U.S. Census and the counting as done as required by New York State statute.

Both analyses completed by the counsel indicated that there were constitutionally sound reasons to put forward the 63rd seat and required, in fact, the establishment of a 63rd Senate seat.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Would he continue to yield on that?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR DILAN: So your answer was yes, that the data was used in calculating the size of the Senate? Is the answer yes or no?

SENATOR NOZZOLIO: Mr. President, I think I've answered the question. But can you reiterate --

SENATOR DILAN: Can you answer my --

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: I'm sorry.

ACTING PRESIDENT FLANAGAN: Would you go through the chair, please.

SENATOR DILAN: I'm sorry. I've been doing that.

SENATOR NOZZOLIO: Mr. President, respectfully, I believe I've answered Senator

Dilan's question. But I will repeat the answer.

SENATOR DILAN: Thank you.

SENATOR NOZZOLIO: That the counsel analyzed this issue both using the data from the United States Census counts as well as the data that was placed in compliance with a New York State special statute that required prisoner counting at the last known address.

His analysis looked at both numbers, and that it's my understanding that the counsel concluded that it was -- in a constitutionally sound manner for either provision that the 63rd Senate seat was in fact required.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Will Senator Nozzolio continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: I don't think that

answers my question, because I'm talking about -- I'm not talking about constitutionality here, I'm talking about how the formula and the data that was used to determine the size of the Senate. And very simply, was the data used, yes or no?

SENATOR NOZZOLIO: Mr. President, I deeply regret Senator Dilan's disappointment in my answer. I've already answered it twice. I would be glad to answer it a third time.

That the counsel established his review based on the United States Census counts and the United States Census counts as modified by New York State statute.

His analysis on both counts came to the same conclusion, a constitutionally sound principle that in his opinion, as placed on the website of LATFOR, that the 63rd seat is in fact required as a result of the population numbers established in 2010.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Nozzolio.

Senator Dilan.

SENATOR DILAN: Will Senator Nozzolio continue to yield?

ACTING PRESIDENT FLANAGAN:

Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Okay. Moving on to another step here. I would like to know, Senator Nozzolio -- are you listening?

SENATOR NOZZOLIO: I'll continue to yield, Mr. President.

SENATOR DILAN: The question is --

ACTING PRESIDENT FLANAGAN: Excuse me, Senator Dilan. I'm fairly and keenly aware Senator Nozzolio is doing his best to listen to your questions, having answered every single one of them. So if you would like him to continue to yield --

SENATOR DILAN: I've made no comment that merits your comments.

ACTING PRESIDENT FLANAGAN: Senator Dilan, do you have a question for Senator Nozzolio?

SENATOR DILAN: Yes, I do.

Senator Nozzolio, what was the predominant criteria used in determining the

proposed legislative districts?

SENATOR NOZZOLIO: Senator Dilan asks extremely important questions. There are many criteria. Certainly the process in and of itself, the seeking of the public opinion, the advertising of the potential for public opinion to be placed at public hearings on the LATFOR website.

I'd also like to add that the federal Constitution requires certain important elements regarding minority representation. And I am personally very pleased that we worked especially hard to protect, preserve, and maintain minority representation in the New York State Senate. The plan put forward clearly conforms with the United States Constitution, the Constitution of the State of New York, and all applicable federal and state statutes, especially the Voting Rights Act.

This plan put and builds on a strong history that this Senate has had in creating minority representation. In the last redistricting 10 years ago, this house created an Hispanic Senate district in Queens that is now represented by Senator Peralta. The Senate

redistricting efforts in the past have established 13 minority State Senate districts in New York State.

This plan that is before us today preserves and protects each and every one of those 13 minority districts and protects and preserves and restores five minority districts in the Senate that actually fell below the 50 percent minority rate because of the shifting population in New York City.

That protection and that plan -- I should also add that the plan increases the black population in the district represented by Senator Perkins by a full 2 percentage points.

I'm especially proud that this plan, Senator Skelos mentioned it, creates the very first Asian-American majority-minority district in New York State. It was the result of many hours of testimony, helpful input from the Asian community in Queens, including organizations such as the Asian-American Community Coalition on Redistricting and Democracy, and is almost an identical reflection of the plans provided the task force by the Asian-American Legal Defense and Education Fund.

This plan offered today contains 14 majority-minority districts. And that, to me, Mr. President, is something to be proud of. In light of shifting sands and shifting population, this Senate has stalwartly supported and complied with the Voting Rights Act.

There are other issues Senator Dilan -- in terms of his question, the proposed plan clearly complies with all applicable population deviation requirements of the United States Constitution, all those federal statutes and applicable case law.

The plan today improves the Senate district population deviation numbers by 10 percent from a decade ago. And hear me out on this so there's no misunderstanding. The former plan had a judicially acceptable standard deviation of 9.78 percent. The plan proposed today has a standard deviation of 8.80 percent. That is a 10 percent improvement over the deviation that was already judicially acceptable.

So Senator Dilan's question, Mr. President, deals with the deviation issues, deals with minority representation. There are also a number of state constitutional standards.

Among those are maintaining communities of interest, maintaining cores of existing districts, maintaining a continuity of representation, and following all appropriate traditional redistricting principles.

I'd be glad to discuss those at further detail with Senator Dilan, but I think in general those are in place. Except if I may, Mr. President, let me just add one more item, the cores of existing districts. Senator Skelos mentioned this in his opening remarks.

I'd like to put forward to this body that over 68 percent of the districts in this plan contain and maintain at least 70 percent of the core of the existing district. Let me state that again. Virtually 70 percent of the districts in this plan maintain at least a core of 70 percent of the existing district.

That is a state constitutional element of redistricting. Maintaining the cores of existing districts are exactly what this plan proposes.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Does the Senator

continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: One comment first, Senator Nozzolio. I believe that you indicated that it was 9.7 percent deviation and now 8.8. If my math is correct, I believe that's less than a 1 percent change, not significant. However --

SENATOR NOZZOLIO: If I may, Mr. President, I believe that was a question. I'd like to respond to it.

SENATOR DILAN: That was a comment.

SENATOR NOZZOLIO: That I don't believe Senator Dilan heard the appropriate numbers. The standard acceptable --

SENATOR DILAN: If you'd like to respond, that's fine.

ACTING PRESIDENT FLANAGAN: Excuse me. Excuse me.

Senator Nozzolio, please continue.

SENATOR NOZZOLIO: Thank you, Mr. President.

The former plan, the plan that exists today for those Senate districts that we are now representing had an acceptable -- by the courts -- standard deviation of 9.78 percent.

This plan that is on your desks today had a standard deviation of 8.80 percent. That is clearly a point less. It's virtually 10 percent better a deviation in the sense of closure. By the math that I'm familiar with, it's a 10 percent improvement.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Thank you. Does the Senator continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR DILAN: Mr. President, I will have only a few more questions. I have a lot more, but I would like some of my colleagues to also get involved in this conversation, so I'll try to wrap up as soon as possible.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Dilan.

SENATOR DILAN: With respect to drafting of this plan, I as a member of LATFOR was not included in the drafting of this plan, and many decisions and actions from the formulation of the plan through to the introduction were not made by LATFOR. So whose plan is this? Who drew the plan?

SENATOR NOZZOLIO: Mr. President, that the plan proposed today is the result of constitutionally acceptable principles. It follows the Constitution of the State of New York, the Constitution of the United States, all applicable federal and state statutes.

This plan is the evolution of suggestions put forward by the public, suggestions put forward by members of this body, suggestions put forward by the citizen representatives to the task force and other legislative members of the task force.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Does the Senator continue to yield?

ACTING PRESIDENT FLANAGAN:
Senator Nozzolio, will you continue to yield?
SENATOR NOZZOLIO: Yes, Mr. President.
SENATOR DILAN: Senator, throughout this process you have stated that this has been the most "open and transparent" process and product to date.
Considering the items we've just discussed -- the request to stream hearings and meetings, insufficient notice of hearings and meetings, no public drafting sessions, lack of clearly defined criteria, and the determination of the size of the Senate prior to ratification of the adjusted census data -- the question is, do you believe that this product is a result of a fair and open process?
SENATOR NOZZOLIO: Mr. President, conducting 23 hearings across the state, having 1.8 million people visit the LATFOR website with 156,000 individuals who actually went through the website, hearings in every corner of the state, interactive website, including the provision of allowing submission of plans through the website, of viewing each and every public hearing on the

website, with over 700 individuals presenting testimony, with hundreds of others submitting plans -- yes, Mr. President, I believe that this plan and this process was open and transparent and that the submissions placed by individuals were the direct result of -- for instance, the Asian-American seat being created in Queens, the result of 10 hours of hearings in the Borough of Queens, a number of meetings with residents of Queens who sought input, placement in foreign language newspapers as well as other vehicles to communicate those public hearings, that the opportunity for citizens to present testimony past the traditional working hour into the evening for many of the hearings, those add up, Mr. President, to being -- Mr. President, can I have some order, please?

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, I think you achieved your purpose just by stating it.

If we could have some order in the house, please.

SENATOR NOZZOLIO: Thank you, Mr. President.

Those video transcripts were

available to the public for full review of every aspect of every hearing. I think that the placement of counsel's memos on the website led to a number of things that this task force should be very proud of in terms of putting forth information to the public.

ACTING PRESIDENT FLANAGAN: Senator Dilan.

SENATOR DILAN: Mr. President, I would like to thank Senator Nozzolio for his answers, and I look forward to working with you in the future.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Dilan.

Is there any other Senator wishing to be heard?

Senator Gianaris.

SENATOR GIANARIS: Good evening, Mr. President.

ACTING PRESIDENT FLANAGAN: Good evening.

SENATOR GIANARIS: Happy Sunshine Week to you.

Would the sponsor yield for some questions, please.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you yield?

SENATOR NOZZOLIO: I'd be happy to yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: Mr. President, I'd like to ask the sponsor -- he mentioned in his previous conversation with Senator Dilan the total standard deviation figure, which was 8.8 percent. I'd like to ask him, what is the average deviation figure in this plan?

SENATOR NOZZOLIO: Average deviation? Mr. President, through you, I'm not familiar with that as a term of deviation assessment placed on those redistricting plans.

SENATOR GIANARIS: I'll be happy to explain, Mr. President, if --

SENATOR NOZZOLIO: If I may.

SENATOR GIANARIS: Yes.

SENATOR NOZZOLIO: The courts have clearly focused on total deviation as a criteria for legislative redistricting. The Supreme Court case of Baker v. Carr established "one person, one vote." But through judicial history there

had been windows that opened primarily for other local governments and state governments. And the traditional standard deviation and total deviation allowed by our judicial system is what the focus of attention has been.

The standard deviation of the current plan, to reiterate to my colleague, is 9.78 percent. The standard deviation of the plan proposed is 8.80 percent.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR GIANARIS: I understand the total deviation number, and that represents a member of the single most populated to the single least populated district and what the difference is in between those two. I understand his answers in that regard.

What I'm asking about is how off of the target number -- in other words, there is a

mean that all of the districts are supposed -- I'm going to wait, Mr. President, because I don't want to have to repeat my question.

Okay. The number of 307,356 is the number each Senate district would have if they were equally populated. Now, some are higher and some are lower in this plan, and I understand the deviation from the single highest to the single lowest is 8.8 percent.

What I'm asking is, on average, how off of that 307,356 number are the districts in this plan?

SENATOR NOZZOLIO: Mr. President, because that number is not a relevant number for judicial determination, I do not have that at my disposal.

SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: I don't agree

that that is not a relevant consideration for the courts. I'll be happy to provide that number for him. It is 3.67 percent.

It is also the largest that that number has ever been in the history of redistricting in this state. Which means the plan that we have before us today has the largest disparity, on average, among districts that we have ever seen in a plan before the state.

Does the sponsor not see a problem with that?

SENATOR NOZZOLIO: Mr. President, I stand by my previous answer.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: If the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR GIANARIS: Is it the sponsor's belief that it would not be possible to create a plan with a lower deviation, either total standard or average, than that which we

have before us today?

SENATOR NOZZOLIO: Mr. President, through you. Possibility is not my consideration, Mr. President. That I'm proffering a plan, as the Senate is considering a plan, that has a 10 percent improvement over the deviations that have been already accepted by a court 10 years ago.

SENATOR GIANARIS: If the sponsor would again continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR GIANARIS: I would suggest, Mr. President, that possibilities should weigh in our minds because it is simply not acceptable to say that it is desirable to have districts that are so severely over- and underpopulated one from another, because that dilutes voting strength of residents of this state.

And so I would respectfully disagree. To suggest that the possibility that we can make a better plan is not relevant to the

sponsor I find outrageous and not acceptable and something that the courts will ultimately pass judgment on.

The fact is, there are possibilities of doing this better. There was a plan submitted by the group Common Cause which had a total standard deviation of 6 percent, far lower than 8.8 and much lower than the 9.7 you were talking about earlier. And the average --

ACTING PRESIDENT FLANAGAN: Senator Gianaris -- Senator Gianaris. Are you speaking on the bill, or are you asking Senator Nozzolio to yield to a question?

SENATOR GIANARIS: I'm asking him to yield to a question.

ACTING PRESIDENT FLANAGAN: Thank you.

SENATOR GIANARIS: I would like to continue stating the premise of my question.

That Common Cause plan not only has a drastically lower standard total deviation but also has a drastically lower average deviation of 1.5 percent.

Now, does the sponsor not think that if we could make a plan that's better, that

creates the districts with more equal population than that that's before us today, that that would not be desirable?

SENATOR NOZZOLIO: Mr. President, of course I would love to see a better plan. Of course I would like to see Senator Gianaris happy. He may consider a better plan that we put forward; the second draft I think Senator Gianaris may have liked a lot better than the first draft that we put forward.

The fact of the matter is we're dealing in the reality. And I would like to see a better plan for a lot of different issues before this Legislature.

This is an issue, though, that we have to deal with the decisions of the courts. Decisions of the courts focus on standard deviation, not what would be a better possible deviation.

That in fact this deviation is a deviation that is well accepted within the judicial standards. It is a deviation that improves over the last deviation. And that I believe that it's a success of this plan to have a lesser standard deviation as required. And I

think the court will say "You did a better job than was done in the last redistricting by the improvement of the standard deviation," which is the standard test for judicial review on this subject.

SENATOR GIANARIS: Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: I would ask the sponsor, is the standard to which he's holding himself to do the bare minimum legally acceptable that would be passed on by the courts or to do something that's in the best interests of the people by establishing a plan that has more equal population among the districts and less of a deviation?

Because it seems like every answer is what the courts would accept, not what necessarily would make good policy.

SENATOR NOZZOLIO: On the

contrary, Mr. President. Maybe Senator Gianaris wasn't paying attention to the comments I made earlier focusing on -- let me reiterate some of those.

That I'm very proud of what this proposal does in establishing a new minority district in the Asian community not too far from the district that Senator Gianaris now represents: the first other Asian-American Senate majority-minority district in New York State.

Of the 13 minority districts in New York State, five of them were below the 50 percent level as a result of shifting population in New York State, and this plan restores their minority representation status. That was something that we worked very hard to achieve.

The cores of existing districts is something that is a constitutionally accepted and required principle in redistricting, and we established over 70 percent of the districts proposed by this plan have at least 70 percent of the core of their existing district as established.

We're trying to push and establish the best possible plan, the most transparent plan, the most citizen-inputted plan possible. And that I think that the proof is in the demographics, and those demographics are that we have taken -- in spite of declining populations in many areas of the state, we have improved those districts that are essentially minority districts and we have focused on improving standard deviations and we have focused on improving the numbers of cores of existing districts. Each of those items, we have improved upon past work.

SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: How many districts in the plan before us deviate by more than 4 percent from the mean?

SENATOR NOZZOLIO: Mr. President,

I don't have that number in front of me. I'd be glad to provide it to Senator Gianaris in the future.

SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR GIANARIS: I'd be happy to provide him with that number. The answer is 23. Twenty-three. More than one-third of the Senate districts deviate from the mean by more than 4 percent. Compared to the map that we're living under today, which has only seven districts deviating from that mean by more than 4 percent.

Which brings me back to my original point. My question to the sponsor is, does it not disturb him -- never mind the total deviation, which went from 9.7 to 8.8. But does it not disturb him that we're not measuring one district against another, we're measuring all 62 or 63 districts against what the numbers should be?

And we have escalated that number

to historic proportions, historic proportions. The number of our districts that deviate from the mean number by more than 4 percent is the highest it has ever been in recorded history. Does that not disturb the sponsor? Does that not make this plan unfair?

SENATOR NOZZOLIO: Mr. President, that the districts proposed are well within the standard deviations required by the courts. The districts proposed improve the standard-deviation record of those districts currently held in the New York State Senate.

The plan proposed today has a standard deviation of 8.80 percent. That deviation is a 10 percent improvement over the 9.78 percent standard deviation accepted by the courts 10 years ago.

SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR GIANARIS: I'd like to attempt to get my question answered in a way that

maybe provides a bit of focus and example for everyone listening.

Can the sponsor tell me what is the population of the 10 districts that have the most white population by race in this plan? And I'll be happy to provide the answer if he doesn't have it available.

SENATOR NOZZOLIO: That those --

ACTING PRESIDENT FLANAGAN: Excuse me. Senator Gianaris, are you asking him a question or are you -- you just said you're going to provide that information?

SENATOR GIANARIS: Well, in my previous questions he's not had the answer available. I happen to have the answer here. So I was hoping to have him give me the answer as he understands it to see if it conforms to my numbers. But I'll be happy to provide it if he doesn't have it.

SENATOR NOZZOLIO: If I may, Mr. President. I couldn't determine what Senator Gianaris's question is. Could he please repeat it?

SENATOR GIANARIS: I'll be happy to.

If we take a ranking of the districts by racial component and we take the 10 districts that have the highest white population in them and add up the total population of those districts in this plan, what is that number?

SENATOR NOZZOLIO: It would take me a number of minutes, Mr. President, to go through the books that were provided to our members. That these books have that information in them, and Senator Gianaris is welcome to review them, that data.

That is part of the submissions put forward by LATFOR, and that I'm sure that question can be answered with a simple calculator and some mathematical time to review them.

SENATOR GIANARIS: Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR GIANARIS: I have in fact done those calculations, so let me cut to the chase of my question.

It turns out that the 10 most white districts in this plan have a population of 2,924,968. By contrast, the nine most African-American districts in this plan have a population of 2,864,372. Those numbers are roughly equal. There's a difference of 2 percent between them.

Does it not disturb not just the sponsor but this entire majority that this plan says that African-American communities are deserving of only nine Senators for every ten Senators that the white communities in this state have? Is that not shameful to the sponsor?

SENATOR NOZZOLIO: Mr. President, that I'm very proud of the fact that this body has continued to support the establishment of minority-majority districts. I already mentioned 10 years ago when this body established a Hispanic district in Queens.

The 13 minority State Senate districts, of those 13, five had a population of less than 50 percent. That LATFOR and this Senate have taken a very proactive role in restoring and protecting and preserving those minority districts. The five of which, because

of shifting population in the City of New York, had considerable concern falling below the 50 percent minority, and that we've restored, protected, and preserved those districts. That's the focus of LATFOR, and that I'm very proud of that focus.

SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: Is the sponsor familiar with the term "packing" as it relates to redistricting?

SENATOR NOZZOLIO: Mr. President, I would certainly welcome Senator Gianaris's definition of such term.

SENATOR GIANARIS: If the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes,

Mr. President.

SENATOR GIANARIS: The term "packing" is a notorious and common method of disenfranchisement of minority communities by loading up as many people of color into as few districts as possible to deny them additional representatives.

So when the sponsor tells me that they've increased the numbers of people of color in certain districts, that is not something to be applauded when they are already represented by people of color, because what they're doing is denying the surrounding communities the same benefit.

And that is made evident by the fact that there's roughly the same number of people of color represented by nine Senators and the same number of people who are Caucasian represented by 10 Senators. And that is an unprecedented outrage.

And that is what packing is, to answer Senator Nozzolio's question. And it is going on rampantly in the plan that's before us today.

And when we talk about population

deviation, that is the real effect it's having on the streets of New York, that you're disenfranchising communities of color from Erie County to Suffolk, and everywhere in between, by making sure that those communities have higher populations in those Senate districts than other communities in this state.

ACTING PRESIDENT FLANAGAN: Senator Gianaris, are you speaking on the bill or are you asking Senator Nozzolio to yield to a question?

SENATOR GIANARIS: I am asking the Senator to yield to a question, Mr. President.

ACTING PRESIDENT FLANAGAN: Thank you.

SENATOR GIANARIS: And the question is, have you no shame, Senator Nozzolio? Have you no shame to produce a plan that disenfranchises so blatantly communities of color throughout this state?

And please don't give me your talking points again. I've heard them several times.

ACTING PRESIDENT FLANAGAN:

Excuse me. Senator Gianaris.

SENATOR GIANARIS: Yes, sir.

ACTING PRESIDENT FLANAGAN: I would remind everyone in the chamber that the house being in order and having a sense of decorum is really a good thing for everybody. We've been doing pretty well up until this point, Senator Dilan having set the appropriate tone.

I would remind you as well that Senator Nozzolio has engaged you and listened to your questions, and he is entitled to answer those questions as he deems fit. If he doesn't answer them to your liking, he is entitled to answer the questions the way he deems appropriate.

SENATOR GIANARIS: I don't believe, Mr. President, that I have taken issue with the way he's answered any of my questions.

ACTING PRESIDENT FLANAGAN: Senator Gianaris, you just said you don't want to hear any of his talking points. So I'm just reminding you that if he is going to speak to your questions, he is entitled to answer them the way he deems fit.

SENATOR GIANARIS: Point taken,

Mr. President.

SENATOR NOZZOLIO: Thank you, Mr. President. And I'd like to respond to Senator Gianaris's question directly.

Senator Gianaris should know that I am not in any way, shape or form ashamed of this plan. Frankly, the question was insulting.

I am very proud of this plan. I am very proud of the fact that we have fully complied with all tenets of the federal Voting Rights Act, that we have restored five majority-minority districts in this state and within the covered counties of this state, even though those five districts fell below 50 percent.

Senator Gianaris's definition of packing I think is totally inappropriate, totally beyond the formal judicially termed definitions of packing.

And that this plan does not engage in such behavior. This plan is totally within the tenets of the federal Voting Rights Act. And I am in fact proud of the job that has been done in establishing minority rights in this State Senate and minority districts in this State

Senate.

SENATOR GIANARIS: Thank you, Senator Nozzolio.

If the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR GIANARIS: Thank you. I'd like to move on to a different topic now, the question of the 63rd seat.

Would the sponsor be willing to stipulate that the purpose of the constitutional provision that determines the size of the Senate exists so that when the population of the state grows in a certain region, that that region does not end up taking a Senator from another part of the state?

In other words, was it not a compromise in 1894 to deal with counties that had growing populations so that we wouldn't have Senators shifted, and the idea would be those counties would gain an extra Senator by increasing the size of the Senate and other

counties would maintain their position?

SENATOR NOZZOLIO: Mr. President, please advise Senator Gianaris that I would in no way stipulate to such a definition.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR GIANARIS: Well, historical records certainly seem to make that point.

Regardless of whether the sponsor stipulates to it or not, I'd ask the question as a matter of policy. If we are going to make a determination that the Senate size should change and grow by one, does it not make sense for that district to be placed in the parts of the state that have experienced the greatest growth in the last decade?

SENATOR NOZZOLIO: Mr. President, I believe that it is a decision of this body, as

it accepts the establishment of the 63rd seat, that that seat is in fact placed in one of the fastest-growing regions of the state.

The Hudson Valley has historically been one of the fastest-growing regions. That this district lines through the Hudson Valley and in fact is one of the fastest-growing population centers is this state. That this plan reflects that growth, and that the addition of the Senate seat is a reflection of that growth.

SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: While it may be true that the Hudson Valley has experienced growth, the numbers make clear that it's in the Lower Hudson Valley where that growth has been experienced, the counties of Orange and Putnam and Westchester and Rockland.

This new district that's being

proposed doesn't touch any of those districts. It is in the Capital Region and in the Northern Hudson Valley.

So again I ask, would it not make sense to place a new district where the population growth was the greatest?

SENATOR NOZZOLIO: Mr. President, I think Senator Gianaris's atlas could use the addition of a few more counties. Saratoga County is by far one of the fastest-growing counties. I believe it is the fastest-growing county in the State of New York.

SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: How much of Saratoga County is located in the new 46th District?

SENATOR NOZZOLIO: Mr. President, the 46th District, the counties are outlined

here. That Saratoga County is not a component of the 63rd senatorial district.

SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.

SENATOR NOZZOLIO: However, if I may, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio.

SENATOR NOZZOLIO: That no district is created in a vacuum. That each district relies on population centers around it as well as within it, and that the inclusion of this district in the region, extending from the Lower Hudson into the Capital Region, is part of a growth that extends from the Lower Hudson into the Capital Region.

Districts around the 63rd seat are as relevant to its establishment as the growth rate within that 63rd seat.

SENATOR GIANARIS: If the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN:
Senator Gianaris.
SENATOR GIANARIS: I'd like to move on to an area that's a little bit complicated to discuss. It took me quite a while to grasp it. But I do want to get into this formula in the Constitution for determining whether or not the Senate size should increase and how it was applied in this plan.
Can the sponsor explain briefly how it is that the Constitution provides a formula -- what the formula is in the Constitution for determining the size of the Senate?
SENATOR NOZZOLIO: I'd refer Senator Gianaris first to Article 3, Section 4 of the State Constitution. Also, I would refer him to the memo presented on the LATFOR website by counsel. I would also refer to Senator Gianaris the applicable sites cited in counsel's memo for further explanation on those judicial opinions relevant to this issue.
SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.
ACTING PRESIDENT FLANAGAN:
Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: I appreciate the sponsor's response to that question, but I think it's important -- because I submit that the formula was misapplied in an unconstitutional manner, so I think it's important that we get into a conversation about what that formula is and how it was applied in this case.

Now, as I understand it, we're dealing with a provision in Article 3, Section 4 that was written in 1894 and provides that when certain counties that are larger in this state experience growth, there's a formula applied to determine whether they are entitled to what the Constitution calls an additional share, or an additional Senator for the purposes of this formula.

Is that in conformance with what the sponsor believes as well?

SENATOR NOZZOLIO: Mr. President, it really was very difficult to follow Senator Gianaris on his trail in trying to frame a

question. Not to be critical of Mr. Gianaris, but I believe the Senator tried to ask a question; I really didn't gather one out of that statement. Could he be so kind as to repeat the question or at least rephrase it in the form of a question?

SENATOR GIANARIS: I would be happy to. And excuse my lack of articulateness in that question, Senator.

Would you agree that Article 3, Section 4 provides a formula to determine when certain large counties in this state experience enough growth to justify an additional Senator?

SENATOR NOZZOLIO: Mr. President, it's my understanding that the Constitution sets forward in motion the establishment of a process and that the formula has actually been determined by a number of judicial decisions.

Those decisions are part of a counsel's opinion that has been on the LATFOR website for a number of months. I again refer the Senator to that opinion by counsel. One need only go to the LATFOR website to find it.

SENATOR GIANARIS: Would the sponsor continue to yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: With all due respect, is the sponsor aware that his counsel doesn't get a vote in this chamber and we are called upon to apply our judgment to what is proper and improper?

And this is an important issue of constitutional interpretation and what the size of our representative government should be in this state. So with respect, it's not sufficient for me for someone to wave a counsel's memo and say "This is the answer."

I would like to engage in a conversation about this formula and how it was applied here.

ACTING PRESIDENT FLANAGAN: Senator Gianaris, are you asking -- it seems to me you were commenting and questioning. Can you restate exactly what your question is for Senator Nozzolio?

SENATOR GIANARIS: My question is, is the sponsor aware that his counsel is called upon to give advice that would then be interpreted by him and his colleagues, not to actually cast a determinative vote in how we do a redistricting plan?

SENATOR NOZZOLIO: Mr. President, of course. That the counsel's advice is just that, it's advice.

That that advice was in fact from the identical counsel that provided the advice to the Senate 10 years ago. That advice then was upheld by the appropriate courts. The advice has a great deal of credibility, a great deal of success. And that counsel's memo, in recognizing and recommending similar action this year, I believe is headed towards a similar result, of the courts accepting counsel's analysis of this constitutional required provision.

SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN:
Senator Gianaris.
SENATOR GIANARIS: Mr. President, I'd like to ask the sponsor how he knows that the advice given by counsel 10 years ago is the same as the advice he gave this year.
SENATOR NOZZOLIO: I think it's a very good question, Mr. President.
That the memo provided on the LATFOR website incorporates the memo that the counsel provided 10 years ago. That there were a combination of the advice, through the memo presented 10 years ago with the analysis updated based on the assessments today incorporated with that memo from 10 years ago.
SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.
ACTING PRESIDENT FLANAGAN:
Senator Nozzolio, will you continue to yield?
SENATOR NOZZOLIO: Yes, Mr. President.
ACTING PRESIDENT FLANAGAN:
Senator Gianaris.
SENATOR GIANARIS: Is the sponsor aware that there were two different methodologies

used in two different parts of the state in making the determination that this plan should go to 63 Senators?

SENATOR NOZZOLIO: Mr. President, I don't believe that the contention by Senator Gianaris is accurate.

SENATOR GIANARIS: If the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: Is the sponsor not aware that his own counsel, who he's using as the authority, readily admits that there were two different methodologies used in two different parts of the state in his plan?

SENATOR NOZZOLIO: That -- let me try to clear up Senator Gianaris's confusion, Mr. President, with this response.

That counsel's memo provides two alternative paths to basically reach -- that both basically reach the same conclusion, that there

are -- the analysis intention is to be comprehensive, and that's why the counsel looked at both alternatives as potentials.

And that both alternatives led to the very same conclusion, that a 63rd seat is in fact constitutionally sound and required for this next redistricting.

SENATOR GIANARIS: If the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: Is the sponsor not aware that what actually happened was both of those alternatives were applied simultaneously in the same plan and that is the only way that the formula resulted in 63?

SENATOR NOZZOLIO: Mr. President, Senator Gianaris is certainly entitled to his own opinion and his assessment of counsel's memo.

I believe I have demonstrated my opinion of counsel's memo. I stand by those

previous answers.

SENATOR GIANARIS: Mr. President, on the bill, please.

ACTING PRESIDENT FLANAGAN: Senator Gianaris on the bill.

SENATOR GIANARIS: I find -- it's not a surprise to anyone in this chamber that I find this bill woefully inadequate.

And I've heard contentions that -- I want to make sure I get the terms right -- it was fair and legal and complies with the State Constitution and the U.S. Constitution and the Voting Rights Act. The fact is, this plan is none of those things. It is not fair, it is not legal, it violates the State Constitution in determining the size of the Senate, it violates the U.S. Constitution in applying the "one person, one vote" rule, and it violates the Voting Rights Act in numerous counties throughout this state, most notably in Hempstead in Nassau County.

Yet we plod on and we use as authority a counsel's memo that no one seems able to explain. Makes me wonder whether the counsel was told "Get us to 63, please. And I don't care

how you get there, but get us there, because that's the number that works for us politically." In fact, 10 years ago we have memoranda written by this same majority that said exactly that in your path to get to 62 from 61.

So if there's anyone here who would like to get up and have a conversation about how this formula was applied and how you got to 63, I'd love to have it, because I have a pretty good idea of how it was and I'm pretty confident it was applied illegally. Yet there's no one here who seems able to explain it other than referring back to a counsel's memo -- not only a counsel's memo from the previous year, but from 10 years prior.

The fact that we're debating such an important piece of legislation at 11 o'clock at night and can't even have a substantive conversation about it speaks volumes about the depths we've fallen to in this chamber as we're doing something as important as determining the districts under which people get to vote for their representatives.

We're sitting here with the highest average deviation in history of this state that

we're proposing, in history. We're sitting here increasing the size of the Senate, placing a new district that is uncalled-for in a part of the state that has not experienced the highest growth. It is an exercise in cynicism the likes of which I haven't seen in 12 years in the State Legislature.

There's been talk about a new era in Albany, how well things are functioning. Well, so much for change coming to Albany, as we sit here today in the middle of the night in the middle of Sunshine Week talking about a blatantly illegal plan that disenfranchises millions of New Yorkers.

It's fun to be petty with these lines, it's fun to make jokes about them. And I know the sponsor made reference to the previous plan, the originally proposed plan on January 26th and the second plan and how I might like one better than the other. The fact is these two plans are virtually identical. If you look at the number of census blocks actually changed from one plan to another, it was more than 98 percent exactly the same.

And I know what the sponsor was

referring to, about where I live and what my district was going to be. But as far as I'm concerned, you can take the second plan, put it together with the first plan, and shove it, the both of them.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you so much, Mr. President. If the sponsor would yield for a few questions.

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you so much, Mr. President.

I have a couple of questions that are actually following up on a couple of things that my colleague brought up. Particularly I'm concerned about issues of minority populations

across the State of New York and how they are represented or misrepresented in this plan.

Senator Nozzolio -- through you, Mr. President -- can you tell me the district that has the most individuals in the state in this proposal?

SENATOR NOZZOLIO: Individuals that the district --

SENATOR RIVERA: Mr. President, through you, I'll restate the question. Can you tell me in this current proposal, plan, what is the district that has the most population?

SENATOR NOZZOLIO: The most population? It will take a minute, Senator.

A district in Queens appeared to have the most population.

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

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

Yes, there is actually -- my colleague Senator Peralta, currently who represents the 13th District, has about 319,115, according to the numbers, the LATFOR numbers.

Can you tell me the racial breakdown of that district?

SENATOR NOZZOLIO: Which -- that's the Senate District 13, Senator Rivera?

SENATOR RIVERA: Mr. President, through you. Indeed it is, Senator Nozzolio.

SENATOR NOZZOLIO: As I said in my remarks, that SD 13 was created 10 years ago as a Hispanic district by this Senate. That we're very pleased it is a majority-minority district. And that your -- you asked for the Hispanic population in that district?

SENATOR RIVERA: Through you, Mr. President --

SENATOR NOZZOLIO: Excuse me, Mr. President. Could Senator Rivera be precise in his question?

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Through you, Mr. President, I absolutely can.

Could you give me the racial breakdown -- not just Latino voters, but the racial breakdown of who lives in that district?

SENATOR NOZZOLIO: That the Hispanic population is 60.8 percent of this district. The non-Hispanic population is 39.2 percent. The non-Hispanic white population is 14.3 percent, the non-Hispanic black population is 6.6 percent. The non-Hispanic Asian population is 16.2 percent. The Hawaiian population is zero. The "other" is listed as 0.6 percent.

And I may add, Senator Rivera can have the answers to any of those questions either in the book presented that provides this analysis for every proposed Senate and Assembly district in this plan.

SENATOR RIVERA: Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes,

Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

It is precisely -- these are -- I just want to make sure that we have the same numbers. And that is the numbers that I'm talking about, I got them precisely from the documents that you referred to.

The 13th District does have about 319,000 individuals that make up the population. About 84 percent of them are people of color.

Can you tell me what district, Senator Nozzolio -- through you, Mr. President -- that has the least individuals in the state and how many those are?

ACTING PRESIDENT FLANAGAN: Senator Rivera, if I may, I frankly had difficulty hearing the latter part of your question.

SENATOR NOZZOLIO: I didn't either.

ACTING PRESIDENT FLANAGAN: If you could repeat that, please.

SENATOR RIVERA: Absolutely, Mr. President. Apologies.

Through you. Senator Nozzolio, could you tell me the district that has the least amount of population and the racial breakdown of said district? Again, just to confirm that I have the correct numbers.

SENATOR NOZZOLIO: I'm advised, Mr. President, that the district that has the least amount of population is the proposed 57th senatorial district. That it is listed as 292,000 people.

It is also about the size of the states of Connecticut, Rhode Island, maybe even Massachusetts combined. It's one of the largest districts in the state. It extends from the Pennsylvania border well across the Southern Tier in the further western part of the state.

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

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: I'd be happy to yield, Mr. President.

ACTING PRESIDENT FLANAGAN:

Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

You are correct, it is the 57th district. It has about 292,000 individuals. And unless I am mistaken, there is no requirement as far as area that a district needs to cover as far as constitutional requirements that -- if I am incorrect, please correct me.

But actually what I have a question for you is, how did LATFOR decide which districts would have larger populations and which would have lower ones? How did you come to that decision? Through you, Mr. President.

ACTING PRESIDENT FLANAGAN:

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, the compliance in each of the districts presented today must comply fully in regard to the United States Constitution, the Constitution of the State of New York, the federal Voting Rights Act and other communities of interest, especially establishing or continuing the cores of existing districts, maintaining communities of interest,

and other provisions of this nature.

That each district also must comply with issues that are relating to rules that the Constitution of the State of New York has before it, of which are the towns cannot be split in the provision of State Senate and Assembly lines.

And that all those factors are combined in the plan developed.

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

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

Senator Nozzolio -- through you, Mr. President -- would you agree with the concept that if a district has 320,000 people, say, hypothetically, that an individual voter or an individual resident of that district basically has about 1/320,000th of representation as

opposed to a district that has 300,000 people -- let me make it clear. Maybe that's not very clear.

Basically, if we have a -- in one district we have 320,000 individuals, in the other one we have 300,000. Do you agree with the concept that the people -- that this person over here, in 320,000, one person in that district would basically have 1/320,000th of the entire representation, and this person over here would have 1/300,000th?

In other words, would there be unequal representation if one district is larger than the other in this way? Hypothetically.

SENATOR NOZZOLIO: Mr. President, the plan proposed today has a standard deviation of 8.80 percent. That compares with the standard deviation of the plan accepted by the courts 10 years ago, the deviation of 9.78 percent. It's a 10 percent improvement in the abilities and deviations that are proposed this year over a plan that had already been accepted by the courts 10 years ago.

The deviations, Mr. President, are acceptable, and that this is well within -- the

plan proposed is well within the range of acceptability.

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

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

Senator Nozzolio -- through you, Mr. President -- are there other proposals that you saw -- when you were coming together to kind of put this proposal together, were there proposals that you saw in which there were more districts where minority populations were more equally represented in the total number of districts as opposed to the one that we have before us today?

Were there other proposals that were presented which actually had more districts that had more minority population represented in

those districts, numerically speaking?

SENATOR NOZZOLIO: Mr. President, looking at the current districts and particularly the 13 minority districts that exist today as senatorial districts, it was a great concern to LATFOR and to members of LATFOR that five of those 13 districts were under 50 percent minority-majority population -- in effect, would lose their minority status if issues were not dealt with.

I indicated before in my comments that the preservation, protection, and restoration of those minority districts was a foremost priority for this plan. That restoration occurred, and I'm very pleased to say it occurred in all five districts. And that that is the focus that this plan had in its mission.

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

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN:

Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

I will get back to this issue in a little bit, particularly when considering the growth across the state, as you've made very clear not only here but in the hearing that we had when I was testifying before you. You made it very clear, you corrected me that there has been growth in the population in the State of New York, but that it was at a lower level than in other states so there was comparison how many seats we had in Congress. But you did make clear that there was growth.

And I would like to get, in a little bit, back to where that growth actually occurred and particularly what populations actually grew. But we'll get back to that.

I want to actually bring you back to the hearing that we actually held in Albany where I testified before you. Do you remember when you referred particularly to my district and you said to me, when we were talking about the percentage of white population that is in my current district and the one that was proposed

that we were discussing at the time, and when you -- do you remember when you told me that I should be happier, that I should be happy with the fact that the population was 11 percent white at one point, and then it went down to 2 percent, so it would make it easier for me to be elected, therefore I should be happy that that was what you had done?

SENATOR NOZZOLIO: Mr. President, I'm sorry, I tried my best to follow Senator Rivera. Could he repeat that question or put it in the form of a question?

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

Senator Nozzolio -- through you, Mr. President -- in the hearing that we held in Albany when we were discussing -- after I gave my testimony and a series of questions and answers ensued from you to me and from me to you, you specifically asked me questions about the 33rd District, currently the one that I represent before this -- whatever proposal is accepted. It has about 11 percent population that is white, non-Latino, and the proposed plan has about 2 percent. It has changed a little bit since

then, but at that time you told me that wouldn't I be happier that I had more Latinos, therefore it would be easier for me to get elected.

I just wanted to see if you remembered that we had that conversation. Through you, Mr. President.

SENATOR NOZZOLIO: Mr. President, I have no recollection of that conversation with Senator Rivera.

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

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you so much, Mr. President.

I would refer you back to the -- actually, the conversation is on the record. But I wanted to bring it up only because it refers a little bit to the issue that my colleague Senator Gianaris brought up as far as how many -- what

the population is of a particular district and whether, in this case, if it makes it easier perhaps for me to get elected or harder for me to get elected.

I think that I would want minority communities to be given the opportunity to elect more representatives of their own choosing. So I wanted to kind of make sure that we remembered that we had that conversation.

But I did have a question as far as packing and cracking as well, which I'll get to in a second. When it comes to redistricting and the issue of packing minorities -- well, I'll wait until Senator Nozzolio finishes talking to the attorney.

SENATOR NOZZOLIO: Mr. President.

SENATOR RIVERA: I just wanted to make sure that --

SENATOR NOZZOLIO: Did you finish your question or is it --

SENATOR RIVERA: No, I haven't. I just wanted to make sure that you were finished with your conversation.

SENATOR NOZZOLIO: Let me know when it's finished.

SENATOR RIVERA: Thank you, Mr. President.

So on the issue of packing and cracking as it refers to the districts that you have in this current plan, would you agree or disagree with the notion that taking districts that were already majority-minority populations and then actually taking that percentage up actually makes it -- actually are cases of packing, and that indeed it actually takes certain populations and disenfranchises them by making it less likely that they would be populations in other districts where they could elect someone of their own choosing?

Through you, Mr. President.

SENATOR NOZZOLIO: Mr. President, Senator Rivera's district, the 33rd District proposed under this plan, maintained the core of its existing district at over 72 percent. 72.5 percent of Senator Rivera's district is the same under this plan as it was in the current district that he now represents. That the Hispanic population went from 65.2 percent to 67 percent.

That -- I'm not sure exactly what

Senator Rivera's question is trying to get at. But the fact of the matter is --

SENATOR RIVERA: Mr. President, I'll clarify if necessary.

SENATOR NOZZOLIO: The fact of the matter is adding 1 or 2 percent of Hispanic population to Senator Rivera's district ensures that there will be no retrogression.

That that is another important component of the Voting Rights Act. That if the district went down 2 percent, or 1.8 percent, as what occurred here, of Hispanic population, I don't know if Senator Rivera would think that would be a good thing.

I'm concerned, though, that certainly as this has -- the Hispanic population has risen 1.8 percent in Senator Rivera's district, I don't believe by preserving the core of existing districts, enhancing a small amount, percentage of Hispanic district ensures the integrity of that minority-majority district.

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

ACTING PRESIDENT FLANAGAN:

Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

Senator Nozzolio -- through you, Mr. President -- I was referring to the prior plan, the original draft that actually changed from 11 percent white population to 2 percent white population. And I was referring to the comment that you made, particularly because I wanted to see what you thought that -- whether that was cracking or packing or not.

But I actually have another question that refers to something that you just brought up, which is retrogression.

First of all, can you tell me the two sections of the Voting Rights Act that specifically protect the rights of minority communities from being disenfranchised, that protects them from being disenfranchised?

SENATOR NOZZOLIO: Mr. President, I'm very pleased that Senator Rivera believes the

plan we put forward is improved upon.

And that I believe he's asking for citations in the federal Voting Rights Act. There are two sections, Section 2 and Section 5 of the --

ACTING PRESIDENT FLANAGAN: Excuse me, Senator Nozzolio.

It's starting to get a little hard to hear our speakers. If we can just have some quiet in the house, that would be helpful.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

Again, let me reiterate I'm very pleased that Senator Rivera appreciates the improvement in his district from the prior plan to this plan.

And that there are two sections of the federal Voting Rights Act that are applicable in these discussions of minority districts. Those are Section 2 and Section 5.

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

ACTING PRESIDENT FLANAGAN:

Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

So referring to Sections 2 and 5, the next series of questions has to do with these two sections. In particular, to talk about the Bronx for a second, when we're talking about the population of Latino voters in the Bronx, it actually was about 11.5 percent growth in the Bronx.

And yet in the Bronx there's still only four districts -- between the Bronx and Upper Manhattan there's only four districts where Latinos might be arguably able to elect a Senator of their choice. Can you tell me why it remained at four and it didn't go up even with that population growth?

SENATOR NOZZOLIO: Mr. President, this plan proffered is in full compliance with the federal Voting Rights Act, both Section 2 and Section 5. And that we believe that the

enhancements of those Hispanic population districts -- or the Hispanic population within individual districts ensures the integrity of those districts, ensures that there will be no retrogression in these districts over the next decade, and continues the maintenance and preservation of those Voting Rights Act minority districts.

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

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

So only for the sake of argument, because I agree with the arguments that my colleague Senator Gianaris stated on the floor about the issue of the 63rd seat -- I don't think that is constitutional, but that was discussed before. For the sake of argument, let's say that

there should be 63 seats, only for the sake of argument. Are you familiar with the -- once the decision was made by LATFOR and it was made public that there would be 63 seats as opposed to 62 in a plan, there were actually draft plans that were put together by other organizations, like the Unity Plan update, Common Cause, et cetera.

In that plan they actually demonstrated that if New York City were given fair apportionment as it refers to the rest of the state, particularly related to its growth or the growth of population, you could actually take -- you would take a pair of Bronx/Westchester districts that would be created and it would be possible to create five districts in this area, in the area of the Bronx and Upper Manhattan, where Latinos would have the political power to be able to elect someone of their own choosing, particularly referring to the growth that was obvious there.

So the question is the following. Seeing that there were these plans that were put out there that clearly demonstrate that based on this growth and based on the -- only for the sake

of argument, that there should be 63 seats -- that five would be available that would be possible in the Bronx, considering the growth of the Latino population there, what was the choice made by LATFOR to actually not create these types of districts?

SENATOR NOZZOLIO: Mr. President, those districts that have been proffered under this plan are in full compliance with the federal Voting Rights Act, the U.S. Constitution and the State Constitution. They preserve the cores of existing districts, that was a priority, as it was a priority to ensure that there be no retrogression in any of the minority districts in the Bronx or any of the other boroughs of New York City.

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

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

That doesn't really answer the question, but okay. Let's actually dig a little bit deeper into the growth of these populations.

Are you familiar, Senator Nozzolio -- through you, Mr. President -- with the breakdown of the largest ethnic groups, the largest Latino ethnic groups in the Bronx, particularly the ones that grew?

SENATOR NOZZOLIO: Your question?

Mr. President, Senator Rivera's question, could he please ask it, state it as a question.

SENATOR RIVERA: Absolutely.

Through you, Mr. President. In the Bronx are you familiar with the largest ethnic groups, largest Latino ethnic groups in the Bronx, particularly as it relates to the growth in the last 10 years for the census numbers?

SENATOR NOZZOLIO: Mr. President, I am familiar with the census data as it is presented. And that data is part of the official record that accompanies the proposed plan.

SENATOR RIVERA: Through you,

Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, do you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

It's all right to say if you don't know them off the top of your head. It sounds good to say it.

There's three of them. There's Puerto Ricans, there's Dominicans, and there's Mexicans. And of those folks, of those ethnic groups, are you familiar with the citizenship status of these different Latino groups?

Through you, Mr. President.

SENATOR NOZZOLIO: Mr. President, the information provided by the United States Census Bureau accompanied this proposal, and each of the districts has accompanying with it that accompanying data.

If Senator Rivera wants to make a

point, I'd be glad to make it. This is not meant to be a rhetorical exercise. If he has a point, please make it.

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

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

There most certainly is a point, and it is the following. Of those Latino populations, Puerto Ricans, Dominicans and Mexicans -- and I will ask a question at the end of this, before I speak on the bill -- Puerto Ricans are actually citizens by birth, as opposed to Mexicans and Dominicans that were born outside of the country. So obviously there is an issue of voting-age populations.

I will wait.

So there is an issue of voting-age

populations. Puerto Ricans, regardless of where they were born, if they were born in the island of Puerto Rico or here in the United States, are citizens. While somebody, for example, who was born in Mexico and then comes to the United States and becomes a citizen, that has to be a process of becoming a citizen. They were not American citizens when they were born.

Therefore, there's issues of voting-age populations in the different districts that we're talking about. And I wanted particularly to speak about the district that would include the Dominican-American community in Washington Heights, where they're still a very large proportion of noncitizens.

So are you aware that the district that is there now, are you aware of the breakdown of citizen voting-age populations that exists in that district?

ACTING PRESIDENT FLANAGAN: Excuse me. Senator Nozzolio, before you answer the question, a lot of members have come back into the chamber. Senator Nozzolio -- it's a little hard for him to hear the questions and be able to properly respond. We just need some quiet in the

house.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, this plan uses as its foundation the data from the United States Census Bureau. That it was discussed already, I will discuss it again, that the plan is well within the acceptable and approvable standards established by the United States Constitution, the federal Voting Rights Act, and the Constitution of the State of New York and all other applicable statutes and all other applicable case law and judicial precedents.

That the data from the United States Census Bureau accompanies each and every one of the districts that are part of this plan. And that Senator Rivera and any other Senator or any other citizen can review that data at their leisure. That the data accompanies each district, and the data I believe speaks for itself.

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

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you so much, Mr. President.

I know time is growing short, and I did want to get to a couple more points before closing.

On the issue of voting-age population, the reason I mention that is specifically because if you can demonstrate that you can draw a district that actually maintains a certain voting-age population by maintaining the 63 seats, et cetera -- yet LATFOR made a choice to actually take a smaller voting-age population. It actually could -- you could argue that there is retrogression in different districts, and I was going to make the case -- when I speak on the bill briefly, I will make the case on the district that that refers to.

But I want to actually talk a little bit about Long Island before we get the

proverbial hook and they pull me and tell me that I'm running out of time. I want to talk a little bit about Long Island and particularly the communities out there in Suffolk and in Nassau and the different -- the growth of population out there and how the villages or different townships and different administrative subunits, if you will, how they're divided up, and particularly how the populations in them are represented or not represented or don't have an opportunity to elect someone of their own choosing.

Let's talk a little bit about Nassau. Do you know the population, when you're talking about Latino, Asian-American and African-American communities, how much they have grown in Nassau County in the last 10 years in the census?

SENATOR NOZZOLIO: Mr. President, the data in regard to each district is accompanying the proposal. That any type of numbers that Senator Rivera would like to have are right within this proposal, and it accompanies the legislation.

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

yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

SENATOR RIVERA: Thank you so much, Mr. President.

Again, just to confirm that the numbers that I have are the ones that you have, Senator Nozzolio.

The 2010 census reports that Nassau County's Hispanic population grew by 47 percent since 2000, the African-American population increased by 9 percent, and the Asian-American community grew by 62 percent. So you had all of these minority populations that grew at very large rates in different parts of Nassau County.

And there is actually an argument that was made, when you held a hearing out there, about different communities that should be kept together, communities of interest that should be kept together.

So I wanted to ask specifically

about what the -- and by the way, these analyses come from certainly experts that know a lot more about this than I do, and who are experts on Long Island, who tell me that the communities of Elmont, South Floral Park, North Valley Stream, Valley Stream, Lakewood, Hempstead Village, Uniondale, Roosevelt, Freeport, Carle Place and Westbury are actually kind of a continuous and cohesive community.

So I wanted to see if you agree that that was the case -- and this, again, is coming from folks that know much more about Long Island than I do. They would argue that all of this makes for a cohesive community of interest even though it is a lot of small villages and towns. Would you agree that that is -- that that would constitute a community of interest?

SENATOR NOZZOLIO: Mr. President, over the last decade Long Island has engaged in a relatively stable population. That the plan presented preserves the cores of existing districts, that it preserves the communities of interest, and that that preservation is the preservation that is required and accepted by the

state constitution and the federal constitution.

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

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Rivera.

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

Senator Nozzolio, would you agree that in Suffolk County -- we're talking about the town of Babylon, the town of Islip and Brentwood. And as far as the black and Latino populations in those parts of Long Island, would you agree or disagree that these can represent a community of interest? And, more specifically, that the growth of population of minority communities in these towns in this geographical area -- I'll wait until the . . .

SENATOR NOZZOLIO: Mr. President.

SENATOR RIVERA: I'm sorry, Mr. President, I have not finished my question.

I will finish it.

SENATOR NOZZOLIO: Please finish, Mr. Rivera.

SENATOR RIVERA: Thank you, Senator Nozzolio.

Would you agree that considering the growth of minority populations in these towns -- again, the town of Babylon, the town of Islip and Brentwood -- would you agree or disagree that the growth of population in these towns corresponds to a growth in population and that that population, minority population that has historically been divided in districts -- some people would argue purposely -- but if these communities of color are growing, should not these communities have an opportunity to elect someone of their own choosing, as per Section 2 and Section 5 of the Voting Rights Act?

SENATOR NOZZOLIO: Mr. President, that the districts that Senator Rivera is referring to each have had at least 90 percent of the core of their existing district -- those on the island, those in Suffolk County in particular, 90 percent of the cores of existing districts were retained by this plan.

That is an item that is part of the redistricting matrix that we particularly are very proud of, in keeping the cores of existing districts together. And that those districts in Suffolk County virtually are all preserved to 90 percent capacity as you move further east -- excuse me, west. That that district core is not under 80 percent moving west.

So the objective, the constitutionally focused objective, standard redistricting practices encourage the preservation of the cores of existing districts, and that is exactly what this plan did, particularly on Long Island.

SENATOR RIVERA: Mr. President, on the bill.

ACTING PRESIDENT FLANAGAN: Senator Rivera on the bill.

SENATOR RIVERA: Thank you, Mr. President.

Thank you, Senator Nozzolio, for answering some of these questions.

It is obvious, my colleagues, that there are some of us that have a serious problem with this plan. And we actually have a lot of

problems with this plan. I have a very deep and basic disagreement both with Senator Nozzolio and with the plan itself, with the idea that it protects minority communities.

I have a deep -- a deep problem, a fundamental problem with the idea that maintaining existing districts, as Senator Nozzolio insisted over and over again, preserving existing districts is actually a positive thing when the existing districts have disenfranchised minority communities historically.

If back in 1972 and in '82 and in '92 and in 2002 districts were drawn specifically to break up communities of color, to weaken their voting power, preserving those changes now does not actually give validity to the idea that this is a plan that defends communities of color, that allows them the opportunity to elect someone of their own interest.

These issues happen all over the state, whether it's out in Long Island -- and I would say that in the case of all the towns that I mentioned -- and I will be the first to admit I don't visit Long Island often. And I know that there's many of my colleagues who both live out

there, who have family out there, who know much more about it than I do. But the reason -- and it is precisely the reason why I mentioned all the little towns and villages that I mentioned.

Because if Elmont, South Floral Park, North Valley Stream, Valley Stream, Lakewood, Hempstead Village, Uniondale, Roosevelt, Freeport, Carle Place and Westbury all correspond to a series of towns and townships and villages that have actually had growing populations, growing minority populations that are trying to make sure that they can access government as ways to have government address its concerns, and you have all of these be split into four districts, historically making quite sure that the percentage of what these districts are corresponds to a percentage that means that whomever is elected in that district can choose to ignore them, I don't think that's fair.

And if you have an historical perspective, you will see that it has been done historically. Preserving that doesn't make it a fair plan. Preserving that makes it a very unfair plan, a plan that disenfranchises minority voters all across the state.

And when I mentioned the Bronx or Upper Manhattan and we talk about the populations in there, and we talk about the fact that organizations that had the same information that LATFOR did -- they had the same information as far as demographics, as far as geographies, as far as communities of interest -- and they could draw plans, even with what I believe to be a unconstitutional 63rd seat, that across the state made it possible for communities of interest to choose someone to represent them, it shows you something very clear: that LATFOR has made choices, has made very clear choices about where they put these lines, has made very clear choices about how they disenfranchise and take away power from communities that could potentially unelect you.

And I say potentially because, ladies and gentlemen, my colleagues on the other side of the aisle, you could actually give yourselves an opportunity to make the case to these individuals, to these men and women, that you could represent them well in this body. You could tell them "You, as minority communities, we could represent you so well. Give us the

opportunity." You don't do that with this plan.

This plan is unfair from top to bottom. It disenfranchises minority communities from top to bottom across the state. It takes power away from people that need it the most. I think you should be ashamed of it.

I'll finish with this, ladies and gentlemen. I came to this body to take over for someone whose name I don't mention, and I won't. But there was a reason I came here. And I came here because I believed that being in this body and representing the people of the district that I represent in the Bronx was incredibly important. It was incredibly important for me to come here and make sure that the things that happen in this state correspond to the best of our nature.

That sounds idealistic and silly, but it was that idealism and that silliness that got me to this Senate seat. It is that idealism and silliness that makes me stand before you today and say that this plan does not correspond to the best that we can do. We can do better. Approving this plan today, considering this plan is not looking backwards, it is stepping

backwards.

Mr. President, I will be voting in the negative on this bill.

ACTING PRESIDENT FLANAGAN: Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: I would like to make a motion to extend the session into tomorrow morning, because we're rapidly approaching midnight. And since we are making such progress, we ought to keep going beyond midnight.

ACTING PRESIDENT FLANAGAN: Senator DeFrancisco's motion is before the house. Those in favor of Senator DeFrancisco's motion should signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Those in objection say nay.

(Response of "Nay.")

ACTING PRESIDENT FLANAGAN: The motion is accepted.

Thank you, Senator DeFrancisco.

SENATOR DeFRANCISCO: I have another motion.

In order to give everyone the

opportunity to explain their vote before we get too far into the following day, I would make a motion to close the debate on this particular bill.

ACTING PRESIDENT FLANAGAN: Senator DeFrancisco has a motion before the house.

SENATOR SQUADRON: Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Squadron, why do you rise?

SENATOR SQUADRON: Point of order, an incidental question of order on that motion.

ACTING PRESIDENT FLANAGAN: State your question, Senator Squadron.

Excuse me. Senator Libous, why do you rise?

SENATOR LIBOUS: Mr. President, a motion is before the house and a vote needs to be taken on whether or not the debate should be ended. And when a motion is on the floor of the house, a vote must be taken immediately.

SENATOR SQUADRON: Mr. President, pursuant to Rule 9, Section 3, paragraph F, incidental questions of order are in order on motions such as this.

ACTING PRESIDENT FLANAGAN: Senator Squadron, Senator Libous's point is well-taken pursuant to Rule 9, Section 3(d). A motion is in order and it is nondebatable.

SENATOR SQUADRON: Mr. President, my --

ACTING PRESIDENT FLANAGAN: The motion before the house is whether or not we should be closing debate.

SENATOR SQUADRON: Mr. President, my -- Mr. President --

ACTING PRESIDENT FLANAGAN: All in favor signify by saying aye.

(Response of "Aye.")

SENATOR SQUADRON: Mr. President, my incidental question of order is on whether this motion is in order and whether there in fact have been two hours of debate on this bill, if you do not include editorial and commentary by the chair and periods in which the questioner was asking for answers.

So I don't believe this motion is in order --

SENATOR LIBOUS: Mr. President, did the motion before the house pass,

Mr. President?

SENATOR SQUADRON: Mr. President, I was standing on an incidental point of order.

ACTING PRESIDENT FLANAGAN: Excuse me. Senator Squadron -- Senator Squadron.

SENATOR SQUADRON: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: The motion of Senator Libous has passed before the house.

SENATOR SQUADRON: Mr. President, the motion was --

ACTING PRESIDENT FLANAGAN: Senator Squadron --

SENATOR LIBOUS: Then debate is ended, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Squadron, to your question, incidental or otherwise, I have a clock right down here. We have been debating this bill for approximately two hours and 20 minutes.

Senator Libous.

SENATOR SQUADRON: Mr. President, if you subtract the time that the chair has spent and the time that the questioner has been waiting

for an answer, we are not yet at two hours.

I believe Senator Sampson would be like to be recognized.

SENATOR LIBOUS: But Mr. President --

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: Mr. President, a motion to end debate has passed the house. Debate has ended and it's now time to call the roll.

SENATOR SQUADRON: Mr. President, the vote on that question was called inappropriately because we were on an incidental question of order.

SENATOR LIBOUS: Mr. President --

SENATOR SQUADRON: Which, under Rule 9, Section 3, paragraph F, is in order.

ACTING PRESIDENT FLANAGAN: Senator Squadron, your point is out of order. The motion before the house has passed. I as a courtesy --

SENATOR SQUADRON: Mr. President, I'd like to appeal the ruling of the chair.

ACTING PRESIDENT FLANAGAN:

Senator Squadron. Before I go to your question, your leader has risen, and I don't want to be disrespectful to him.

Senator Sampson, why do you rise?

SENATOR SAMPSON: Thank you very much, Mr. President. I just rise to make a comment on the motion that just passed or didn't pass.

You know, you stood up there and you talked about decorum and you talked about respect. This is something that we try to have a cohesive body and be respectful of one another. I can remember when the Republican Conference was in the minority, they were disgusted by the way they were treated. They were disgusted by the way they were cut off. As a result, they took matters in their own hands and created unfortunately this coup situation.

And now we're talking about voting on redistricting. It happens every 10 years, one of the most important votes that some members in this chamber have to vote on, that affects people throughout the State of New York. And for one of my colleagues to cut us off in debate, whether they are entitled to or not, where is the respect

and where is the decorum?

We are all duly elected officials, and we represent individuals that give us the privilege to represent them. This is not a seat that we hold that is indefinite. But to be disrespected and say that debate has to end on something that some of us hold dear to our heart, my colleagues -- and I'm appealing to what not is politically correct, but what is morally correct.

To deny our colleagues on this side of the aisle an opportunity to debate something that is extremely important to them lacks any sort of decorum. That is a form of disrespect not only to us but to this entire body, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Sampson, I appreciate your comments.

The motion that was before the house was to close the debate. That motion has passed, with the majority of the Senators present voting in the affirmative.

The debate on that bill is closed. The Secretary will ring the bell.

SENATOR SQUADRON: Mr. President,

I appealed the ruling of the chair. And we -- out of deference to the leader of the Democratic Conference, we held that appeal. But I appealed the ruling of the chair, Mr. President, on that motion.

ACTING PRESIDENT FLANAGAN: On the appeal by Senator Squadron, all those in favor of sustaining the chair signify by saying aye.

(Response of "Aye.")

SENATOR SQUADRON: Show of hands. Show of hands, please, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Squadron has asked for a show of hands.

Senator Squadron -- Senator Squadron.

All those in favor of sustaining the chair signify by saying aye or raising their hands.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Senator Squadron, the ruling of the chair has been appealed and has been upheld.

SENATOR SQUADRON: Mr. President, would you please report to me the count of the vote on that motion.

ACTING PRESIDENT FLANAGAN: Ayes, 32. 33, excuse me.

SENATOR SAMPSON: Mr. President, may I be heard?

ACTING PRESIDENT FLANAGAN: Senator Sampson.

SENATOR SAMPSON: Mr. President, it has come to the point in time that we're being denied an opportunity to speak on, to debate on an issue that is fundamentally important to our communities. We are being denied a right that our constituents elect us to do, to come up here and debate these issues.

As a result, there is no reason -- as I'm telling my members here tonight on this side of the aisle, there is no reason for us to participate in what I call a charade of democracy.

So I'm asking my colleagues at this point in time, we need to get up out of our seats, we need to go back to our offices. When we're ready to engage into democracy, when we are ready to engage into giving the minority an opportunity to speak or debate on that issue, then therefore we should come back into session

and be a part of what we call democracy.

Because it's very interesting, when we talk about the decorum and respect, when we are disrespected from debating an issue that is important to us -- that we only get to debate every 10 years -- we should be entitled to that right, Mr. President.

So I'm advising my colleagues, at this point in time we need to walk off. You can conduct this vote, this session --

ACTING PRESIDENT FLANAGAN: Senator Sampson. Senator Sampson, I gave you the courtesy of listening to you, and I would ask the same.

SENATOR SAMPSON: Thank you very much.

ACTING PRESIDENT FLANAGAN: And I ask that the members not leave the chamber.

Senator Sampson.

SENATOR SAMPSON: Senator Flanagan, you know, I respect you, but it comes to a point in time where enough is enough. Our bills are denied, resolutions are denied. It comes to a point in time where we have to stand up for what is right. Thank you very much.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Sampson.

Senator Libous.

SENATOR LIBOUS: Is there a substitution at the desk?

ACTING PRESIDENT FLANAGAN: The Secretary will read the substitution.

THE SECRETARY: In relation to Calendar Number 363, Senator Nozzolio moves to discharge, from the Committee on Rules --

SENATOR SQUADRON: Mr. President, point of order.

THE SECRETARY: -- Assembly Bill Number 9525 and substitute it for the identical Senate Bill Number 6696, Third Reading Calendar 363.

ACTING PRESIDENT FLANAGAN: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar 363, by Member of the Assembly McEneny, Assembly Print Number 9525, an act to amend the State Law.

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: We're on the roll

call; correct?

ACTING PRESIDENT FLANAGAN: Yes.

SENATOR LIBOUS: Call the roll.

SENATOR SQUADRON: Mr. President, point of order. The bells were not rung. We are not on the controversial calendar.

ACTING PRESIDENT FLANAGAN: Senator Squadron, the bells are rung. If you want to explain your vote, you'll be entitled to that. We are on a roll call.

SENATOR SQUADRON: Mr. President, this vote is being called out of order and outside of the Senate rules.

ACTING PRESIDENT FLANAGAN: Senator Squadron, you are out of order.

We are on a roll call. If you would like to explain your vote, I would be happy to recognize you.

Call the roll.

THE SECRETARY: Section 5. This act shall take effect immediately.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Announce the results.

THE SECRETARY: In relation to

Calendar Number 363, absent from voting:
Senators Adams, Addabbo, Avella, Breslin, Diaz, Dilan, Duane, Espaillat, Gianaris, Hassell-Thompson, Huntley, Kennedy, Krueger, Montgomery, Parker, Peralta, Perkins, Rivera, Sampson, Serrano, Smith, Squadron, Stavisky, and Stewart-Cousins.

Ayes, 36. Nays, 0.

ACTING PRESIDENT FLANAGAN: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President, could we now go to Calendar 364, please.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

Senator Libous, I believe we have a substitution.

SENATOR LIBOUS: Please make the substitution.

ACTING PRESIDENT FLANAGAN: The Secretary will read the substitution.

THE SECRETARY: In relation to Calendar Number 364, Senator Skelos moves to discharge, from the Committee on Rules, Assembly Bill Number 9526 and substitute it for the

identical Senate Bill Number 6698, Third Reading Calendar 364.

ACTING PRESIDENT FLANAGAN: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 364, by Member of the Assembly Silver, Assembly Print Number 9526, Concurrent Resolution of the Senate and Assembly proposing an amendment to Article 3 of the Constitution.

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: Mr. President, ring the bells and call the roll, please.

ACTING PRESIDENT FLANAGAN: The Secretary will ring the bell.

The Secretary will call the roll on the resolution.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Announce the results.

THE SECRETARY: In relation to Calendar Number 364, absent from voting: Senators Adams, Addabbo, Avella, Breslin, Diaz, Dilan, Duane, Espaillat, Gianaris,

Hassell-Thompson, Huntley, Kennedy, Krueger, Montgomery, Parker, Peralta, Perkins, Rivera, Sampson, Serrano, Smith, Squadron, Stavisky and Stewart-Cousins.

Ayes, 36. Nays, 0.

ACTING PRESIDENT FLANAGAN: The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

There will be an immediate meeting of the Rules Committee in Room 332. The Senate will stand at ease, and then we'll come back after Rules.

ACTING PRESIDENT FLANAGAN: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 11:47 p.m.)

(Whereupon, the Senate reconvened at 12:09 a.m.)

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: Mr. President, I believe there's a report of the Rules Committee at the desk. Could we have it read so we can

accept it, please.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Senator Skelos, from the Committee on Rules, reports the following bills:

Senate Print 6732, by the Committee on Rules, an act to amend the Education Law;

6733, by Senator Saland, an act to amend the Criminal Procedure Law; and

6734, by Senator Bonacic, Concurrent Resolution of the Senate and Assembly.

All bills reported direct to third reading.

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: I move to accept the report of the Rules Committee, Mr. President.

ACTING PRESIDENT FLANAGAN: All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT FLANAGAN: The Rules report is accepted.

Senator Libous.

SENATOR LIBOUS: Mr. President, could we have the noncontroversial reading of Calendar 21B, please.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 365, by the Senate Committee on Rules, Senate Print 6732, an act to amend the Education Law.

SENATOR SQUADRON: Lay it aside.

ACTING PRESIDENT FLANAGAN: Senator Squadron, we need to accept the message.

Senator Libous.

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

ACTING PRESIDENT FLANAGAN: Yes, there is.

SENATOR LIBOUS: I move to accept the message.

ACTING PRESIDENT FLANAGAN: All in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN:
Opposed, nay.
(Response of "Nay.")
ACTING PRESIDENT FLANAGAN: The message of necessity is accepted.
The bill is laid aside.
The Secretary will continue to read.
THE SECRETARY: Calendar Number 366, by Senator Saland, Senate Print 6733, an act to amend the Criminal Procedure Law.
SENATOR LIBOUS: Mr. President, is there a message of necessity at the desk?
ACTING PRESIDENT FLANAGAN: Yes, there is.
SENATOR LIBOUS: I move to accept the message of necessity.
ACTING PRESIDENT FLANAGAN: All in favor signify by saying aye.
(Response of "Aye.")
ACTING PRESIDENT FLANAGAN:
Opposed, nay.
(Response of "Nay.")
ACTING PRESIDENT FLANAGAN: The message of necessity is accepted.

SENATOR SQUADRON: Lay it aside.

ACTING PRESIDENT FLANAGAN: The bill is laid aside.

The Secretary will continue to read.

THE SECRETARY: Senator Bonacic moves to discharge, from the Committee on Rules, Assembly Print Number 9556 and substitute it for the identical Senate Bill Number 6734, Third Reading Calendar 367.

SENATOR SQUADRON: Lay it aside.

ACTING PRESIDENT FLANAGAN: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 367, by Member of the Assembly Pretlow, Assembly Print 9556, Concurrent Resolution of the Senate and Assembly.

SENATOR SQUADRON: Lay it aside.

ACTING PRESIDENT FLANAGAN: The bill is laid aside.

Senator Libous, that completes the noncontroversial reading of Calendar 21B.

SENATOR LIBOUS: Thank you, Mr. President.

We'd like to have the controversial reading of the calendar, but I would like to go to Calendar Number 367 and take that bill up first.

ACTING PRESIDENT FLANAGAN: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 367, by Member of the Assembly Pretlow, Assembly Print Number 9556, Concurrent Resolution of the Senate and Assembly.

ACTING PRESIDENT FLANAGAN: Senator Young to explain her vote.

SENATOR YOUNG: Thank you, Mr. President.

Tonight we are passing the Governor's plan for a constitutional amendment that would create seven casinos in New York State, contingent upon the passage of a public referendum.

Ten years ago New York State made a promise, through a compact with the Seneca Nation of Indians when Western New York casinos were established, and that compact said that an exclusivity zone would be honored. In the final

outcome of this legislation, New York State must keep that promise by making sure that the exclusivity zone is respected and protected.

The final outcome also must make sure that the Salamanca School District, the City of Salamanca and Cattaraugus County have their needs met.

Therefore, I vote yes on the Governor's plan tonight, with the goal that the final plan that will be put before the voters for a constitutional amendment will reflect the priorities that I have mentioned. Therefore, Mr. President, I will be voting aye.

ACTING PRESIDENT FLANAGAN: Senator Young will be recorded in the affirmative.

Senator Libous, in my zeal to be efficient, I got a little ahead of myself. I know Senator Young was getting up to explain her vote, but prior to doing that we need to close debate.

So debate is closed.

The Secretary will call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN:

Senator Martins to explain his vote, and then Senator Maziarz.

Senator Martins.

SENATOR MARTINS: Thank you, Mr. President.

I too rise to express my concerns with respect to the Governor's proposal.

I will be voting in the affirmative, as I understand that this is a two-year process and that the vote this year also has to be mirrored by a similar vote next year.

But I am concerned about the lack of specificity with regard to the locations for the proposed casinos and want to make it very clear that although I am voting aye this year and supporting this proposal, I do expect that there will be specificity before we're asked to vote on this again so that we have an opportunity to properly evaluate the merits. And if we don't have that specificity, I will be voting no next year.

This year, I vote aye.

ACTING PRESIDENT FLANAGAN: Senator Martins to be recorded in the affirmative.

Senator Maziarz.

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

I just want to join my colleagues Senator Martins and Senator Young in supporting this legislation but also being very concerned about specificity.

As pointed out by Senator Young, there's nothing in this bill that jeopardizes anyone, whether it's the racinos across this state or Indian nations across this state.

This is the Governor's program bill. It opens the dialogue for discussion. It will get the process started to discussion on this amendment.

And it doesn't have any particular sites in it. And again, I have concerns going forward, before we do second passage, about more specificity on where these casinos will be placed.

But I do vote in the affirmative. Thank you, Mr. President.

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

Senator Ranzenhofer to explain his vote.

SENATOR RANZENHOFER: Very briefly, Mr. President, I have some concerns, as some of my other colleagues have expressed, about the lack of specificity.

I will voting yes tonight, but this is just the beginning of the process rather than the end, and I just want to state that for the record. Thank you.

ACTING PRESIDENT FLANAGAN: Senator Ranzenhofer to be recorded in the affirmative.

Senator Gallivan to explain his vote.

SENATOR GALLIVAN: Thank you, Mr. President.

I too share the concerns raised by my colleagues.

I'll be voting in the affirmative. I think this is very appropriate to start the discussion, flesh it out, and certainly deal with the concerns of our constituents as we move forward. I vote aye.

ACTING PRESIDENT FLANAGAN:

Senator Gallivan to be recorded in the affirmative.

Senator Grisanti to explain his vote.

SENATOR GRISANTI: Thank you, Mr. President.

As my colleagues have stated prior, and it's very important, there is nothing, there is nothing in this legislation or this bill that jeopardizes anybody, any matters of racinos or any of the Indian nations, as stated by Senator Maziarz, across this state.

This amendment enactment does not establish any particular site or sites and leaves the discretion to the legislators in the future. I'm going to vote aye because it does move the dialogue forward, but again, I have concerns about the lack of specificity.

But I will vote aye, Mr. President.

ACTING PRESIDENT FLANAGAN: The Secretary will announce the results.

THE SECRETARY: In relation to Calendar Number 367, those Senators absent from voting: Senators Adams, Addabbo, Avella, Breslin, Diaz, Dilan, Duane, Espaillat, Gianaris,

Hassell-Thompson, Huntley, Kennedy, Krueger, Montgomery, Parker, Peralta, Perkins, Rivera, Sampson, Serrano, Smith, Squadron, Stavisky and Stewart-Cousins.

Ayes, 36. Nays, 0.

ACTING PRESIDENT FLANAGAN: The resolution is adopted.

The Secretary will read.

THE SECRETARY: Calendar Number 365, by the Senate Committee on Rules, Senate Print 6732, an act to amend the Education Law.

ACTING PRESIDENT FLANAGAN: The debate is closed. The Secretary will ring the bells.

Read the last section.

THE SECRETARY: Section 12. This act shall take effect immediately.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Announce the results.

THE SECRETARY: In relation to Calendar Number 365, absent from voting: Senators Adams, Addabbo, Avella, Breslin, Diaz,

Dilan, Duane, Espaillat, Gianaris, Hassell-Thompson, Huntley, Kennedy, Krueger, Montgomery, Parker, Peralta, Perkins, Rivera, Sampson, Serrano, Smith, Squadron, Stavisky and Stewart-Cousins.

Ayes, 36. Nays, 0.

ACTING PRESIDENT FLANAGAN: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 366, by Senator Saland, Senate Print 6733, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT FLANAGAN: The debate is closed. The Secretary will ring the bells.

Read the last section.

THE SECRETARY: Section 9. This act shall take effect October 1, 2012.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Senator Saland to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this is a DNA all-crimes databank bill. What this bill does is it expands the collection of DNA to all felonies -- not merely Penal Law felonies, but all felonies -- and all misdemeanors, with one exception, that exception being the Class B marijuana possession where an individual who has been so accused has no prior convictions, including any prior conviction for possession of marijuana under Penal Law Section 221.10.

It provides for access to post-plea DNA testing in a limited number of cases -- homicides, violent B felonies, and felony sex offenses. It's only for defendants who have pled guilty after the enactment of the law, so it's only prospective.

Very importantly, it limits testing of evidence secured in connection with the investigation or prosecution of a defendant to that which has retained its prohibitiveness by being in the prosecution, law enforcement or lab's custody; in other words, under the possession and control and custody of law enforcement.

And again very importantly,

evidence must establish a defendant's actual innocence -- not merely that he or she was not guilty or innocent, but actual innocence, which is a much higher bar.

Similarly, access is provided for post-trial discovery of property allowed only after a trial of a felony. There are a number of restrictions that go along with that. For a court to consider such a post-trial motion, there has to be a significant issue warranting an evidentiary hearing as determined by the court.

It's only if probative to the determination, once, again of the defendant's actual innocence. Not merely his or her innocence, not that they were not found to be not guilty beyond a reasonable doubt, but they must establish their actual innocence. Again, a much higher bar.

And, lastly, there is the ability to apply for DNA profile keyboard-search comparisons in certain circumstances.

Mr. President, this is a bill which certainly is both a sword and a shield. It's a bill which provides means by which prosecutors can more greatly secure public safety. It's a

means by which closed cases can be put to rest. It's also a means by which defendants can be exonerated or removed from consideration as a criminal suspect.

SENATOR DeFRANCISCO: Point of order.

(Laughter.)

SENATOR SALAND: Lastly, I'd like to thank the Governor's office for having worked so closely with us in making this a reality.

ACTING PRESIDENT FLANAGAN: Senator Saland to be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: In relation to Calendar Number 366, absent from voting are Senators Adams, Addabbo, Avella, Breslin, Diaz, Dilan, Duane, Espaillat, Gianaris, Hassell-Thompson, Huntley, Kennedy, Krueger, Montgomery, Parker, Peralta, Perkins, Rivera, Sampson, Serrano, Smith, Squadron, Stavisky and Stewart-Cousins.

Ayes, 36. Nays, 0.

ACTING PRESIDENT FLANAGAN: The bill is passed.

Senator Libous, before I recognize Senator Skelos, I just want to announce that that completes the controversial reading of the calendar.

Senator Skelos.

SENATOR SKELOS: Mr. President, I'd just like to direct the members' attention to Rule 9, which talks about attendance and vote.

"Every Senator shall be present within the Senate chamber during the sessions of the Senate unless duly excused or necessarily prevented, and shall vote on each question for which a vote is required stated from the chair unless excused by the Senate, or unless he or she has a direct personal or pecuniary interest in such event of such question. If any Senator refuses to vote, unless he or she is excused by the Senate or unless he or she be interested, such refusal shall be deemed a contempt."

ACTING PRESIDENT FLANAGAN: Thank you, Senator Skelos.

Senator Libous.

SENATOR LIBOUS: There will be a meeting of the Rules Committee in Room 332.

In the meantime, the Senate will

stand at ease.

ACTING PRESIDENT FLANAGAN: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 12:23 a.m.)

(Whereupon, the Senate reconvened at 12:25 a.m.)

ACTING PRESIDENT ROBACH: Senator Libous.

SENATOR LIBOUS: Mr. President, there will be an immediate Republican conference in Room 332. There will be a Republican conference immediately in Room 332.

ACTING PRESIDENT ROBACH: There will be an immediate Republican conference in Room 332.

The Senate will continue to stand at ease.

(Whereupon, the Senate stood at ease at 12:27 a.m.)

(Whereupon, the Senate reconvened at 3:49 a.m.)

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: Mr. President,

may we return to reports of standing committees. I believe there's a report of the Rules Committee at the desk.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

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

Senate Print 6735, by the Committee on Rules, an act to amend the Retirement and Social Security Law.

SENATOR LIBOUS: Mr. President, I move to accept the report of the Rules Committee.

ACTING PRESIDENT FLANAGAN: All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT FLANAGAN: Senator Libous, the Rules report is accepted.

Just to clarify one point from earlier, we had had a previous Rules report, we had had a formal vote on it, and I just want to make sure that the record reflects that that

report was accepted after the vote.

Senator Libous.

SENATOR SQUADRON: Mr. President, for clarity, what was the calendar number on that report?

ACTING PRESIDENT FLANAGAN: Senator Squadron, 21B.

Senator Libous.

SENATOR LIBOUS: Mr. President, can we have the noncontroversial reading of Calendar Number 21C.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 368, by the Committee on Rules, Senate Print 6735, an act to amend the Retirement and Social Security Law.

SENATOR SQUADRON: Lay it aside.

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

ACTING PRESIDENT FLANAGAN: Senator Libous, there is.

SENATOR LIBOUS: I move to accept the message of necessity.

ACTING PRESIDENT FLANAGAN: All in

favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT FLANAGAN: The message is accepted.

The bill is laid aside, Senator Squadron.

SENATOR SQUADRON: Thank you.

SENATOR LIBOUS: Mr. President, can we now please have the controversial reading of Calendar 21C, please.

ACTING PRESIDENT FLANAGAN: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 368, by the Senate Committee on Rules, Senate Print 6735, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT FLANAGAN: Senator Squadron.

SENATOR SQUADRON: Thank you, Mr. President.

Mr. President, according to

Section 23 of Article 3 of the State Constitution, carried through by subdivision C of Section 2 of Senate Rule 9, three-fifths of all the members elected to the Senate shall be necessary to constitute a quorum therein on the final passage of any bill which creates a debt or a charge.

This bill does so. By all appearances, there is not the requisite number of Senators present in the house at this time.

Pursuant to the Senate rule I cited previously, the absence of the constitutional quorum necessary to the final passage of this bill requires that it simply retain its place on the Third Reading Calendar and be again taken up in its regular order.

ACTING PRESIDENT FLANAGAN: Senator Squadron, the bill is properly before the house. There is no appropriation contained in this bill. Therefore, a simple quorum is all that is required for transacting the business before the house.

SENATOR SQUADRON: Mr. President, to clarify, I'm asking a question of quorum. I'm asking for a quorum, please, a quorum call.

Pursuant to Rule 4, paragraph 2.

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: There is not a problem. If the Senator wants a quorum call, we shall have a quorum call.

ACTING PRESIDENT FLANAGAN: The Secretary will call the roll to ascertain if there's a quorum.

THE SECRETARY: Senator Adams.

(No response.)

THE SECRETARY: Senator Addabbo.

(No response.)

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Here.

THE SECRETARY: Senator Avella.

(No response.)

THE SECRETARY: Senator Ball.

SENATOR BALL: Good morning.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Present.

THE SECRETARY: Senator Breslin.

(No response.)

THE SECRETARY: Senator Carlucci.

SENATOR CARLUCCI: Here.
THE SECRETARY: Senator DeFrancisco.
SENATOR DeFRANCISCO: Here.
THE SECRETARY: Senator Diaz.
(No response.)
THE SECRETARY: Senator Dilan.
(No response.)
THE SECRETARY: Senator Duane.
(No response.)
THE SECRETARY: Senator Espaillat.
(No response.)
THE SECRETARY: Senator Farley.
SENATOR FARLEY: Here.
THE SECRETARY: Senator Flanagan.
ACTING PRESIDENT FLANAGAN: Here.
THE SECRETARY: Senator Fuschillo.
SENATOR FUSCHILLO: Here.
THE SECRETARY: Senator Gallivan.
SENATOR GALLIVAN: Here.
THE SECRETARY: Senator Gianaris.
(No response.)
THE SECRETARY: Senator Golden.
SENATOR GOLDEN: Here.

THE SECRETARY: Senator Griffo.
SENATOR GRIFFO: Here.
THE SECRETARY: Senator Grisanti.
SENATOR GRISANTI: Here.
THE SECRETARY: Senator Hannon.
SENATOR HANNON: Here.
THE SECRETARY: Senator Hassell-Thompson.
(No response.)
THE SECRETARY: Senator Huntley.
(No response.)
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Here.
THE SECRETARY: Senator Kennedy.
(No response.)
THE SECRETARY: Senator Klein.
SENATOR KLEIN: Here.
THE SECRETARY: Senator Krueger.
(No response.)
THE SECRETARY: Senator Lanza.
SENATOR LANZA: Here.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: Here.
THE SECRETARY: Senator LaValle.
SENATOR LaVALLE: Here.

THE SECRETARY: Senator Libous.
SENATOR LIBOUS: Here.
THE SECRETARY: Senator Little.
SENATOR LITTLE: Here.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: Here.
THE SECRETARY: Senator Martins.
SENATOR MARTINS: Here.
THE SECRETARY: Senator Maziarz.
SENATOR MAZIARZ: Here.
THE SECRETARY: Senator McDonald.
SENATOR McDONALD: Here.
THE SECRETARY: Senator Montgomery.
(No response.)
THE SECRETARY: Senator Nozzolio.
SENATOR NOZZOLIO: Present.
THE SECRETARY: Senator O'Mara.
SENATOR O'MARA: Here.
THE SECRETARY: Senator Oppenheimer.
(No response.)
THE SECRETARY: Senator Parker.
(No response.)

THE SECRETARY: Senator Peralta.
(No response.)
THE SECRETARY: Senator Perkins.
(No response.)
THE SECRETARY: Senator Ranzenhofer.
SENATOR RANZENHOFER: Here.
THE SECRETARY: Senator Ritchie.
SENATOR RITCHIE: Here.
THE SECRETARY: Senator Rivera.
(No response.)
THE SECRETARY: Senator Robach.
SENATOR ROBACH: Here.
THE SECRETARY: Senator Saland.
SENATOR SALAND: Here.
THE SECRETARY: Senator Sampson.
(No response.)
THE SECRETARY: Senator Savino.
SENATOR SAVINO: Here.
THE SECRETARY: Senator Serrano.
(No response.)
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Here.
ACTING PRESIDENT FLANAGAN: Senator Libous, pursuant to Rule 9, Section 2(a),

a quorum is present.

SENATOR LIBOUS: Thank you, Mr. President.

Can we proceed on the bill?

SENATOR SQUADRON: Mr. President, on the quorum question.

On the bill before the house, the rules state very clearly that if -- I'm in Rule 4, paragraph 2, Section D. If on taking the final question on a bill it shall appear the constitutional quorum is not present, or if the bill requires a vote of two-thirds of the Senators elected to pass it and it appears that such number is not present, the bill shall retain its place on the calendar and be again taken up in its regular order.

Paragraph sub (e): When any bill requiring the concurrence of two-thirds of the Senators or a quorum of three-fifths thereof is under consideration, such concurrence or quorum, as the case may be, shall not be requisite except on the question of its final passage, which is what we are on now.

And of course that references the constitutional provision that I referenced

before.

ACTING PRESIDENT FLANAGAN: Senator Squadron, we already ruled on your point of order, which you're now making for a second time. The bill is properly before the house pursuant to the rules of the house.

Is there any Senator wishing to be heard on the bill?

SENATOR SQUADRON: Mr. President, on the constitutional provision. The constitutional provision is very clear. It says on the final passage in either house of the Legislature of any act which imposes --

ACTING PRESIDENT FLANAGAN: Senator Squadron --

SENATOR SQUADRON: -- or revives a tax or creates a debt or charge or --

ACTING PRESIDENT FLANAGAN: Senator Squadron, you are out of order. We have ruled on this twice already.

SENATOR SQUADRON: -- or releases a charge --

ACTING PRESIDENT FLANAGAN: The bill is before the house.

Senator Libous.

SENATOR SQUADRON: -- or a demand on the state.

ACTING PRESIDENT FLANAGAN: Any Senator wishing to be heard?

SENATOR SQUADRON: Mr. President, I have the floor and I'm speaking on the bill. I am speaking on the constitutional requirement of this bill.

ACTING PRESIDENT FLANAGAN: Senator Squadron, you are out of order.

Senator Libous.

SENATOR SQUADRON: Mr. President, I have the floor and am speaking on the bill. In what way am I out of order, Mr. President?

SENATOR LIBOUS: Mr. President, he's not speaking on the bill.

SENATOR SQUADRON: I am.

SENATOR LIBOUS: You are not speaking on the bill, sir. You got up after a quorum call was taken, the vote was taken. You are not speaking on the bill. You do not get up to speak on the bill.

Mr. President, at this point in time I would say that we would take a roll call vote on the bill.

SENATOR SQUADRON: Mr. President, on the bill.

ACTING PRESIDENT FLANAGAN: Senator Squadron on the bill.

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

The constitutional provision, I will continue. The question shall be taken by yeas and nays which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall in all such cases be necessary to constitute a quorum therein.

On the bill, on page 43 of the bill, I'm quoting from the bottom of page 43 of the bill here: "There would also be additional administrative expenses to inform employers and new members of the new plan provisions and to notified automated systems. Employee contributions would now be a function of base salary instead of one fixed rate. To implement these employee contribution rate changes the modification of NYSLRS automated systems would be substantial" -- I'm on page 44 now -- "with an associated implementation expense estimated at $3 to $5 million. The more complicated system would

be more challenging to maintain, apply and explain, resulting in estimated annual ongoing expenses in the millions of dollars. The state and each of the approximately 3,000 participating employers would have to modify their methods for withholding employee contributions, which could also lead to total expenses in the millions of dollars. Lastly, the bill contains no appropriation to support the additional payroll administrative expense to the Office of the State Comptroller or the implementation and ongoing expenses of NYSLRS related to the new tier."

This is clearly a bill that is in keeping with the constitutional provision requiring a three-fifths quorum. It is a provision -- it's not just in the Constitution, it is mirrored in the Senate rules.

We've had a quorum call. We have 37 members present, by my count. I think we actually only got to 32 in the quorum call, but by my count we have 37 in the chamber at the moment, which is one shy of the three-fifths required for this type of bill.

And this bill clearly, based on what I read and other components, creates a

charge and a cost and obligation for the state. Further, pension bills historically have been treated with a three-fifths quorum requirement, Mr. President.

So again, I believe that based on the quorum call that we previously had, based on the current number of Senators present and in the house, we do not have the appropriate quorum to take up final passage of the bill.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Any other Senator wishing to be heard?

Hearing none, the debate is closed.

Read the last section.

THE SECRETARY: Section 83. This act shall take effect April 1, 2012.

ACTING PRESIDENT FLANAGAN: The Secretary will ring the bell.

Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Senator Squadron.

SENATOR SQUADRON: To explain my vote, Mr. President.

Mr. President, this bill sitting on my desk, it is literally still warm. The hour is quite -- it's not even late anymore, the hour is now quite early. We have, as I pointed out earlier, 37 members in this house, which is one shy of the constitutional requirement.

I am voting against this bill today, I need to admit, without having read it. There was no time to do so. It was put on my desk, warmly, just minutes ago. And I do not believe that a bill as important as this, as monumental as this should be voted on in a way that invites legal challenge and without a quorum.

So with only 37 members present, in an evening in which debate and democracy has been stifled again and again, I am forced to vote no on this bill. I hope to have the opportunity to consider it more fully in the future.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Squadron will be recorded in the negative.

The Secretary will announce the results.

THE SECRETARY: In relation to Calendar Number 368, those recorded in the negative are Senators Carlucci, Klein, Savino, Squadron and Valesky.

Absent from voting: Senators Adams, Addabbo, Avella, Breslin, Diaz, Dilan, Duane, Espaillat, Gianaris, Hassell-Thompson, Huntley, Kennedy, Krueger, Montgomery, Parker, Peralta, Perkins, Rivera, Sampson, Serrano, Smith, Stavisky and Stewart-Cousins.

Ayes, 32. Nays, 5.

ACTING PRESIDENT FLANAGAN: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President, there will be an immediate meeting of the Rules Committee in Room 332.

I would ask that members that are not on the Rules committee stay in the chamber, because it will be a quick meeting and we'll be right back on the floor.

The Senate will stand at ease pending the Rules Committee meeting.

ACTING PRESIDENT FLANAGAN: Rules Committee meeting in Room 332.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:02 a.m.)

(Whereupon, the Senate reconvened at 4:25 a.m.)

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: Mr. President, can we please return to reports of standing committees. I believe there's a report of the Rules Committee at the desk.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

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

Senate Print 6736, by Senator Skelos, an act to amend the Legislative Law.

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: Mr. President, I move to accept the report of the Rules Committee, please.

ACTING PRESIDENT FLANAGAN: All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT FLANAGAN: Senator Libous, the Rules report is adopted.

SENATOR LIBOUS: Mr. President, if we can go to the noncontroversial reading of Calendar Number 21D, please.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 369, by Senator Skelos, Senate Print 6736, an act to amend the Legislative Law.

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

ACTING PRESIDENT FLANAGAN: Senator Libous, there is.

SENATOR LIBOUS: I move to accept the message of necessity.

ACTING PRESIDENT FLANAGAN: All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Those opposed, nay.

(Response of "Nay.")

SENATOR SQUADRON: Lay it aside.

ACTING PRESIDENT FLANAGAN: The message is accepted and the bill is laid aside.

Senator Libous.

SENATOR LIBOUS: Mr. President, at this time can we have the controversial reading of the calendar.

ACTING PRESIDENT FLANAGAN: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 369, by Senator Skelos, Senate Print 6736, an act to amend the Legislative Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

THE SECRETARY: Section 6. This act shall take effect subsequent upon passage by both houses of the Legislature.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Announce the results.

THE SECRETARY: In relation to

Calendar Number 369, absent from voting:
Senators Adams, Addabbo, Avella, Breslin, Diaz, Dilan, Duane, Espaillat, Gianaris, Hassell-Thompson, Huntley, Kennedy, Krueger, Montgomery, Parker, Peralta, Perkins, Rivera, Sampson, Serrano, Smith, Squadron, Stavisky, and Stewart-Cousins.

Ayes, 36. Nays, 0.

ACTING PRESIDENT FLANAGAN: The bill is passed.

Senator Libous.

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

ACTING PRESIDENT FLANAGAN: There is none.

SENATOR LIBOUS: Thank God.

(Laughter.)

SENATOR LIBOUS: Mr. President, there will be this morning at 10:45 a Republican Majority conference, promptly at 10:45.

And, Mr. President, I move that the Senate stand adjourned until Thursday morning, this morning, March 15th, at 11:00 a.m.

ACTING PRESIDENT FLANAGAN: On motion, the Senate stands adjourned until this

morning, Thursday, March 15th, at 11:00 a.m.

(Whereupon, at 4:27 a.m., the Senate adjourned.)