

1 NEW YORK STATE SENATE

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3
4 THE STENOGRAPHIC RECORD

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8
9 ALBANY, NEW YORK

10 March 14, 2012

11 11:10 a.m.

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13
14 REGULAR SESSION

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18 SENATOR JOSEPH A. GRIFFO, Acting President

19 FRANCIS W. PATIENCE, Secretary

1 P R O C E E D I N G S

2 ACTING PRESIDENT GRIFFO: The
3 Senate will come to order.

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

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

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

13 PASTOR MOODIE: Thank you.

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

19 Could you bow your heads.

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

1 business for Your people.

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

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

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

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

23 In Your name, we pray. Amen.

24 ACTING PRESIDENT GRIFFO: Thank
25 you, Pastor.

1 The reading of the Journal.

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

7 ACTING PRESIDENT GRIFFO:
8 Without objection, the Journal stands approved
9 as read.

10 Presentation of petitions.
11 Messages from the Assembly.
12 Messages from the Governor.
13 Reports of standing committees.
14 Reports of select committees.
15 Communications and reports from
16 state officers.

17 Motions and resolutions.

18 SENATOR LIBOUS: Mr. President,
19 one second, please.

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

25 ACTING PRESIDENT GRIFFO: The

1 Secretary will read.

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

7 ACTING PRESIDENT GRIFFO: Senator
8 Carlucci.

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

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

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

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

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

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

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

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

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

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

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

24 Thank you, Mr. President.

25 ACTING PRESIDENT GRIFFO: Thank

1 you, Senator Carlucci.

2 As noted, the resolution has been
3 previously adopted.

4 Senator Libous.

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

9 ACTING PRESIDENT GRIFFO: Senator
10 Smith.

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

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

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

17 Can we have some order in the
18 house, please.

19 Senator Smith.

20 SENATOR SMITH: Yes, thank you.

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

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

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

9 Sun Guoxiang, would you please
10 rise?

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

16 (Applause.)

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

19 He is now consul general to the
20 People's Republic of China here in New York.
21 From 2008 to 2011, he was ambassador
22 extraordinaire of the People's Republic of China
23 to the Socialist Republic of Vietnam. 2006 to
24 2008, he was the ambassador extraordinaire of the
25 People's Republic of China to the Republic of

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

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

16 Thank you, Mr. President.

17 ACTING PRESIDENT GRIFFO: Thank
18 you, Senator Smith.

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

22 I now call upon Senator Maziarz to
23 speak.

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

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

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

9 Thank you, Mr. President.

10 ACTING PRESIDENT GRIFFO: Senator
11 Farley.

12 SENATOR FARLEY: Thank you,
13 Mr. President.

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

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

25 Thank you very much, Mr. President.

1 ACTING PRESIDENT GRIFFO: Senator
2 Stavisky.

3 SENATOR STAVISKY: Thank you,
4 Mr. President.

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

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

12 ACTING PRESIDENT GRIFFO: Thank
13 you, Senator Stavisky.

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

18 Senator Libous.

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

22 ACTING PRESIDENT GRIFFO: The
23 Secretary will read.

24 THE SECRETARY: Calendar Number
25 300, by Senator Little, Senate Print 824, an act

1 to amend the Executive Law.

2 ACTING PRESIDENT GRIFFO: Read the
3 last section.

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

6 ACTING PRESIDENT GRIFFO: Call the
7 roll.

8 (The Secretary called the roll.)

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

11 ACTING PRESIDENT GRIFFO: The bill
12 is passed.

13 THE SECRETARY: Calendar Number
14 311, by Senator LaValle, Senate Print 5343, an
15 act to amend the Education Law.

16 ACTING PRESIDENT GRIFFO: Read the
17 last section.

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

20 ACTING PRESIDENT GRIFFO: Call the
21 roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes, 57.

24 ACTING PRESIDENT GRIFFO: The bill
25 is passed.

1 THE SECRETARY: Calendar Number
2 317, by Senator Diaz, Senate Print 108, an act to
3 amend the Penal Law.

4 ACTING PRESIDENT GRIFFO: Read the
5 last section.

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

8 ACTING PRESIDENT GRIFFO: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes, 57.

12 ACTING PRESIDENT GRIFFO: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 318, by Senator Nozzolio, Senate Print 474, an
16 act to amend the Correction Law.

17 ACTING PRESIDENT GRIFFO: Read the
18 last section.

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

21 ACTING PRESIDENT GRIFFO: Call the
22 roll.

23 (The Secretary called the roll.)

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

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

3 Ayes, 55. Nays, 3.

4 ACTING PRESIDENT GRIFFO: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 319, by Senator Young, Senate Print 744A, an act
8 to amend the Correction Law.

9 ACTING PRESIDENT GRIFFO: Read the
10 last section.

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

13 ACTING PRESIDENT GRIFFO: Call the
14 roll.

15 (The Secretary called the roll.)

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

20 Ayes, 56. Nays, 2.

21 ACTING PRESIDENT GRIFFO: The bill
22 is passed.

23 Senator Montgomery, why do you
24 rise?

25 SENATOR MONTGOMERY: Yes,

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

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

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

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

12 SENATOR LIBOUS: Mr. President.

13 ACTING PRESIDENT GRIFFO: Senator
14 Libous.

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

18 ACTING PRESIDENT GRIFFO: Without
19 objection, so granted.

20 SENATOR MONTGOMERY: Thank you.

21 THE SECRETARY: In relation to
22 Calendar Number 319 --

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

25 SENATOR PERKINS: I would like

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

3 ACTING PRESIDENT ROBACH: Senator
4 Libous? Without objection.

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

9 ACTING PRESIDENT ROBACH: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 320, by Senator Saland, Senate Print 1418, an act
13 to amend the Correction Law.

14 ACTING PRESIDENT ROBACH: Read the
15 last section.

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

18 ACTING PRESIDENT ROBACH: Call the
19 roll.

20 (The Secretary called the roll.)

21 ACTING PRESIDENT ROBACH: Senator
22 Rivera to explain his vote.

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

25 This is one of the bills that I

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

4 The issue with bills of this type
5 is that they are not specific to the type of sex
6 offender that we are speaking of. Level 1, 2 and
7 3 sex offenders need to be distinguished in bills
8 like this.

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

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

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

25 SENATOR LIBOUS: Mr. President,

1 can we have some order.

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

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

9 Senator Rivera will be recorded in
10 the negative.

11 Announce the results.

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

16 Ayes, 54. Nays, 5.

17 ACTING PRESIDENT GRIFFO: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 321, by Senator Alesi, Senate Print 1927, an act
21 to amend the Correction Law.

22 ACTING PRESIDENT GRIFFO: Read the
23 last section.

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

1 ACTING PRESIDENT GRIFFO: Call the
2 roll.

3 (The Secretary called the roll.)

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

6 ACTING PRESIDENT GRIFFO: The bill
7 is passed.

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

10 SENATOR LIBOUS: Thank you,
11 Mr. President.

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

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

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

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

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

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

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

25 That's at 12:30, those meetings.

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

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

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

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

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

25 Economic Development, Health,

1 Education, General Government will commence at
2 1:30. At 12:30, Mental Hygiene, Transportation,
3 Human Services.

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

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

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

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

17 (Whereupon, the Senate reconvened at
18 5:03 p.m.)

19 ACTING PRESIDENT GRIFFO: The
20 Senate will come to order.

21 Senator Skelos.

22 SENATOR SKELOS: Mr. President,
23 there will be a meeting of the Rules Committee at
24 5:45 in the Majority Conference Room.

25 ACTING PRESIDENT GRIFFO: Meeting

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

3 SENATOR SKELOS: And the Senate
4 will stand at ease.

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

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

9 (Whereupon, the Senate reconvened at
10 6:24 p.m.)

11 ACTING PRESIDENT GRIFFO: The
12 Senate will come to order.

13 Senator Libous.

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

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

21 ACTING PRESIDENT GRIFFO: Senator
22 Breslin.

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

1 here.

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

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

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

9 The Senate is at ease.

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

12 (Whereupon, the Senate reconvened at
13 9:10 p.m.)

14 SENATOR LIBOUS: Mr. President.

15 ACTING PRESIDENT FLANAGAN:

16 Senator Libous.

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

19 ACTING PRESIDENT FLANAGAN:

20 Motions and resolutions.

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

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

4 Senator Libous.

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

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

13 Senator Libous.

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

18 ACTING PRESIDENT FLANAGAN:
19 Reports of standing committees.

20 The Secretary will read.

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

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

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

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

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

9 (Response of "Aye.")

10 ACTING PRESIDENT FLANAGAN: Those
11 opposed, nay.

12 (Response of "Nay.")

13 SENATOR BRESLIN: Point of order.

14 ACTING PRESIDENT FLANAGAN: The
15 Rules report is adopted.

16 Senator Breslin.

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

20 ACTING PRESIDENT FLANAGAN:
21 Senator Libous.

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

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

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

9 SENATOR LIBOUS: Thank you.
10 (Pause.)

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

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

16 SENATOR LIBOUS: Thank you,
17 Mr. President.

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

21 ACTING PRESIDENT FLANAGAN: The
22 Secretary will read.

23 THE SECRETARY: Calendar Number
24 363, by Senator Nozzolio, Senate Print 6696, an
25 act to amend the State Law.

1 SENATOR BRESLIN: Lay it aside.

2 ACTING PRESIDENT FLANAGAN: The
3 bill is laid aside.

4 THE SECRETARY: Calendar Number
5 364, by Senator Skelos, Senate Print 6698,
6 Concurrent Resolution of the Senate and Assembly.

7 SENATOR BRESLIN: Lay it aside.

8 ACTING PRESIDENT FLANAGAN: The
9 bill is laid aside.

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

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

15 ACTING PRESIDENT FLANAGAN: The
16 Secretary will read.

17 THE SECRETARY: Calendar Number
18 363, by Senator Nozzolio, Senate Print 6696, an
19 act to amend the State Law.

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

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

25 SENATOR LIBOUS: Senator Flanagan,

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

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

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

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

17 SENATOR DILAN: Oh, yes.

18 SENATOR SKELOS: Thank you very
19 much.

20 ACTING PRESIDENT FLANAGAN:
21 Senator Dilan, thank you.

22 Senator Skelos.

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

25 Today this Legislature is

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

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

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

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

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

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

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

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

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

25 Our position has always been that

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

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

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

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

20 ACTING PRESIDENT FLANAGAN: Thank
21 you, Senator Skelos.

22 Senator Dilan.

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

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

4 SENATOR NOZZOLIO: Yes,
5 Mr. President.

6 ACTING PRESIDENT FLANAGAN:
7 Senator Dilan, Senator Nozzolio yields.

8 SENATOR DILAN: Thank you very
9 much, Senator Nozzolio.

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

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

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

1 was established by Chapter 45 of the Laws of
2 1978. It is a task force that consists of six
3 members, including four legislators, of which
4 Senator Dilan is one, and two nonelected citizen
5 representatives.

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

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

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

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

7 SENATOR DILAN: Mr. President --

8 ACTING PRESIDENT FLANAGAN:
9 Senator Dilan.

10 SENATOR DILAN: -- would he
11 continue to yield?

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

14 SENATOR NOZZOLIO: I'll be happy
15 to yield.

16 ACTING PRESIDENT FLANAGAN:
17 Senator Dilan.

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

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

1 63 Senatorial districts. It is well over 200
2 pages -- it is 253 pages, one of the largest
3 legislative measures that we have to consider by
4 this house.

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

10 SENATOR DILAN: Would he continue
11 to yield?

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

14 SENATOR NOZZOLIO: Yes,
15 Mr. President.

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

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

21 SENATOR NOZZOLIO: Pardon me,
22 Senator?

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

1 ACTING PRESIDENT FLANAGAN: Would
2 you please repeat the question?

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

6 SENATOR NOZZOLIO: Mr. President,
7 this plan was put forth -- again, complying with
8 population standards, adherence to strict
9 redistricting principles, including preserving
10 the cores of traditional districts and
11 maintaining traditional communities of interest.
12 This plan put forward after the original
13 14 hearings were conducted by LATFOR. It was put
14 forward in the middle of January, and that an
15 additional nine hearings were conducted following
16 the original pronouncement of the plan.

17 SENATOR DILAN: Would he continue
18 to yield?

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

21 SENATOR NOZZOLIO: Yes,
22 Mr. President.

23 ACTING PRESIDENT FLANAGAN:
24 Senator Dilan.

25 SENATOR DILAN: There have been

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

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

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

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

1 the history of the State of New York.

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

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

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

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

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

4 Senator Dilan's question asked for
5 the draft release of a plan. After those initial
6 14 hearings, a draft plan for the State Senate
7 and Assembly district lines were put forward on
8 January 26, 2012. Subsequently, after the
9 release of that plan, an additional nine public
10 hearings were conducted in Albany; the Bronx;
11 Brooklyn; Manhattan; Queens; Smithtown,
12 Long Island; Syracuse, Rochester and Buffalo.

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

18 SENATOR DILAN: Would he continue
19 to yield?

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

22 SENATOR NOZZOLIO: Yes,
23 Mr. President.

24 ACTING PRESIDENT FLANAGAN:
25 Senator Dilan.

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

7 I would just first, with respect to
8 the first point, I believe that after we held the
9 14 hearings in the second round I believe there
10 were some revisions that were made to the
11 original proposals. And I was handed a book with
12 maps only this morning at the LATFOR meeting.

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

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

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

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

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

7 SENATOR DILAN: Two points.

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

10 SENATOR DILAN: Both.

11 (Laughter.)

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

14 Senator Nozzolio.

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

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

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

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

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

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

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

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

25 Each public hearing -- though I

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

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

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

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

1 SENATOR NOZZOLIO: Yes,
2 Mr. President.

3 ACTING PRESIDENT FLANAGAN:
4 Senator Dilan.

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

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

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

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

1 SENATOR DILAN: Mr. President.

2 ACTING PRESIDENT FLANAGAN:

3 Senator Dilan.

4 SENATOR DILAN: Does the Senator
5 continue to yield?

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

8 SENATOR NOZZOLIO: Yes,
9 Mr. President.

10 ACTING PRESIDENT FLANAGAN:
11 Senator Dilan.

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

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

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

1 parties involved?

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

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

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

24 SENATOR DILAN: Would he continue
25 to yield?

1 ACTING PRESIDENT FLANAGAN:

2 Senator Nozzolio, will you continue to yield?

3 SENATOR NOZZOLIO: Yes,
4 Mr. President.

5 ACTING PRESIDENT FLANAGAN:
6 Senator Dilan.

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

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

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

25 So again, my question was, when did

1 you receive the plan to have those discussions?

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

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

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

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

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

23 SENATOR NOZZOLIO: Yes,
24 Mr. President.

25 ACTING PRESIDENT FLANAGAN:

1 Senator Dilan.

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

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

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

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

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

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

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

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

17 SENATOR NOZZOLIO: Yes,
18 Mr. President.

19 ACTING PRESIDENT FLANAGAN:
20 Senator Dilan.

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

25 SENATOR NOZZOLIO: Mr. President,

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

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

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

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

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

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

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

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

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

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

11 SENATOR NOZZOLIO: Yes,
12 Mr. President.

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

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

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

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

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

11 SENATOR NOZZOLIO: Senator, the
12 question is?

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

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

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

1 The formula that has been followed
2 by the courts is dependent on final population
3 numbers. And that counsel who represented the
4 Senate in 2002 issued a memo in 2012 regarding
5 the propriety of establishing a 63rd seat. The
6 memo from our counsel is on the LATFOR website,
7 and that decision to create a 63rd seat is, in
8 accepting the counsel's advice, a
9 constitutionally sound decision, one that was
10 established by the same counsel who provided the
11 legal analysis for the New York State Senate in
12 2002.

13 SENATOR DILAN: Will the Senator
14 continue to yield?

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

17 SENATOR NOZZOLIO: Yes,
18 Mr. President.

19 ACTING PRESIDENT FLANAGAN:
20 Senator Dilan.

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

25 As you recall, many times during

1 the course of the first round I had asked what
2 are we basing the plans on, 62 or 63. At that
3 time I also indicated that the public had a right
4 to know and those that were interested in
5 submitting plans should know are we basing it on
6 62 or 63. All those requests were denied during
7 the first round.

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

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

17 SENATOR DILAN: Does he continue
18 to yield?

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

21 SENATOR NOZZOLIO: Yes,
22 Mr. President.

23 ACTING PRESIDENT FLANAGAN:
24 Senator Dilan.

25 SENATOR DILAN: During the course

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

9 How did you determine or anyone
10 determine that the size of the Senate should be
11 63?

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

19 SENATOR DILAN: Does he continue
20 to yield?

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

23 SENATOR NOZZOLIO: Yes,
24 Mr. President.

25 ACTING PRESIDENT FLANAGAN:

1 Senator Dilan.

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

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

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

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

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

16 SENATOR DILAN: Will he continue
17 to yield?

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

20 SENATOR NOZZOLIO: Yes,
21 Mr. President.

22 ACTING PRESIDENT FLANAGAN:
23 Senator Dilan.

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

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

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

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

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

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

21 Both analyses completed by the
22 counsel indicated that there were
23 constitutionally sound reasons to put forward the
24 63rd seat and required, in fact, the
25 establishment of a 63rd Senate seat.

1 ACTING PRESIDENT FLANAGAN:

2 Senator Dilan.

3 SENATOR DILAN: Would he continue
4 to yield on that?

5 ACTING PRESIDENT FLANAGAN:

6 Senator Nozzolio, will you continue to yield?

7 SENATOR NOZZOLIO: Yes,
8 Mr. President.

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

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

15 SENATOR DILAN: Can you answer
16 my --

17 ACTING PRESIDENT FLANAGAN:

18 Senator Dilan.

19 SENATOR DILAN: I'm sorry.

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

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

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

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

2 SENATOR DILAN: Thank you.

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

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

15 ACTING PRESIDENT FLANAGAN:
16 Senator Dilan.

17 SENATOR DILAN: Will Senator
18 Nozzolio continue to yield?

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

21 SENATOR NOZZOLIO: Yes,
22 Mr. President.

23 ACTING PRESIDENT FLANAGAN:
24 Senator Dilan.

25 SENATOR DILAN: I don't think that

1 answers my question, because I'm talking about --
2 I'm not talking about constitutionality here, I'm
3 talking about how the formula and the data that
4 was used to determine the size of the Senate.

5 And very simply, was the data used, yes or no?

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

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

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

20 ACTING PRESIDENT FLANAGAN: Thank
21 you, Senator Nozzolio.

22 Senator Dilan.

23 SENATOR DILAN: Will Senator
24 Nozzolio continue to yield?

25 ACTING PRESIDENT FLANAGAN:

1 Senator Nozzolio, will you continue to yield?

2 SENATOR NOZZOLIO: Yes,
3 Mr. President.

4 ACTING PRESIDENT FLANAGAN:
5 Senator Dilan.

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

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

11 SENATOR DILAN: The question is --

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

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

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

23 SENATOR DILAN: Yes, I do.

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

1 proposed legislative districts?

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

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

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

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

4 This plan that is before us today
5 preserves and protects each and every one of
6 those 13 minority districts and protects and
7 preserves and restores five minority districts in
8 the Senate that actually fell below the
9 50 percent minority rate because of the shifting
10 population in New York City.

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

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

1 This plan offered today contains
2 14 majority-minority districts. And that, to me,
3 Mr. President, is something to be proud of. In
4 light of shifting sands and shifting population,
5 this Senate has stalwartly supported and complied
6 with the Voting Rights Act.

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

13 The plan today improves the Senate
14 district population deviation numbers by
15 10 percent from a decade ago. And hear me out on
16 this so there's no misunderstanding. The former
17 plan had a judicially acceptable standard
18 deviation of 9.78 percent. The plan proposed
19 today has a standard deviation of 8.80 percent.
20 That is a 10 percent improvement over the
21 deviation that was already judicially acceptable.

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

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

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

12 I'd like to put forward to this
13 body that over 68 percent of the districts in
14 this plan contain and maintain at least
15 70 percent of the core of the existing district.
16 Let me state that again. Virtually 70 percent of
17 the districts in this plan maintain at least a
18 core of 70 percent of the existing district.

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

23 ACTING PRESIDENT FLANAGAN:
24 Senator Dilan.

25 SENATOR DILAN: Does the Senator

1 continue to yield?

2 ACTING PRESIDENT FLANAGAN:

3 Senator Nozzolio, will you continue to yield?

4 SENATOR NOZZOLIO: Yes,

5 Mr. President.

6 ACTING PRESIDENT FLANAGAN:

7 Senator Dilan.

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

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

16 SENATOR DILAN: That was a
17 comment.

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

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

23 ACTING PRESIDENT FLANAGAN: Excuse
24 me. Excuse me.

25 Senator Nozzolio, please continue.

1 SENATOR NOZZOLIO: Thank you,
2 Mr. President.

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

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

13 ACTING PRESIDENT FLANAGAN:
14 Senator Dilan.

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

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

19 SENATOR NOZZOLIO: Yes,
20 Mr. President.

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

1 ACTING PRESIDENT FLANAGAN: Thank
2 you, Senator Dilan.

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

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

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

22 ACTING PRESIDENT FLANAGAN:
23 Senator Dilan.

24 SENATOR DILAN: Does the Senator
25 continue to yield?

1 ACTING PRESIDENT FLANAGAN:

2 Senator Nozzolio, will you continue to yield?

3 SENATOR NOZZOLIO: Yes,
4 Mr. President.

5 SENATOR DILAN: Senator,
6 throughout this process you have stated that this
7 has been the most "open and transparent" process
8 and product to date.

9 Considering the items we've just
10 discussed -- the request to stream hearings and
11 meetings, insufficient notice of hearings and
12 meetings, no public drafting sessions, lack of
13 clearly defined criteria, and the determination
14 of the size of the Senate prior to ratification
15 of the adjusted census data -- the question is,
16 do you believe that this product is a result of a
17 fair and open process?

18 SENATOR NOZZOLIO: Mr. President,
19 conducting 23 hearings across the state, having
20 1.8 million people visit the LATFOR website with
21 156,000 individuals who actually went through the
22 website, hearings in every corner of the state,
23 interactive website, including the provision of
24 allowing submission of plans through the website,
25 of viewing each and every public hearing on the

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

18 ACTING PRESIDENT FLANAGAN:

19 Senator Nozzolio, I think you achieved your
20 purpose just by stating it.

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

23 SENATOR NOZZOLIO: Thank you,
24 Mr. President.

25 Those video transcripts were

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

7 ACTING PRESIDENT FLANAGAN:
8 Senator Dilan.

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

13 ACTING PRESIDENT FLANAGAN: Thank
14 you, Senator Dilan.

15 Is there any other Senator wishing
16 to be heard?

17 Senator Gianaris.

18 SENATOR GIANARIS: Good evening,
19 Mr. President.

20 ACTING PRESIDENT FLANAGAN: Good
21 evening.

22 SENATOR GIANARIS: Happy Sunshine
23 Week to you.

24 Would the sponsor yield for some
25 questions, please.

1 ACTING PRESIDENT FLANAGAN:

2 Senator Nozzolio, will you yield?

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

5 ACTING PRESIDENT FLANAGAN:

6 Senator Gianaris.

7 SENATOR GIANARIS: Mr. President,
8 I'd like to ask the sponsor -- he mentioned in
9 his previous conversation with Senator Dilan the
10 total standard deviation figure, which was
11 8.8 percent. I'd like to ask him, what is the
12 average deviation figure in this plan?

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

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

19 SENATOR NOZZOLIO: If I may.

20 SENATOR GIANARIS: Yes.

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

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

6 The standard deviation of the
7 current plan, to reiterate to my colleague, is
8 9.78 percent. The standard deviation of the plan
9 proposed is 8.80 percent.

10 ACTING PRESIDENT FLANAGAN:
11 Senator Gianaris.

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

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

16 SENATOR NOZZOLIO: Yes,
17 Mr. President.

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

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

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

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

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

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

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

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

21 SENATOR NOZZOLIO: Yes,
22 Mr. President.

23 ACTING PRESIDENT FLANAGAN:
24 Senator Gianaris.

25 SENATOR GIANARIS: I don't agree

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

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

10 Does the sponsor not see a problem
11 with that?

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

14 ACTING PRESIDENT FLANAGAN:
15 Senator Gianaris.

16 SENATOR GIANARIS: If the sponsor
17 would continue to yield.

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

20 SENATOR NOZZOLIO: Yes,
21 Mr. President.

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

1 have before us today?

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

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

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

13 SENATOR NOZZOLIO: Yes,
14 Mr. President.

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

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

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

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

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

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

16 ACTING PRESIDENT FLANAGAN: Thank
17 you.

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

20 That Common Cause plan not only has
21 a drastically lower standard total deviation but
22 also has a drastically lower average deviation of
23 1.5 percent.

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

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

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

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

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

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

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

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

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

10 SENATOR NOZZOLIO: Yes,
11 Mr. President.

12 ACTING PRESIDENT FLANAGAN:
13 Senator Gianaris.

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

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

25 SENATOR NOZZOLIO: On the

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

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

12 Of the 13 minority districts in
13 New York State, five of them were below the
14 50 percent level as a result of shifting
15 population in New York State, and this plan
16 restores their minority representation status.
17 That was something that we worked very hard to
18 achieve.

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

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

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

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

18 SENATOR NOZZOLIO: Yes,
19 Mr. President.

20 ACTING PRESIDENT FLANAGAN:
21 Senator Gianaris.

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

25 SENATOR NOZZOLIO: Mr. President,

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

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

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

8 SENATOR NOZZOLIO: Yes,
9 Mr. President.

10 SENATOR GIANARIS: I'd be happy to
11 provide him with that number. The answer is 23.
12 Twenty-three. More than one-third of the Senate
13 districts deviate from the mean by more than
14 4 percent. Compared to the map that we're living
15 under today, which has only seven districts
16 deviating from that mean by more than 4 percent.

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

25 And we have escalated that number

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

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

13 The plan proposed today has a
14 standard deviation of 8.80 percent. That
15 deviation is a 10 percent improvement over the
16 9.78 percent standard deviation accepted by the
17 courts 10 years ago.

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

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

22 SENATOR NOZZOLIO: Yes,
23 Mr. President.

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

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

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

8 SENATOR NOZZOLIO: That those --

9 ACTING PRESIDENT FLANAGAN:

10 Excuse me. Senator Gianaris, are you asking him
11 a question or are you -- you just said you're
12 going to provide that information?

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

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

24 SENATOR GIANARIS: I'll be happy
25 to.

1 If we take a ranking of the
2 districts by racial component and we take the
3 10 districts that have the highest white
4 population in them and add up the total
5 population of those districts in this plan, what
6 is that number?

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

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

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

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

21 SENATOR NOZZOLIO: Yes,
22 Mr. President.

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

1 It turns out that the 10 most white
2 districts in this plan have a population of
3 2,924,968. By contrast, the nine most
4 African-American districts in this plan have a
5 population of 2,864,372. Those numbers are
6 roughly equal. There's a difference of 2 percent
7 between them.

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

14 SENATOR NOZZOLIO: Mr. President,
15 that I'm very proud of the fact that this body
16 has continued to support the establishment of
17 minority-majority districts. I already mentioned
18 10 years ago when this body established a
19 Hispanic district in Queens.

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

1 of shifting population in the City of New York,
2 had considerable concern falling below the
3 50 percent minority, and that we've restored,
4 protected, and preserved those districts. That's
5 the focus of LATFOR, and that I'm very proud of
6 that focus.

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

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

11 SENATOR NOZZOLIO: Yes,
12 Mr. President.

13 ACTING PRESIDENT FLANAGAN:
14 Senator Gianaris.

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

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

21 SENATOR GIANARIS: If the sponsor
22 would continue to yield.

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

25 SENATOR NOZZOLIO: Yes,

1 Mr. President.

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

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

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

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

25 And when we talk about population

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

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

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

15 ACTING PRESIDENT FLANAGAN: Thank
16 you.

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

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

25 ACTING PRESIDENT FLANAGAN:

1 Excuse me. Senator Gianaris.

2 SENATOR GIANARIS: Yes, sir.

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

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

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

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

25 SENATOR GIANARIS: Point taken,

1 Mr. President.

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

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

8 I am very proud of this plan. I am
9 very proud of the fact that we have fully
10 complied with all tenets of the federal Voting
11 Rights Act, that we have restored five
12 majority-minority districts in this state and
13 within the covered counties of this state, even
14 though those five districts fell below
15 50 percent.

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

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

1 Senate.

2 SENATOR GIANARIS: Thank you,
3 Senator Nozzolio.

4 If the sponsor would continue to
5 yield.

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

8 SENATOR NOZZOLIO: Yes,
9 Mr. President.

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

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

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

1 counties would maintain their position?

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

5 ACTING PRESIDENT FLANAGAN:
6 Senator Gianaris.

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

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

11 SENATOR NOZZOLIO: Yes,
12 Mr. President.

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

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

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

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

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

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

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

15 SENATOR NOZZOLIO: Yes,
16 Mr. President.

17 ACTING PRESIDENT FLANAGAN:
18 Senator Gianaris.

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

25 This new district that's being

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

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

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

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

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

17 SENATOR NOZZOLIO: Yes,
18 Mr. President.

19 ACTING PRESIDENT FLANAGAN:
20 Senator Gianaris.

21 SENATOR GIANARIS: How much of
22 Saratoga County is located in the new
23 46th District?

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

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

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

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

7 ACTING PRESIDENT FLANAGAN:
8 Senator Nozzolio.

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

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

20 SENATOR GIANARIS: If the sponsor
21 would continue to yield.

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

24 SENATOR NOZZOLIO: Yes,
25 Mr. President.

1 ACTING PRESIDENT FLANAGAN:

2 Senator Gianaris.

3 SENATOR GIANARIS: I'd like to
4 move on to an area that's a little bit
5 complicated to discuss. It took me quite a while
6 to grasp it. But I do want to get into this
7 formula in the Constitution for determining
8 whether or not the Senate size should increase
9 and how it was applied in this plan.

10 Can the sponsor explain briefly how
11 it is that the Constitution provides a formula --
12 what the formula is in the Constitution for
13 determining the size of the Senate?

14 SENATOR NOZZOLIO: I'd refer
15 Senator Gianaris first to Article 3, Section 4 of
16 the State Constitution. Also, I would refer him
17 to the memo presented on the LATFOR website by
18 counsel. I would also refer to Senator Gianaris
19 the applicable sites cited in counsel's memo for
20 further explanation on those judicial opinions
21 relevant to this issue.

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

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

1 SENATOR NOZZOLIO: Yes,
2 Mr. President.

3 ACTING PRESIDENT FLANAGAN:
4 Senator Gianaris.

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

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

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

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

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

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

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

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

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

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

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

3 SENATOR NOZZOLIO: Yes,
4 Mr. President.

5 ACTING PRESIDENT FLANAGAN:
6 Senator Gianaris.

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

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

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

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

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

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

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

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

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

24 SENATOR NOZZOLIO: Yes,
25 Mr. President.

1 ACTING PRESIDENT FLANAGAN:

2 Senator Gianaris.

3 SENATOR GIANARIS: Mr. President,
4 I'd like to ask the sponsor how he knows that the
5 advice given by counsel 10 years ago is the same
6 as the advice he gave this year.

7 SENATOR NOZZOLIO: I think it's a
8 very good question, Mr. President.

9 That the memo provided on the
10 LATFOR website incorporates the memo that the
11 counsel provided 10 years ago. That there were a
12 combination of the advice, through the memo
13 presented 10 years ago with the analysis updated
14 based on the assessments today incorporated with
15 that memo from 10 years ago.

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

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

20 SENATOR NOZZOLIO: Yes,
21 Mr. President.

22 ACTING PRESIDENT FLANAGAN:
23 Senator Gianaris.

24 SENATOR GIANARIS: Is the sponsor
25 aware that there were two different methodologies

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

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

7 SENATOR GIANARIS: If the sponsor
8 would continue to yield.

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

11 SENATOR NOZZOLIO: Yes,
12 Mr. President.

13 ACTING PRESIDENT FLANAGAN:
14 Senator Gianaris.

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

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

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

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

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

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

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

12 SENATOR NOZZOLIO: Yes,
13 Mr. President.

14 ACTING PRESIDENT FLANAGAN:
15 Senator Gianaris.

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

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

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

1 previous answers.

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

4 ACTING PRESIDENT FLANAGAN:
5 Senator Gianaris on the bill.

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

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

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

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

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

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

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

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

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

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

25 And I know what the sponsor was

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

6 Thank you, Mr. President.

7 ACTING PRESIDENT FLANAGAN:

8 Senator Rivera.

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

12 SENATOR NOZZOLIO: Yes,
13 Mr. President.

14 ACTING PRESIDENT FLANAGAN:
15 Senator Nozzolio, will you yield?

16 SENATOR NOZZOLIO: Yes,
17 Mr. President.

18 ACTING PRESIDENT FLANAGAN:
19 Senator Rivera.

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

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

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

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

7 SENATOR NOZZOLIO: Individuals
8 that the district --

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

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

15 A district in Queens appeared to
16 have the most population.

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

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

22 SENATOR NOZZOLIO: Yes,
23 Mr. President.

24 ACTING PRESIDENT FLANAGAN:
25 Senator Rivera.

1 SENATOR RIVERA: Thank you,
2 Mr. President.

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

7 Can you tell me the racial
8 breakdown of that district?

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

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

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

19 SENATOR RIVERA: Through you,
20 Mr. President --

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

24 ACTING PRESIDENT FLANAGAN:
25 Senator Rivera.

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

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

6 SENATOR NOZZOLIO: That the
7 Hispanic population is 60.8 percent of this
8 district. The non-Hispanic population is
9 39.2 percent. The non-Hispanic white population
10 is 14.3 percent, the non-Hispanic black
11 population is 6.6 percent. The non-Hispanic
12 Asian population is 16.2 percent. The Hawaiian
13 population is zero. The "other" is listed as
14 0.6 percent.

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

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

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

25 SENATOR NOZZOLIO: Yes,

1 Mr. President.

2 ACTING PRESIDENT FLANAGAN:

3 Senator Rivera.

4 SENATOR RIVERA: Thank you,
5 Mr. President.

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

11 The 13th District does have about
12 319,000 individuals that make up the population.
13 About 84 percent of them are people of color.

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

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

22 SENATOR NOZZOLIO: I didn't
23 either.

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

1 SENATOR RIVERA: Absolutely,
2 Mr. President. Apologies.

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

8 SENATOR NOZZOLIO: I'm advised,
9 Mr. President, that the district that has the
10 least amount of population is the proposed
11 57th senatorial district. That it is listed as
12 292,000 people.

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

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

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

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

1 ACTING PRESIDENT FLANAGAN:

2 Senator Rivera.

3 SENATOR RIVERA: Thank you,
4 Mr. President.

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

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

16 ACTING PRESIDENT FLANAGAN:
17 Senator Nozzolio.

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

1 and other provisions of this nature.

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

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

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

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

14 SENATOR NOZZOLIO: Yes,
15 Mr. President.

16 ACTING PRESIDENT FLANAGAN:
17 Senator Rivera.

18 SENATOR RIVERA: Thank you,
19 Mr. President.

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

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

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

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

15 SENATOR NOZZOLIO: Mr. President,
16 the plan proposed today has a standard deviation
17 of 8.80 percent. That compares with the standard
18 deviation of the plan accepted by the courts
19 10 years ago, the deviation of 9.78 percent.
20 It's a 10 percent improvement in the abilities
21 and deviations that are proposed this year over a
22 plan that had already been accepted by the courts
23 10 years ago.

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

1 plan proposed is well within the range of
2 acceptability.

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

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

8 SENATOR NOZZOLIO: Yes,
9 Mr. President.

10 ACTING PRESIDENT FLANAGAN:
11 Senator Rivera.

12 SENATOR RIVERA: Thank you,
13 Mr. President.

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

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

1 those districts, numerically speaking?

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

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

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

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

23 SENATOR NOZZOLIO: Yes,
24 Mr. President.

25 ACTING PRESIDENT FLANAGAN:

1 Senator Rivera.

2 SENATOR RIVERA: Thank you,
3 Mr. President.

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

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

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

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

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

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

15 Senator Nozzolio -- through you,
16 Mr. President -- in the hearing that we held in
17 Albany when we were discussing -- after I gave my
18 testimony and a series of questions and answers
19 ensued from you to me and from me to you, you
20 specifically asked me questions about the
21 33rd District, currently the one that I represent
22 before this -- whatever proposal is accepted. It
23 has about 11 percent population that is white,
24 non-Latino, and the proposed plan has about
25 2 percent. It has changed a little bit since

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

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

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

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

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

15 SENATOR NOZZOLIO: Yes,
16 Mr. President.

17 ACTING PRESIDENT FLANAGAN:
18 Senator Rivera.

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

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

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

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

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

16 SENATOR NOZZOLIO: Mr. President.

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

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

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

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

1 SENATOR RIVERA: Thank you,
2 Mr. President.

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

15 Through you, Mr. President.

16 SENATOR NOZZOLIO: Mr. President,
17 Senator Rivera's district, the 33rd District
18 proposed under this plan, maintained the core of
19 its existing district at over 72 percent.
20 72.5 percent of Senator Rivera's district is the
21 same under this plan as it was in the current
22 district that he now represents. That the
23 Hispanic population went from 65.2 percent to
24 67 percent.

25 That -- I'm not sure exactly what

1 Senator Rivera's question is trying to get at.

2 But the fact of the matter is --

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

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

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

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

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

25 ACTING PRESIDENT FLANAGAN:

1 Senator Nozzolio, will you continue to yield?

2 SENATOR NOZZOLIO: Yes,
3 Mr. President.

4 ACTING PRESIDENT FLANAGAN:
5 Senator Rivera.

6 SENATOR RIVERA: Thank you,
7 Mr. President.

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

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

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

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

1 plan we put forward is improved upon.

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

6 ACTING PRESIDENT FLANAGAN: Excuse
7 me, Senator Nozzolio.

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

11 Senator Nozzolio.

12 SENATOR NOZZOLIO: Thank you,
13 Mr. President.

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

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

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

25 ACTING PRESIDENT FLANAGAN:

1 Senator Nozzolio, will you continue to yield?

2 SENATOR NOZZOLIO: Yes,
3 Mr. President.

4 ACTING PRESIDENT FLANAGAN:
5 Senator Rivera.

6 SENATOR RIVERA: Thank you,
7 Mr. President.

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

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

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

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

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

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

14 SENATOR NOZZOLIO: Yes,
15 Mr. President.

16 ACTING PRESIDENT FLANAGAN:
17 Senator Rivera.

18 SENATOR RIVERA: Thank you,
19 Mr. President.

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

1 there should be 63 seats, only for the sake of
2 argument. Are you familiar with the -- once the
3 decision was made by LATFOR and it was made
4 public that there would be 63 seats as opposed to
5 62 in a plan, there were actually draft plans
6 that were put together by other organizations,
7 like the Unity Plan update, Common Cause,
8 et cetera.

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

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

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

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

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

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

22 SENATOR NOZZOLIO: Yes,
23 Mr. President.

24 ACTING PRESIDENT FLANAGAN:
25 Senator Rivera.

1 SENATOR RIVERA: Thank you,
2 Mr. President.

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

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

11 SENATOR NOZZOLIO: Your question?
12 Mr. President, Senator Rivera's
13 question, could he please ask it, state it as a
14 question.

15 SENATOR RIVERA: Absolutely.
16 Through you, Mr. President. In the
17 Bronx are you familiar with the largest ethnic
18 groups, largest Latino ethnic groups in the
19 Bronx, particularly as it relates to the growth
20 in the last 10 years for the census numbers?

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

25 SENATOR RIVERA: Through you,

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

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

5 SENATOR NOZZOLIO: Yes,
6 Mr. President.

7 ACTING PRESIDENT FLANAGAN:
8 Senator Rivera.

9 SENATOR RIVERA: Thank you,
10 Mr. President.

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

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

19 Through you, Mr. President.

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

25 If Senator Rivera wants to make a

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

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

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

9 SENATOR NOZZOLIO: Yes,
10 Mr. President.

11 ACTING PRESIDENT FLANAGAN:
12 Senator Rivera.

13 SENATOR RIVERA: Thank you,
14 Mr. President.

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

24 I will wait.

25 So there is an issue of voting-age

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

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

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

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

1 house.

2 Senator Nozzolio.

3 SENATOR NOZZOLIO: Thank you,
4 Mr. President.

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

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

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

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

3 SENATOR NOZZOLIO: Yes,
4 Mr. President.

5 ACTING PRESIDENT FLANAGAN:
6 Senator Rivera.

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

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

12 On the issue of voting-age
13 population, the reason I mention that is
14 specifically because if you can demonstrate that
15 you can draw a district that actually maintains a
16 certain voting-age population by maintaining the
17 63 seats, et cetera -- yet LATFOR made a choice
18 to actually take a smaller voting-age
19 population. It actually could -- you could argue
20 that there is retrogression in different
21 districts, and I was going to make the case --
22 when I speak on the bill briefly, I will make the
23 case on the district that that refers to.

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

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

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

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

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

1 yield.

2 ACTING PRESIDENT FLANAGAN:

3 Senator Nozzolio, will you continue to yield?

4 SENATOR NOZZOLIO: Yes,
5 Mr. President.

6 ACTING PRESIDENT FLANAGAN:

7 Senator Rivera.

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

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

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

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

25 So I wanted to ask specifically

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

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

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

1 state constitution and the federal constitution.

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

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

7 SENATOR NOZZOLIO: Yes,
8 Mr. President.

9 ACTING PRESIDENT FLANAGAN:
10 Senator Rivera.

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

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

23 SENATOR NOZZOLIO: Mr. President.

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

1 I will finish it.

2 SENATOR NOZZOLIO: Please finish,
3 Mr. Rivera.

4 SENATOR RIVERA: Thank you,
5 Senator Nozzolio.

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

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

1 That is an item that is part of the
2 redistricting matrix that we particularly are
3 very proud of, in keeping the cores of existing
4 districts together. And that those districts in
5 Suffolk County virtually are all preserved to
6 90 percent capacity as you move further east --
7 excuse me, west. That that district core is not
8 under 80 percent moving west.

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

15 SENATOR RIVERA: Mr. President, on
16 the bill.

17 ACTING PRESIDENT FLANAGAN:
18 Senator Rivera on the bill.

19 SENATOR RIVERA: Thank you,
20 Mr. President.

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

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

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

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

12 If back in 1972 and in '82 and in
13 '92 and in 2002 districts were drawn specifically
14 to break up communities of color, to weaken their
15 voting power, preserving those changes now does
16 not actually give validity to the idea that this
17 is a plan that defends communities of color, that
18 allows them the opportunity to elect someone of
19 their own interest.

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

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

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

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

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

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

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

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

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

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

1 backwards.

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

4 ACTING PRESIDENT FLANAGAN:

5 Senator DeFrancisco, why do you rise?

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

12 ACTING PRESIDENT FLANAGAN:

13 Senator DeFrancisco's motion is before the
14 house. Those in favor of Senator DeFrancisco's
15 motion should signify by saying aye.

16 (Response of "Aye.")

17 ACTING PRESIDENT FLANAGAN: Those
18 in objection say nay.

19 (Response of "Nay.")

20 ACTING PRESIDENT FLANAGAN: The
21 motion is accepted.

22 Thank you, Senator DeFrancisco.

23 SENATOR DeFRANCISCO: I have
24 another motion.

25 In order to give everyone the

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

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

8 SENATOR SQUADRON: Mr. President.

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

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

13 ACTING PRESIDENT FLANAGAN: State
14 your question, Senator Squadron.

15 Excuse me. Senator Libous, why do
16 you rise?

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

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

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

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

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

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

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

14 (Response of "Aye.")

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

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

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

1 Mr. President?

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

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

6 SENATOR SQUADRON: Yes,
7 Mr. President.

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

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

13 ACTING PRESIDENT FLANAGAN:
14 Senator Squadron --

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

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

22 Senator Libous.

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

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

2 I believe Senator Sampson would be
3 like to be recognized.

4 SENATOR LIBOUS: But
5 Mr. President --

6 ACTING PRESIDENT FLANAGAN:
7 Senator Libous.

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

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

16 SENATOR LIBOUS: Mr. President --

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

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

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

25 ACTING PRESIDENT FLANAGAN:

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

4 Senator Sampson, why do you rise?

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

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

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

1 and where is the decorum?

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

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

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

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

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

25 SENATOR SQUADRON: Mr. President,

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

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

9 (Response of "Aye.")

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

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

14 Senator Squadron -- Senator
15 Squadron.

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

19 (Response of "Aye.")

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

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

1 ACTING PRESIDENT FLANAGAN: Ayes,
2 32. 33, excuse me.

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

5 ACTING PRESIDENT FLANAGAN:
6 Senator Sampson.

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

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

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

1 and be a part of what we call democracy.

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

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

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

15 SENATOR SAMPSON: Thank you very
16 much.

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

19 Senator Sampson.

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

1 ACTING PRESIDENT FLANAGAN: Thank
2 you, Senator Sampson.

3 Senator Libous.

4 SENATOR LIBOUS: Is there a
5 substitution at the desk?

6 ACTING PRESIDENT FLANAGAN: The
7 Secretary will read the substitution.

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

11 SENATOR SQUADRON: Mr. President,
12 point of order.

13 THE SECRETARY: -- Assembly Bill
14 Number 9525 and substitute it for the identical
15 Senate Bill Number 6696, Third Reading Calendar
16 363.

17 ACTING PRESIDENT FLANAGAN:
18 Substitution ordered.

19 The Secretary will read.

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

23 ACTING PRESIDENT FLANAGAN:
24 Senator Libous.

25 SENATOR LIBOUS: We're on the roll

1 call; correct?

2 ACTING PRESIDENT FLANAGAN: Yes.

3 SENATOR LIBOUS: Call the roll.

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

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

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

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

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

19 Call the roll.

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

22 (The Secretary called the roll.)

23 ACTING PRESIDENT FLANAGAN:
24 Announce the results.

25 THE SECRETARY: In relation to

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

8 Ayes, 36. Nays, 0.

9 ACTING PRESIDENT FLANAGAN: The
10 bill is passed.

11 Senator Libous.

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

14 ACTING PRESIDENT FLANAGAN: The
15 Secretary will read.

16 Senator Libous, I believe we have a
17 substitution.

18 SENATOR LIBOUS: Please make the
19 substitution.

20 ACTING PRESIDENT FLANAGAN: The
21 Secretary will read the substitution.

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

1 identical Senate Bill Number 6698, Third Reading
2 Calendar 364.

3 ACTING PRESIDENT FLANAGAN:
4 Substitution ordered.

5 The Secretary will read.

6 THE SECRETARY: Calendar Number
7 364, by Member of the Assembly Silver, Assembly
8 Print Number 9526, Concurrent Resolution of the
9 Senate and Assembly proposing an amendment to
10 Article 3 of the Constitution.

11 ACTING PRESIDENT FLANAGAN:
12 Senator Libous.

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

15 ACTING PRESIDENT FLANAGAN: The
16 Secretary will ring the bell.

17 The Secretary will call the roll on
18 the resolution.

19 (The Secretary called the roll.)

20 ACTING PRESIDENT FLANAGAN:
21 Announce the results.

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

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

5 Ayes, 36. Nays, 0.

6 ACTING PRESIDENT FLANAGAN: The
7 resolution is adopted.

8 Senator Libous.

9 SENATOR LIBOUS: Thank you,
10 Mr. President.

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

15 ACTING PRESIDENT FLANAGAN: The
16 Senate will stand at ease.

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

19 (Whereupon, the Senate reconvened at
20 12:09 a.m.)

21 ACTING PRESIDENT FLANAGAN:
22 Senator Libous.

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

1 accept it, please.

2 ACTING PRESIDENT FLANAGAN: The
3 Secretary will read.

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

7 Senate Print 6732, by the Committee
8 on Rules, an act to amend the Education Law;
9 6733, by Senator Saland, an act to
10 amend the Criminal Procedure Law; and

11 6734, by Senator Bonacic,
12 Concurrent Resolution of the Senate and
13 Assembly.

14 All bills reported direct to third
15 reading.

16 ACTING PRESIDENT FLANAGAN:
17 Senator Libous.

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

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

22 (Response of "Aye.")

23 ACTING PRESIDENT FLANAGAN:
24 Opposed, nay.

25 (Response of "Nay.")

1 ACTING PRESIDENT FLANAGAN: The
2 Rules report is accepted.

3 Senator Libous.

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

7 ACTING PRESIDENT FLANAGAN: The
8 Secretary will read.

9 THE SECRETARY: Calendar Number
10 365, by the Senate Committee on Rules, Senate
11 Print 6732, an act to amend the Education Law.

12 SENATOR SQUADRON: Lay it aside.

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

15 Senator Libous.

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

18 ACTING PRESIDENT FLANAGAN: Yes,
19 there is.

20 SENATOR LIBOUS: I move to accept
21 the message.

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

25 (Response of "Aye.")

1 ACTING PRESIDENT FLANAGAN:

2 Opposed, nay.

3 (Response of "Nay.")

4 ACTING PRESIDENT FLANAGAN: The
5 message of necessity is accepted.

6 The bill is laid aside.

7 The Secretary will continue to
8 read.

9 THE SECRETARY: Calendar Number
10 366, by Senator Saland, Senate Print 6733, an act
11 to amend the Criminal Procedure Law.

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

14 ACTING PRESIDENT FLANAGAN: Yes,
15 there is.

16 SENATOR LIBOUS: I move to accept
17 the message of necessity.

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

20 (Response of "Aye.")

21 ACTING PRESIDENT FLANAGAN:
22 Opposed, nay.

23 (Response of "Nay.")

24 ACTING PRESIDENT FLANAGAN: The
25 message of necessity is accepted.

1 SENATOR SQUADRON: Lay it aside.

2 ACTING PRESIDENT FLANAGAN: The
3 bill is laid aside.

4 The Secretary will continue to
5 read.

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

11 SENATOR SQUADRON: Lay it aside.

12 ACTING PRESIDENT FLANAGAN:
13 Substitution ordered.

14 The Secretary will read.

15 THE SECRETARY: Calendar Number
16 367, by Member of the Assembly Pretlow, Assembly
17 Print 9556, Concurrent Resolution of the Senate
18 and Assembly.

19 SENATOR SQUADRON: Lay it aside.

20 ACTING PRESIDENT FLANAGAN: The
21 bill is laid aside.

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

24 SENATOR LIBOUS: Thank you,
25 Mr. President.

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

5 ACTING PRESIDENT FLANAGAN: The
6 Secretary will ring the bell.

7 The Secretary will read.

8 THE SECRETARY: Calendar Number
9 367, by Member of the Assembly Pretlow, Assembly
10 Print Number 9556, Concurrent Resolution of the
11 Senate and Assembly.

12 ACTING PRESIDENT FLANAGAN:
13 Senator Young to explain her vote.

14 SENATOR YOUNG: Thank you,
15 Mr. President.

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

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

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

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

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

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

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

22 So debate is closed.

23 The Secretary will call the roll.

24 (The Secretary called the roll.)

25 ACTING PRESIDENT FLANAGAN:

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

3 Senator Martins.

4 SENATOR MARTINS: Thank you,
5 Mr. President.

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

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

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

22 This year, I vote aye.

23 ACTING PRESIDENT FLANAGAN:

24 Senator Martins to be recorded in the
25 affirmative.

1 Senator Maziarz.

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

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

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

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

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

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

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

1 Senator Ranzenhofer to explain his
2 vote.

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

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

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

14 Senator Gallivan to explain his
15 vote.

16 SENATOR GALLIVAN: Thank you,
17 Mr. President.

18 I too share the concerns raised by
19 my colleagues.

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

25 ACTING PRESIDENT FLANAGAN:

1 Senator Gallivan to be recorded in the
2 affirmative.

3 Senator Grisanti to explain his
4 vote.

5 SENATOR GRISANTI: Thank you,
6 Mr. President.

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

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

19 But I will vote aye, Mr. President.

20 ACTING PRESIDENT FLANAGAN: The
21 Secretary will announce the results.

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

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

5 Ayes, 36. Nays, 0.

6 ACTING PRESIDENT FLANAGAN: The
7 resolution is adopted.

8 The Secretary will read.

9 THE SECRETARY: Calendar Number
10 365, by the Senate Committee on Rules, Senate
11 Print 6732, an act to amend the Education Law.

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

15 Read the last section.

16 THE SECRETARY: Section 12. This
17 act shall take effect immediately.

18 ACTING PRESIDENT FLANAGAN: Call
19 the roll.

20 (The Secretary called the roll.)

21 ACTING PRESIDENT FLANAGAN:
22 Announce the results.

23 THE SECRETARY: In relation to
24 Calendar Number 365, absent from voting:
25 Senators Adams, Addabbo, Avella, Breslin, Diaz,

1 Dilan, Duane, Espaillat, Gianaris,
2 Hassell-Thompson, Huntley, Kennedy, Krueger,
3 Montgomery, Parker, Peralta, Perkins, Rivera,
4 Sampson, Serrano, Smith, Squadron, Stavisky and
5 Stewart-Cousins.

6 Ayes, 36. Nays, 0.

7 ACTING PRESIDENT FLANAGAN: The
8 bill is passed.

9 The Secretary will read.

10 THE SECRETARY: Calendar Number
11 366, by Senator Saland, Senate Print 6733, an act
12 to amend the Criminal Procedure Law.

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

16 Read the last section.

17 THE SECRETARY: Section 9. This
18 act shall take effect October 1, 2012.

19 ACTING PRESIDENT FLANAGAN: Call
20 the roll.

21 (The Secretary called the roll.)

22 ACTING PRESIDENT FLANAGAN:
23 Senator Saland to explain his vote.

24 SENATOR SALAND: Thank you,
25 Mr. President.

1 Mr. President, this is a DNA
2 all-crimes databank bill. What this bill does is
3 it expands the collection of DNA to all
4 felonies -- not merely Penal Law felonies, but
5 all felonies -- and all misdemeanors, with one
6 exception, that exception being the Class B
7 marijuana possession where an individual who has
8 been so accused has no prior convictions,
9 including any prior conviction for possession of
10 marijuana under Penal Law Section 221.10.

11 It provides for access to post-plea
12 DNA testing in a limited number of cases --
13 homicides, violent B felonies, and felony sex
14 offenses. It's only for defendants who have pled
15 guilty after the enactment of the law, so it's
16 only prospective.

17 Very importantly, it limits testing
18 of evidence secured in connection with the
19 investigation or prosecution of a defendant to
20 that which has retained its prohibitiveness by
21 being in the prosecution, law enforcement or
22 lab's custody; in other words, under the
23 possession and control and custody of law
24 enforcement.

25 And again very importantly,

1 evidence must establish a defendant's actual
2 innocence -- not merely that he or she was not
3 guilty or innocent, but actual innocence, which
4 is a much higher bar.

5 Similarly, access is provided for
6 post-trial discovery of property allowed only
7 after a trial of a felony. There are a number of
8 restrictions that go along with that. For a
9 court to consider such a post-trial motion, there
10 has to be a significant issue warranting an
11 evidentiary hearing as determined by the court.

12 It's only if probative to the
13 determination, once, again of the defendant's
14 actual innocence. Not merely his or her
15 innocence, not that they were not found to be not
16 guilty beyond a reasonable doubt, but they must
17 establish their actual innocence. Again, a much
18 higher bar.

19 And, lastly, there is the ability
20 to apply for DNA profile keyboard-search
21 comparisons in certain circumstances.

22 Mr. President, this is a bill which
23 certainly is both a sword and a shield. It's a
24 bill which provides means by which prosecutors
25 can more greatly secure public safety. It's a

1 means by which closed cases can be put to rest.
2 It's also a means by which defendants can be
3 exonerated or removed from consideration as a
4 criminal suspect.

5 SENATOR DeFRANCISCO: Point of
6 order.

7 (Laughter.)

8 SENATOR SALAND: Lastly, I'd like
9 to thank the Governor's office for having worked
10 so closely with us in making this a reality.

11 ACTING PRESIDENT FLANAGAN:
12 Senator Saland to be recorded in the affirmative.

13 The Secretary will announce the
14 results.

15 THE SECRETARY: In relation to
16 Calendar Number 366, absent from voting are
17 Senators Adams, Addabbo, Avella, Breslin, Diaz,
18 Dilan, Duane, Espaillat, Gianaris,
19 Hassell-Thompson, Huntley, Kennedy, Krueger,
20 Montgomery, Parker, Peralta, Perkins, Rivera,
21 Sampson, Serrano, Smith, Squadron, Stavisky and
22 Stewart-Cousins.

23 Ayes, 36. Nays, 0.

24 ACTING PRESIDENT FLANAGAN: The
25 bill is passed.

1 Senator Libous, before I recognize
2 Senator Skelos, I just want to announce that that
3 completes the controversial reading of the
4 calendar.

5 Senator Skelos.

6 SENATOR SKELOS: Mr. President,
7 I'd just like to direct the members' attention to
8 Rule 9, which talks about attendance and vote.

9 "Every Senator shall be present
10 within the Senate chamber during the sessions of
11 the Senate unless duly excused or necessarily
12 prevented, and shall vote on each question for
13 which a vote is required stated from the chair
14 unless excused by the Senate, or unless he or she
15 has a direct personal or pecuniary interest in
16 such event of such question. If any Senator
17 refuses to vote, unless he or she is excused by
18 the Senate or unless he or she be interested,
19 such refusal shall be deemed a contempt."

20 ACTING PRESIDENT FLANAGAN: Thank
21 you, Senator Skelos.

22 Senator Libous.

23 SENATOR LIBOUS: There will be a
24 meeting of the Rules Committee in Room 332.

25 In the meantime, the Senate will

1 stand at ease.

2 ACTING PRESIDENT FLANAGAN: The
3 Senate will stand at ease.

4 (Whereupon, the Senate stood at ease
5 at 12:23 a.m.)

6 (Whereupon, the Senate reconvened at
7 12:25 a.m.)

8 ACTING PRESIDENT ROBACH: Senator
9 Libous.

10 SENATOR LIBOUS: Mr. President,
11 there will be an immediate Republican conference
12 in Room 332. There will be a Republican
13 conference immediately in Room 332.

14 ACTING PRESIDENT ROBACH: There
15 will be an immediate Republican conference in
16 Room 332.

17 The Senate will continue to stand
18 at ease.

19 (Whereupon, the Senate stood at ease
20 at 12:27 a.m.)

21 (Whereupon, the Senate reconvened at
22 3:49 a.m.)

23 ACTING PRESIDENT FLANAGAN:
24 Senator Libous.

25 SENATOR LIBOUS: Mr. President,

1 may we return to reports of standing committees.
2 I believe there's a report of the Rules Committee
3 at the desk.

4 ACTING PRESIDENT FLANAGAN: The
5 Secretary will read.

6 THE SECRETARY: Senator Skelos,
7 from the Committee on Rules, reports the
8 following bill direct to third reading:

9 Senate Print 6735, by the Committee
10 on Rules, an act to amend the Retirement and
11 Social Security Law.

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

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

16 (Response of "Aye.")

17 ACTING PRESIDENT FLANAGAN:
18 Opposed, nay.

19 (Response of "Nay.")

20 ACTING PRESIDENT FLANAGAN:
21 Senator Libous, the Rules report is accepted.

22 Just to clarify one point from
23 earlier, we had had a previous Rules report, we
24 had had a formal vote on it, and I just want to
25 make sure that the record reflects that that

1 report was accepted after the vote.

2 Senator Libous.

3 SENATOR SQUADRON: Mr. President,
4 for clarity, what was the calendar number on that
5 report?

6 ACTING PRESIDENT FLANAGAN:
7 Senator Squadron, 21B.

8 Senator Libous.

9 SENATOR LIBOUS: Mr. President,
10 can we have the noncontroversial reading of
11 Calendar Number 21C.

12 ACTING PRESIDENT FLANAGAN: The
13 Secretary will read.

14 THE SECRETARY: Calendar Number
15 368, by the Committee on Rules, Senate Print
16 6735, an act to amend the Retirement and Social
17 Security Law.

18 SENATOR SQUADRON: Lay it aside.

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

21 ACTING PRESIDENT FLANAGAN:
22 Senator Libous, there is.

23 SENATOR LIBOUS: I move to accept
24 the message of necessity.

25 ACTING PRESIDENT FLANAGAN: All in

1 favor signify by saying aye.

2 (Response of "Aye.")

3 ACTING PRESIDENT FLANAGAN:

4 Opposed, nay.

5 (Response of "Nay.")

6 ACTING PRESIDENT FLANAGAN: The
7 message is accepted.

8 The bill is laid aside, Senator
9 Squadron.

10 SENATOR SQUADRON: Thank you.

11 SENATOR LIBOUS: Mr. President,
12 can we now please have the controversial reading
13 of Calendar 21C, please.

14 ACTING PRESIDENT FLANAGAN: The
15 Secretary will ring the bell.

16 The Secretary will read.

17 THE SECRETARY: Calendar Number
18 368, by the Senate Committee on Rules, Senate
19 Print 6735, an act to amend the Retirement and
20 Social Security Law.

21 ACTING PRESIDENT FLANAGAN:
22 Senator Squadron.

23 SENATOR SQUADRON: Thank you,
24 Mr. President.

25 Mr. President, according to

1 Section 23 of Article 3 of the State
2 Constitution, carried through by subdivision C of
3 Section 2 of Senate Rule 9, three-fifths of all
4 the members elected to the Senate shall be
5 necessary to constitute a quorum therein on the
6 final passage of any bill which creates a debt or
7 a charge.

8 This bill does so. By all
9 appearances, there is not the requisite number of
10 Senators present in the house at this time.

11 Pursuant to the Senate rule I cited
12 previously, the absence of the constitutional
13 quorum necessary to the final passage of this
14 bill requires that it simply retain its place on
15 the Third Reading Calendar and be again taken up
16 in its regular order.

17 ACTING PRESIDENT FLANAGAN:
18 Senator Squadron, the bill is properly before the
19 house. There is no appropriation contained in
20 this bill. Therefore, a simple quorum is all
21 that is required for transacting the business
22 before the house.

23 SENATOR SQUADRON: Mr. President,
24 to clarify, I'm asking a question of quorum. I'm
25 asking for a quorum, please, a quorum call.

1 Pursuant to Rule 4, paragraph 2.

2 SENATOR LIBOUS: Mr. President.

3 ACTING PRESIDENT FLANAGAN:

4 Senator Libous.

5 SENATOR LIBOUS: There is not a
6 problem. If the Senator wants a quorum call, we
7 shall have a quorum call.

8 ACTING PRESIDENT FLANAGAN: The
9 Secretary will call the roll to ascertain if
10 there's a quorum.

11 THE SECRETARY: Senator Adams.

12 (No response.)

13 THE SECRETARY: Senator Addabbo.

14 (No response.)

15 THE SECRETARY: Senator Alesi.

16 SENATOR ALESI: Here.

17 THE SECRETARY: Senator Avella.

18 (No response.)

19 THE SECRETARY: Senator Ball.

20 SENATOR BALL: Good morning.

21 THE SECRETARY: Senator Bonacic.

22 SENATOR BONACIC: Present.

23 THE SECRETARY: Senator Breslin.

24 (No response.)

25 THE SECRETARY: Senator Carlucci.

1 SENATOR CARLUCCI: Here.
2 THE SECRETARY: Senator
3 DeFrancisco.
4 SENATOR DeFRANCISCO: Here.
5 THE SECRETARY: Senator Diaz.
6 (No response.)
7 THE SECRETARY: Senator Dilan.
8 (No response.)
9 THE SECRETARY: Senator Duane.
10 (No response.)
11 THE SECRETARY: Senator
12 Espaillat.
13 (No response.)
14 THE SECRETARY: Senator Farley.
15 SENATOR FARLEY: Here.
16 THE SECRETARY: Senator Flanagan.
17 ACTING PRESIDENT FLANAGAN: Here.
18 THE SECRETARY: Senator Fuschillo.
19 SENATOR FUSCHILLO: Here.
20 THE SECRETARY: Senator Gallivan.
21 SENATOR GALLIVAN: Here.
22 THE SECRETARY: Senator Gianaris.
23 (No response.)
24 THE SECRETARY: Senator Golden.
25 SENATOR GOLDEN: Here.

1 THE SECRETARY: Senator Griffo.
2 SENATOR GRIFFO: Here.
3 THE SECRETARY: Senator Grisanti.
4 SENATOR GRISANTI: Here.
5 THE SECRETARY: Senator Hannon.
6 SENATOR HANNON: Here.
7 THE SECRETARY: Senator
8 Hassell-Thompson.
9 (No response.)
10 THE SECRETARY: Senator Huntley.
11 (No response.)
12 THE SECRETARY: Senator Johnson.
13 SENATOR JOHNSON: Here.
14 THE SECRETARY: Senator Kennedy.
15 (No response.)
16 THE SECRETARY: Senator Klein.
17 SENATOR KLEIN: Here.
18 THE SECRETARY: Senator Krueger.
19 (No response.)
20 THE SECRETARY: Senator Lanza.
21 SENATOR LANZA: Here.
22 THE SECRETARY: Senator Larkin.
23 SENATOR LARKIN: Here.
24 THE SECRETARY: Senator LaValle.
25 SENATOR LaVALLE: Here.

1 THE SECRETARY: Senator Libous.
2 SENATOR LIBOUS: Here.
3 THE SECRETARY: Senator Little.
4 SENATOR LITTLE: Here.
5 THE SECRETARY: Senator
6 Marcellino.
7 SENATOR MARCELLINO: Here.
8 THE SECRETARY: Senator Martins.
9 SENATOR MARTINS: Here.
10 THE SECRETARY: Senator Maziarz.
11 SENATOR MAZIARZ: Here.
12 THE SECRETARY: Senator McDonald.
13 SENATOR McDONALD: Here.
14 THE SECRETARY: Senator
15 Montgomery.
16 (No response.)
17 THE SECRETARY: Senator Nozzolio.
18 SENATOR NOZZOLIO: Present.
19 THE SECRETARY: Senator O'Mara.
20 SENATOR O'MARA: Here.
21 THE SECRETARY: Senator
22 Oppenheimer.
23 (No response.)
24 THE SECRETARY: Senator Parker.
25 (No response.)

1 THE SECRETARY: Senator Peralta.
2 (No response.)
3 THE SECRETARY: Senator Perkins.
4 (No response.)
5 THE SECRETARY: Senator
6 Ranzenhofer.
7 SENATOR RANZENHOFER: Here.
8 THE SECRETARY: Senator Ritchie.
9 SENATOR RITCHIE: Here.
10 THE SECRETARY: Senator Rivera.
11 (No response.)
12 THE SECRETARY: Senator Robach.
13 SENATOR ROBACH: Here.
14 THE SECRETARY: Senator Saland.
15 SENATOR SALAND: Here.
16 THE SECRETARY: Senator Sampson.
17 (No response.)
18 THE SECRETARY: Senator Savino.
19 SENATOR SAVINO: Here.
20 THE SECRETARY: Senator Serrano.
21 (No response.)
22 THE SECRETARY: Senator Seward.
23 SENATOR SEWARD: Here.
24 ACTING PRESIDENT FLANAGAN:
25 Senator Libous, pursuant to Rule 9, Section 2(a),

1 a quorum is present.

2 SENATOR LIBOUS: Thank you,
3 Mr. President.

4 Can we proceed on the bill?

5 SENATOR SQUADRON: Mr. President,
6 on the quorum question.

7 On the bill before the house, the
8 rules state very clearly that if -- I'm in
9 Rule 4, paragraph 2, Section D. If on taking the
10 final question on a bill it shall appear the
11 constitutional quorum is not present, or if the
12 bill requires a vote of two-thirds of the
13 Senators elected to pass it and it appears that
14 such number is not present, the bill shall retain
15 its place on the calendar and be again taken up
16 in its regular order.

17 Paragraph sub (e): When any bill
18 requiring the concurrence of two-thirds of the
19 Senators or a quorum of three-fifths thereof is
20 under consideration, such concurrence or quorum,
21 as the case may be, shall not be requisite except
22 on the question of its final passage, which is
23 what we are on now.

24 And of course that references the
25 constitutional provision that I referenced

1 before.

2 ACTING PRESIDENT FLANAGAN:

3 Senator Squadron, we already ruled on your point
4 of order, which you're now making for a second
5 time. The bill is properly before the house
6 pursuant to the rules of the house.

7 Is there any Senator wishing to be
8 heard on the bill?

9 SENATOR SQUADRON: Mr. President,
10 on the constitutional provision. The
11 constitutional provision is very clear. It says
12 on the final passage in either house of the
13 Legislature of any act which imposes --

14 ACTING PRESIDENT FLANAGAN:
15 Senator Squadron --

16 SENATOR SQUADRON: -- or revives a
17 tax or creates a debt or charge or --

18 ACTING PRESIDENT FLANAGAN:
19 Senator Squadron, you are out of order. We have
20 ruled on this twice already.

21 SENATOR SQUADRON: -- or releases
22 a charge --

23 ACTING PRESIDENT FLANAGAN: The
24 bill is before the house.

25 Senator Libous.

1 SENATOR SQUADRON: -- or a demand
2 on the state.

3 ACTING PRESIDENT FLANAGAN: Any
4 Senator wishing to be heard?

5 SENATOR SQUADRON: Mr. President,
6 I have the floor and I'm speaking on the bill. I
7 am speaking on the constitutional requirement of
8 this bill.

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

11 Senator Libous.

12 SENATOR SQUADRON: Mr. President,
13 I have the floor and am speaking on the bill. In
14 what way am I out of order, Mr. President?

15 SENATOR LIBOUS: Mr. President,
16 he's not speaking on the bill.

17 SENATOR SQUADRON: I am.

18 SENATOR LIBOUS: You are not
19 speaking on the bill, sir. You got up after a
20 quorum call was taken, the vote was taken. You
21 are not speaking on the bill. You do not get up
22 to speak on the bill.

23 Mr. President, at this point in
24 time I would say that we would take a roll call
25 vote on the bill.

1 SENATOR SQUADRON: Mr. President,
2 on the bill.

3 ACTING PRESIDENT FLANAGAN:
4 Senator Squadron on the bill.

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

7 The constitutional provision, I
8 will continue. The question shall be taken by
9 yeas and nays which shall be duly entered upon
10 the journals, and three-fifths of all the members
11 elected to either house shall in all such cases
12 be necessary to constitute a quorum therein.

13 On the bill, on page 43 of the
14 bill, I'm quoting from the bottom of page 43 of
15 the bill here: "There would also be additional
16 administrative expenses to inform employers and
17 new members of the new plan provisions and to
18 notified automated systems. Employee
19 contributions would now be a function of base
20 salary instead of one fixed rate. To implement
21 these employee contribution rate changes the
22 modification of NYSLRS automated systems would be
23 substantial" -- I'm on page 44 now -- "with an
24 associated implementation expense estimated at \$3
25 to \$5 million. The more complicated system would

1 be more challenging to maintain, apply and
2 explain, resulting in estimated annual ongoing
3 expenses in the millions of dollars. The state
4 and each of the approximately 3,000 participating
5 employers would have to modify their methods for
6 withholding employee contributions, which could
7 also lead to total expenses in the millions of
8 dollars. Lastly, the bill contains no
9 appropriation to support the additional payroll
10 administrative expense to the Office of the State
11 Comptroller or the implementation and ongoing
12 expenses of NYSLRS related to the new tier."

13 This is clearly a bill that is in
14 keeping with the constitutional provision
15 requiring a three-fifths quorum. It is a
16 provision -- it's not just in the Constitution,
17 it is mirrored in the Senate rules.

18 We've had a quorum call. We have
19 37 members present, by my count. I think we
20 actually only got to 32 in the quorum call, but
21 by my count we have 37 in the chamber at the
22 moment, which is one shy of the three-fifths
23 required for this type of bill.

24 And this bill clearly, based on
25 what I read and other components, creates a

1 charge and a cost and obligation for the state.
2 Further, pension bills historically have been
3 treated with a three-fifths quorum requirement,
4 Mr. President.

5 So again, I believe that based on
6 the quorum call that we previously had, based on
7 the current number of Senators present and in the
8 house, we do not have the appropriate quorum to
9 take up final passage of the bill.

10 Thank you, Mr. President.

11 ACTING PRESIDENT FLANAGAN: Any
12 other Senator wishing to be heard?

13 Hearing none, the debate is
14 closed.

15 Read the last section.

16 THE SECRETARY: Section 83. This
17 act shall take effect April 1, 2012.

18 ACTING PRESIDENT FLANAGAN: The
19 Secretary will ring the bell.

20 Call the roll.

21 (The Secretary called the roll.)

22 ACTING PRESIDENT FLANAGAN:
23 Senator Squadron.

24 SENATOR SQUADRON: To explain my
25 vote, Mr. President.

1 Mr. President, this bill sitting on
2 my desk, it is literally still warm. The hour is
3 quite -- it's not even late anymore, the hour is
4 now quite early. We have, as I pointed out
5 earlier, 37 members in this house, which is one
6 shy of the constitutional requirement.

7 I am voting against this bill
8 today, I need to admit, without having read it.
9 There was no time to do so. It was put on my
10 desk, warmly, just minutes ago. And I do not
11 believe that a bill as important as this, as
12 monumental as this should be voted on in a way
13 that invites legal challenge and without a
14 quorum.

15 So with only 37 members present, in
16 an evening in which debate and democracy has been
17 stifled again and again, I am forced to vote no
18 on this bill. I hope to have the opportunity to
19 consider it more fully in the future.

20 Thank you, Mr. President.

21 ACTING PRESIDENT FLANAGAN:
22 Senator Squadron will be recorded in the
23 negative.

24 The Secretary will announce the
25 results.

1 THE SECRETARY: In relation to
2 Calendar Number 368, those recorded in the
3 negative are Senators Carlucci, Klein, Savino,
4 Squadron and Valesky.

5 Absent from voting: Senators
6 Adams, Addabbo, Avella, Breslin, Diaz, Dilan,
7 Duane, Espaillat, Gianaris, Hassell-Thompson,
8 Huntley, Kennedy, Krueger, Montgomery, Parker,
9 Peralta, Perkins, Rivera, Sampson, Serrano,
10 Smith, Stavisky and Stewart-Cousins.

11 Ayes, 32. Nays, 5.

12 ACTING PRESIDENT FLANAGAN: The
13 bill is passed.

14 Senator Libous.

15 SENATOR LIBOUS: Mr. President,
16 there will be an immediate meeting of the Rules
17 Committee in Room 332.

18 I would ask that members that are
19 not on the Rules committee stay in the chamber,
20 because it will be a quick meeting and we'll be
21 right back on the floor.

22 The Senate will stand at ease
23 pending the Rules Committee meeting.

24 ACTING PRESIDENT FLANAGAN: Rules
25 Committee meeting in Room 332.

1 The Senate will stand at ease.

2 (Whereupon, the Senate stood at ease
3 at 4:02 a.m.)

4 (Whereupon, the Senate reconvened at
5 4:25 a.m.)

6 ACTING PRESIDENT FLANAGAN:
7 Senator Libous.

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

12 ACTING PRESIDENT FLANAGAN: The
13 Secretary will read.

14 THE SECRETARY: Senator Skelos,
15 from the Committee on Rules, reports the
16 following bill direct to third reading:

17 Senate Print 6736, by Senator
18 Skelos, an act to amend the Legislative Law.

19 ACTING PRESIDENT FLANAGAN:
20 Senator Libous.

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

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

1 (Response of "Aye.")

2 ACTING PRESIDENT FLANAGAN:

3 Opposed, nay.

4 (Response of "Nay.")

5 ACTING PRESIDENT FLANAGAN:

6 Senator Libous, the Rules report is adopted.

7 SENATOR LIBOUS: Mr. President, if
8 we can go to the noncontroversial reading of
9 Calendar Number 21D, please.

10 ACTING PRESIDENT FLANAGAN: The
11 Secretary will read.

12 THE SECRETARY: Calendar Number
13 369, by Senator Skelos, Senate Print 6736, an act
14 to amend the Legislative Law.

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

17 ACTING PRESIDENT FLANAGAN:
18 Senator Libous, there is.

19 SENATOR LIBOUS: I move to accept
20 the message of necessity.

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

23 (Response of "Aye.")

24 ACTING PRESIDENT FLANAGAN: Those
25 opposed, nay.

1 (Response of "Nay.")

2 SENATOR SQUADRON: Lay it aside.

3 ACTING PRESIDENT FLANAGAN: The
4 message is accepted and the bill is laid aside.

5 Senator Libous.

6 SENATOR LIBOUS: Mr. President, at
7 this time can we have the controversial reading
8 of the calendar.

9 ACTING PRESIDENT FLANAGAN: The
10 Secretary will ring the bell.

11 The Secretary will read.

12 THE SECRETARY: Calendar Number
13 369, by Senator Skelos, Senate Print 6736, an act
14 to amend the Legislative Law.

15 ACTING PRESIDENT FLANAGAN: Read
16 the last section.

17 THE SECRETARY: Section 6. This
18 act shall take effect subsequent upon passage by
19 both houses of the Legislature.

20 ACTING PRESIDENT FLANAGAN: Call
21 the roll.

22 (The Secretary called the roll.)

23 ACTING PRESIDENT FLANAGAN:
24 Announce the results.

25 THE SECRETARY: In relation to

1 Calendar Number 369, absent from voting:
2 Senators Adams, Addabbo, Avella, Breslin, Diaz,
3 Dilan, Duane, Espaillat, Gianaris,
4 Hassell-Thompson, Huntley, Kennedy, Krueger,
5 Montgomery, Parker, Peralta, Perkins, Rivera,
6 Sampson, Serrano, Smith, Squadron, Stavisky, and
7 Stewart-Cousins.

8 Ayes, 36. Nays, 0.

9 ACTING PRESIDENT FLANAGAN: The
10 bill is passed.

11 Senator Libous.

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

14 ACTING PRESIDENT FLANAGAN: There
15 is none.

16 SENATOR LIBOUS: Thank God.

17 (Laughter.)

18 SENATOR LIBOUS: Mr. President,
19 there will be this morning at 10:45 a Republican
20 Majority conference, promptly at 10:45.

21 And, Mr. President, I move that the
22 Senate stand adjourned until Thursday morning,
23 this morning, March 15th, at 11:00 a.m.

24 ACTING PRESIDENT FLANAGAN: On
25 motion, the Senate stands adjourned until this

1 morning, Thursday, March 15th, at 11:00 a.m.

2 (Whereupon, at 4:27 a.m., the Senate
3 adjourned.)

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