NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 3, 2022

3:39 p.m.

REGULAR SESSION

SENATOR JAMAAL T. BAILEY, Acting President

ALEJANDRA N. PAULINO, ESQ., Secretary

P R O C E E D I N G S

ACTING PRESIDENT BAILEY: The Senate will come to order.

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

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

ACTING PRESIDENT BAILEY: In the absence of clergy, let us bow our heads in a moment of silent reflection or prayer.

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

ACTING PRESIDENT BAILEY: The reading of the Journal.

THE SECRETARY: In Senate, Monday, May 2, 2022, the Senate met pursuant to adjournment. The Journal of Sunday, May 1, 2022, was read and approved. On motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

The Secretary will read.

THE SECRETARY: Senator

Reichlin-Melnick moves to discharge, from the Committee on Housing, Construction and Community Development, Assembly Bill Number 4620 and substitute it for the identical Senate Bill 7479, Third Reading Calendar 457.

ACTING PRESIDENT BAILEY: So ordered.

THE SECRETARY: Senator Sanders moves to discharge, from the Committee on Judiciary, Assembly Bill Number 7737B and substitute it for the identical Senate Bill 5473D, Third Reading Calendar 704.

ACTING PRESIDENT BAILEY: So ordered.

THE SECRETARY: Senator Kennedy moves to discharge, from the Committee on Transportation, Assembly Bill Number 9161 and substitute it for the identical Senate Bill Number 8272, Third Reading Calendar 914.

ACTING PRESIDENT BAILEY: So ordered.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from

state officers.

Motions and resolutions.

Senator Liu.

SENATOR LIU: Mr. President, on behalf of Senator Kaplan, on page number 33 I offer the following amendments to Calendar Number 765, Senate Print Number 7658, and ask that the said bill retain its place on the Third Reading Calendar.

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

Senator Liu.

SENATOR LIU: Mr. President, I also offer, on page number 41, the following amendments to Calendar Number 837, Senate Print Number 6195A, by Senator Persaud, and ask that the said bill retain its place on the Third Reading Calendar.

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

Senator Liu.

SENATOR LIU: Mr. President, finally, I move to amend Senate Bill Number 7862A

by striking out the amendments made on May 2nd and restoring it to its original print number, 7862. It's by Senator Bailey.

ACTING PRESIDENT BAILEY: So ordered. The bill will retain its place on the Third Reading Calendar.

Senator Liu.

SENATOR LIU: Mr. President, I move to adopt the Resolution Calendar, with the exception of Resolution 2390.

ACTING PRESIDENT BAILEY: All those in favor of adopting the Resolution Calendar, with the exception of Resolution 2390, please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BAILEY: Opposed, nay.

(No response.)

ACTING PRESIDENT BAILEY: The Resolution Calendar is adopted.

Senator Liu.

SENATOR LIU: Mr. President, please take up previously adopted Resolution 1348, by Senator Persaud, read that resolution title only, and please recognize Senator Persaud on the

resolution.

ACTING PRESIDENT BAILEY: The Secretary will read.

THE SECRETARY: Senate Resolution 1348, by Senator Persaud, memorializing Governor Kathy Hochul to proclaim May 2022 as Older Americans Month in the State of New York, in conjunction with the observance of National Older Americans Month.

ACTING PRESIDENT BAILEY: Senator Persaud on the resolution.

SENATOR PERSAUD: Thank you, Mr. President.

This month, as we celebrate Older Americans Month, I want us all to remember the contributions that our seniors have given to our society.

In my district, I am fortunate to have a significant number of active adults, as we call them, active adults that when I walk into a senior center -- there's one in particular who is on Facebook Live. I remember the first day she said to me, "Senator Persaud, are you ready? We're going live." And I'm like, "Live where?"

(Laughter.)

SENATOR PERSAUD: She says "Facebook Live. Here you go," and she starts speaking. And every time I go to that center, that's what she does.

And then I'll go to another center, and there -- you know, people tend to think that our older adults are not technologically savvy. Well, they are. We just have to give them the access to the technology and they will run with it.

And those are the kinds of seniors that we're celebrating today, seniors who they have given back, given everything to our society, and now they just want to relax and enjoy. And we have to give them the opportunities.

When I talk about seniors, I remember my grandfather, who passed at the age of 95, who loved to remind us -- he was very, very active, and he loved to remind us that he could out-walk all of us. And also he never wore glasses in his life, and said "I can read the Bible," you know, "without glasses."

And my grandmother, who passed at 101 and five months and would always tell us -- she could tell us everything that happened from

the day of her birth, without hesitation.

And so all of us have a lot to look forward to as we grow older. You know, so let us remember the contributions that our seniors have given.

And I just want to remind us all of a quote by George Bernard Shaw, to sort of let us all remember when we're -- you know, when we're not having such a good day and we're fussing about things, to remember you don't stop laughing when you grow old, you grow old when you stop laughing.

So remember, keep laughing and enjoy our seniors.

Thank you, Mr. President.

ACTING PRESIDENT BAILEY: Thank you, Senator Persaud.

Senator May on the resolution.

SENATOR MAY: Thank you, Mr. President.

And thank you to Senator Persaud for bringing this resolution.

The 2022 theme of Older Americans Month is "Age My Way," an opportunity for all of us to explore the many ways older adults can

remain in and be active within their communities.

And Senator Persaud's examples were great. I want to bring two additional ones. One is a wonderful program that's administered by Interfaith Works in Syracuse, called the Senior Companions Program. I know there are many across the state, but this one I've had the pleasure to be able to visit.

And this is a program where they pair volunteers, who are seniors themselves, with people who are facing isolation, whether it's in a nursing home or even in their own homes. And they pair people up, and both the volunteer and the person they are volunteering for end up with a new friend and a much more active perspective on life.

And it's really beautiful to see the volunteers with the people that they are supposedly helping, because they are both helping each other in beautiful ways.

I also want to mention Ruth Colvin, who came here in 2019 as my awardee for the Senior of the Year, and she is now 105 years old, still playing golf, still going to the gym.

She's -- 50 years ago she started an

organization called Pro Literacy that became a worldwide adult literacy organization. It had fallen on hard times in recent years, so she is now involved in restarting this really important nonprofit literacy organization -- again, at the age of 105.

So there are people around us who are inspiring and are showing us the way. And all of us are aging, and this idea of "Aging My Way" I think is a beautiful image to keep in our minds, especially when we look at people around us and pay attention to what other people are doing to show us the way.

So again, thank you for bringing this resolution, Senator Persaud.

I vote aye.

ACTING PRESIDENT BAILEY: Thank you, Senator May.

Senator Serino on the resolution.

SENATOR SERINO: Thank you, Mr. President.

And thank you, Senator Persaud, for bringing this resolution forward, and I loved listening to you speak.

You know, I rise today to honor our

older Americans, and especially our New Yorkers, the residents who have helped really build our state. It's our older New Yorkers whose work over the years has shaped the communities that we know and love, and we owe them a tremendous debt of gratitude.

As we rise to honor these trailblazing New Yorkers and all older Americans, I think it's important that we also recognize the many challenges that so many of them face today, with rising costs on everything from electricity to home heating oil, groceries to gasoline, it's really our older New Yorkers, many of whom are living on fixed incomes, who are feeling the impacts each and every day.

If we want to honor our seniors, we have to start by ensuring that they have the resources that they need to age with dignity at home in the communities that they know and love.

That starts by taking real action to bring down their cost of living, holding the line on their property taxes, and ensuring they have access to quality healthcare and bolstering age-related services like home care.

It also includes ensuring that state

policies that we know have put our seniors in harm's way are never implemented again. That means investigating the state's handling of the pandemic as it relates to nursing homes, where over 15,000 vulnerable older New Yorkers died during the pandemic.

It means making a promise to older New Yorkers that their needs will always be a priority in this house, and ensuring that they will never be an afterthought in the State of New York ever again. It's one thing to proclaim that we are an age-friendly state or to name a month in our seniors' honor, but it's another thing altogether to take real action to provide the relief that they are so in need of.

You know, our seniors grew up in a time when they never asked for anything, any help. But we can make a real difference for older New Yorkers during these challenging times by making their needs a top priority.

Thank you, Mr. President.

ACTING PRESIDENT BAILEY: Thank you, Senator Serino.

The resolution was previously adopted on January 11th.

Senator Liu.

SENATOR LIU: Mr. President, please take up previously adopted Resolution 2051, by Senator Rivera, read that resolution title only, and recognize Senator Rivera on the resolution.

ACTING PRESIDENT BAILEY: The Secretary will read.

THE SECRETARY: Senate Resolution 2051, by Senator Rivera, memorializing Governor Kathy Hochul to proclaim May 2022 as Huntington's Disease Awareness Month in the State of New York.

ACTING PRESIDENT BAILEY: Senator Rivera on the resolution.

SENATOR RIVERA: Thank you, Mr. President.

This resolution is to memorialize Huntington's Awareness Month. It's basically to ask the Governor to make May Huntington's Disease Awareness Month.

Now, for folks who might not know, Huntington's Disease is a degenerative brain disorder. It is sadly noncurable. It can be treated, but it cannot be cured. And it is rare, but more than a quarter of a million Americans actually suffer from Huntington's Disease. And

we have to also think about the family members and caregivers who are impacted by folks who have this condition.

It is imperative that we bring greater awareness to this disease, and so that's why I'm happy to support this resolution and also to visit -- as many folks -- as we know, the last couple of years we've been quite lonely up here; we haven't had many folks come and visit us.

But sometimes we do have some visitors, and I'm glad to welcome two of them today. With us are Pat Schuler and Jenny Hart. Both of them are part of the Albany Chapter of the Huntington's Disease Society of America.

They provide service, Mr. President, for families and caregivers for folks who are stricken by Huntington's disease, all the way from Kingston all the way up to the Canadian border. So certainly many of my colleagues are served by the fine work that these folks do and their organization does.

So I welcome them here today. I thank you, Mr. President, for giving me the opportunity to talk about bringing awareness to this important topic.

Thank you so much, and welcome to Albany.

ACTING PRESIDENT BAILEY: To our guests, I welcome you on behalf of the Senate. We extend to you all the privileges and courtesies of the house.

Please rise and be recognized.

(Standing ovation.)

ACTING PRESIDENT BAILEY: The resolution was previously adopted on March 15th.

Senator Liu.

SENATOR LIU: Mr. President, please take up Resolution 2085, by Senator Kennedy, read that resolution title only, and recognize Senator Kennedy on the resolution.

ACTING PRESIDENT BAILEY: The Secretary will read.

THE SECRETARY: Senate Resolution 2085, by Senator Kennedy, mourning the death of Barbara Jo Hard, devoted educator, loving mother and grandmother, and distinguished citizen.

ACTING PRESIDENT BAILEY: Senator Kennedy on the resolution.

SENATOR KENNEDY: Thank you, Mr. President.

It is an extraordinary honor that I stand here today to honor the life and the legacy of one of the greatest that's ever come out of Western New York, Barbara Jo Hard, who passed away on February 3rd of this year.

She was born in South Buffalo, she attended South Park High School. She went to Buffalo State College, where she majored in exceptional education, and there began her extraordinary career helping other people.

Her life was filled with love and compassion and caring and a spirit of giving to the community. Back in the early 1980s, she founded what's become one of the greatest educational institutions in Western New York and arguably the state, helping individuals with disabilities, Bornhava Preschool. Bornhava Preschool is a private preschool that has become renowned for its excellent education programs.

I actually had the opportunity to work at Bornhava in my previous life as an occupational therapist. On a personal note, I met my wife there.

And Barbara Jo, though, aside from having such an impact on bringing my wife and I

together and my future family, she had an impact on thousands of lives, thousands of families' children in our community over decades that she served as the executive director, where she treated these children that came through -- some of the most vulnerable in our entire community -- as if they were her own.

And because of that, and treating those children as her own family and the workers at Bornhava as her own family, she had this spirit about her. When you'd see her, she'd always have a smile. She'd have a positive attitude. She knew how to engage with people and really knew how to fight for what she believed in, and that was her work. And that was understanding that the work done at Bornhava Preschool and helping these kids with disabilities would help to change the world.

But she didn't stop there. Back in the '80s when the Vietnam War had just concluded less than a decade earlier, Barbara Jo Hard went to North Vietnam and she brought two young men into her life, that lived with her and established their lives in Buffalo: Jeffrey Nguyen and Quang Don.

A couple of years later, she went back to Vietnam and she adopted two more young boys from the war-ravaged countryside, Nguyen Tu and Don Vu. And she wasn't done there. She went back and then she brought two others over: Don Vu's brother Tu and sister Ahn.

And then when folks thought that she's done so much and, you know what, most people would have sat back and taken a rest, she said, No, I'm not finished. And so she spread her wings this time across the Atlantic to post-Soviet Union Communist Cold War Russia, where she adopted two young girls, Marina and Maggie.

Eight children she brought into her life and was the mother of, raising them to be wonderful people giving back to the community and who have contributed so much.

I can tell you she acted as a beacon of love, of light, and of hope to all those that crossed her path. And I think, Mr. President, we can all learn a lot of how Barbara Jo Hard lived her life. And while she's no longer with us, her memory will undoubtedly live on with the many children and individuals she took under her wing,

encouraging them to grow and become all that they could possibly be and to realize their greatest potential.

And so it's for this reason and so many others that I'm proud to honor the life and contributions of Barbara Jo Hard here on the Senate floor here today. May all of those who love her and continue to feel her presence in the lives that they live remember her as the wonderful individual that she was.

May Barbara Jo Hard rest in peace.

Thank you, Mr. President.

ACTING PRESIDENT BAILEY: Thank you, Senator Kennedy.

The resolution was previously adopted on March 22nd.

Senator Liu.

SENATOR LIU: Mr. President, please take up Resolution 2390, by Senator Gounardes, read that resolution and recognize Senator -- and recognize Senator Gounardes on this resolution.

ACTING PRESIDENT BAILEY: The Secretary will read.

THE SECRETARY: Senate Resolution 2390, by Senator Gounardes, memorializing

Governor Kathy Hochul to proclaim April 24, 2022, as Armenian Genocide Remembrance Day in the State of New York.

ACTING PRESIDENT BAILEY: Senator Gounardes on the resolution.

SENATOR GOUNARDES: Thank you, Mr. President.

It's very fitting that we are -- I'm here today to talk about this resolution calling on the Governor to commemorate April 24th as Armenian Genocide Awareness Day, Remembrance Day, a day after Senator Kaplan was on this floor introducing her resolution for Holocaust Remembrance Day, because the 20th century has seen some of the greatest atrocities known in the history of mankind, where there were attempts to wipe out and fully exterminate entire populations of people.

And even a generation before the terrible atrocities happened during the Holocaust in Nazi Germany, the Ottoman Empire engaged in a systematic program to exterminate the Armenians and the Greeks and the Pontians and the Assyrians and the Christian minorities that were living in the Ottoman Empire, living in modern-day Turkey.

And it was because of ultra-nationalist Turkish elements in the Ottoman Empire that it began in 1915 to systematically wipe out all of these peoples and all of these communities. Over the course of eight years, 1.5 million Armenians were exterminated because of the Turkish Ottoman genocide program, 800,000 Greeks exterminated by the Turkish Ottoman genocide program; hundreds of thousands of Assyrians and Pontics and other Christian minorities terminated, killed, slaughtered, displaced. Churches destroyed. Communities lit on fire. In 1923, the Ottoman Empire set fire to the entire city of Smyrna, in Asia Minor, in an attempt to kill everyone living there.

There is an awful, awful legacy that we have an obligation to not just never forget, but to proactively remember.

I want to read the words of Henry Morgenthau -- who had been the U.S. ambassador to the Ottoman Empire -- in 1918 when he was calling on the world to stand up for the truth: "Will the outrageous terrorizing, the cruel torturing, the driving of women into harems, the debauchery of innocent girls, the sale of many of them at 80

cents each, the murdering of hundreds of thousands and the deportation to and starvation in the deserts of other hundreds of thousands, the destruction of hundreds of villages and cities, will the willful execution of this whole devilish scheme to annihilate the Armenian, Greek and Syrian Christians of Turkey, will all of this go unpunished?"

Sadly, Mr. President, at that time it did go unpunished. But we are here today nearly a century later to be able to say that we will never forget what happened to those communities, and that we will do everything in our power to put their memory at the fore of our consciousness. And as we combat this rising wave and tide of nationalism and hatred and bigotry against ethnic minorities regardless of where they are or who they are or where they're from, we have an obligation to stand up and protect them.

I'm incredibly proud that last year on this date President Biden officially recognized the Armenian genocide as an official presidential proclamation. It took a century worth of organizating to get our country to that

point. And I'm incredibly proud to stand on this floor today to memorialize that event, to pay tribute to the millions whose lives were taken from us, and to say defiantly that we will never forget.

Thank you.

ACTING PRESIDENT PERSAUD: The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT PERSAUD: Opposed, nay.

(No response.)

ACTING PRESIDENT PERSAUD: The resolution is adopted.

Senator Liu.

SENATOR LIU: Madam President, at the request of the sponsors, the resolutions are open for cosponsorship.

ACTING PRESIDENT PERSAUD: The resolutions are open for cosponsorship. Should you choose not to be a cosponsor, please notify the desk.

Senator Liu.

SENATOR LIU: Madam President,

please take up the reading of the calendar.

ACTING PRESIDENT PERSAUD: The Secretary will read.

THE SECRETARY: Calendar Number 82, Senate Print 6373B, by Senator Savino, an act to amend the Workers' Compensation Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: In relation to Calendar 82, those Senators voting in the negative are Senators Akshar, Borrello, Boyle, Gallivan, Griffo, Helming, Jordan, Lanza, Martucci, Mattera, Oberacker, O'Mara, Ortt, Palumbo, Rath, Ritchie, Serino, Stec, Tedisco and Weik.

Ayes, 42. Nays, 20.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 214, Senate Print 1565, by Senator Sanders, an act to amend the Banking Law and the Penal Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the 30th day after it shall have become a law.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: In relation to Calendar 214, those Senators voting in the negative are Senators Akshar, Borrello, Boyle, Gallivan, Griffo, Helming, Jordan, Lanza, Martucci, Mattera, Oberacker, O'Mara, Ortt, Palumbo, Rath, Ritchie, Serino, Stec, Tedisco and Weik.

Ayes, 42. Nays, 20.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 457, Assembly Print Number 4620, by

Assemblymember Zebrowski, an act to amend the Real Property Actions and Proceedings Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Senator Borrello to explain his vote.

SENATOR BORRELLO: Thank you, Madam President.

I think this is another example when we are going to unfairly burden our state-chartered banks with a fee that they should not have to pay.

Quite frankly, if condominium owners have their reserves properly funded, they should be able to afford -- as unfortunate as it might be -- to absorb some of those fees until these properties, which are usually quite highly valued, can be sold and those fees can be made whole.

And in the meantime, our

state-chartered banks, the only ones that are impacted by this, that only account for roughly 20 percent of the mortgages in New York State, are going to be burdened with this unfair bill, sadly.

And what that means is we are going to have more of our community banks, the people that will lend when others will not, be burdened with higher costs and ultimately facing the idea of leaving the state-chartered bank status and becoming chartered in some other way.

So I am strongly opposed to this because of it once again unfairly targeting our state-chartered banks.

Thank you.

ACTING PRESIDENT PERSAUD: Senator Borrello to be recorded in the negative.

Announce the results.

THE SECRETARY: In relation to Calendar Number 457, those Senators voting in the negative are Senators Akshar, Borrello, Boyle, Gallivan, Griffo, Helming, Jordan, Lanza, Martucci, Mattera, Oberacker, O'Mara, Ortt, Palumbo, Rath, Ritchie, Serino, Stec, Tedisco and Weik.

Ayes, 42. Nays, 20.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 497, Senate Print 2143A, by Senator Kavanagh, an act to amend the Banking Law.

SENATOR LANZA: Lay it aside.

ACTING PRESIDENT PERSAUD: Lay it aside.

THE SECRETARY: Calendar Number 703, Senate Print 5472, by Senator Hoylman, an act to amend the Real Property Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 180th day after it shall have become a law.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: In relation to Calendar Number 703, those Senators voting in the negative are Senators Akshar, Borrello, Boyle,

Griffo, Helming, Jordan, Lanza, Martucci, Mattera, Oberacker, O'Mara, Ortt, Palumbo, Rath, Ritchie, Serino, Stec, Tedisco and Weik.

Ayes, 43. Nays, 19.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 704, Assembly Print Number 7737B, by Assemblymember Weinstein, an act to amend the Real Property Actions and Proceedings Law.

SENATOR LANZA: Lay it aside.

ACTING PRESIDENT PERSAUD: Lay it aside.

THE SECRETARY: Calendar Number 739, Senate Print 8540, by Senator Griffo, an act to amend the Public Officers Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 773, Senate Print 7483, by Senator Brouk, an act to amend the Environmental Conservation Law and the State Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 797, Senate Print 7417, by Senator Tedisco, an act to amend the Public Officers Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 802, Senate Print 1288A, by Senator Brooks, an act to amend the Executive Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day after it shall have become a law.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 803, Senate Print 1378A, by Senator Brooks, an act to amend the Real Property Tax Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the second of January.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 804, Senate Print 2918A, by Senator Addabbo, an act to amend the Real Property Tax Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 805, Senate Print 3402, by Senator Bailey, an act to amend the Real Property Tax Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Senator Bailey to explain his vote.

SENATOR BAILEY: Thank you, Madam President.

You know, in this chamber under the leadership of Andrea Stewart-Cousins, we don't just celebrate veterans on Memorial Day and Veterans Day and when they come up -- we celebrate them the right way to do it, via policy.

This piece of legislation would offer qualified veterans an extra property tax exemption. Because if you have two qualified veterans living in the same household and they have both served our country incredibly well, there should be no reason why only one of their service -- only one member of their household's service counts towards a property tax exemption.

If both of them have put their lives on the line for our country, if both of them have put their body at risk for our country, then the least we can do is grant each of their respective terms of services and their respective service in our great armed forces, in our military as well.

So I just want to thank our leadership for putting this together and my colleagues for voting in support of this bill. I will be voting in the affirmative, Madam President.

ACTING PRESIDENT PERSAUD: Senator Bailey to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 823, Senate Print 8500, by Senator Bailey, an act to amend the Private Housing Finance Law.

ACTING PRESIDENT PERSAUD: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day after it shall have become a law.

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Senator Bailey to explain his vote.

SENATOR BAILEY: Madam President, it's been a long time since you've heard from me.

(Laughter.)

SENATOR BAILEY: Again, in this theme of making sure that our veterans are taken care of well beyond the scope of their service, many of us on both sides of the aisle, we indicate that housing should be a human right.

And if you have paid your debt to society as a veteran and you're doing things that many of us could have never done, never thought of doing, the least we can do is do our best to

make sure that you have somewhere habitable to live.

So when it comes to preferences and waiting lists for housing, we should make sure that there's no confusion about who is a veteran when it's time for these waiting lists.

When it comes to Mitchell-Lama, when it comes to a number of different housing waiting lists, we often confuse it so that we -- so we're not exactly understanding that our veterans that have done so much, they deserve at least a little checkbox next to their name for us so when we look at that list, we can see that they've served our country incredibly well.

So, Madam President, I thank you for allowing me the opportunity to speak on the resolution, and I appreciate all my colleagues on both sides of the aisle for supporting this incredibly important resolution. Our veterans have done for us; we should continue to do for them.

I proudly vote in the affirmative.

ACTING PRESIDENT PERSAUD: Senator Bailey to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 835, Senate Print 8802, by Senator Mayer, an act to amend Chapter 217 of the Laws of 2015.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 844, Senate Print 7622A, by Senator Serrano, an act to amend the Public Authorities Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 892, Senate Print 8403, by Senator Brouk, an act to amend Chapter 289 of the Laws of 2021.

SENATOR LIU: Lay it aside temporarily, please.

ACTING PRESIDENT PERSAUD: Lay it aside temporarily.

THE SECRETARY: Calendar Number 893, Senate Print 8618, by Senator Rivera, an act to amend the Public Health Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 898, Senate Print 6193A, by Senator Gounardes, an act to amend the Executive Law.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Senator Akshar to explain his vote.

SENATOR AKSHAR: Madam President, thank you. It's not often I rise to explain how excited I am about a particular piece of legislation.

I want to commend the sponsor. This piece of legislation is incredibly important. We in this house and our friends in the Assembly know in fact how important the Constitution in

the State of New York is. Look no further than the gerrymandered maps. At the end of the day, the Constitution prevailed, the maps went in the garbage.

So I want to thank the sponsor for advancing a piece of legislation that commemorates a specific day in the State of New York and acknowledges the importance of the Constitution. I proudly stand with my colleague and our colleagues and vote in the affirmative.

Thank you, Madam President.

ACTING PRESIDENT PERSAUD: Senator Akshar to be recorded in the affirmative.

Senator Borrello to explain his vote.

SENATOR BORRELLO: Thank you, Madam President.

I would also like to commend the sponsor on this. In fact, I was moved by his speech last week and I got a transcript of it here, and with your indulgence I am going to read it again in its entirety, so --

(Laughter.)

SENATOR BORRELLO: Just kidding.

Thank you, Madam President.

ACTING PRESIDENT PERSAUD: Senator Borrello to be recorded in the affirmative without reading the speech.

(Laughter.)

ACTING PRESIDENT PERSAUD: Senator Gounardes to explain his vote.

(Groans, laughter.)

SENATOR GOUNARDES: Madam President, I only got to finish half of my speech last week --

(Laughter.)

SENATOR GOUNARDES: -- so if you don't mind, I want to finish the other half -- no.

(Laughter.)

SENATOR GOUNARDES: You know, and I appreciate my colleagues for their comments. There's a reason why I really talk about why it's important to celebrate the Constitution. Because it's important that we know the structures, the powers, the obligations of our government. It's important for us to know why it is we do what we do.

Without fail, every year members on both sides of the aisle like to complain about

our state budget process. And we bang our fists and we wring our hands and we say, Oh, Silver v. Pataki, oh, it's a terrible thing, we can't get the budget we want. Ignoring the fact that it was a hundred-plus years ago when the budget process was reformed by a young reformer named Robert Moses -- yes, that Robert Moses -- that led to the passage of the 1927 amendment consolidating power for the budget in the executive chamber.

It's because we come back to this chamber year after year after year to fight for education funding. Senator Jackson walking to Albany twice in the push for education funding. Why? Because in 1894 the Constitution mandated an elevated public education as a fundamental constitutional right.

Those two things are inextricably linked. When we talk about the robust public safety net that we have in this state for people who are less advantaged, for people who need a leg up, for people who need just a little bit of help, it's because our Constitution, Article 17, says that the aid, care and support of the needy are public concerns and shall be provided for by

the state. That is in our State Constitution, those words.

And so I know it's kind of fun and I got up here and I spoke a little bit longer than folks like to talk about our history. And I know it seems like a nerdy thing, but it is so incredibly important. Because it determines not only where we've been, but where we're going. Even on issues that we might not fully agree with -- or agree on.

And so for that reason, I proudly vote aye to celebrate and establish April 20th as officially New York's Constitution Day.

Thank you.

ACTING PRESIDENT PERSAUD: Senator Gounardes to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

THE SECRETARY: Calendar Number 914, Assembly Print Number 9161, by Assemblymember Magnarelli, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT PERSAUD: Read the

last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: In relation to Calendar Number 914, voting in the negative: Senator Lanza.

Ayes, 61. Nays, 1.

ACTING PRESIDENT PERSAUD: The bill is passed.

Senator Liu.

SENATOR LIU: Madam President, please return to Calendar Number 892.

ACTING PRESIDENT PERSAUD: There's a substitution at the desk.

The Secretary will read.

THE SECRETARY: Senator Brouk moves to discharge, from the Committee on Health, Assembly Bill Number 9374 and substitute it for the identical Senate Bill 8403, Third Reading Calendar 892.

ACTING PRESIDENT PERSAUD: The substitution is so ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 892, Assembly Number 9374, by Assemblymember Abinanti, an act to amend Chapter 289 of the Laws of 2021.

ACTING PRESIDENT PERSAUD: Read the last section.

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

ACTING PRESIDENT PERSAUD: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT PERSAUD: Announce the results.

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT PERSAUD: The bill is passed.

Senator Liu, that completes the reading of today's calendar.

SENATOR LIU: Madam President, please go to the reading of the controversial calendar.

ACTING PRESIDENT PERSAUD: The

Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 497, Senate Print 2143A, by Senator Kavanagh, an act to amend the Banking Law.

ACTING PRESIDENT BAILEY: Senator Borrello.

SENATOR BORRELLO: Thank you, Mr. President. Will the sponsor yield for a question.

ACTING PRESIDENT BAILEY: Does the sponsor yield?

SENATOR KAVANAGH: Yes, Mr. President.

SENATOR BORRELLO: Thank you, Senator Kavanagh.

You know, as you've heard me say before, I'm always concerned about things that unfairly impact our -- particularly our New York banks. This just happens to unfairly impact every bank.

But with that being said, if a servicer on a mortgage -- because this would require that they all meet very strict standards on a deadline, which we agree with. However, if

a servicer makes a harmless error anywhere in the process of servicing it, it could result in the inability for them to ever foreclose on a mortgage, right? Which I think is wholly unfair and is certainly going to harm the mortgage industry in New York State.

So with that said, would it be true that if a servicer sent a statement -- they'd have to provide a statement within 30 days. If they sent that statement on Day 31, that they would later be unable to foreclose on that property in the event that it was a default, for missing the deadline by one day?

SENATOR KAVANAGH: Thank you, Mr. President. Don't expect the eloquence we had from my colleague in this chamber last week and this week.

(Laughter.)

SENATOR BORRELLO: It's okay.

SENATOR KAVANAGH: But no. Thank you.

So this is a bill, for those who might be listening, that permits a private right of action for violation of certain rules that are intended to protect borrowers throughout the

state. And it's supported by a very wide range of organizations that are actively active in the space of litigating and taking other actions necessary to protect borrowers.

And the provision that my colleague is referring to would also require compliance with those rules, which are colloquially called -- they're the 419 rules. And my reading of the bill is that a minor immaterial violation like that would not necessarily bar a case by the court. Somebody asserting that failure to comply with those rules bars a case entirely would have to make the claim that it is a violation of those rules that rises to that level.

SENATOR BORRELLO: Mr. President, will the sponsor continue to yield?

ACTING PRESIDENT BAILEY: Will the sponsor yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR BORRELLO: So I'm trying to unpack your answer to the question, because my question was pretty simple.

If a bank sent a notice under that 419 requirement and it was a 30-day and it was delivered on Day 31, would that invalidate any claim they might have in the future to foreclose? Your answer was, well, maybe, I think, based on whether or not the borrower decided that they were going to pursue that action.

So if the borrower did pursue that action, would that invalidate that mortgage? Or are you saying that under no circumstances would a minor violation result in a mortgage holder being unable to foreclose?

SENATOR KAVANAGH: Through you, Mr. President, I think I'm saying neither of those things, although I'm not sure I followed those efforts to paraphrase my words.

SENATOR BORRELLO: Okay.

SENATOR KAVANAGH: The question I believe, Mr. President, if I understand the question, is would a court permit a case to go forward if subdivision 4 of this bill were the law?

And my answer is -- and I think that the premise of that question is that even a very minor immaterial violation of the law would

prevent a case from going forward, if I'm correct. And I would say that a court -- if a borrower files a case -- sorry, if a lender files a case and they're intending to avail themselves of the courts, if the subdivision 4 were in place, the defense -- the defendant in that case, the respondent in that case would be permitted to say there's been a violation of the existing rules and under subdivision 4 of the legislation that was passed, they are barred from -- from having that -- proceeding with that case.

And again, I and many practitioners in this area do not believe that a -- you know, a one-day delay in some notice sometime years ago, or some -- or something that the court deems to be a minor violation would bar a case under this provision.

But again, it's -- I don't want to get into a game of, you know, if I were the judge would I permit it under this language. We have a role to set a standard, and then the courts have a role of interpreting those standards and determining whether cases are going to proceed.

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

ACTING PRESIDENT BAILEY: Will the sponsor yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR BORRELLO: Well, I thank you for that. So let's ask a different question.

Pursuant to the new regulation, Section 419.6, a servicer has five days in which to acknowledge receipt of a complaint and give the borrower additional information.

If the servicer sends that acknowledgment on Day 6, would that result in the inability later for that -- to foreclose on that property if it was in default?

SENATOR KAVANAGH: Through you, Mr. President. Again, I don't think it is productive for me to stand here and guess without any context about how a particular judge might interpret a particular provision of law or the circumstances under which it was -- that particular rule or the circumstances in which it was violated.

What I'm saying to you is that the

way I read this and the way many practitioners in the area read this, we believe that a non -- a de minimis violation -- 419 is a complex set of regulations, and there's a widespread perception that many lenders and servicers flagrantly violate those rules all the time and there's little consequence for that.

So we're trying to create an obligation to comply with the law as it's already on the books if you want to avail yourselves of the courts in an action like this.

But again, I do not read this to say that, you know, if you fail to -- if you've misspelled a word or failed to dot the Is and cross the Ts, that your case is automatically barred. But I don't think it's -- it's not my role to read -- I have a copy of Section 419 here. I don't think it's our role here to parse out which of those violations would be significant enough to bar an action and which would not be. That's the role of judges.

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

ACTING PRESIDENT BAILEY: Will the sponsor yield? Senator Kavanagh, do you yield?

(Pause.)

ACTING PRESIDENT BAILEY: Senator Kavanagh, do you yield?

SENATOR KAVANAGH: Yes, I do.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR KAVANAGH: I was just consulting with a colleague here. Thank you.

SENATOR BORRELLO: Through you, Mr. President. So I guess what I'm getting to here is it sounds like we've opened the door for someone who is an attorney defending someone who is in a foreclosure proceeding to say: No, no, according to Section 419, this mortgage provider, this lender gave a notice on Day 31 or Day 6 and therefore they can request from the judge to -- for a summary dismissal, you know, to vacate the claim. That's really what this law says.

But you're telling me that that's -- that -- is it your intent with this law to not allow such minor violations to bar mortgage lenders from actually making a claim on a foreclosure?

SENATOR KAVANAGH: Through you, Mr. President. My intent with this legislation

is to recognize that lenders have lots of obligations that are intended to protect homeowners, small businesses and others that are borrowing throughout our state and to address the fact that in many instances they're ignoring those provisions.

So we are attempting here to create a standard that says you have to comply with the laws on the books, that are already on the books, and the regulations that are on the books, that are intended to protect homeowners and small businesses and other borrowers. And if you do not comply, then you cannot then turn around and foreclose.

Having said that, I and, you know, the many legal services organizations and others who are practitioners in the courts have informed me that they do not believe that a -- something the court deems to be a de minimis violation would necessarily bar a case in this.

And there's a further provision that -- of the same subdivision that we're discussing here that makes it clear that a defense -- that violations of those rules can be a defense in a case that is actually proceeding,

so there is contemplated a situation where there are cases that are proceeding where violations exist.

And that provision has been amended since -- that was amended last year at the request of some of the lenders and their representatives to indicate that the provision -- that the defense -- that it is a defense but not a complete defense in those cases.

So I think the overall effect of subdivision 4 will create good reason for lenders to be concerned that if they're violating the rules that are intended to protect our homeowners and our small business owners, that that may have consequences when they -- should they choose to avail themselves of the courts to enforce their rights.

But I don't believe that in practice a court is going to find that, you know, if three years ago you made some de minimis violation of those rules, that that in itself would bar the case.

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

ACTING PRESIDENT BAILEY: Will the

sponsor continue to yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR BORRELLO: Through you, Mr. President. I guess the intent versus the language is what we're talking about here.

But there is no doubt that what this bill is going to do is it's going to create a situation where a minor error could potentially lead to at least the extension of litigation and the delay of a foreclosure proceeding. New York State is already probably the worst in being able to resolve foreclosure proceedings.

But there's another important part of this, and that is the secondary market. What makes many mortgages affordable and accessible, particularly for people with questionable credit, is the fact that there is indeed a secondary market where a mortgagor can sell their loans. It happens all the time. In fact, my mother's mortgage was sold five times.

So with that being said, in New York State if a purchaser of a loan has -- buys a loan

where a violation, a minor violation, any one of these Section 419 violations was committed by the originator and then sold, does that violation follow? And is the mortgage buyer now responsible, liable, for that violation that was done by the originator?

SENATOR KAVANAGH: Through you, Mr. President, my colleague is correct that violations of the existing law are not effectively wiped away by transferring the mortgage or perhaps a package of mortgages to a -- somebody who purchases them, and that is the express intent of this.

There are many, many business transactions where one party is taking possession of property or business or other assets that might come with liabilities, might come with liability for violations of the law, and it is certainly the case that the -- you know, the lawyers representing people in those transactions have the ability to choose who's responsible for the violations, to create indemnity classes or other things, and also to do due diligence to make sure that the purchaser of the asset is -- you know, is understanding the risks they're

taking on and taking steps to minimize that.

We do not want a situation where we've got these -- as the many rules that we've already talked about that are intended to protect the rights of borrowers -- that any violation of those rules can simply be wiped way by a transfer to a new entity.

So yes, the liability -- the sort of consequences of having violated those rules would go with the loan if it's purchased.

SENATOR BORRELLO: Thank you.

Mr. President, will the sponsor continue to yield?

ACTING PRESIDENT BAILEY: Will the sponsor continue to yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR BORRELLO: You know, those of us that aren't lawyers usually look at a mistake and usually have an opportunity to fix that mistake, to repair what you have done. In legal terms, I'm told this is called a cure.

In other words, is there an

opportunity for someone who had missed a deadline accidentally, something got lost in the mail, to cure that? In other words, can we make sure that we don't put them in jeopardy of having to be drawn into a long, drawn-out legal battle over a minor violation?

So does this bill actually give an opportunity to cure? In other words, can they fix the mistake that they made to avoid them having to go into what could be a costly legal battle?

SENATOR KAVANAGH: There's no specific provision in this bill that provides -- there's no provision to provide for a cure here.

And again, to the extent we've discussed violations here -- you know, my colleague has mentioned some minor violations like something was due a number of years ago on the 30th and it sent on the 31st. It's not clear how one would cure that unless one has a time machine.

But again, the idea here is that if a lender is generally following the rules and when they make a mistake they are curing it and -- you know, curing it and preventing any

harm to the borrower, then they will -- that is something that they can present as an explanation for why the case -- why their case should move forward in spite of some claim by the respondent that it shouldn't move forward.

And also in response to if the -- to a circumstance where under this same subdivision the borrower may offer as a defense in the action that the -- that the lender has previously violated the rules.

SENATOR BORRELLO: Mr. President, on the bill.

ACTING PRESIDENT BAILEY: Senator Borrello on the bill.

SENATOR BORRELLO: Thank you.

Thank you, Senator Kavanagh, for once again giving those explanations.

You know, I realize that there's always an opportunity to explain yourself. But unfortunately, when you're in court, that costs a lot of money. And explaining yourself while the clock is ticking is what we're talking about here.

New York State is already an incredibly difficult place to do business, and

probably no worse, honestly, than for our state-chartered banks in particular. We continue to pile up the bricks on the backs of our state-chartered banks, and eventually that back is going to break.

And that's not going to be good for the people of New York State because as I mentioned before, the community banks, the small banks where you know the people on the board, where you know the mortgage lender, where you know his family, his or her family -- those are the people that are truly making sure that our small communities especially are able to make things like homes and cars affordable and accessible to the people in their communities, particularly in the middle class.

So in the State of New York we often pass things like this, which sound good, like a consumer protection, but what we're really saying is we're going to make it so that we're going to muddy the water, we're going to blur the lines. And whenever that happens, Mr. President, that means we have to go to court. And when we have to go to court, the meter's running. And that's really what this is about.

So if we want to see mortgages continue to be affordable and accessible -- and considering the fact that we now know that we're going to see increases in mortgage rates, we're seeing that the rates are going to go up, that's going to make it even more difficult for some people to afford a mortgage. If you pile onto that additional costs and fees that will ultimately be amortized -- no pun intended -- into the cost of actually getting a mortgage, then that's going to make it very difficult for people in a state like New York, where it's already expensive for a lot of people to own a home, it's expensive to pay those property taxes, it's certainly expensive to pay those closing costs -- New York is one of the most expensive places to close a mortgage -- we're going to just make it more and more difficult for people to have the basics like being able to have the American dream of owning your own home.

So while I understand that there are a lot of special interests out there that would love to see this happen, this is not in the best interests of the consumers of New York State. And when the time comes, I'll be against it.

Thank you, Mr. President.

ACTING PRESIDENT BAILEY: Senator Palumbo.

SENATOR PALUMBO: Thank you, Mr. President. Would the sponsor yield for a few questions, please?

ACTING PRESIDENT BAILEY: Will the sponsor yield?

SENATOR KAVANAGH: Happily, Mr. President.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR PALUMBO: Thank you, Senator Kavanagh. And through you, Mr. President. I do have a few questions really on the damages side, but I wanted to follow up a little bit on what Senator Borrello just discussed and maybe go a little bit further into the specific language of this bill.

And just initially, though, is there a small servicer exemption under this bill, under Part 419, that would otherwise be exempt from having to comply with these specifics?

SENATOR KAVANAGH: I think I know, but I'm just checking to make sure.

So are you asking is -- does the existing 419 provide for a small servicer exception? Or are you asking does this bill provide for a small servicer exception to the otherwise applicable requirements of 419?

Through you, Mr. President, I ask that clarifying question.

SENATOR PALUMBO: Yes, certainly. And if I may clarify, Mr. President.

And so I believe under -- and I actually cheated a little, I printed out NYCRR under Title 3, Section 419. But I also pulled up the DFS website discussing these regulations. And it did say that there was no small servicer exemption, they're not exempt from the requirements of Part 419.

So my question is, are small servicers exempt from compliance under this bill? Or is this basically everyone who lends?

SENATOR KAVANAGH: Again -- through you, Mr. President -- this bill is about the consequences of not complying with existing law.

So if one were to think that there ought to be a small servicer exemption from 419 -- I'm not sure why small servicers should be

able to violate the rights of homeowners and small businesses owners and borrowers. But if we wanted to make that case, the place I think to do that would be in an amendment to 419.

This is a bill if -- to the extent 419 is applicable to you, this is a bill about the consequences of failing to comply with 419.

SENATOR PALUMBO: Understood.

Would the sponsor continue to yield, please.

ACTING PRESIDENT BAILEY: Will the sponsor yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR PALUMBO: Senator Kavanagh, there actually already are private rights of action under the federal regulations, would you agree with that? The Real Estate Settlement Procedures Act. There are some, not all -- but there are many regarding material violations, rights of action that a homeowner could seek today. We don't need the -- there's no need to include it under New York State law. Would you

agree with that?

SENATOR KAVANAGH: Through you, Mr. President, I was with my colleague until the very last part.

I will certainly agree that there are private rights of action under -- I think it's Section X. But obviously I would not -- were I to agree that we didn't need a private right of action under state law, I would not be proposing this bill to this house today.

The point is that there's federal law and there's state law, and they, you know, relate to each other in some ways but they're distinct. And as in many, many areas of the law, we have state standards that we want to enforce, and we get to choose at the state how those will be enforced.

And this bill does add a private right of action to those who want to assert a violation of the laws applicable in New York.

And yes, there is also a private right of action, and the Congress and the Executive have chosen which of the provisions of federal law there's a private right of action on, and we're today proposing a set of laws that --

to grant a private right of action to parties for violations of our state laws.

SENATOR PALUMBO: Will the sponsor continue to yield.

ACTING PRESIDENT BAILEY: Does the sponsor yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR PALUMBO: Thank you, Senator.

Does the sponsor have a definition of what a condition precedent is when it comes to a lawsuit?

SENATOR KAVANAGH: Through you, Mr. President, the -- I'm reluctant -- I think -- I think my colleague knows what those words mean. And, I mean, it is a condition necessary to meet before one is allowed -- before some other event is permitted to occur.

SENATOR PALUMBO: Will the sponsor continue to yield.

ACTING PRESIDENT BAILEY: Will the sponsor continue to yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR PALUMBO: And I wasn't trying to trick you, Senator. I know you knew the answer because it's in the bill and so --

SENATOR KAVANAGH: Mr. President, I did not perceive a trick, I just was trying to --

SENATOR PALUMBO: So I just wanted to have you explain that to our colleagues, because I just want to read this one section. And it's only a two-page bill, it's not very long -- really, a little more than a page.

And it says here, under Section 4, Compliance with rules, regulations or policies: "Compliance with any such rules, regulations or policies as the superintendent may promulgate to effect the purposes of this article, including but not limited to 3 NYCRR 419 or any subsequently promulgated mortgage servicing rules pursuant to this subdivision, shall be a condition precedent to commencing an action to foreclose upon a mortgage subject to this article or an action on the note, and the failure to

comply with such rules, regulations or policies shall be a defense to a foreclosure action or action on the note, even if servicing has been transferred to a different mortgage servicer."

So I read that section and I ask you specifically, when you think about other areas where a condition precedent in our law is applicable -- for example, you want to sue a municipality -- a condition precedent to a lawsuit is filing a notice of claim within 90 days. If you fail to file a notice of claim, your suit's a nullity.

So if they fail to comply with these rules and regulations and then mistakenly sue, their lawsuit, according to this bill -- the mortgage servicing company -- would then be deemed a nullity. Is that accurate?

SENATOR KAVANAGH: Through you, Mr. President, I think that -- I don't think we have a dispute about what condition or precedent means, I think. But in the question -- the discussion with my other colleague and this discussion here, I think we are having a conversation about what compliance with all these rules, regulations and policies -- what level of

compliance is necessary for this provision to be applicable.

I don't think there are many borrowers that if you ask them are you complying with, you know, 3 NYCRR 419, they would say no, we are not complying with that. I think they would say they are complying. And perhaps, you know, borrowers who want to make the assertion in future litigation that this provision is as strict as my colleagues suggest it is should, you know, bring him in to make that case.

But my belief and the belief of many people who are litigants in this area, and I'll talk -- you know, my colleague referred to the supporters of this bill as special interests a minute ago. We'll talk about who's supporting this bill in a minute.

But the -- it is my belief and the intent, as the sponsor of this bill, the intent that you must comply with the rules and regulations and policies, and failure to comply with those rules would block the -- a suit from proceeding. If you do find yourself in a court action, that you could use those as a defense, although not a complete defense in a foreclosure

action. And I think that it's going to be up to courts to determine, as they do in so many areas, the precise parameters of the compliance that's necessary and how the defense plays out and what the remedy is.

And again, I would also just note that one of my colleagues had said that this would bring people into court and then to have to defend their compliance with the regulations. This subdivision 4 applies in circumstances where the lender is bringing the borrower to court. So there's nothing about this provision that would bring the -- would bring a lender to court.

This is where -- this provision applies where a lender is asserting their rights in a court action.

SENATOR PALUMBO: Will the sponsor continue to yield.

ACTING PRESIDENT BAILEY: Would the sponsor yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR PALUMBO: And that was

really -- my question was regarding a plaintiff, that if you ultimately sued.

Because, for example, at page 2, line 3, it says "shall be a condition precedent to commencing an action." When you're suing a municipality without a notice of claim, your case is dismissed. There is no discussion. There is no discretion for a judge.

So for the purposes of legislative intent, could you please just clarify for future litigants whether or not it is a material noncompliance, immaterial noncompliance -- meaning anything, if it's I did mail my notice 18 days instead of 15 days -- could you possibly clarify that for us? Because I know that substantial compliance is used a lot in our law, or material defects versus immaterial, something that can actually damage a homeowner, the fact that you got a notice three days late, although -- and we'll get to damages shortly -- you're still entitled to damages under this law, you are not actually damaged by that, the fact that you didn't get a notice that it was transferred to another company.

So would you please maybe help us

out so that people who are listening could ultimately understand your intent with this particular bill once it becomes law?

SENATOR KAVANAGH: Through you, Mr. President, just to clarify. My colleague seemed to be talking about subdivision 4 throughout the question and then threw in the reference to the subdivision 3, the damages provision in subdivision 3.

I'm going to just interpret the question as a question about the -- just continuing the conversation of -- about subdivision 4. And if we want to discuss the damages provisions, we can discuss those. But I'm going to sort of consider that not part of this question.

SENATOR PALUMBO: Sure. And I apologize, that was a bit of a long question.

So I'll just say very specifically, could you explain to us what the satisfaction aspect of complying with, as a condition precedent, complying with these regulations would be sufficient in order to sustain your lawsuit?

Because if you fail, in certain areas of our law, in the slightest to satisfy

condition precedent, your case is thrown out. So could we just make -- could you possibly indicate that this condition precedent, as you said, does it need to be a material compliance, substantial compliance, or utter absolute compliance to the letter?

SENATOR KAVANAGH: So through you, Mr. President, I don't -- I just -- first an observation about the example that my colleague is using of the application of condition precedent.

When the rule is you must file a -- you must file the action that you're about to file, a notice of the action in a particular way, that's a pretty straightforward question whether that notice was filed or not filed. It's -- you know, in this sort of thing it's not surprising that courts that find that that was not filed at all and it is a notice of the action that is then supposed to be allowed to proceed or not proceed, it's not surprising that, you know, there's a sort of fairly clean interpretation of that, that the Legislature intended explicitly that that notice be filed, and it hasn't been filed, and therefore that case cannot proceed.

This bill does have a lot more complexity to it because the rules and regulations and policies that we're discussing here are complex.

I don't think legislative intent is best expressed on the floor by people adding words to the statute, so I'm not going to say "materiality" should be the word in here or "substantialness" should be the word in here.

I've already said during the course of these proceedings that I do not believe that absolute compliance with every provision and every letter of the law is going to be necessary. But courts are going to have to determine whether there has been compliance or there has not been compliance, and whether they should bar cases brought by borrowers because of noncompliance with these laws. And then, as my other colleague alluded to, what might be necessary for the borrower to remedy that noncompliance in order to proceed.

SENATOR PALUMBO: Thank you, Senator. Would you continue to yield, please.

ACTING PRESIDENT BAILEY: Will the sponsor continue to yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR PALUMBO: Thank you. And through you, Mr. President. And that -- I appreciate that.

Because this is about, you know, 150 notices of claim is what we're doing if we're keeping -- if we're establishing that each and every one of those compliance situations over a 30-year relationship is absolutely necessary. So inabsolute compliance is a good thing.

And I have one last question in that area. If the lender makes a good-faith effort, would that satisfy, in your opinion, under your intention in this statute, a good-faith effort at compliance, would that be satisfactory in order to allow the suit to proceed?

SENATOR KAVANAGH: Through you, Mr. President. Again, I'm going to -- we're talking about subdivision 4 here, the compliance required in subdivision 4?

SENATOR PALUMBO: Yes, thank you.

SENATOR KAVANAGH: Okay. Again, I

do not -- words like "good faith" and "materiality" and "substantialness" have, you know, legal and technical definitions that vary from context to context. I do not want to add words that are not in the statute to the record today.

But obviously courts very frequently consider the behavior of parties and whether they intended to engage in bad behavior or whether they acted in good faith. And I assume -- I would assume that courts would consider those factors in litigation around how this statute applies.

But I'm not going to say that there's a bright line standard that if there's good faith, then this provision doesn't apply.

SENATOR PALUMBO: Thank you.

Senator, would you continue to yield, please.

ACTING PRESIDENT BAILEY: Does the sponsor continue to yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR PALUMBO: Thank you, Senator Kavanagh.

So just a few quick questions on the damages section now in Section 3, subdivision 3. "If awarded damages or injunctive relief," the tenant shall be entitled to recover -- and I added that -- or the owner or the defendant, so to speak, "shall also be entitled to recover costs and expenses, including but not limited to reasonable attorneys' fees."

So when it says when awarded damages, is that any damages? And the reason I ask that is the section before that awards a thousand dollars a day liquidated or presumed damages simply for a violation. So in the example I gave before, your notice is three days late, they get three grand because you were three days late, which is presumed.

Are they basically entitled to all these additional costs, treble damages and attorneys' fees, in the event there's any violation at all?

SENATOR KAVANAGH: Through you, Mr. President. First to clarify. The provision my colleague is referring to is not a per-day

provision but it's a per-violation provision. So it would be a thousand dollars total per violation.

And again, the actions in question here are actions where a party has been -- would have to have demonstrated -- in order to have an action, they'd have to have demonstrated that they have been injured by a violation.

So in the example that my colleague used, if a notice were a few days late, that -- there wouldn't be a case at all unless the borrower is able to demonstrate that they've been injured by the violation. And if they are injured then, yes, they're entitled -- if they do demonstrate to the satisfaction of the court that they are injured by the violation, they are then entitled to the remedies that are listed here.

SENATOR PALUMBO: Very good. Thank you, Chairman. I appreciate you answering my questions.

On the bill, please, Mr. President.

ACTING PRESIDENT BAILEY: Senator Palumbo on the bill.

SENATOR PALUMBO: Thank you, Mr. President.

And I appreciate Senator Kavanagh clarifying a lot of those issues that I have with the language of this.

But unfortunately, this is a long ways away from something that's palatable. Because we have a very vaguely drafted statute, we have language that has meaning in our system of law, a condition precedent, which means -- and it's a "shall" statute: You must comply. You fail to do so, you lose. By a day, for example. I gave the -- in General Municipal Law you have a year and 90 days to sue overall. If you're outside your 90 days for a notice of claim, you have to make a motion and get court permission. If you miss those conditions, you're out.

So now we have someone, a lender, who is looking to just simply square up with someone who is in default. And we have been bludgeoning them, as my colleague, the ranker on Banks, mentioned earlier, we have been bludgeoning our banks. And I get it: We do not want someone to lend in a predatory fashion, we do not want someone to injure, actually injure any borrower or be otherwise -- you know the big bullies that they're unfortunately -- and

villains -- made out to be on this floor often.

But these are the folks that also most of whom are -- have scruples. These are the folks that allow homeownership. The people that are struggling to make payments are the ones that we all collectively have a heart for. We certainly want them to stay in their home. And we have all kinds of conditions and mandates and mandatory settlement conferences, you have to do hundreds and hundreds -- I've refereed many foreclosures. And I don't litigate, myself, against a -- with a -- as a party representative, but I get stacks and stacks, probably 10 inches worth of documents prior to ultimately getting to the point where you can consider selling a piece of property.

So they are diligent, they're doing what they're doing. But this is discouraging not only lenders in New York State from staying here, but it's discouraging lenders from even lending or getting involved or on a secondary market investing in that field. Why possibly would you want to put your money in New York when it's an absolute burden to get your money back in the event of a default?

They're in the business of money. When you see these modifications, they're modifying loans down to about 2 percent. They're not making money on that. They don't want to own a home. They don't want to foreclose. That's really the last resort.

So I do appreciate the laudable intent of this bill, but it is really -- it's, most respectfully, very poorly drafted. And I just don't think this is going to do anything to help anyone. Its unintended consequence is it will actually hurt borrowers in the long run.

I'll be voting in the negative, and I urge my colleagues to do the same.

Thank you, Mr. President.

ACTING PRESIDENT BAILEY: Thank you, Senator Palumbo.

Are there any other Senators wishing to be heard?

Seeing and hearing none, debate is closed. The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT BAILEY: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT BAILEY: Senator Kavanagh to explain his vote.

SENATOR KAVANAGH: Thank you, Mr. President.

I thank my colleagues for, you know, a lively debate today. I think it's always important to, you know, lay out what's going on and different perspectives on how the bills before us will work.

I do want to just note, you know, for the record, this bill is supported by a very wide range of organizations in our state including AARP New York, which is a special interest for all of us who have gotten to be my age and a little older; the Center for New York City Neighborhoods; Community Service Society of New York; DC 37; the Empire Justice Center; JASA; the Legal Aid Society; Legal Services of New York City; Long Island Housing Services; Mobilization for Justice; the Mortgage Working Group of New Yorkers for Responsible Lending; Neighborhood Housing Services of Brooklyn; New York Legal Assistance Group; the Rural Law Center of

New York; and the Western New York Law Center.

And I just want to -- first of all, you know, I wanted to just mention that for the record and also publicly thank the many organizations who have worked on this bill and advocated for us to get it this far in the process.

I also just want to respond to an argument that we hear a lot -- we hear variations on this argument a lot. And this is my 16th year in Albany, and I have seen debates about consumer protection bills in many contexts, including laws that are intended to protect borrowers from practices of banks and other participants in the lending industry.

And we very frequently hear this argument that if we take this additional step, people are going to stop lending in our state, they're going to go elsewhere, they're going to cease to be willing to lend under these circumstances. And again, we've heard that again and again.

And over many years we have strengthened the laws that are intended to protect our borrowers, our homeowners, our small

business owners, and we have never seen this exodus from the market. I don't believe there's any reason to think that a bill like this will cause that kind of exodus. But on the other hand, it will provide some teeth, some effectiveness to the laws that we've already taken the time to put on the books to protect our lenders -- sorry, our borrowers.

And on that basis, Mr. President, I vote aye.

ACTING PRESIDENT BAILEY: Senator Kavanagh to be recorded in the affirmative.

Announce the results.

THE SECRETARY: In relation to Calendar 497, those Senators voting in the negative are Senators Akshar, Borrello, Boyle, Gallivan, Griffo, Helming, Jordan, Lanza, Martucci, Mattera, Oberacker, O'Mara, Ortt, Palumbo, Rath, Ritchie, Serino, Stec, Tedisco and Weik.

Ayes, 42. Nays, 20.

ACTING PRESIDENT BAILEY: The bill is passed.

The Secretary will ring the bell. The Secretary will read.

THE SECRETARY: Calendar Number 704, Assembly Print Number 7737B, by Assemblymember Weinstein, an act to amend the Real Property Actions and Proceedings Law.

ACTING PRESIDENT BAILEY: Senator Boyle.

SENATOR BOYLE: Will the Senator yield?

ACTING PRESIDENT BAILEY: Will the sponsor yield for some questions?

SENATOR KAVANAGH: Yes, Mr. President, standing in for the sponsor, Senator Sanders.

ACTING PRESIDENT BAILEY: Senator Sanders is the sponsor, but Senator Kavanagh will be debating on the subject matter today.

SENATOR BOYLE: Thank you. Through you, Mr. President, would the Senator yield for a couple of questions?

ACTING PRESIDENT BAILEY: The sponsor yields.

SENATOR KAVANAGH: Yes.

SENATOR BOYLE: Senator, does this bill apply solely to residential properties? I couldn't find it, but is it also commercial?

SENATOR KAVANAGH: Through you, Mr. President, this bill addresses lots of concerns that have come up, as far as we know, exclusively in the residential market, but it is not on its own terms limited to that.

So if the provisions of this bill that are intended to provide fairness for borrowers also provide fairness for commercial borrowers, then, you know, that would be, from my perspective, a benefit of this bill. But we do expect it to basically be -- and we're not aware of any instances where these issues have come up in a commercial context. But the bill is not limited to residential.

SENATOR BOYLE: Thank you.

Will the Senator continue to yield?

ACTING PRESIDENT BAILEY: Will the Senator continue to yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: The Senator yields.

SENATOR BOYLE: Thank you, Mr. President.

Can you explain how the effective

date of this bill works? And who would be affected by the -- this date?

SENATOR KAVANAGH: Through you, Mr. President, there are a number of different sections of this bill.

And it is -- let me just start with the effective date provision, which says that it shall take effect immediately and will apply to all actions commenced on an instrument described under a particular provision of the Civil Practice Law and Rules in which a final judgment of foreclosure and sale has not been enforced.

So that -- what that provision suggests is that it is going to apply to actions that have been commenced, presumably on the date this bill becomes law, assuming it is signed by the Governor.

So there may be some complicated questions about -- you know, in some cases this bill applies to situations where an action has been commenced and it's been suspended in some way. But as a general matter, if an action has not -- an action has been commenced and is pending at the time this bill comes into effect, then it would apply. But if an action has been

concluded, presumably it would not apply to that action.

SENATOR BOYLE: Thank you. Will you continue to yield?

ACTING PRESIDENT BAILEY: Will the Senator continue to yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: Senator Kavanagh yields.

SENATOR BOYLE: Thank you, Senator.

So I think the big issue with this bill is the fact that you have a bank -- an example, you have a bank, the borrower stops making payments for whatever reason, a foreclosure action is started, and then the bank and the borrower start talking, Hey, let's cut a deal, in which they may make a change to modify the payment plan and then the foreclosure action is ceased, and then a couple of years down the road or a little ways down the road again there's a problem.

How does the bank again start a foreclosure action? And can they, if this bill becomes law?

SENATOR KAVANAGH: Again, there are several different provisions here, but I think the one that's most applicable to your question are Sections 3, 4 and 8 of the bill which are a response to a state court opinion called Engel.

And that is an opinion that the -- where the court ruled that in the event a foreclosure is brought and then the lender ends that action voluntarily, presumably because they've made some other arrangement with the borrower, under Engel -- Engel made a decision that by action of law, the lender is permitted in a future case to say that they de-accelerated -- that the conclusion of that prior case de-accelerated the loan payment -- just for those who that term isn't familiar, acceleration is what you do when your lender is not paying the loan and you want to foreclose, the first thing you do is take advantage of an acceleration provision in the lending documents, which basically say if the lender -- if the borrower fails to make certain payments, all of the payments become due. And then on that basis, the borrower goes to court and seeks payment from the lender and seeks the remedy of foreclosure if

that's what they're seeking.

So under Engel, there had been some difference of opinion. People on various sides of this -- some say it was clear and Engel changed the status quo; others just say Engel clarified the law. But what the courts said is that when a lender withdraws a case, that it is automatically de-accelerated in a manner that allows them to take advantage of the statute of limitations having been beginning again when they accelerate the case again.

So normal -- with -- in most cases a statute of limitations begins when somebody has some action that's precedent and usually some cause of action kind of ripens and then there's a period during which they can bring the case, and then that period ends and they can no longer bring the case.

The effect of Engel is that a case can be brought, the lender can withdraw the case, and then they get the benefit of an entirely new statute of limitations.

What this bill says is that in that circumstance, if a lender wants to withdraw a case because they have some agreement with the

borrower, they can make an agreement with the borrower that determines whether the settlement of that first case constitutes de-acceleration or it doesn't, and that agreement is binding on the parties.

But it's not automatically de-accelerated, so that the borrower doesn't automatically have the right to begin a new case with a statute of limitations that's premised on a new acceleration.

SENATOR BOYLE: Just to follow up on that, does this bill create a --

ACTING PRESIDENT BAILEY: Senator Boyle, are you asking the sponsor to yield?

SENATOR BOYLE: Yes.

ACTING PRESIDENT BAILEY: Senator Kavanagh, will you yield?

SENATOR KAVANAGH: Yes, Mr. President.

SENATOR BOYLE: I thought I could sneak one in without asking.

(Laughter.)

SENATOR BOYLE: The -- is there -- does this bill give an approved procedure for a bank to decelerate a loan and to pause the

statute of limitations? Is there anything that explains the procedure for the bank? Because they're probably going to be wondering what they have to do.

SENATOR KAVANAGH: Through you, Mr. President, I don't believe that banks that are in the business of lending or bringing, you know, cases to enforce their rights and to foreclose have much doubt as to how to accelerate -- how to indicate to the borrower that they're accelerating or they're de-accelerating, and certainly -- so I don't believe this bill has any -- (pause).

I'm just reminded -- just -- my colleague was suggesting to clarify this. But it does indicate that it needs to be in writing and that it needs to be, you know, in an agreement with the lender. But it doesn't -- you know, the bill doesn't specify what the words are or -- that are necessary to do that.

SENATOR BOYLE: Mr. President, if the sponsor will continue to yield for one more question.

ACTING PRESIDENT BAILEY: Will the Senator continue to yield?

SENATOR KAVANAGH: Yes, Mr. President.

ACTING PRESIDENT BAILEY: The Senator yields.

SENATOR BOYLE: Last question, Senator.

Say a bank got a judgment of foreclosure and a sale just before COVID hit, it's been a two-year time span and this puts them outside of the six-year window, for example.

What are the -- would the borrower just be able to stay in the house and say, Oh, your statute of limitations has passed? Or is there -- was there a tolling during COVID, as far as you know, in this bill?

SENATOR KAVANAGH: Through you, Mr. President, we took a lot of emergency actions legislatively and through executive orders during COVID.

I am not aware of any provision that will -- so I'm not aware of any provision where we tolled the statute of limitations during COVID.

I will note that the statute of limitations in this case is a six-year statute of

limitations, so if a case is barred now because the statute of limitations has run, the case would have had to -- it would have to be based on a loan that was accelerated no later than, you know, April of 2016.

So I think that, you know, the operation of the statute of limitations in that case is probably not -- the fact that they have not concluded the case is not primarily a function of COVID.

Having said that, if this is an area where it is appropriate to create emergency provisions related to COVID, we've done that in numerous areas; I suppose one could propose such a thing.

But in this case, you know, we have sophisticated participants in the market who understood what was going on in the courts and what their options were for their cases, and I don't think this bill creates any -- you know, any significant change in their rights that's related to COVID.

But again, I'd be open to the possibility, if there's some -- if somebody wants to explain why they were unable to enforce their

rights during COVID, I suppose we could have that conversation.

SENATOR BOYLE: I guess maybe because the courts were closed for two years.

But thank you, Senator. Thank you, Mr. President.

ACTING PRESIDENT BAILEY: Thank you, Senator Boyle.

SENATOR KAVANAGH: Through you, Mr. President, just to -- since there was a comment at the end, I'll take it as a question.

The courts would say that they were not --

(Laughter.)

SENATOR KAVANAGH: The courts would say they were not closed, they were on very limited capacity, but they were -- there was an ability to file various motions throughout the COVID period.

And, you know, again, if there's further discussion of how litigants need to protect themselves, I'm sure we could have it.

Thank you, Mr. President.

ACTING PRESIDENT BAILEY: Thank you, Senator Kavanagh.

Are there any other Senators wishing to be heard?

Seeing and hearing none, debate is closed. The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT BAILEY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BAILEY: Senator Salazar to explain her vote.

SENATOR SALAZAR: Thank you, Mr. President.

This bill is deeply meaningful to many homeowners in our Brooklyn districts who have been fighting to keep their homes, and especially in communities that have seen particularly high rates of foreclosure filings throughout the pandemic.

Given the alarming number of homeowners who are unable to keep up with mortgage payments or facing foreclosure, it really is important to protect fairness in foreclosure proceedings and minimize uncertainty

for homeowners.

By passing this bill today, we are ensuring that financial institutions are not able to evade longstanding statutes of limitations to take advantage of these struggling homeowners.

Mr. President, I vote aye.

ACTING PRESIDENT BAILEY: Senator Salazar to be recorded in the affirmative.

Announce the results.

THE SECRETARY: In relation to Calendar 704, those Senators voting in the negative are Senators Borrello, Gallivan, Griffo, Jordan, Oberacker, Ortt, Ritchie, Serino, Stec, Tedisco and Weik.

Ayes, 51. Nays, 11.

ACTING PRESIDENT BAILEY: The bill is passed.

Senator Liu, that completes the reading of today's controversial calendar.

SENATOR LIU: Mr. President, can we please return to motions and resolutions.

ACTING PRESIDENT BAILEY: Senator Liu.

SENATOR LIU: Mr. President, on page 45 I offer the following amendments to

Calendar Number 874, Senate Print Number 2025, by Senator May, and ask that the said bill retain its place on Third Reading Calendar.

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

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

ACTING PRESIDENT BAILEY: There is no further business at the desk.

SENATOR LIU: I move to adjourn until Wednesday, May 4th, at 3:00 p.m.

ACTING PRESIDENT BAILEY: Let me be clear. On motion, the Senate stands adjourned until Wednesday, May 4th, at 3:00 p.m.

(Whereupon, at 5:13 p.m., the Senate adjourned.)