NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 28, 2014

11:22 a.m.

REGULAR SESSION

SENATOR DAVID J. VALESKY, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT VALESKY: The Senate will come to order.

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

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

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

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

ACTING PRESIDENT VALESKY: The reading of the Journal.

The Secretary will read.

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

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

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

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

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The Resolution Calendar is adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

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

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

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

ACTING PRESIDENT VALESKY: Senator Kennedy on the resolution.

SENATOR KENNEDY: Thank you, Mr. President.

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

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

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

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

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

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

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

player personnel.

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

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

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

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

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Kennedy.

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

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

Senator Libous.

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

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: Calendar Number 1,

by Senator Skelos, Senate Print --

SENATOR LIBOUS: Lay the bill aside for the day.

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

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

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT VALESKY: The bill is passed.

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

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT VALESKY: The bill is passed.

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

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT VALESKY: The bill is passed.

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

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 5. This

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT VALESKY: The bill is passed.

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

SENATOR RIVERA: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

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

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

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

The Secretary will read.

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

ACTING PRESIDENT VALESKY: Senator Rivera.

SENATOR RIVERA: Thank you, Mr. President.

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

ACTING PRESIDENT VALESKY: Senator Klein, do you yield?

SENATOR KLEIN: Yes, Mr. President.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR RIVERA: Thank you, Mr. President.

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

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

This bill is intentionally narrowly

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

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

ACTING PRESIDENT VALESKY: Senator Klein, do you yield?

SENATOR KLEIN: Yes, Mr. President.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR RIVERA: Thank you, Mr. President.

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

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

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

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

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

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

anti-Israel.

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

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

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

ACTING PRESIDENT VALESKY: Senator Rivera.

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

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

SENATOR KLEIN: Yes, Mr. President.

ACTING PRESIDENT VALESKY: The

sponsor yields.

SENATOR RIVERA: Through you, Mr. President.

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

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

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

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

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

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

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

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

SENATOR RIVERA: Through you,

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

ACTING PRESIDENT VALESKY: Senator Klein, do you yield?

SENATOR KLEIN: Yes, Mr. President.

ACTING PRESIDENT VALESKY: The sponsor continues to yield.

SENATOR RIVERA: Thank you, Mr. President.

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

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

SENATOR RIVERA: On the bill, Mr. President.

ACTING PRESIDENT VALESKY: Senator Rivera on the bill.

SENATOR RIVERA: Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Rivera.

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

Seeing none, the debate is closed.

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

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

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

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

ACTING PRESIDENT VALESKY: Thank you, Senator Libous.

Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Announce the results.

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

Ayes, 51. Nays, 4.

ACTING PRESIDENT VALESKY: The bill is passed.

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

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

ACTING PRESIDENT VALESKY: The desk is clear.

SENATOR LIBOUS: The desk is clear.

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

(Laughter.)

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

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