

1 NEW YORK STATE SENATE

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3
4 THE STENOGRAPHIC RECORD

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7
8 ALBANY, NEW YORK

9 January 28, 2014

10 11:22 a.m.

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13
14 REGULAR SESSION

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18 SENATOR DAVID J. VALESKY, Acting President

19 FRANCIS W. PATIENCE, Secretary

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

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

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

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

9 ACTING PRESIDENT VALESKY: In the
10 absence of clergy, may we bow our heads in a
11 moment of silence.

12 (Whereupon, the assemblage respected
13 a moment of silence.)

14 ACTING PRESIDENT VALESKY: The
15 reading of the Journal.

16 The Secretary will read.

17 THE SECRETARY: In Senate, Monday,
18 January 27th, the Senate met pursuant to
19 adjournment. The Journal of Saturday,
20 January 25th, was read and approved. On motion,
21 Senate adjourned.

22 ACTING PRESIDENT VALESKY: Without
23 objection, the Journal stands approved as read.

24 Presentation of petitions.

25 Messages from the Assembly.

1 Messages from the Governor.
2 Reports of standing committees.
3 Reports of select committees.
4 Communications and reports from
5 state officers.

6 Motions and resolutions.
7 Senator Libous.

8 SENATOR LIBOUS: Thank you,
9 Mr. President.

10 I'd like to at this time move the
11 Resolution Calendar, with the exception of
12 Resolution Number 3253, by Senator Kennedy.

13 ACTING PRESIDENT VALESKY: All in
14 favor of adopting the Resolution Calendar, with
15 the exception of Resolution 3253, signify by
16 saying aye.

17 (Response of "Aye.")

18 ACTING PRESIDENT VALESKY: Opposed,
19 nay.

20 (No response.)

21 ACTING PRESIDENT VALESKY: The
22 Resolution Calendar is adopted.

23 Senator Libous.

24 SENATOR LIBOUS: Thank you,
25 Mr. President.

1 At this time could you call on
2 Senator Kennedy, Resolution 3253, read its title
3 only, and Senator Kennedy would like to speak on
4 it.

5 ACTING PRESIDENT VALESKY: The
6 Secretary will read the title of Resolution
7 3253.

8 THE SECRETARY: Legislative
9 Resolution Number 3253, by Senator Kennedy,
10 honoring St. Francis High School graduates Tom
11 Telesco and Dave Caldwell on their distinguished
12 service to the National Football League.

13 ACTING PRESIDENT VALESKY: Senator
14 Kennedy on the resolution.

15 SENATOR KENNEDY: Thank you,
16 Mr. President.

17 As the nation's eyes turn toward
18 New York in the lead-up to this year's Super Bowl
19 at MetLife Stadium, I rise to honor two Western
20 New Yorkers who have worked their way to the top
21 of their respective NFL franchises.

22 Tom Telesco, a 1992 graduate of
23 St. Francis High School, was introduced last
24 season as the general manager of the San Diego
25 Chargers, while Dave Caldwell, from St. Francis's

1 Class of 1991, was hired as the general manager
2 of the Jacksonville Jaguars. The future is
3 bright for these men and the franchises they
4 lead.

5 After Tom graduated high school, he
6 went on to John Carroll University, where he
7 joined the football team as a wide receiver. He
8 spent his summers interning for my hometown team,
9 and everyone's only New York State team, the
10 Buffalo Bills.

11 Soon after Tom graduated, he joined
12 the Indianapolis Colts as a scout, eventually
13 working his way up the ladder with the Colts,
14 highlighted by a 2006 Super Bowl victory.

15 In 2013, he was finally handed the
16 reins to a team when he joined the Chargers. His
17 success has been quick; this year the Chargers
18 reached the AFC Division round of the playoffs.

19 Dave Caldwell also attended John
20 Carroll University, where he played as outside
21 linebacker before graduating in 1996. Very soon
22 after, he joined the Carolina Panthers as a
23 scouting assistant. Later he joined Tom in the
24 Colts organization and eventually moved on to the
25 Atlanta Falcons, where he became the director of

1 player personnel.

2 His hard work was rewarded when he
3 joined the Jaguars, a team in the midst of a
4 turnaround, much like our beloved Bills.

5 Dave and Tom both attribute their
6 success to their football coaches back in
7 Buffalo, Jerry Smith and John Scibetta, and also
8 to Bill Polian and his family, who have had a
9 major influence on Buffalo football.

10 I speak for everyone in Buffalo when
11 I say how proud we are to be turning out such
12 high-caliber talent that it's being recognized
13 across the National Football League. I predict
14 great things in the years ahead for both Tom and
15 Dave and the franchises they lead, and I believe
16 they're going to take their teams, the Chargers
17 and Jaguars, to even greater heights in 2014,
18 only to be knocked out in next year's playoffs by
19 our Bills, the Super Bowl XLIX victors.

20 I don't know what's so funny about
21 that.

22 We wish Dave and Tom the best of
23 luck as we work to strengthen the teams
24 throughout the NFL, and we commend their
25 leadership and hard work for their coaches and

1 teachers in Western New York who have helped
2 support them along the way.

3 Football is a proud tradition in
4 Western New York and in Buffalo and across
5 New York State. These two men epitomize that
6 tradition. We congratulate them and their
7 families.

8 Thank you, Mr. President.

9 ACTING PRESIDENT VALESKY: Thank
10 you, Senator Kennedy.

11 The question is on Resolution 3253.
12 All in favor signify by saying aye.

13 (Response of "Aye.")

14 ACTING PRESIDENT VALESKY: Opposed,
15 nay.

16 (No response.)

17 ACTING PRESIDENT VALESKY: The
18 resolution is adopted.

19 Senator Libous.

20 SENATOR LIBOUS: Thank you,
21 Mr. President. Can we move to the reading of the
22 noncontroversial calendar.

23 ACTING PRESIDENT VALESKY: The
24 Secretary will read.

25 THE SECRETARY: Calendar Number 1,

1 by Senator Skelos, Senate Print --

2 SENATOR LIBOUS: Lay the bill aside
3 for the day.

4 ACTING PRESIDENT VALESKY: The bill
5 is laid aside for the day.

6 THE SECRETARY: Calendar Number 25,
7 by Senator Marcellino, Senate Print 3616, an act
8 to amend the Alcoholic Beverage Control Law.

9 ACTING PRESIDENT VALESKY: Read the
10 last section.

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

13 ACTING PRESIDENT VALESKY: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes, 50.

17 ACTING PRESIDENT VALESKY: The bill
18 is passed.

19 THE SECRETARY: Calendar Number 32,
20 by Senator Larkin, Senate Print 284, an act to
21 amend the General Business Law.

22 ACTING PRESIDENT VALESKY: Read the
23 last section.

24 THE SECRETARY: Section 3. This
25 act shall take effect on the 180th day.

1 ACTING PRESIDENT VALESKY: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes, 50.

5 ACTING PRESIDENT VALESKY: The bill
6 is passed.

7 THE SECRETARY: Calendar Number 34,
8 by Senator Zeldin, Senate Print 6290, an act to
9 amend the General Business Law.

10 ACTING PRESIDENT VALESKY: Read the
11 last section.

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

14 ACTING PRESIDENT VALESKY: Call the
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes, 50.

18 ACTING PRESIDENT VALESKY: The bill
19 is passed.

20 THE SECRETARY: Calendar Number 54,
21 by Senator Golden, Senate Print 6346, an act to
22 amend the Penal Law.

23 ACTING PRESIDENT VALESKY: Read the
24 last section.

25 THE SECRETARY: Section 5. This

1 act shall take effect on the same date and in the
2 same manner as a chapter of the Laws of 2013.

3 ACTING PRESIDENT VALESKY: Call the
4 roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes, 50.

7 ACTING PRESIDENT VALESKY: The bill
8 is passed.

9 THE SECRETARY: Calendar Number 60,
10 by Senator Klein, Senate Print 6438, an act
11 prohibiting.

12 SENATOR RIVERA: Lay it aside.

13 ACTING PRESIDENT VALESKY: The bill
14 is laid aside.

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

17 SENATOR LIBOUS: So I guess we'll
18 have the reading of the controversial calendar.

19 ACTING PRESIDENT VALESKY: The
20 Secretary will ring the bells and place Calendar
21 Number 60 before the Senate, controversial.

22 The Secretary will read.

23 THE SECRETARY: Calendar Number 60,
24 by Senator Klein, Senate Print 6438, an act
25 prohibiting.

1 ACTING PRESIDENT VALESKY: Senator
2 Rivera.

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

5 Through you, would the sponsor yield
6 for a few questions?

7 ACTING PRESIDENT VALESKY: Senator
8 Klein, do you yield?

9 SENATOR KLEIN: Yes, Mr. President.

10 ACTING PRESIDENT VALESKY: The
11 sponsor yields.

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

14 Through you, Mr. President, how
15 would the ban actually work? Functionally
16 speaking, how would the funding ban work
17 exactly?

18 SENATOR KLEIN: Sure. This bill
19 would prevent colleges and universities in
20 New York State from using state funds, just state
21 funds, to support any entity that boycotts a
22 New York State Board of Regents-chartered
23 academic institution or a foreign country that
24 hosts it.

25 This bill is intentionally narrowly

1 tailored to include only those universities that
2 are state-chartered. They are American
3 University of Beirut, Lebanese American
4 University, Bar-Ilan University in Israel,
5 Sackler School of Medicine in Israel, the Center
6 for Economic Research in the Czech Republic, and
7 Central European University in Hungary.

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

11 ACTING PRESIDENT VALESKY: Senator
12 Klein, do you yield?

13 SENATOR KLEIN: Yes, Mr. President.

14 ACTING PRESIDENT VALESKY: The
15 sponsor yields.

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

18 So if I understand this correctly --
19 and I certainly thank you for listing out the
20 universities, the academic institutions that it's
21 meant to not impact but on whose behalf, for lack
22 of a better term, the bill is being put forward.

23 But as it relates to, let's say, a
24 faculty member in any state institution that is
25 either a member of the organization of American

1 studies, as an example, American Studies
2 Association, or is traveling or presenting
3 scholarly work at any conference that is being
4 hosted or organized by an organization such as
5 ASA, how would the ban work as it relates to that
6 faculty member?

7 SENATOR KLEIN: Sure. Let me just
8 back up for a minute.

9 I guess my colleagues, I think most
10 of you probably know, it was reported extensively
11 in the news, that the American Studies
12 Association, which is an association that's
13 affiliated with colleges all over the
14 United States, has voted to boycott all colleges
15 and universities in the country of Israel due to
16 the association's political beliefs.

17 They turned around and made
18 themselves, I guess, more important than the
19 State Department by deciding that somehow Israel
20 does not deserve educational freedom. They don't
21 deserve the ability for people from around the
22 world to go to Israel to learn in Israel because
23 they claim that Israel is undemocratic and is
24 running a terrorist regime. Certainly a
25 statement which is reprehensible and

1 anti-Israel.

2 So clearly this legislation is
3 narrowly tailored to punish them by not allowing
4 them to use any state funds for the American
5 Studies Association or any other association that
6 is going to dictate worldwide politics.

7 You know, I think it's worth
8 mentioning that they are not taking this
9 position, the American Studies Association,
10 against nations that are on the State
11 Department's watch list for aiding and abetting
12 terrorism, like North Korea, Sudan, Iran.

13 So again, for them to turn around
14 and single out Israel for this boycott I think
15 deserves action by the State of New York, and
16 thus the legislation that I have before us today.

17 ACTING PRESIDENT VALESKY: Senator
18 Rivera.

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

22 ACTING PRESIDENT VALESKY: Senator
23 Klein, do you continue to yield?

24 SENATOR KLEIN: Yes, Mr. President.

25 ACTING PRESIDENT VALESKY: The

1 sponsor yields.

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

4 So let me present a hypothetical and
5 you tell me if I'm correct in understanding how
6 the ban would work. Faculty Member A, so
7 Professor Smith, teaches at a state university.
8 He or she wants to present a paper on state
9 budgeting that is going to -- he or she wants to
10 discuss a paper on budgeting in a conference
11 that's going to be held today in Chicago on state
12 budgeting that is going to be sponsored by ASA.

13 Under normal circumstances, this
14 professor would go to his or her university, as
15 part of the responsibility of that university is
16 to sponsor this professor on their endeavor to
17 become tenured, to produce scholarship. So he or
18 she would then under normal circumstances go to
19 their university and say, I'm going to Chicago
20 for a conference, as I do for a lot of other
21 things, so I would be sponsored to pay for my
22 flight and room and board, et cetera.

23 So in this circumstance,
24 Professor Smith would be unable to ask his
25 university to sponsor a trip to Chicago on a

1 conference on state budgeting sponsored by ASA
2 because of this particular bill. Would that be a
3 correct assumption?

4 SENATOR KLEIN: Through you,
5 Mr. President, that's correct, as far as if
6 they're using state money for the American
7 Studies Association for that trip.

8 It does not ban the university
9 that's a member of the American Studies
10 Association to use private funding for that same
11 trip.

12 Again, I mean this is created, just
13 to follow up, a sort of an outcry among
14 universities. Many universities not only
15 condemned the action of the American Studies
16 Association, but pulled out. Columbia
17 University, Harvard, other great universities
18 around the country decided over this to pull
19 their membership of the American Studies
20 Association.

21 So again, while it doesn't prevent
22 this university, in the example you set, from
23 using private funds, it would prevent them from
24 using state funds to sponsor that trip, yes.

25 SENATOR RIVERA: Through you,

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

3 ACTING PRESIDENT VALESKY: Senator
4 Klein, do you yield?

5 SENATOR KLEIN: Yes, Mr. President.

6 ACTING PRESIDENT VALESKY: The
7 sponsor continues to yield.

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

10 So to narrow it down even a little
11 bit further, so if this said university had no
12 private funds to speak of to sponsor academic
13 activities by their faculty, then Professor Smith
14 would not be able to travel to Chicago in that
15 instance that I --

16 SENATOR KLEIN: If they're planning
17 on using state money, correct.

18 SENATOR RIVERA: On the bill,
19 Mr. President.

20 ACTING PRESIDENT VALESKY: Senator
21 Rivera on the bill.

22 SENATOR RIVERA: Thank you,
23 Mr. President.

24 I want to thank the sponsor for
25 giving me a few minutes to talk about this bill.

1 Now, let me be clear about a few
2 things. Obviously the actions -- there is a
3 purpose, and as the sponsor stated, it is a very
4 narrowly tailored bill that is aimed at a
5 particular organization and some of the actions
6 that they have taken as an organization.

7 While I may disagree with the
8 actions that this organization has taken as it
9 relates to Israel in that particular case, I
10 think that this bill is much more broad than
11 that, and it is why I must oppose it.

12 In the case of -- for our professors
13 in our academic institutions -- and I'm actually
14 an educator myself. I came originally to
15 New York in 1998 to do a Ph.D. in political
16 science, found politics, and I have not gone back
17 since. But, you know, my dad insists that I
18 should, and I will eventually go back.
19 Technically I'm a Ph.D. student at the CUNY
20 Graduate Center in the city, and I still teach to
21 this day.

22 Some of my colleagues, when they're
23 seeking tenure, tenure requires scholarship.
24 That scholarship requires academic freedom. And
25 in this case what we're saying is certainly it is

1 an action narrowly tailored to protest, for lack
2 of a better term, from the state's perspective,
3 the actions of one particular institution.

4 The issue that I have with this is
5 that regardless of what that institution -- in
6 this case, ASA -- has done, what we are saying is
7 that we are as a state taking a position on what
8 is right or not right to say. Not to get too
9 wordy, but to paraphrase Voltaire, I might hate
10 what you say but I'll defend your right to say it
11 with my life.

12 So in this case what we're saying
13 here is that it would affect not only ASA but it
14 could potentially impact a professor or another
15 academic institution that might not even agree
16 with the actions of ASA.

17 If an organization sponsors strictly
18 work on a particular -- you know, in the case of
19 ASA, let's say that they sponsor academic
20 conferences and such that are strictly on the
21 issue of Israel, then certainly.

22 But if they do scholarship on other
23 issues -- if they do on state budgeting, on
24 environmental conservation, on labor issues --
25 and if there is a professor or a faculty member

1 that wants to actually go and participate in
2 something that that organization has sponsored
3 that has nothing to do with a position that they
4 have taken on another issue, then you are
5 impacting the ability of that particular
6 professor and, in the case of the academic
7 institution that might sponsor him or her to go
8 to this conference, you are limiting their
9 ability to be able to practice their scholarship
10 and you're indeed, in that case, limiting their
11 academic freedom.

12 So I would say that it is not --
13 this bill, unfortunately, I think discourages
14 scholarship. And I don't believe that government
15 should be in the business of sanctioning speech.

16 Now, whether we agree with the
17 actions of ASA or not, we can certainly make all
18 sorts of statements -- and I will say that
19 certainly as a private institution, whether they
20 have made the wrong decision or not by trying to
21 limit the ability of their members to participate
22 with academic institutions from Israel, it is not
23 in the business or it should not be in the
24 business of the state to say that we are going to
25 limit the amount of funding that we're going to

1 provide to an academic institution because we
2 disagree with the actions of, in this case, of
3 something like ASA.

4 So unfortunately, although I
5 certainly understand where it's coming from, I
6 think that it is not narrowly tailored enough and
7 unfortunately I think might discourage -- it
8 opens up a door that I believe we should not open
9 as it relates to scholarly work in the State of
10 New York. So unfortunately I will have to vote
11 in the negative.

12 Thank you, Mr. President.

13 ACTING PRESIDENT VALESKY: Thank
14 you, Senator Rivera.

15 Are there any other Senators who
16 wish to be heard on the bill?

17 Seeing none, the debate is closed.

18 The Secretary will ring the bells.
19 Senators are asked to proceed to the chamber
20 immediately so we may move forward with the
21 roll call.

22 SENATOR LIBOUS: Mr. President,
23 while we're waiting for members to come to the
24 chamber, I just want to remind members that are
25 attending committees meetings or budget hearing

1 meetings today that you have until 5 p.m. to
2 register your vote on a noncontroversial bill.
3 And if you would let the folks at the desk know,
4 there's a form that needs to be filled out.

5 So if your offices are listening and
6 you're not here and you're at a hearing, you have
7 until 5 p.m. to vote on a noncontroversial bill.
8 I'm sorry, and a controversial bill.

9 ACTING PRESIDENT VALESKY: Thank
10 you, Senator Libous.

11 Read the last section.

12 THE SECRETARY: Section 3. This
13 act shall take effect on the 30th day.

14 ACTING PRESIDENT VALESKY: Call the
15 roll.

16 (The Secretary called the roll.)

17 ACTING PRESIDENT VALESKY: Announce
18 the results.

19 THE SECRETARY: In relation to
20 Calendar Number 60, those recorded in the
21 negative are Senators Montgomery, Perkins, Rivera
22 and Sanders.

23 Ayes, 51. Nays, 4.

24 ACTING PRESIDENT VALESKY: The bill
25 is passed.

1 Senator Libous, that completes the
2 controversial reading of the calendar.

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

5 ACTING PRESIDENT VALESKY: The desk
6 is clear.

7 SENATOR LIBOUS: The desk is
8 clear.

9 There being no further business at
10 the desk, I move that the Senate adjourn until
11 Monday, February 3rd, the day after the Denver
12 Broncos win the Super Bowl, intervening days
13 being legislative days.

14 (Laughter.)

15 ACTING PRESIDENT VALESKY: On
16 motion, the Senate stands adjourned until Monday,
17 February 3rd, at 3:00 p.m., 3:00 p.m., Monday,
18 February 3rd, intervening days being legislative
19 days.

20 (Whereupon, at 11:45 a.m., the
21 Senate adjourned.)

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