

PUBLIC FORUMS ON

REGULATORY
REFORM

APPENDIX 2:
PUBLIC FORUM TRANSCRIPTS

NEW YORK STATE SENATE
MAJORITY COALITION

Fall 2013



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1 BEFORE THE NEW YORK STATE SENATE MAJORITY COALITION

2 PUBLIC FORUM: REGULATORY REFORM FORUM

3 TO LEARN FROM BUSINESSES AND INDUSTRY EXPERTS WHICH
4 REGULATIONS ARE THE LEAST USEFUL, LEAST
5 COST-EFFECTIVE, AND, THEREFORE, SHOULD BE ELIMINATED

6
7 Roswell Park Research Studies Center
8 Corner of Elm St. and Carlton St.
9 Gaylord-Cary Meeting Room
Buffalo, New York

10 September 11, 2013
11 11:00 a.m. to 1:00 p.m.

12 SPONSORS PRESIDING:

13 Senator Patrick M. Gallivan
14 Deputy Conference Leader for Economic Development

15 Senator Kathleen A. Marchione
16 Chair of the Administrative Regulations Review
Commission

17 Senator David J. Valesky
18 Chair of the Senate Committee on Commerce,
Economic Development, and Small Business

19
20 CO-SPONSOR PRESIDING:

21 Senator Mark J. Grisanti
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Marlene Kraft
Vice President,
Quality & Marketing Services
Dr. John Gillespie
Chief Medical Officer
Palladian Health

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1 SENATOR GALLIVAN: Good morning, everybody.

2 Thank you for being here today.

3 I am Senator Pat Gallivan, joined by
4 Senator Dave Valesky, Senator Kathy Marchione, and
5 Senator Mark Grisanti, in what is the first of a
6 series of ten industry-specific hearings to focus on
7 regulations in New York State and our regulatory
8 environment.

9 Some of you may have been aware of a recent
10 U.S. Chamber of Commerce "Enterprising States
11 Report" that indicated New York State had the worst
12 business climate in the nation: 50 out of 50.

13 It's no secret, of course, for many of you,
14 and for us, what has gotten us to this point are
15 two areas: taxes and regulations.

16 So we know about the high taxes. We are
17 trying to take those on.

18 Some of our counterparts are actually
19 conducting a series of statewide hearings, looking
20 for ideas on tax reform.

21 One will actually be held in Buffalo in city
22 hall, I believe tomorrow --

23 SENATOR VALESKY: Tomorrow.

24 SENATOR GALLIVAN: -- at 10 a.m.?

25 SENATOR VALESKY: 10 a.m., yeah.

1 SENATOR GALLIVAN: And, of course, you're
2 invited to that as well.

3 But just as burdensome as the taxes in
4 New York, of course, is its regulatory environment,
5 that is tantamount to a death by a thousand cuts.

6 We know of the large regulations that are out
7 there.

8 We know, and we have tried to advocate for,
9 and we had a little bit of improvement this year, in
10 reform in the area of unemployment insurance and
11 worker's compensation insurance, but there are
12 hundreds and thousands of regulations that are
13 outdated, that are duplicative, that increase the
14 cost of doing business, that siphon resources from
15 businesses, that serve as a barrier for entry for
16 new entrepreneurs, and all of them, of course, serve
17 to stifle our economy and cost us jobs.

18 So, we have set out on a goal to take up --
19 take on this regulatory environment, and our initial
20 goal is to identify and eliminate a minimum of
21 1,000 regulations in New York State that are
22 duplicative, costly, that make absolutely no sense,
23 that are outdated, and that work to stifle our
24 economy.

25 Just to give you an idea how many there are:

1 You say a thousand, and it is quite a task. We have
2 to start somewhere. There are over 80 volumes of
3 regulations in New York State, over 140,000 pages.

4 So we think this is very doable, but in order
5 for us to try to take this on, we often hear in
6 Albany of the large ones.

7 The idea is to delve into your world.

8 In this case, the health-care and
9 medical-technology industries, and get below the
10 surface of those big things that we always hear
11 about.

12 We always, in Buffalo, talk about
13 "silver bullets," so instead of the great big idea,
14 the great big fix, we're looking for your help to
15 delve down into it and identify the things that are
16 bothersome, burdensome, costly, where the costs
17 greatly exceeds the benefits, are outdated, and so
18 on.

19 So I am very excited to take this on.

20 Senator Marchione is the Chair of the
21 Administrative Regulations Review Commission;

22 Senator Valesky is the Chair of the Senate
23 Committee on Commerce, Economic Development, and
24 Small Business;

25 And I am our Conference Leader -

1 Deputy Conference Leader for Economic Development.

2 The fourth member of our team that will be
3 traveling this state is Senator David Carlucci, from
4 Lower Hudson Valley area, that preceded
5 Senator Marchione as chair of that administrative
6 regulatory review commission.

7 So, we are very anxious to take this on.

8 Senator Grisanti has been very helpful in
9 this effort.

10 We -- originally, when we announced this back
11 in June, put together 14 specific areas for reform.

12 Senator Grisanti was a part of that, and
13 I know committed to trying to help, not just
14 Western New York, but New York State, in that area
15 of economic development.

16 So with that, I will ask all of our members
17 up here just to say a few words, and then we will
18 jump right into this.

19 But, first, I would like to thank
20 Dr. Donald Trump, who is the president --

21 I always get president and CEO all goofed up.

22 -- of Roswell, who is our host today, and
23 will, ultimately, be our first speaker.

24 So, thank you for hosting.

25 DONALD TRUMP, M.D.: Thank you.

1 SENATOR GALLIVAN: Senator Valesky.

2 SENATOR VALESKY: Thank you,
3 Senator Gallivan.

4 Doctor, thank you for hosting this event.

5 I'm happy to be in Buffalo for today's
6 hearing, and tomorrow's finance hearing on taxes.

7 So, go Bills!

8 [Laughter.]

9 SENATOR VALESKY: And thanks to
10 Senator Grisanti for his hosting of this as well.

11 I won't repeat everything that
12 Senator Gallivan has already gone through.
13 I certainly agree with everything he said.

14 This is an important series of hearings.

15 The first of the series, our timeline is to
16 collect testimony in all industry sectors from folks
17 across the state.

18 We'll then prepare a report, with
19 accompanying legislation that we look to have action
20 on as we head back to Albany for the
21 2014 legislative session in January.

22 The only thing I would mention, from a
23 process perspective, two things:

24 One, we'd ask those of you who are here to
25 testify, we would ask for you to be as specific as

1 possible.

2 Senator Gallivan indicated about a thousand
3 regulations are our target, so please be as specific
4 as possible.

5 I don't think any of us here has health care
6 in our background, so we rely on you to share with
7 us exactly the kinds of regulations that impede you
8 from doing business even better than you already
9 are.

10 The other thing I would just mention is,
11 I think we will have, from most all of you, if not
12 all of you, a written testimony, so please don't
13 feel that you have to read your testimony.

14 We will have that.

15 You can certainly summarize that, and I'm
16 sure we'll have some questions after your formal
17 presentation as well.

18 Thank you all for being here.

19 SENATOR GALLIVAN: Senator Marchione.

20 SENATOR MARCIONE: Thank you.

21 It's an honor for me to be here today with my
22 fellow Senators, and with all of you, as we kick off
23 our statewide regulatory reform hearings in the
24 "city of good neighbors," in the city of Buffalo.

25 I'd also like to thank Roswell Park Cancer

1 Institute for hosting us here today.

2 And before we continue, I'd like to
3 appreciate a moment of silence to remember and
4 reflect on the thousands of our fellow Americans who
5 died 12 years ago in the terror attacks on
6 September 11th.

7 So, if we may have a moment of silence.

8 (Moment of silence observed.)

9 SENATOR MARCIONE: Thank you.

10 Thank you.

11 Of all the laws and rules and regulations, at
12 least 12 miles of red tape, as we just heard
13 Senator Gallivan talk about the 80 volumes, it's
14 nearly enough to reach from Albany to my home in the
15 town of Half Moon.

16 It poses a massive financial burden to our
17 economy;

18 They tangle up private-sector job creators;

19 They stifle innovation;

20 And they force institutions to spend more
21 time with regulatory compliance, and less time
22 finding the next medical breakthrough or providing
23 quality care.

24 The purpose of our forum today is to hear
25 from experts in the field of medical technology and

1 health care.

2 Our goal is not to point fingers or assign
3 political blame.

4 Our one, our only goal, is finding solutions,
5 real solutions; and, in short, we want to hear what
6 Albany can do to stop hurting, and start helping.

7 And we look forward to hearing your testimony
8 today.

9 Thank you.

10 SENATOR GALLIVAN: Thanks, Senator.

11 Senator Grisanti.

12 SENATOR GRISTANTI: Thank you.

13 Good morning, everybody.

14 I want to commend Senator Gallivan,
15 Senator Valesky, and Senator Marchione, and also
16 Senator Carlucci, for doing something that is
17 unprecedented here in the state of New York, in a
18 bipartisan fashion, moving forward to, not only
19 reduce, but eliminate thousands and thousands of
20 regulations that we're going to focus on throughout
21 these hearings in various fields throughout
22 New York State in the coming months ahead, just
23 prior to our next legislative session.

24 It's a great endeavor.

25 I appreciate, also, people that have -- that

1 are going to participate, not only here, but across
2 the state of New York.

3 It's very important to participate, because
4 we're going to find common goals and themes
5 throughout these hearings as they're set up, and
6 that will help us be able to decipher and take out
7 those regulations that are necessary.

8 I know that the four that are part of this
9 coalition legislative effort are going to be
10 pit bulls when it comes to getting rid of this, and
11 as I said, in a bipartisan fashion, so it's going to
12 be very, very easy to get this through the Senate.

13 And I also want to thank Donald Trump for
14 hosting us here.

15 And I want to welcome Senator Valesky and
16 Senator Marchione to the great city of Buffalo.

17 If you have the opportunity, look at all the
18 economic development that's working right here in
19 the backyard, and also down at Canal Side.

20 And Pat's buying hamburgers and all lunch for
21 you at the end, so....

22 [Laughter.]

23 SENATOR MARCIONE: But thank you for allowing
24 me to be here today.

25

1 SENATOR GALLIVAN: Thanks, Senator.

2 Our first speaker will be Dr. Donald Trump,
3 who is the president of Roswell Park Cancer
4 Institute.

5 And I would just like to congratulate you --
6 well, first, thank you again; thank you for the work
7 you do, and for hosting us.

8 And, so many people in Western New York, you
9 know that you've touched my family, and so many
10 others, and Roswell is very important to the
11 Western New York community.

12 But I'd like to congratulate you, in that,
13 many people don't know that Roswell Park Cancer
14 Institute was just published on the latest list of
15 "Best Hospitals," by "U.S. News and World Report,"
16 as the 41st best hospital out of 902 hospitals
17 that provide cancer care, the specialty care.

18 And that's really a significant
19 accomplishment in helping to put Western New York
20 and New York State on the map.

21 And I know New York State provides a
22 significant investment to Roswell, and it's good to
23 see that it is put to good use; and more
24 importantly, that you're helping to save lives and
25 help people.

1 But, thank you, Dr. Trump.

2 Go right ahead.

3 DONALD TRUMP, M.D.: Well, thank you,
4 Senator, for those kind words.

5 Senators, welcome to Roswell Park. We are
6 happy to have you here.

7 I'd also like to specially thank
8 Senator Gallivan and his staff for organizing this
9 event.

10 We're pleased to host you on the campus, and
11 I do hope you may have an opportunity to tour some
12 of our facilities, talk to some of the clinicians,
13 researchers, and scientists, and to see the
14 Buffalo Niagara Medical Campus, the campus where
15 Roswell Park has been operating for its entire
16 100-plus-year history.

17 Roswell Park Cancer Institute is a cancer
18 research, treatment, and educational facility.

19 We provide care for cancer patients;

20 In our laboratories, we are searching for new
21 cures and new ways to diagnose cancer;

22 And we educate and facilitate the public in
23 preventing cancer through changing behavior and
24 appropriate cancer screening;

25 And, finally, we prepare the next generation

1 of scientists, clinicians, and allied health
2 professionals to care, to understand, and to prevent
3 and cure cancer.

4 As a provider of health care, and a
5 New York State public-benefit corporation, we do
6 deal with a tremendous amount of regulation.

7 And my message today, while perhaps starting
8 a bit provocatively, is important; that is, I would
9 suggest that more common sense would go a long way
10 in mitigating the detrimental effects of a highly
11 regulated environment.

12 In other words, where possible, avoid using a
13 sledgehammer to kill an ant.

14 If something less can achieve the same goal,
15 that's much to be desired.

16 So I would ask that you, as legislative
17 leaders, consider two things in the upcoming
18 session:

19 Think about the implications and
20 implementation before new laws are passed;

21 And make the rule or regulation or law fit
22 the problem.

23 Many well-intentioned solutions can quickly
24 get out of hand when common sense is absent from the
25 equation.

1 "The devil is always in the details."

2 Many times it is not the law or the idea that
3 is flawed, but the implementation.

4 For example, two pieces of legislation that
5 had been introduced and considered by the
6 Legislature, but have not yet become law, are prime
7 examples: The Safe Staffing for Quality Care Act,
8 and the Safe Patient Handling Act.

9 With titles like that, how could you oppose
10 those bills?

11 Clearly, as health-care professionals, our
12 patient safety is of the highest importance.

13 However, the specifics that are in the bills,
14 the requirements, if you will, go further than
15 necessary, in my opinion.

16 As legislators, I respect your roles as
17 leaders and policymakers, to state the need to
18 eliminate injuries that occur due to the movement of
19 patients, and to ensure that we provide a safe,
20 caring environment.

21 But, in turn, please trust health-care
22 professionals to safely staff our facilities and
23 provide appropriate tools to do so.

24 If there are a few bad actors, I'm confident
25 that the capability already exists to address those

1 without imposing an across-the-board legislative
2 solution to staffing patterns or numbers.

3 As far as hospital and clinical operations
4 are concerned, I'm sure you will hear a lot about
5 the Certificate of Need, or, "CON," process, so
6 I will not dwell on this, but suffice it to say,
7 that the playing field needs to be leveled, but it
8 should be done in a way that does -- it should not
9 be done by adding more regulation to parties in the
10 health-care industry, but, instead, be achieved by
11 eliminating some of the burdensome regulations.

12 The Health Care Association of
13 New York State, of which Roswell Park is a member,
14 has raised the issue of duplicative laboratory
15 certifications, and this would be an area where
16 savings could be achieved with no loss of quality.

17 Our clinical laboratories must be inspected
18 by the Joint Commission, which is a national
19 accrediting organization, and New York State also
20 inspects our laboratories.

21 This is duplicative, time-consuming, costly,
22 with little or no added value.

23 Medical licensure could also be significantly
24 streamlined.

25 We have recruited physicians from places such

1 as the Mayo Clinic, the M.D. Anderson, or
2 Memorial Sloan-Kettering Cancer Center, who have
3 been practicing medicine in the United States for
4 20 years but were educated at a foreign medical
5 school.

6 The New York State process for verifying
7 education is long and cumbersome, and largely
8 unnecessary, when you consider that many of these
9 physicians had been practicing in other states for
10 more than two decades.

11 We can offer you more detailed outlines in
12 this regard as your interests dictate.

13 Telemedicine is another important tool in the
14 health-care industry.

15 As technology permeates and makes
16 telemedicine more accessible, our laws and
17 regulations need to keep pace.

18 In an "Institute of Medicine" report recently
19 issued, "Delivering High-Quality Cancer Care:
20 Charting a New Course for a System in Crisis," this
21 report just released yesterday, notes that the
22 anticipated oncology workforce shortage in the face
23 of a growing demand for services.

24 Telemedicine is one way to address this
25 shortage.

1 Currently, there are rules and regulations in
2 New York that prohibit our physicians from providing
3 care by telemedicine to a patient in another state,
4 unless the physician is licensed in that state.

5 Another issue that is especially difficult
6 for cancer patients, is the requirement by some
7 Medicaid managed-care plans to obtain specialty
8 medication from CVS Caremark in Connecticut.

9 Using a pharmacy company out of
10 New York State delays our patients getting
11 medications in a timely fashion.

12 It seems that utilizing a special pharmacy --
13 a specialty pharmacy in New York State would address
14 two issues: Keeping New York State Medicaid dollars
15 in New York State; and providing business to
16 New York State companies, business that is likely to
17 be delivered on a more timely basis.

18 I know there are companies in the state, and
19 in our region, who can provide these services.

20 When the Public Authorities
21 Accountability Act was passed in 2009, the goals
22 were transparency and accountability.

23 As a taxpayer, I can't argue with those
24 goals; however, this falls into the category of a
25 universal solution that does not quite fit every

1 instance.

2 Roswell Park Cancer Institute, as I said, is
3 a public-benefit corporation, but in accounting
4 standards, we are a public health-care facility, so
5 our financial reports must follow the rules of full
6 accrual accounting.

7 The Public Authorities' budget office is
8 looking for standardization, but the accounting
9 methods that apply to our business are not the same
10 that are required in the ABO reporting.

11 So when we submit our year-end financial
12 reports and budget to the ABO, we have to pay
13 accountants to transform our financial statements
14 into the accrued accounting method; therefore, the
15 public information reported by Roswell Park does not
16 resemble the reality of our public accounting -- or,
17 our accounting methods and distorts the intent of
18 the public disclosure.

19 I'm sure you will hear this in other venues,
20 but the Triborough Amendment to the Taylor Law,
21 which provides for the continuation of
22 bargaining-agreement provisions after expiration,
23 and prior to the ratification of a new agreement,
24 does cause challenges.

25 There are unique circumstances at

1 Roswell Park that are nonetheless challenging.

2 Since our employees are members of the
3 statewide public employees unions, the contracts are
4 negotiated in Albany by the Governor's Office of
5 Employee Relations and the statewide union
6 leadership.

7 It would be beneficial to have more autonomy
8 in collective bargaining for institutions, such as
9 Roswell Park, by revising this aspect of the
10 Public Authorities law.

11 Roswell Park currently offers a voluntary
12 defined contribution plan to some employees.

13 We would like to expand that benefit to
14 others. It would be more portable, and would reduce
15 New York State pension costs.

16 There is an Assembly bill, A1587, which would
17 repeal the Wage Theft Prevention Act.

18 While complete repeal might be something you
19 would like to examine in particular, we would like
20 to see the annual wage notification, which is
21 required by New York State Labor Law, Section 195-1,
22 to be repealed.

23 This is an administrative burden that
24 requires our research employees to sign off on their
25 salary in a separate exercise every year.

1 With respect to Civil Service Law,
2 Section 71, and 73, we would like to see revisions
3 so that the amount of leave would be based on the
4 degree of disability and the likelihood of the
5 employee returning to work.

6 A couple of years ago, there was a
7 significant worker's compensation reform, but one
8 item that might need to be revisited would be
9 Section 25: the employee payments and degree of
10 disability table outlined in the
11 worker's compensation reform and legislation.

12 It is complicated, costly, and incentivizes
13 employees to remain out of work.

14 These are a few of the items we'd ask your
15 consideration.

16 I very much thank you for your time and
17 efforts in trying to create a better climate for
18 business in New York State.

19 And I, of course, would like to answer any
20 questions, and make more information available on
21 any important points your staff might need.

22 Thank you very much.

23

24

25

1 SENATOR GALLIVAN: Thank you very much,
2 Doctor.

3 If I may, and this is -- will be for
4 everybody testifying, if you have copies of your
5 written testimony, if you could get them to us in
6 advance -- well, you know, before you start
7 speaking. And if you don't, if we could make some
8 copies before you leave.

9 And then the other thing is, you brought up a
10 point I didn't mention before, Dr. Trump, but the
11 follow-up; if we make sure we have contact
12 information for the appropriate person, to
13 follow up, and get a grasp on this.

14 I only have one question that I had wanted to
15 ask about: The Certificate of Need regulations.

16 They were supposed to change, I think, in
17 early 2012.

18 My question is: Did that happen, and was it
19 helpful?

20 UNKNOWN FEMALE SPEAKER: There has been some
21 change. It's still in process, but now they're
22 look -- actually, what -- what some of the things
23 that are being looked at is, instead of lowering the
24 burden that exists on Article 28 facilities, is,
25 perhaps, extending those provisions to other

1 facilities.

2 And that's not necessarily a great solution.

3 There does need to be a leveling of the
4 playing field, because it is very unlevel right now,
5 but, that might not be the best approach.

6 And, especially, it would be a concern of
7 Roswell Park, and facilities, institutions, because,
8 you know, how do you account for the system that
9 already exists out there, and then you start doing
10 some regulation?

11 So, I could get into more details on that,
12 but there's concern about that.

13 SENATOR GALLIVAN: Thank you.

14 Dave?

15 SENATOR VALESKY: Thank you.

16 Just to thank you for being as specific as
17 you were.

18 Some of these are issues that we hear, that
19 cross over all disciplines; some are specific to
20 health care.

21 The one point I would just make, the
22 wage theft issue, I know you gave an Assembly bill
23 number.

24 We've actually passed that in the Senate a
25 couple of times, and actually have tried to get that

1 into the budget process, and we've had, to this
2 point, difficulty convincing the Assembly to join
3 us.

4 So with your support, hopefully, we'll be
5 successful in the new session.

6 DONALD TRUMP, M.D.: We'll do all we can do
7 to help you.

8 SENATOR VALESKY: Thank you.

9 SENATOR GALLIVAN: Senator Marchione?

10 SENATOR MARCIONE: Doctor, thank you for
11 being so specific.

12 This was exactly what I wanted to hear, is,
13 just, so many different parameters of what's making
14 it tough for you here.

15 I also had questions on Certificate of Need,
16 so thank you for answering those.

17 Just another question: What are your
18 thoughts concerning the Affordable Care Act and the
19 regulations that are forthcoming?

20 Do you have any opinion that you would like
21 to share with us on that?

22 DONALD TRUMP, M.D.: The precise way in which
23 those -- the Affordable Care Act will affect
24 institutions like Roswell Park, I think, is still in
25 evolution.

1 I think the advantage of the
2 Affordable Care Act is that it will make care more
3 widely available.

4 We know for sure that cancer mortality has
5 been enhanced by the lack of available care,
6 screening -- access to screening procedures, and
7 appropriate care.

8 So, I also know for sure that our current
9 system of health care is unsustainable at its
10 current rate of growth in costs.

11 So, we're working hard, with partners in our
12 community, with the payers, with our patients, to
13 (a) understand what the impact will be, and to try
14 to assure that care at Roswell Park continues to
15 enhance its quality and be as affordable and most
16 value-based as possible.

17 SENATOR MARCIONE: Thank you.

18 SENATOR GRISTANTI: I have nothing.

19 SENATOR GALLIVAN: Thank you, Dr. Trump.

20 DONALD TRUMP, M.D.: Thank you very much.

21 SENATOR GALLIVAN: Our next presenter is
22 James Kaskie, who's the president and
23 chief executive officer of Kaleida Health.

24 Kaleida is the largest health-care provider
25 in Western New York.

1 We appreciate you being here.

2 And I would just also make a note, like
3 Roswell, Women's and Children's Hospital, which is
4 part of Kaleida Health, was also recognized on the
5 latest list of "Best Hospitals," published by
6 "U.S. News and World Report" magazine, one of the
7 top 50 in the entire country.

8 And we congratulate you for that.

9 And, of course, thank you for your efforts
10 for what you do here.

11 You're part of the growth.

12 This is -- the medical campus here is, of
13 course, one of the success stories in
14 Western New York, and across New York State, and
15 it's exciting to be a part of it.

16 But, we appreciate you being here.

17 JAMES KASKIE: Senator, I'm very honored to
18 be here, and I thank you for each and every one of
19 your support of our effort to serve the community.

20 Good morning, my name is Jim Kaskie. I'm the
21 president and chief executive officer of
22 Kaleida Health, the largest provider of health-care
23 services and largest employer in Western New York.

24 And on behalf of the 10,000 employees, and
25 1 million people we serve each year, thank you for

1 the opportunity to speak.

2 I also serve in the unique role as the
3 president and chief executive officer of
4 Great Lakes Health System of Western New York, which
5 is the organization bringing ECMC and
6 Kaleida-University of Buffalo School of Medicine and
7 other partners together to really build centers of
8 excellence, and translate unnecessary duplication
9 and competition into collaboration, to create
10 centers of excellence and improve services to the
11 community.

12 First of all, I want to commend the
13 Senate Majority Coalition for the task at hand.
14 Your leadership, vision, planning, will, hopefully,
15 lead to meaningful reform.

16 Eliminating costly regulation and unnecessary
17 bureaucracies is good government; more importantly,
18 it can drive growth and improve our economy.

19 We certainly know Western New York can
20 benefit from this type of reform.

21 We all know that we are living in very
22 challenging times; however, each of us must assume a
23 leadership role, to work together, to find
24 thoughtful, balanced solutions to the fiscal
25 problems and regulatory challenges facing our state,

1 and, us as employers and providers of health-care
2 services.

3 Therefore, our organizations, Kaleida Health
4 in particular, is committed to being part of the
5 solution.

6 We are willing to work with the
7 Majority Coalition and the State if you need a
8 demonstration site to test reforms. We stand ready
9 to work with you to implement any regulatory relief.

10 We are an organization that has stepped
11 forward to take what we have, which is very good,
12 and make it better for the people of
13 Western New York.

14 For example, during the Berger Commission,
15 Kaleida Health openly supported the reform agenda.

16 The result:

17 In Western New York, we're closing outdated
18 facilities, we're consolidating others, building
19 new, and creating a more efficient delivery system;

20 We're partnering with public and private
21 entities to create a better health-care system;

22 We're working collaboratively to better serve
23 our community.

24 But more reform is needed.

25 As a member of the Greater New York Hospital

1 Association --

2 And by the way, I was recently appointed and
3 installed as chair of that association.

4 -- we represent over 215 not-for-profit
5 voluntary public hospitals and long-term-care
6 facilities.

7 Kaleida Health supports the reform agenda of
8 the Greater New York Hospital Association that's
9 been advanced over the years, to reduce hospital
10 regulatory burdens, as well as the high cost of
11 doing business.

12 With year-after-year budget cuts coming out
13 of Albany and Washington D.C., many
14 financially-strapped hospitals cannot continue to
15 provide the high-quality care to all residents
16 throughout the state without some relief in sight.

17 So I'd like to spend a few minutes on
18 three areas where I believe focus of the reform
19 agenda is most pertinent and most appropriate.

20 So, when you consider your upcoming New York
21 legislative session, we'll work together with you to
22 advance the follow proposals:

23 To provide hospitals and physicians relief
24 from the high cost of medical malpractice coverage
25 by advancing meaningful tort-reform proposals, such

1 as expanding the 2011 Medical Indemnity Fund, the
2 "MIF" as we've come to know it, to cover the future
3 medical costs of all neurologically impaired
4 individuals, not just neurologically impaired
5 newborns, and preventing the passage of other bills
6 that would increase medical-malpractice premiums,
7 such as extending New York's current statute of
8 limitations for malpractice cases.

9 The second area that I will be discussing, is
10 to implement the New York State Public Health and --
11 Health Planning Council's recommendations, part of
12 your "Certificate of Need" questions for Dr. Trump,
13 recommendations that would further streamline
14 New York State's Certificate of Need process and
15 program by eliminating construction projects from
16 CON review, regardless of cost, unless such projects
17 include detailed cost-drivers or limited access or
18 rationalized character and incompetence reviews of
19 new operators and board members.

20 The third area is, Greater New York and
21 Kaleida Health have strongly opposed two extremely
22 costly nursing workforce bills that are being
23 suggested.

24 One is, the mandate to minimum nurse-patient
25 staffing ratios, which has not been proven to

1 improve patient outcomes;

2 And, secondly, the requirement of health-care
3 facilities to implement a very onerous
4 one-size-fits-all safe patient-handling program.

5 Kaleida Health's own safe-handling program
6 has been extremely effective and successful, but
7 this should be a choice for an organization, not a
8 mandate, particularly not an unfunded mandate.

9 So let me develop these a little bit further.

10 With regard to malpractice reform:

11 Regarding malpractice in New York State, as
12 much as 10 percent of our non-operating budget comes
13 from the high cost of medical-malpractice coverage.

14 Collectively, New York hospitals pay more
15 than 1.6 billion annually in medical-malpractice
16 costs, some of the highest in the country.

17 The high costs, over time, have pushed most
18 commercial insurance carriers out of the market, and
19 have forced many institutions to be self-insured or
20 go without insurance at all.

21 Not surprisingly, these patterns and these
22 trends have many physicians very nervous; and,
23 therefore, practicing, very much, defensive medicine
24 in order to avoid malpractice litigation, which
25 further adds to the overall cost of health care.

1 Furthermore, in New York, the severity
2 awards, that is, the dollars that are awarded from a
3 judgment, including some -- includes some of the
4 largest jury awards in the nation here in our state.

5 And this, too, has substantially driven
6 unnecessarily high costs of medical-malpractice
7 coverage and experience.

8 It is very important to note, that on the
9 good news side, is the number of claims against
10 hospitals has leveled off, and in some areas and
11 cases, are declining.

12 And I believe it's the industry's response to
13 working to ensure a safe environment, and to do
14 everything possible to ensure patient safety at all
15 times.

16 But it's important, that while hospitals have
17 undertaken patient-safety efforts and have been
18 successful in reversing adverse events, we have that
19 clear experience within Kaleida, there is not often
20 an immediate associated reduction in our costs or
21 our premium because, as you know, there's a lag time
22 for these types of trend lines to adjust, so it
23 takes years to recover these costs.

24 So if we don't interrupt them now, we are
25 going to be facing trend lines into the future of

1 significant cost burdens.

2 The second area, with regard to Certificate
3 of Need reform:

4 New York needs to take the steps necessary to
5 implement the June 2012 recommendations from the
6 Public Health and -- the Public Health and Health
7 Planning Council, that -- with respect to
8 streamlining the state's Certificate of Need
9 program.

10 In particular, the Legislature must amend
11 state law to eliminate CON review of construction
12 projects.

13 As I said earlier, regardless of cost, except
14 to the extent that a project may involve certain
15 specified cost-drivers or they somehow curtail
16 access to care.

17 Examples of construction projects that no
18 longer would be subject to review under the
19 Health Planning Council's recommendations are
20 physical plant modernizations and reconfiguration
21 projects, such as renovation of rooms to convert
22 double rooms to single rooms, or consolidate
23 programs into a single facility.

24 The rationale, is that there are many market
25 forces and other ways that limit our investment, and

1 we make appropriate investment choices.

2 And, so, when we do construction projects,
3 many of these, we don't believe, are necessarily
4 subject to the types of certificate-of-review
5 burdens under present law.

6 So these types of projects would continue to
7 be -- other projects that do limit access, and do
8 change services and programs, would be subject to
9 Certificate of Need.

10 In addition, to guard against potential
11 increase and unnecessary Medicaid spending by
12 eliminating Certificate of Need reviews for the
13 projects, the Health Planning Council and
14 Department of Health is in a position to monitor the
15 Medicaid spending.

16 The Department of Health is also in the
17 position to conduct financial reviews of projects
18 proposed by providers that cannot meet certain
19 financial benchmarks, to guard against destabilizing
20 their future ability.

21 The State will continue Certificate of Need
22 reviews under this reform with regard to certain
23 aspects and projects that increase costs or affect
24 access, such as, adding new equipment, decertifying,
25 re-purposing beds, new extension sites, changing

1 emergency department, surgery capacity, or adding
2 complex major new medical equipment or services,
3 replacing or relocating facilities, closing
4 facilities, and doing other things that
5 fundamentally change the capacity or the delivery
6 profile of an organization.

7 We urge, however, that aspects of the
8 projects that remain subject to CON be narrowly
9 drawn down to provide meaningful reform and
10 streamlining.

11 The re-purposing of a small number of beds as
12 part of a large renovation project, should add only
13 to the re-purposing of beds, and not to the entire
14 construction project for Certificate of Need.

15 So, narrow the review, narrow the focus.

16 In addition, the Health Planning Council's
17 approved a recommendation to rationalize the way in
18 which the State undertakes character and competence
19 review as the process for establishing a new
20 health-care facility or certain new services.

21 We strongly support the need for improving
22 the process, which is currently applied in a
23 regimented way, and a way that can deter qualified
24 experienced board members from being part of our
25 organizations and serving on our -- with serving

1 with our organizations, are part of these new
2 enterprises.

3 In particular, current state public law
4 requires the State to affirmly find, by substantial
5 evidence, that substantially consistent high level
6 of care is being rendered in each such hospital or
7 institution, and they'd have a 10-year look-back.

8 These are areas that need to be reviewed, and
9 modified and reformed.

10 The last point is on the nursing-staffing
11 ratio areas, as well as the patient safe handling.

12 With regard to the nursing-workforce issues,
13 Greater New York Hospital Association,
14 Kaleida Health, oppose legislation that would
15 require hospitals and nursing homes to implement
16 unit-specific minimum registered-nurse-to-patient
17 ratios.

18 The prescribed nurse-to-patient ratios would
19 need to be adhered to, as we read the proposed
20 legislation, at all times, but they fail to
21 recognize that patient care in our hospital settings
22 is delivered optimally by a team of skilled
23 professionals; and, in part, the nurse is a very
24 critical member, and oftentimes leader of such team.

25 But this is a team process, not one

1 individual group with mandated staffing ratios.

2 This multidisciplinary team approach has
3 proven effective in ensuring the highest quality of
4 care for our patients, and is the future of the
5 hospital health-care delivery systems.

6 Implementing nurse-to-patient staffing ratios
7 would cost New York State's financially-challenged
8 voluntary and public hospitals, we believe, at least
9 \$2 billion annually, and would require us to hire,
10 over the state, some 20,000 new nurses, an unfunded
11 mandate that would certainly force hospitals to lay
12 off other staff and interrupt this team process.

13 You can look to California and find that this
14 isn't working.

15 The other nursing-workforce bill is the one
16 that requires the task force and the New York
17 Department of Health to define the elements of
18 comprehensive safe-patient handling.

19 And this would be an expectation that would
20 be implemented in all health-care facilities with
21 specific staffing and equipment requirements.

22 Greater New York Hospital Association and
23 Kaleida Health support the concept of safe patient
24 handling.

25 Our program is very successful; however, we

1 have very significant concerns about the bill's
2 prescriptive requirements and unfunded mandates.

3 We support the Greater New York Hospital's
4 efforts to continue discussion with the key
5 legislative staff, or unions that represent nurses
6 and direct-care staff, and legislative leaders, to
7 reach a consensus on the best approach for
8 implementing a policy around safe patient handling.

9 So, in conclusion, I thank you for the
10 opportunity for me to speak specifically to these
11 three.

12 There are many more issues we can speak to,
13 but I think these are the three priorities.

14 And, we also will provide, as part of my
15 testimony, the full legislative agenda for the
16 Greater New York Hospital Association, which covers
17 many other areas of suggested reform.

18 And, we stand ready, I personally, the
19 organization, and in my role with Greater New York,
20 to assist in any way that we can to advance the
21 reform agenda.

22 Thank you for the opportunity.

23

24

25

1 SENATOR GALLIVAN: Thank you.

2 I have one question about Certificate of
3 Need, again.

4 With your recommendation, how would the
5 process stack up against the rest of the country,
6 New York State's process?

7 Not where it is today, but even if it
8 implemented your regulation -- or, I'm sorry, your
9 recommendation?

10 JAMES KASKIE: I would not represent myself
11 as an expert in the Certificate of Need status
12 across the country in 50 states, but we do know
13 there's great variety and variation amongst the
14 states.

15 Some don't have any at all, and others have
16 very tailored.

17 I think these are more consistent with the
18 states that I'm familiar with, that have done
19 targeted reform to narrow the review.

20 Keep it in place, so that you have -- you
21 prevent unnecessary duplication of equipment, you
22 rationalize some of the services and programs, but
23 at the same time, you give flexibility to routine
24 investments in property, plant, and equipment.

25 So I think we -- the recommendations that I'm

1 suggesting here, and with the Greater New York
2 Hospital Association, are more consistent with those
3 more contemporary reformed agendas, versus, the
4 level of review and the detailed review of our
5 current Certificate of Need.

6 And I don't know of others that have
7 look-back provisions and other kind of extra
8 regulatory steps that ours has.

9 Seems that we are overregulated in this area.

10 SENATOR GALLIVAN: Thank you.

11 SENATOR MARCIONE: Just one.

12 I've heard you talk a lot about legislation
13 relative to nursing, and I wondered: There's
14 recommendations -- there are recommendations to
15 allow nurse practitioners to expand primary-care
16 responsibilities that are in line with physicians.

17 What do you think about those expanding
18 nurse-practitioner roles with regard to physician
19 roles?

20 JAMES KASKIE: Yeah, I think the nurse
21 practitioners, physicians assistants, what we would
22 typically refer to as a group of "mid-level
23 professionals," are essential to the delivery of
24 health care.

25 They are purely -- they are really seen as

1 extenders of the care-delivery model. They improve
2 access, they improve service.

3 And we, for example, across Kaleida, probably
4 employ 100 to 120 nurse practitioners.

5 We work with our physicians with their own
6 nurse practitioners and physician assistants.

7 So I think it's a critical element of the
8 workforce, back to my concept -- my suggestion that
9 this is a team process of how we deliver care.

10 Nurse practitioners are an essential member
11 of that team.

12 I think we have to always be careful, and we
13 need very good, deliberative, inclusive dialogue
14 about, What is the scope of practice?

15 There are levels of training and education
16 and expertise and experience that nurse
17 practitioners have. They're not equal to a
18 physician who's, not only completed medical school,
19 but full residencies and fellowships, so there has
20 to be some gradation. It can't be equivalent.

21 And I think it's a matter of working with
22 individuals around the table.

23 And as an example, we would be happy to help
24 in spearheading those dialogues about, What is the
25 right delineation of privileges and duties within

1 that field?

2 SENATOR MARCIONE: Thank you.

3 SENATOR GALLIVAN: Senator Grisanti?

4 SENATOR GRISTANTI: Thanks, Senator Gallivan.

5 Jim, how you doing this morning?

6 JAMES KASKIE: Doing great, thank you.

7 SENATOR GRISTANTI: Good to see you.

8 You know, it's interesting because, in fact,
9 Kaleida has instituted the safe patient-handling
10 program in-house.

11 Do you have specifics as to what was done,
12 and why it works so well for your facility, that
13 could possibly be implemented into other facilities?

14 I mean, I know there's got to be a cost in
15 workman's-compensation savings. I think there's --
16 that's been told to me, and other things.

17 I mean, what specifically is why it works for
18 you there?

19 JAMES KASKIE: Great question.

20 And we do have a very specific experience,
21 and I can speak in generalities --

22 SENATOR GRISTANTI: Okay.

23 JAMES KASKIE: -- and we can provide a
24 specific case study to you.

25 And I think our case study demonstrates that

1 programs in safe patient handling are very
2 effective, first of all, for the patient.

3 The level of incidents are down.

4 Falls; slippage; the ability to turn and
5 rotate patients, to prevent skin breakdown; all of
6 those kind of aspects are clearly better as a result
7 of safe patient handling.

8 And then, as far as our own employees and
9 their ability to handle patients, it's clearly an
10 asset that allows them to move without risk of
11 injury, particularly in some of the areas where we
12 face a high level of obesity, are very difficult to
13 mobilize patients.

14 But the challenge, though, and the gap here
15 is, it is very good in principle, but you just can't
16 say that's the right thing to do, without
17 recognizing how much of an unfunded mandate that
18 could be.

19 So, for example, about five years ago, when
20 we instituted this program, we invested in the range
21 of 10 to 18 million dollars, because we bought new
22 beds with electronic scales, we did lifts, we did
23 all kinds of that.

24 We invested additional millions of dollars in
25 training, and, we have maintained the program, and

1 we have leaders in training and safe patient
2 handling.

3 But the problem with that is, if you just
4 mandate it, that's a lot of money.

5 SENATOR GRISTANTI: Right.

6 JAMES KASKIE: We did reduce worker-comp
7 experiences, we did reduce it back to the safer
8 environment, so it was effective, but, it is very
9 expensive.

10 And we just demonstrated, given some of the
11 challenges we have with the population that we
12 serve, and the complexity of the patients that we
13 care for, that this was one of the things that we
14 needed to make a choice, an institutional choice,
15 about investing in.

16 And -- but I don't necessarily say that
17 that's a requirement for everyone, but they should
18 go through a process.

19 And that's why we're interested in having the
20 dialogue about, how do you assess your ability and
21 capacity to implement this kind of a program, versus
22 just passing laws to do it?

23 SENATOR GRISTANTI: And it kind of goes along
24 with what was talked about earlier, I think, by
25 Dr. Trump, is, you know, look at what the

1 consequences, or what can happen, you know, by
2 implementing certain laws without seeing what could
3 happen in the future.

4 But for Kaleida itself, you took it upon
5 yourself several years back to go ahead and make an
6 investment in new beds and lifts, so on and so
7 forth.

8 You saw that it has, basically, worked, to
9 some capacity, but to instill that maybe on another
10 hospital would be an extreme cost, and a mandate, as
11 you said. And, it should be a choice if you have
12 the funding available.

13 Is it possible to also get that provided to
14 us, as to what the studies have shown, or what you
15 have seen, by doing that type of movement with the
16 safe patient-handling program?

17 JAMES KASKIE: We certainly can.

18 And it's a continuing investment. It's just
19 not that one-time investment.

20 It's probably a program that costs us a
21 couple million dollars a year to run.

22 SENATOR GRISTANTI: Okay, I appreciate that.
23 Thank you very much.

24 And, again, thanks for coming here today as
25 well.

1 SENATOR VALESKY: Mr. Keskie, I wasn't going
2 to ask you a question, but I do want to return to
3 your top issue.

4 And the reason why I do that, is I happen to
5 be serving in my ninth year in the State Senate now,
6 and it seems that, whether I'm talking to my
7 hospitals in Central New York, hospital CEOs, or
8 anywhere across the state, the issue of
9 medical-malpractice reform is always on a list
10 somewhere. Sometimes number one, sometimes two or
11 three, but always near the top of that list.

12 And we've had, over the years, in my
13 relatively short time there, there have been fits
14 and starts, I guess, in Albany toward major reform.

15 2009 -- '08, '09, in that ballpark,
16 certainly, your organization was at the table at
17 that time.

18 2011, as you indicate, the medical indemnity
19 fund that we did.

20 I guess the question is: What, in your
21 opinion --

22 And I see you have 10 percent of your
23 hospital's non-operating budget, that's high, and
24 there are other hospitals that are even higher.

25 I mean, what is it really going to take, from

1 your opinion, to make a significant difference
2 beyond simply, I understand, preventing other
3 legislation from passing, which is certainly
4 something that we all have an opportunity to weigh
5 in on?

6 Or, is this going to be a reality that, in
7 this state, for all sorts of reasons, reform is
8 always going to be on the edges?

9 Am I explaining myself?

10 JAMES KASKIE: I don't know if I can speak
11 to -- in this state, reforms on the edges, because
12 I think there are political forces for and against
13 this.

14 SENATOR VALESKY: Correct.

15 JAMES KASKIE: Let me start with, at times,
16 bad things do happen.

17 Sometimes they're by no fault. They are a
18 convergence of untoward events.

19 Sometimes there is an issue of misjudgment, a
20 difficult practice applied, so that there can be an
21 injury for which there needs to be compensation.

22 So one of the issues is, we cannot hide from
23 any ownership that we have, and the fact that we are
24 taking care of people.

25 We have a responsibility to do that in a safe

1 and high-quality manner, and that we are subject to
2 scrutiny as a result of that.

3 So, I think the first thing is a recognition
4 that it's not necessarily adversarial, but it's
5 determination of, Is this an untoward, unexpected,
6 sometimes even unrelated?

7 It could be an individual bringing in a very
8 complicated social circumstance, drug addiction, or
9 something, that results in a very challenged
10 newborn, that has nothing to do with care that's
11 delivered, for which, then, there's malpractice
12 pursuit.

13 So, that -- having a process to separate that
14 question first is important.

15 I think the second is, to have an informed
16 judiciary system that is informed as to what's
17 reasonable.

18 There's pretty good science around
19 understanding, you know, the consequences supporting
20 someone who's had an injury, in terms of medical and
21 custodial needs; but at the same time, there needs
22 to be a reasonableness about the consequence of
23 injury, the severity of injury, whether injury
24 really was, as I said, a cause that was effected, or
25 a cause that was coincidental.

1 And I think the third is, that there needs to
2 be some process of moderating the jury award, full
3 latitude -- some caps, some guidelines, some
4 protocols -- so that there can be some logic around
5 some of the award levels that relate, versus, just
6 someone's feeling about their response or their
7 personal experience, or whatever it might be.

8 So I think those three areas of, really:

9 Having a process to determine cause and
10 effect;

11 A process to have an informed --
12 a better-informed judiciary process; judges who
13 understand the complexities of medical malpractice,
14 medical incident, a medical provision, versus, you
15 know, the pursuit of the experts;

16 And then, I think, some sort of moderated
17 jury process that determines what appropriate awards
18 are, if they are necessary.

19 SENATOR GALLIVAN: Thank you.

20 SENATOR MARCIONE: Thank you.

21 SENATOR GALLIVAN: Thanks, Jim.

22 JAMES KASKIE: Senator, thank you.

23 SENATOR GALLIVAN: Should a follow-up be with
24 Mike?

25 JAMES KASKIE: Well, we have packets for you,

1 with Mike's cards in it.

2 And you know I'm available any time you call.

3 And thank you again for all of your support,
4 and thank you for the special recognition of
5 Children's.

6 We're very proud here in Western New York
7 that we're nationally ranked.

8 Our cardiac program is three-star nationally
9 ranked.

10 So, it's -- the stroke program is the largest
11 in the northeast.

12 So, we're very proud of what we're being able
13 to do here in Western New York.

14 And thank you for your help, over the years,
15 with Berger, and everything else.

16 You've made a difference for us.

17 SENATOR GALLIVAN: Thanks, Jim.

18 JAMES KASKIE: Thank you.

19 SENATOR GALLIVAN: Our next presenter, from
20 the Medical Society of Erie County, Tom Madejski.

21 Tom, did I pronounce it right?

22 THOMAS MADEJSKI, M.D.: [Inaudible.]

23 SENATOR GALLIVAN: I'm sorry.

24 THOMAS MADEJSKI, M.D.: I'm actually from the
25 Medical [inaudible].

1 SENATOR GALLIVAN: Oh, okay.

2 THOMAS MADEJSKI, M.D.: I have with me --

3 SENATOR GALLIVAN: The Medical Society of the
4 State of New York, 8th District?

5 THOMAS MADEJSKI, M.D.: Yep.

6 SENATOR GALLIVAN: Got you.

7 THOMAS MADEJSKI, M.D.: And I have with me,
8 Christine Nadolny, who's the executive director for
9 Erie County and the 8th district.

10 SENATOR GALLIVAN: Got you.

11 Pronounce your last name for us, one more
12 time.

13 THOMAS MADEJSKI, M.D.: The "J" is like a
14 "Y." "Madejski."

15 SENATOR GALLIVAN: Thank you.

16 THOMAS MADEJSKI, M.D.: You're welcome.

17 SENATOR GRISTANTI: And how do you say your
18 last name?

19 CHRISTINE NADOLNY: Nadolny, N-A-D-O-L-N-Y.

20 SENATOR GRISTANTI: Thank you.

21 SENATOR GALLIVAN: When you're ready.

22 THOMAS MADEJSKI, M.D.: Good morning.

23 And I think you already know my name, but I'm
24 Dr. Tom Madejski, and I'm an internist in Medina,
25 New York, and the assistant treasurer for the

1 Medical Society of the State of New York.

2 I appreciate the opportunity to testify on
3 behalf of the physician community regarding the
4 ever-increasing administrative burden we face, as a
5 result of state mandates, in attempting to deliver
6 care to our patients.

7 We look forward to continuing dialogue with
8 you to eliminate or lessen these burdens.

9 I think it's important to remind the panel,
10 and I believe they understand that, that New York is
11 an increasingly difficult state in which to deliver
12 care to our patients, your constituents.

13 This is due to a confluence of a number of
14 factors, which have also been alluded to by
15 Mr. Kaskie recently, including its extraordinarily
16 high liability-insurance costs as compared to other
17 states; at the same time that the insurance industry
18 continues to impose roadblocks to delivering patient
19 care through the continued reduction, denial, and
20 delay of payment for necessary care previously
21 delivered.

22 We, as any other small business, also face
23 ridiculously high tax burden and ever-increasing
24 overhead costs.

25 State government, legislative, and regulatory

1 mandates significantly add to our burden, and take
2 time away from delivering patient care.

3 These problems must be considered and
4 addressed as policymakers hope to assure an adequate
5 health-care safety net for the hundreds of thousands
6 of New Yorkers who will likely be obtaining
7 health-insurance coverage for the first time through
8 the state's health-insurance exchange.

9 Recently, MSSNY conducted a survey of over
10 800 physician respondents to gauge physician
11 perspectives of a variety of issues relating to
12 New York State's health-care delivery system.

13 Over one third of the respondents indicated
14 that they were seriously considering retiring from
15 practice in the next two years, and over 37 percent
16 indicated that they plan to reduce the services they
17 deliver over the next two years.

18 We'll provide you with additional information
19 on that separately.

20 The study showed that only 35 percent of
21 physicians would affirmatively recommend to their
22 children or younger family members that they become
23 physicians, and only 22 percent of physicians would
24 affirmatively recommend to medical students that
25 they practice within New York State.

1 That is chilling.

2 Some of the comments to the survey are
3 particularly telling about physicians' concern
4 within New York State.

5 A Rochester internist stated, "Help! We are
6 all drowning in administrative insurance-regulatory
7 hassles. Overhead has doubled since I started
8 practice in 1993. As a primary-care physician,
9 there is no way to continue in this environment."

10 In Buffalo, another internist noted,
11 "With the increasing intrusiveness of government and
12 third-party payers into the practice of medicine,
13 I am asking myself why I went to medical school.

14 "The third-parties seem to think they know
15 more about the practice of medicine than I do, yet
16 they are not exposed to liability or review as I am.

17 "My principal obligation should be to care
18 for my patients, not doing the bidding of government
19 as an I-STOP, or justifying my thought processes to
20 an insurance company to get a medication or a
21 diagnostic image."

22 A Syracuse allergist added, "Government
23 mandates are a drag on the practice of medicine.
24 They take time out of the practice.

25 "A perfect example is the I-STOP law:

1 cumbersome, time-consuming; a perfect example of
2 government creating a fix that looks like it is
3 addressing problem, while, in reality, creating a
4 whole new set of problems."

5 Another Syracuse physician noted, "For every
6 hour in the office actually seeing patients,
7 I have to spend 30 to 45 minutes doing
8 administrative work.

9 "As soon as I am financially able, I hope to
10 retire and donate my time."

11 A Brooklyn geriatrician noted, "It would be
12 interesting to know how many physicians like myself
13 in practice frequently exclude themselves from the
14 payroll so that everyone else can be paid, and for
15 the simple reason that there's not enough money
16 available.

17 "It is certainly not rewarding to be working
18 longer hours and receiving diminishing returns
19 because of the administrative burden in paperwork.

20 "Something is wrong with the equation."

21 These are just a few of hundreds of very
22 similar comments we received. They reflect a strong
23 frustration on the part of many in the physician
24 community.

25 We remain very committed to delivering care

1 in our communities, but so much of our time now is
2 taken up by non-medical tasks.

3 Certainly, many of the changes taking place
4 in the practice of medicine in New York are
5 similarly taking place across the country.

6 State budget constraints and employers' focus
7 on controlling health-care costs exist in every
8 state and are forcing profound changes in the
9 delivery of care, including increased administrative
10 steps to justifying that medical treatment is
11 necessary.

12 But New York policymakers have added to this
13 growing burden with an armada of mandated actions in
14 the last few years. These are usually
15 well-intentioned, but, I would point out to you that
16 they are not always fully thought out.

17 These include required offering of
18 HIV testing, required offering of palliative care,
19 required checking of a prescription-drug database,
20 required electronic submission of prescriptions,
21 required reporting of persons under the Safe Act,
22 and a bill to go to the Governor's Office soon that
23 will require the offering of Hepatitis C tests.

24 New York is unique among the 50 states in
25 imposing many of these mandates on doctors, and if

1 the doctor fails to take these required actions,
2 they face serious fines and possible licensure
3 action.

4 Certainly, the steps required by these
5 mandates should be taken by physicians in many, many
6 patient encounters, but it should be left to the
7 discretion of the physician in discussion with the
8 patient.

9 To quote the physician I referenced earlier,
10 "Help!"

11 If we expect to continue to have a viable
12 health-care system to treat our patients,
13 policymakers need to create an environment in
14 New York State that will incentivize physicians to
15 remain in practice here rather than to relocate to
16 states with more welcoming environments for
17 physicians.

18 I would note that a recent report by the
19 Center for Health Workforce Studies concluded that
20 the in-state retention of newly trained physicians
21 in New York, which is the leader in the country in
22 training physicians, has decreased from 53 percent
23 in 2001, to 44 percent in 2011.

24 Certainly, there are a wide number of issues
25 that must be taken up to address this problem, but

1 specific to the goals of this hearing, among our
2 suggestions to relieve our mandate burden include:

3 Changes to the Safe Act:

4 Right now, the statute requires a physician
5 and other health-care practitioners to report to
6 their local mental-health director any patient the
7 physician has reasonable cause to believe is
8 "likely to engage" in conduct that will cause
9 serious harm to self or others.

10 While certainly well-intentioned after the
11 horror at Sandy Hook, this reporting standard is
12 practically speaking so broad that the physician is
13 compelled to report a broad category of patients.

14 Moreover, a literal read of the statute seems
15 to make the provision applicable to all physicians
16 providing care, and not just psychiatrists.

17 If the physician fails to comply, they could
18 face huge penalties from the State.

19 Moreover, there is a significant threat of
20 lawsuit, since the liability protections, including
21 for reporting, or failing to report, were drawn very
22 narrowly and would be easily breached by a creative
23 trial attorney.

24 The Medical Society has asked for cleanup
25 legislation that (a) assures that the provisions

1 only apply to psychiatrists and other providing
2 mental-health treatment, (b) provides a -- stronger
3 liability protections, based upon a physician's
4 decision to report or not report, and (c) clarifies
5 the duty-to-report standard to those situations
6 where a physician believes there is an imminent
7 threat of harm, which is similar to other exceptions
8 to patient confidentiality articulated in federal
9 and state law.

10 The second area I'd like to address, is
11 creating additional exceptions to the
12 duty-to-consult under I-STOP.

13 The Medical Society certainly appreciates the
14 public policy concerns underlying this new mandate,
15 to check the prescribing database prior to
16 prescribing a controlled substance to a patient.

17 We have been working closely with the
18 New York State Department of Health to assure a
19 smooth implementation, and very much appreciate
20 their efforts to quickly respond to concerns raised
21 by physicians.

22 Nevertheless, as we anticipated, since the
23 law was implemented two weeks ago, many physicians
24 have found that duty-to-consult this database to be
25 seriously disruptive to the flow of delivering care

1 to their patients.

2 There is no question that this will force
3 physicians to refer patients in need of pain
4 medications, and reduce access to care for patients
5 who have legitimate needs for pain medications.

6 For example, while the regulations permit a
7 physician's staff to check the database 24 hours in
8 advance of a patient's visit to reduce disruptions
9 while a patient is in the doctor's office, the
10 regulations do not permit the physician's staff to
11 check the database on the Friday before a Monday
12 patient visit.

13 This should be changed.

14 Also problematic is that some hospitals have
15 not facilitated having staff available to check the
16 database for a physician providing outpatient
17 surgery, forcing busy physicians doing hospital
18 rounds or evaluating patients post surgery to
19 navigate the website themselves, rather than being
20 able to delegate this function.

21 One exception to the duty-to-consult under
22 the I-STOP Law, is when a physician is in a hospital
23 emergency room, gives the patient a 5-day or less
24 supply of a controlled substance.

25 We'd recommend that this exception be

1 extended to all post-surgical patients, and perhaps
2 even broader than that, in a hospital or outpatient
3 setting.

4 Creating additional exceptions to
5 e-prescribing requirements:

6 Another component of I-STOP will require
7 physicians, with limited exceptions, to
8 electronically prescribe all prescriptions, as of
9 March 27, 2015.

10 Many physicians have adopted e-prescribing
11 systems; some have not, however, due to their cost
12 and disruption in the delivery of medical care.

13 There are many physicians approaching
14 retirement, but still in a position to deliver
15 quality of care to patients, and many with
16 longstanding treatment relationships with their
17 patients, that may not be able to accrue the
18 investment of an electronic prescribing system.

19 We should assure that these physicians are
20 able to easily avail themselves of the waiver
21 process set forth in the statute.

22 With regard to the insurance industry,
23 uniformity in physician claim submission would be
24 helpful.

25 Right now, New York State Medicaid,

1 worker's compensation, and no-fault all have their
2 own unique claim-submission forms mandated by the
3 State Department of Health, the Worker's
4 Compensation Board, and the Department of Financial
5 Services, respectively.

6 And all these forms are different than the
7 forms physicians submit to commercial health
8 insurers.

9 In some cases, these forms can be incredibly
10 burdensome to complete.

11 In 2010, the Worker's Comp Board decided to
12 withdraw the required use of new injury report forms
13 after a huge number of physicians dropped out of the
14 worker's compensation program in response to the
15 complexity of the forms.

16 We're pleased to hear that the board will be
17 undertaking a complete reevaluation of its claim
18 adjudication process, and hope it will lead to a
19 simplified process that reduces administrative
20 hassles.

21 There has been a great push nationally,
22 including as part of the Affordable Care Act, to
23 create greater uniformity in the burdensome
24 claim-submission process.

25 This uniformity should be extended to all

1 forms of insurance coverage for patient health-care
2 costs, including Medicaid, worker's compensation,
3 and no-fault.

4 While not a state rule, physicians across the
5 country are going to face huge costs associated with
6 complying with the Center for Medicare Studies'
7 mandate, to change their disease coding system from
8 ICD-9 to ICD-10 on October 1, 2014.

9 The purpose of including these codes on a
10 claim form is to simplify the reporting of a
11 patient's disease or particular condition.

12 However, implementing the new ICD-10 requires
13 physicians and their staff to contend with
14 68,000 outpatient diagnostic codes, the expansion of
15 which has very little clinical impact. It's more
16 for tabulating health-care data for research.

17 This would be a fivefold increase from the
18 plenty of 13,000 codes that we have now.

19 This will be a massive administrative and
20 financial undertaking for physicians and other
21 health-care entities, requiring education, software,
22 coder training, and testing with payers.

23 Physicians will be responsible for all of
24 these costs, as will others, which, depending on the
25 size of a medical practice, has been estimated to

1 range from \$83,000 to more than \$2.7 million.

2 The Medical Society of New York has joined
3 with many other state and national specialty
4 societies across the country in asking CMS for the
5 further delay in this implementation.

6 Moreover, we've advocated for legislation in
7 the U.S. Congress to repeal this requirement to
8 shift to ICD-10 coding.

9 We would urge you, to help us urge Congress
10 that this legislation be adopted.

11 We'd also ask you to reject new mandates.

12 There are a number of other proposals under
13 consideration that would impose additional,
14 potentially costly mandates on physicians that will
15 interfere with the timely availability of quality
16 patient care.

17 We note our strong opposition to the
18 following proposals that have been introduced or are
19 under consideration in certain state agencies;

20 Opposition to proposals under discussion at
21 the state Public Health and Health Planning Council,
22 that would require physicians to undergo
23 prohibitively expensive Certificate of Need approval
24 if they wish to perform certain medical procedures
25 that are routinely performed in a non-hospital

1 setting.

2 I would defer any questions on that to
3 Dr. Underwood, who will speak specifically to that.

4 Opposition to proposals under discussion by
5 the New York E-Health Collaborative that would
6 mandate physicians adopt interoperable electronic
7 medical-records systems, and participate on the
8 SHIN-NY network.

9 Opposition to legislation that would mandate
10 course-specific continuing medical-education
11 coursework, such as pain management.

12 MSSNY supports a general requirement for
13 physicians to obtain 50 hours of CME on a biennial
14 basis, but opposes legislative or regulatory
15 mandates for specific courses that may have no
16 connection to an individual physician's practice.

17 As we go through life, we do different
18 things.

19 And while it's very appropriate to have
20 training in pain management, and most of us receive
21 some of that in medical school, some of us do things
22 that have nothing to do with it, and it's a burden
23 that would not be helpful, and, again, reduce the
24 pleasure of practice in New York State.

25 We appreciate your efforts to identify ways

1 to reduce the administrative burdens.

2 I'd like to echo the thoughts of both
3 Mr. Kaskie and Dr. Trump on medical-liability
4 reform, and some of the other areas that they have
5 brought up.

6 And, I would be happy to answer any questions
7 that you have.

8 SENATOR MARCIONE: You know, I heard a lot of
9 commonsense thoughts from you.

10 Thank you very much.

11 THOMAS MADEJSKI, M.D.: Thank you.

12 SENATOR MARCIONE: I mean, we heard that
13 first from Dr. Trump, that we should be looking at
14 that.

15 Just a question to follow up on the Safe Act
16 concerns that you have, between psychiatrists and
17 doctors, and there's no differential in the law.

18 When you bring forth someone that you believe
19 meets the law, do you bring that forward to the
20 county physician?

21 There's a county mental-health coordinator.

22 Do you then turn those folks over to the
23 county mental-health coordinator?

24 And if so, have you heard any further
25 information from them about how burdensome or not

1 this new law is?

2 THOMAS MADEJSKI, M.D.: Well, again, I think
3 that is the issue with passing a law which has not
4 been, perhaps, fully thought out, in terms of how to
5 deal with that, because our county mental-health
6 director came to me, we had some discussion.

7 They're not clear to what to do.

8 This is not something that really would have
9 changed how I practice, if I have a patient who has
10 a serious mental-health issue who is unsafe.

11 We have a direct relationship with the county
12 mental-health service, that I can easily access
13 them, and then we do what's right for the patient,
14 which is the most important thing.

15 And that may be, that I have to call some
16 other public-health worker, such as a policeman, or
17 someone for someone who is unstable, that we get
18 them to an emergency psychiatric facility.

19 The reporting part of that, again, made no
20 difference to me in terms of how I would act on
21 behalf of the patient, and is, again, just another
22 burdensome regulation that exposes me to more
23 liability for not doing it in the way that the State
24 has indicated they would do it, even though
25 I believe I would do it in a safe and effective

1 manner, for my patient, and for the public health.

2 SENATOR MARCIONE: Thank you.

3 SENATOR GRISTANTI: Yes.

4 Tom, you know, in going through your report
5 here, and reading it, you know, there is going to be
6 some cleanup legislation that we're doing.

7 Some of these that you have under I-STOP and
8 Safe Act, you know, don't seem to be really heavy
9 lifts.

10 Just curious, though: Why, under the I-STOP,
11 is the staff, they can't check the database on a
12 Friday for a Monday?

13 THOMAS MADEJSKI, M.D.: Because of the way
14 that it's been set up by the Department of Health.
15 There's a 24-hour look-back, so if you're -- you
16 know, you can't check it.

17 SENATOR GRISTANTI: So, I mean, is it shut
18 down?

19 I mean --

20 THOMAS MADEJSKI, M.D.: I don't know the
21 specifics of that.

22 CHRISTINE NADOLNY: No, the --

23 THOMAS MADEJSKI, M.D.: I'll find you
24 additional information.

25 CHRISTINE NADOLNY: The database is available

1 24 hours, 7 days a week; however, the legislation
2 specifically states that the database must be
3 accessed 24 hours before the presentation of the
4 script -- or, the visit with the patient.

5 So in that case alone, our offices do not
6 have staff on Saturday and Sunday --

7 SENATOR GRISTANTI: Right, on Sundays.

8 Right.

9 CHRISTINE NADOLNY: -- unless there's hours.
10 So, it really becomes a problem.

11 SENATOR GRISTANTI: Only as a change,
12 basically saying that, you know, on a Friday before
13 the weekend, if we're, you know, are able to check
14 it?

15 CHRISTINE NADOLNY: Right.

16 SENATOR GRISTANTI: Okay.

17 And the-- I want you to elaborate a little
18 bit more on the stop I -- ICD-10 that you have
19 written here.

20 If you could elaborate on that?

21 THOMAS MADEJSKI, M.D.: I can.

22 And it's actually somewhat outside of,
23 I think, what you could do at the state level.

24 SENATOR GRISTANTI: No, but at the state
25 level, it could be done with regards to --

1 THOMAS MADEJSKI, M.D.: Well, I'll look back
2 at that, with our staff, and get back to you with
3 that.

4 SENATOR GRISTANTI: Okay.

5 THOMAS MADEJSKI, M.D.: But it's more of a
6 federal issue that, again, your support in terms of
7 helping us make that not happen would be greatly
8 appreciated.

9 SENATOR GRISTANTI: Okay. All right.

10 I appreciate you coming here today and
11 testifying.

12 Thank you.

13 SENATOR GALLIVAN: Thank you.

14 THOMAS MADEJSKI, M.D.: Thank you.

15 SENATOR GALLIVAN: Our next presenter is
16 Jessica Crawford, who is the president of
17 MedTech Association.

18 Thank you for being here.

19 Now, if I may, before you get started, if
20 everybody could just be mindful of the time.

21 We had allocated about ten minutes for
22 everybody, and, obviously, this is very important,
23 so we're anxious to hear what you have to say.

24 If you have things in writing, that's very
25 helpful to us, and you don't necessarily have to go

1 through all of it, so long as we can follow up
2 afterwards.

3 But, this room is scheduled to be used at
4 1 p.m., so we have to be out of here just a little
5 shortly before that.

6 So, I'd ask everybody to keep that in mind.

7 Jessica, thanks for being here.

8 JESSICA CRAWFORD: Thank you, Senator.

9 I appreciate the opportunity to be here
10 today, and I will be sensitive to the time.
11 I understand.

12 I'm Jessica Crawford. I'm the president of
13 MedTech Association. We're a statewide bioscience
14 and medical-technology association in
15 New York State.

16 We represent nearly 100 companies, member
17 companies, across all corners of New York State.

18 And I actually spoke in front of
19 Senators Marchione and Valesky last week.

20 We're one of the few industries that is
21 growing in New York State, and we have the potential
22 to really return upstate to economic relevance, and
23 bolster the overall economy in New York State.

24 Across the state we employ over
25 75,000 New York State residents, with average

1 salaries of over \$72,000. That's well above the
2 state and national averages.

3 Locally here, though, in Western New York,
4 this has become a really booming industry and strong
5 economic driver for the region here locally.

6 Locally, we represent about -- over a dozen
7 member companies with over 8,000 employees,
8 including University of Buffalo, AMRI, Great Batch,
9 and Moog Medical.

10 As part of Governor Cuomo's Buffalo Billion
11 plan, AMRI is creating a research center here in
12 Buffalo, with about 250 jobs it's bringing here
13 locally.

14 Also, the move downtown of UB's medical
15 school is very promising, and already attracting a
16 lot of investment in downtown Buffalo.

17 So as I said, we're a major economic driver
18 for Western New York; however, without the full
19 cooperation of the State, this often overlooked
20 industry cannot realize its vast potential.

21 And one example of a policy that I'd like to
22 highlight today is in reference to the Governor's
23 Medicaid redesign team that released a report about
24 a year and a half ago.

25 They recommend setting up a technology

1 assessment process; however, this process, they've
2 already been making decisions on eliminating
3 technologies and devices from coverage.

4 It's not transparent, it doesn't allow for
5 public comment, and it's hurting our companies.

6 So we understand, as an association, why this
7 is necessary, and we've seen this happen across the
8 country, not just in New York.

9 We're seeing it happen in Washington, Oregon,
10 and Minnesota.

11 And for our companies, they understand that
12 this is a necessary part of doing business; however,
13 what we're seeing in other states is a more
14 friendlier process, where they allow for
15 transparency, they allow for public input, and it's
16 not just industry, but from consumers, patients,
17 groups that use these technologies.

18 So, I think it's sending a message of the
19 state being an unfriendly place to be doing
20 business, and I know that's not its intent.

21 I think some of the technologies that have
22 been questioned, as of recently, really treat
23 chronic pain or conditions; so, back pain,
24 spinal-cord injuries, Cerebral Palsy, where, a lot
25 of times, you see that it may be costly up front,

1 but when you look at it, it does save lives; and in
2 the long run, does save money for the state, from a
3 health perspective.

4 So, one of those technologies that I'd like
5 to reference: implantable infusion pumps for
6 treating non-cancer pain.

7 This directly affects a few hundred patients
8 in New York State, but this is their last resort for
9 pain -- for treating their chronic-pain conditions.

10 This is actually produced by one of our
11 companies, Medtronic, that has a number of jobs here
12 in New York State.

13 You know, we really are just looking for a
14 more open and transparent process.

15 I think the solution is pretty simple, and
16 can really go a long way with companies and patients
17 using these treatments.

18 And like I said, if you look at systems such
19 as Washington State's health-technology assessment,
20 Oregon has a health-evidence review commission, and
21 Minnesota has a health-services advisory committee,
22 they all add transparency and integrity to the
23 review process.

24 They allow for public input, and consulting
25 the advice of medical practitioners and

1 professionals.

2 So, we'd like to see something like that
3 happen here in New York State, something similar.

4 We've actually been working with a number of
5 groups across New York on a bill, that, thank you to
6 Assemblyman Morelle and Senator Hannon for
7 sponsoring. It did pass the Senate this year.

8 It provides for a committee consisting of
9 13 members with backgrounds in health care and
10 health technology, that provides recommendations
11 about coverage decisions, recommendations that are
12 based on clinical effectiveness and safety.

13 So, unfortunately, it has stalled on the
14 Assembly side, in committee, under
15 Assemblyman Godfried, the Health Committee.

16 So, we really do believe that this committee
17 is going to allow for input from consumers,
18 advocates, and patients in the biomed industry, and
19 bring transparency and integrity back to this
20 Medicaid-assessment process; and, ultimately,
21 leading to better patient outcomes.

22 I mean, at the end of the day, is what we all
23 want to see.

24 So that being said, anything that you can do
25 to support enacting that bill would be very much

1 appreciated by our industry.

2 And on a positive note, I'd like to thank the
3 Governor and the Administration, and all of you,
4 for, I think, in the last year, we've seen a lot
5 of -- it's tied in directly to the regulatory
6 environment, but we've seen a lot of proactive
7 efforts in the way of workforce development.

8 And that is certainly a need and a challenge
9 for our industry, from a technical perspective, but
10 also senior-level talent, recruiting that to
11 New York, Upstate New York specifically, and, we
12 appreciate that.

13 That's a priority for our members, and it's
14 something that we'll be continuing to focus on this
15 year, and look forward to working with you on more
16 in the year to come.

17 So, thank you.

18 SENATOR GALLIVAN: Thank you, Jessica.

19 JESSICA CRAWFORD: Any questions?

20 SENATOR MARCIONE: I have one, just some
21 clarification, if you would.

22 When I looked at the -- this bill that you're
23 talking about, it says it creates a
24 health-technology assessment committee under the
25 Department of Health.

1 You know, my look as a senator has been,
2 anything that creates new rules and regulations is
3 something that I'm not interested in.

4 Are you asking us, through this Committee, to
5 add an additional layer that would create more
6 regulation for your industry?

7 Or am I not understanding you correctly?

8 JESSICA CRAWFORD: No, it's actually -- it's
9 integrating kind of this peer-review, or check.

10 We just want to make sure that these
11 decisions aren't being made in a vacuum.

12 We want to make sure that they're not
13 arbitrary, and that they're having -- there's some
14 expert opinion going into technology, whether it's
15 looking at efficacy, the cost, how it's impacting
16 patients across the state.

17 We don't even know who's on -- who's making
18 these decisions. There's just a total lack of
19 transparency.

20 So, we're not looking to add another layer,
21 but we want to ensure that the people making these
22 decisions, that there's some level of expertise
23 represented on that group of advisors, or -- so
24 we're really suggesting just a group of advisors to
25 provide some expert opinion.

1 SENATOR MARCIONE: Thank you.

2 SENATOR GALLIVAN: Is it possible, that if
3 that was to take place at these decisions being
4 made, if proper equipment was made available, or
5 continued to be made available, is that something
6 that, potentially, will lower health-care costs?

7 JESSICA CRAWFORD: Absolutely.

8 Absolutely.

9 So like I mentioned, the chronic pain or
10 conditions, so there is a bit of an investment up
11 front for the cost of the technology, but in the
12 long run, it does save the State money.

13 So there's --

14 SENATOR GALLIVAN: And would you be able to
15 present data --

16 JESSICA CRAWFORD: Sure. I can --

17 SENATOR GALLIVAN: -- in certain
18 circumstances?

19 JESSICA CRAWFORD: Yeah, and I can talk to
20 some of my members, to point to some examples of
21 some technology that has done that, absolutely.

22 SENATOR GALLIVAN: And we can follow up with
23 you?

24 JESSICA CRAWFORD: Absolutely.

25 SENATOR GALLIVAN: Thank you.

1 SENATOR GRISTANTI: That's good.

2 I'm familiar with, actually, Senator Hannon's
3 bills that you talk about, and I think that it's
4 actually moving in the right direction.

5 And it's, unfortunately, that the Assembly
6 did not pass it.

7 You know, but that will be worked on next
8 year.

9 And I know that biomed is critical in this
10 area, and moving forward in Western New York, and
11 that it actually is getting some teeth.

12 But my question is: What does MedTech
13 exactly do?

14 Do you represent, like, a lot of different
15 companies under one umbrella?

16 JESSICA CRAWFORD: Yes, so we're a trade
17 association.

18 So, similar to, like, the
19 Manufacturers Association of Central New York --

20 SENATOR GRISTANTI: I got you.

21 JESSICA CRAWFORD: -- we represent the needs
22 and interests of our industry.

23 So, advocacy, training, educational
24 programming. We have a [unintelligible] consortium
25 that supports our members.

1 So, there's a number of benefits for our
2 member companies, but advocacy being a main big part
3 of that.

4 SENATOR GRISTANTI: And other than Medtronic
5 that has -- you know, that has -- Medtronic that has
6 this issue, are there any other organizations that
7 MedTech is representing, that have other possible
8 regulations that they see as, you know, needs to be
9 changed?

10 JESSICA CRAWFORD: Other regulations, or
11 other technologies being looked at under this?

12 SENATOR GRISTANTI: Well, you got here that
13 MedTech represents pharmaceutical, biotech,
14 medical-technology companies, their suppliers.

15 And I know that, you know, you mentioned one
16 of them, Medtronic, you know, they have this issue
17 right now with a piece of legislation you'd like to
18 get moving forward, because of something that
19 happened, basically, this year, as of October 1st of
20 this year, regarding the implantable infusion pumps.

21 Are there other companies, that you
22 represent, have other issues that are different than
23 that, or other issues that they have regulations
24 with that, that anybody's brought to your attention?

25 JESSICA CRAWFORD: So, outside of this policy

1 specifically, I mean, there's a lot of broader,
2 I think, business regulations, that I think we've
3 heard a few of them already today.

4 This is one that's become more of a priority
5 to share for our members, because I think they're
6 afraid of what's to come.

7 It's more about, with that lack of
8 transparency, anyone's at risk. No one knows who's
9 going to be a target next, what technology is going
10 to be targeted next, because we don't know,
11 decisions are being made, who's making them.

12 So, it's kind of more fear of the unknown
13 with this right now.

14 I mean, there are other policies and things
15 that impact our industry, from a general business
16 perspective.

17 This is one, specifically, more on the health
18 side.

19 SENATOR GRISTANTI: But if there are other
20 ones, if you can, you know, have somebody put those
21 together and get those to us as well, that would be
22 helpful.

23 JESSICA CRAWFORD: Okay.

24 SENATOR GRISTANTI: Thanks for testifying
25 today.

1 SENATOR GALLIVAN: Thanks, Jessica.

2 And we have all your contact information.

3 JESSICA CRAWFORD: Yes.

4 Thank you so much for your time.

5 SENATOR GALLIVAN: Don Ingalls,
6 vice president of state and federal regulations,
7 from HealthNow New York.

8 Welcome, Don.

9 DONALD INGALLS: Thanks, Senator Gallivan,
10 Senator Grisanti;

11 And welcome to Buffalo, Senator Valesky and
12 Senator Marchione, thanks for coming.

13 I'm Don Ingalls, vice president of state and
14 federal relations for HealthNow New York, and we
15 operate as BlueCross/BlueShield of Western New York
16 in the 8 counties of Western New York, and
17 BlueShield of northeastern New York in the
18 13 counties around the Capitol District.

19 We employ about 1650 employees in Buffalo,
20 Albany, and Endicott.

21 We've been providing insurance solutions to
22 employers and individuals since 1936, and are the
23 region's largest health-care insurer.

24 We cover about 700,000 people in
25 Upstate New York.

1 Thanks so much for the opportunity to speak
2 with you today.

3 I wanted to focus for a few minutes on
4 health-insurance mandates, and these are the
5 requirements, in state law, that insurance policies
6 cover specific services or practitioners or other
7 items.

8 New York has one of the most number of
9 mandates in the country, and this continues to
10 result in increased costs for health insurance,
11 because the services are mandated to be covered by
12 insurance policies.

13 This affects small business especially,
14 because larger businesses can self-insure, and often
15 do, and escape the requirements of state regulation,
16 and one of those being the mandates to cover those
17 services.

18 We have data from a 2003 study that show that
19 the mandates, at that time, were -- added about
20 12.2 percent to the premiums, not insignificant, and
21 that resulted in about \$445 a year for a single
22 contract, and 1,067 for a family contract.

23 And this was before some of the more recent
24 mandates, like the autism mandate a couple of years
25 ago, Timothy's Law, and mental-health parity a few

1 years before that.

2 Mandates started, really, in the early 1970s,
3 and early on, they really covered things that we'd
4 all reasonably expect to be covered in a
5 health-insurance policy.

6 Then they -- mandates happened -- other
7 mandates happened that focused on providers.

8 So, chiropractors, for example, in 1997,
9 lobbied to get chiropractic coverage in New York;
10 and fertility specialists lobbied to get fertility
11 services covered in later years.

12 And then, more recently, there have been
13 additional mandates around -- relating to
14 state-budget issues.

15 So, for example, the movement of some costs
16 from the early intervention program in the state to
17 private health insurance.

18 So, some mandates really are appropriate.
19 We, then, the insurance would be covering these
20 things anyway.

21 But it's not easy to tell when the laws have
22 gone from forcing insurers to provide services that
23 employers believe they have paid for, to forcing
24 companies to purchase services that they don't
25 really or necessarily want to have.

1 So, that's one of the reasons why we, as an
2 individual insurance company, and the industry, tend
3 to oppose additional mandates, one of the reasons.

4 Individually, they may not -- the costs may
5 not be significant, but as you've seen, they add up,
6 in general, and, there's an unintended consequence
7 of the mandates, beyond the cost addition, is that
8 they encourage more companies to self-insure to
9 escape the cost of the mandates.

10 Currently, about half -- well, I think it's a
11 little over a half of the insurance plans in the
12 state, and companies in the state, self-insure, so
13 that they are not subject to the mandates.

14 So when the mandates are passed, they're only
15 covering the portions of the population who are
16 fully insured.

17 Many states have coped with this by setting
18 up mandate review commissions.

19 And, in fact, New York passed legislation
20 back in 2007, as you know, to set up a mandate
21 review commission.

22 And we applaud Senator Gallivan and the other
23 sponsors of the S3042, which would make some changes
24 to the New York State Health-Care Quality and Cost
25 Commission, and we think that's an appropriate way

1 to start to address the effective mandates before
2 they take effect. And, the bill also would require
3 review, ongoing review, of existing mandates.

4 And we think that's a very healthy approach
5 to looking at the issue.

6 I will have additional details in written
7 testimony.

8 I have to make some changes to it, but I'll
9 get that to the staff.

10 But, happy to answer any questions now.

11 SENATOR GALLIVAN: I'm glad you mentioned the
12 bill that we have advanced, to try to address the
13 very thing that you brought up.

14 And just say, unanimously, our purpose here
15 today is to accomplish that on a greater scale, and
16 you've identified one particular area.

17 I look forward to following up with you.

18 I don't know if there are other questions?

19 SENATOR VALESKY: Not a question, just,
20 thanks for being here.

21 Good to see you, Don.

22 DONALD INGALLS: Yeah, good to see you.

23 SENATOR VALESKY: Look forward to your
24 written testimony.

25 SENATOR GRISTANTI: Thanks, Don. Thanks for

1 coming today.

2 DONALD INGALLS: Yep, indeed.

3 SENATOR GALLIVAN: Thanks, Don.

4 SENATOR GALLIVAN: Dennis Galluzzo,
5 Pharmacists Association of Western New York.

6 Thanks for being here, Dennis.

7 DENNIS GALLUZZO: I want to thank you for
8 inviting me to represent pharmacists in
9 Western New York today, and I also want to thank all
10 of you for spearheading regulatory reform.

11 I represent the Pharmacists Association of
12 Western New York as their executive director, and
13 I represent the pharmacists side of the state of
14 New York as a regional affiliate.

15 I am an owner of a -- a pharmacy owner.

16 I own Family Medical Pharmacy in
17 Williamsville, so these restrictions and problems
18 and regulations affect me personally.

19 And I also am a member of the Erie County
20 Board of Health, so I bring these issues to you on
21 the basis of public health.

22 Let me just go right into it. I'll eliminate
23 some of the introductory things I was going to say.

24 But, regarding a regulatory problem that
25 we're having with a particular law regarding

1 immunizations, is the county-restriction regulation
2 that's within the law.

3 Since October 2008, the state law has allowed
4 pharmacists certified by the Education Department to
5 administer certain vaccines to adults.

6 Let me explain this to you.

7 There's a provision within the law that
8 requires us to have a non-patient specific order.

9 So, in other words, for me, as a pharmacist,
10 to immunize somebody for -- against influenza,
11 I have to have a doctor write a standing order for
12 me.

13 Being on the Erie County Board of Health, we
14 are lucky to have Commissioner Burstein, the
15 Commissioner of Health in Erie County, write the
16 orders for Erie County.

17 Now, the law states, that if that
18 practitioner writing the standing order for county
19 pharmacists in that county, if the adjacent counties
20 have less than 75,000 in population, that
21 practitioner can also be the practitioner writing
22 that standing order.

23 We have a problem here in Western New York.

24 We represent the eight New York counties.

25 I have three counties in our area,

1 Niagara County, Chautauqua County, and
2 Cattaraugus County that have over 75,000 in
3 population; so, therefore, Dr. Burstein cannot write
4 those orders for those counties.

5 We have been mandated -- we have been
6 instructed, not mandated, we've been, request of
7 Dr. Shah, to have all the county officials sign on
8 to these orders.

9 In so doing, Commissioner Burstein was able
10 to do that for us in Erie County and five of the
11 other counties.

12 The Chautauqua County and Cattaraugus County
13 county officials have stepped up to the plate.

14 However, we have five pharmacies in
15 Niagara County that are unable to give flu vaccine
16 because we cannot get a county official to sign on
17 to those standing orders.

18 This law is actually a barrier that prevents
19 certified and willing pharmacists from administering
20 vaccine to consumers who ask for them.

21 The five pharmacies in Niagara County have
22 flu vaccine.

23 I want you to make it very important, that
24 pharmacists must prebook vaccine for the upcoming
25 season.

1 So these five pharmacies, in lieu of the fact
2 that they would get a standing order, have bought
3 over five to six thousand dollars worth of flu
4 vaccine, have them presently in their stores.

5 Presently, I have about \$10,000 worth of flu
6 vaccine that I'm ready to administer.

7 But these five pharmacies in those counties
8 in Niagara County cannot administer it.

9 The members of the public are asking for flu
10 shots in their county, but they cannot be immunized
11 in pharmacies because Niagara County officials and
12 physicians refuse to write non-patient specific
13 orders for pharmacists in that county.

14 These owners, pharmacists, and members of the
15 public have all been disenfranchised by a provision
16 in the state law that gives veto power to a few
17 practitioners who simply refuse to authorize
18 pharmacists to give flu shots.

19 This is particularly egregious, because those
20 same pharmacists, under the H1N1 pandemic, through
21 the decrees of Governor Paterson at the time, and
22 subsequently after that, the next season,
23 Governor -- Governor Cuomo, were able to give
24 carte blanche vaccines to children and to the adult
25 population.

1 Now, we only ask to do adult population, but
2 under the decree, we were able to give vaccines to
3 help avert the pandemic of H1N1.

4 So now we're asking you, please, it is
5 important to know, this issue is included, because
6 it's a glaring example of state policy that is
7 detrimental to pharmacies, and also health insurers
8 that want to save costs by keeping their enrollees
9 healthy during the flu season.

10 It is important to note that one of
11 Governor Cuomo's program bills, Senate Bill 4528,
12 introduced by Senator Hannon -- and you have my
13 testimony there -- removes the county restriction,
14 and includes other important reforms to improve
15 public health.

16 Backed by the Governor and the New York State
17 Department of Health, pharmacists are optimistic
18 that this, or a similar bill, will be passed and be
19 assigned into law in 2014.

20 However, we are in a real crisis right now,
21 and if there's anything you can do for us in
22 Niagara County, we would greatly appreciate it,
23 because flu season is in full force right now -- in
24 other -- and the -- you know, averting the flu
25 epidemic for this year is in full force right now.

1 I've already given many vaccines.

2 The CDC tells us that we should be giving the
3 vaccine out as soon as it becomes available.

4 It became available
5 late August/early September for all these
6 pharmacies.

7 And in this county, is now, subsequently,
8 endangering some of these population.

9 SENATOR GRISTANTI: Anywhere else in the
10 state, or just in Niagara County?

11 DENNIS GALLUZZO: Yes, it's happening in
12 other places in the state, but I don't have those.

13 Elizabeth Lasky can give you the list of
14 certain counties that we're having problems with.

15 This really should be a mandate from the
16 State Department of Health.

17 Senator -- Commissioner Danes, prior to
18 Commissioner Shah, was able to do that -- should be
19 able to do that cart blanch for everybody in the
20 state.

21 Unfortunately, because of this county
22 restriction.

23 SENATOR GRISTANTI: And it's because of the
24 veto power -- the veto-power situation that --

25 DENNIS GALLUZZO: Yeah, like, the county --

1 like, if the county -- if, like, in -- specifically,
2 if a Niagara County county official who -- the
3 commissioner says, "We're not going to do it," then
4 that sets precedent for all the other physicians in
5 those groups that are just saying, Well, gee, we're
6 in the medical side in Niagara, we're not going to
7 do it.

8 So we've approached --

9 SENATOR GRISTANTI: Who said that in
10 Niagara County? Who [unintelligible] in
11 Niagara County?

12 DENNIS GALLUZZO: Well, specifically, we've
13 gone to the commissioner of health in
14 Niagara County, and he would not -- was unable to
15 help us.

16 SENATOR GALLIVAN: Well, we -- my
17 understanding, if I understand correctly, it
18 emanates from a law or regulation --

19 DENNIS GALLUZZO: Correct.

20 SENATOR GALLIVAN: -- that --

21 DENNIS GALLUZZO: Gives them that power.

22 SENATOR GALLIVAN: -- draws the line at
23 75,000?

24 DENNIS GALLUZZO: Correct.

25 SENATOR GALLIVAN: So if you're at 75,000, an

1 adjacent county cannot do anything?

2 DENNIS GALLUZZO: Correct.

3 SENATOR GALLIVAN: It must be done within the
4 county?

5 DENNIS GALLUZZO: Right, exactly.

6 SENATOR MARCIONE: Why would a county say no?
7 I mean, what's the rationale here?

8 DENNIS GALLUZZO: Senator, we are speechless.
9 We have no way of knowing where their
10 sentiment is in that regard.

11 We just can't believe it.

12 It's a public-health issue.

13 Like I said, the Erie County Commissioner of
14 Health, Gail Burstein, stepped right up to the
15 plate, and said -- came -- even came to the meeting
16 with us, and said, you know, This is something that
17 has been requested by your Commissioner.

18 State Health Commissioner Dr. Shah got on a
19 conference call with all these counties officials,
20 and said, "You guys should sign on to this for
21 pharmacists in the area."

22 But, unfortunately, we have a problem right
23 here in Western New York.

24 SENATOR MARCIONE: Is there any liability to
25 the county --

1 DENNIS GALLUZZO: We -- Dr. Richard Peer,
2 who's the vice president of MLMIC, assured me that
3 they would come on board for any liability issues
4 involved.

5 In other words, I actually have a statement
6 that was written to the previous doctor, for
7 Erie County was Dr. Richard Judelsohn, who's now
8 passed away, a dear friend of mine, who signed on
9 for Erie County. And he actually had a statement
10 from MLMIC, saying, "That we encourage you to do
11 this."

12 So his insurance company was encouraging him
13 to do it for pharmacists.

14 Because, quite frankly, insurance companies
15 want people to be immunized, because -- to stop them
16 from having health problems, from flu epidemic, you
17 know, there's precautions -- or, other things that
18 happen, like, they can get pneumonia and die.

19 Like, 5,000 people die from pneumonia in
20 New York State due to flu complications every year.

21 So, I mean, there's a lot of things that are
22 going on.

23 The second thing is, a mandatory cost survey.

24 In November 2011, the Health Department
25 published emergency regulations that required every

1 pharmacy enrolled in the Medicaid program to
2 complete two surveys.

3 One survey asks for the actual invoice cost
4 for each individual drug product purchased by the
5 pharmacy;

6 And the other asks for details about the
7 costs of operating the pharmacy.

8 The cost surveys, you must remember, are a
9 Medicaid-mandated regulation.

10 They affect every pharmacy in New York State.
11 4,400 pharmacies had to give this cost survey.

12 So far, we have seen no results.

13 We have never had these price lists as
14 current.

15 Because they are -- prices change, and it's
16 an ongoing process, this has proven to be a
17 never-ending bureaucratic web.

18 We need to remove this regulation from --
19 from, uhm, the statutes that are in New York State
20 right now.

21 The second survey, of the cost of pharmacy
22 operations, is based on a federal law that requires
23 states to pay pharmacies a dispensing fee that is
24 reasonable, based on our overhead.

25 The cost-of-dispensing survey was demanding,

1 time-consuming, and mandatory, but the data is in,
2 and the results are eagerly anticipated, but very,
3 very overdue.

4 The issue raised here is the ongoing
5 product-cost survey, and not the on-time cost --
6 "one-time cost of dispensing" survey.

7 The product-cost survey is ongoing, and
8 costly to the State in terms of staff.

9 And since the costs go up daily, it is going
10 to be a continual problem.

11 The data is voluminous, to say the least.

12 Just imagine going into my store, which is a
13 very little pharmacy. I have thousands and
14 thousands of prescription medications on my shelves
15 that I have to give a list of costs to the Medicaid
16 people.

17 And the problem there is, it changes every
18 week.

19 SENATOR GALLIVAN: How often?

20 DENNIS GALLUZZO: Oh, we get price changes
21 all the time. Every day.

22 SENATOR GALLIVAN: No, how often do you have
23 to do this?

24 DENNIS GALLUZZO: Oh, they are doing -- they
25 did the cost survey, they made everybody do it in

1 New York State, 4,400 pharmacies. And then they're
2 randomly selecting us to do it on a monthly basis.

3 So I had one last month to do.

4 And the other problem is, that it comes
5 through -- the request comes through the health
6 commerce account.

7 And it's really kind of funny, because I kept
8 getting statements from them, but the statements
9 were going to my junk mail, because they keep
10 changing the person who's sending out the
11 information.

12 And I finally called them up and I said:
13 I don't know who you are. You're asking me for a
14 survey, and I don't even know what you're asking me
15 for.

16 So they say: Oh, we're from the
17 Health Commerce System, and we need to do a random
18 cost survey again on you.

19 So we had to go to the wholesale house and
20 ask this to be done again.

21 This regulation is an excellent example of
22 one that is not useful, not cost-effective,
23 burdensome, and wasteful for both the State and the
24 4,400 affected pharmacies.

25 We strongly recommend its repeal.

1 Think about it: it's duplicative.

2 The federal government, CMS, was conducting
3 national price surveys as well. They are not
4 mandatory.

5 This one is.

6 And, the results of the cost-of-dispensing
7 survey are overdue.

8 Pharmacists have always maintained that the
9 Medicaid fee-for-service professional fee falls well
10 below the actual cost of dispensing, especially
11 after the non-mandatory co-pay is subtracted.

12 So if you think about it, there was a study
13 by Grant Thornton several years ago, that said that
14 the cost of filling a prescription in a pharmacy
15 exceeds \$10.

16 Medicaid is paying us \$3.50.

17 And, then, the Medicaid patient will come
18 into the pharmacy and say, My social worker said
19 that I don't have to pay the co-pay.

20 So on the fact that we are probably losing
21 money on that prescription because we're not getting
22 paid enough, they also don't pay their co-pay,
23 because it's also said in the state contract that
24 they don't have to do it.

25 So, this is a terrible thing for us on both

1 ends.

2 There is another issue that I wanted to go
3 through.

4 Regarding the cost survey, they want to make
5 it public. But if they publish it, it's already
6 going to be outdated the moment they publish it,
7 because these costs keep changing every day.

8 One of the things that I would go through on
9 the last segment, would be to regulate pharmacy
10 benefit managers and require timely price updates.

11 Let me just say one thing about this last
12 issue.

13 Pravastatin, there's a generic called
14 "Pravachol."

15 On my shelf, several months ago, one bottle
16 cost \$3.

17 For some reason, this should be investigated
18 by the Senate, your Committee, it went up to \$300.

19 Now, can you imagine a prescription going
20 from \$3 a bottle to \$300 a bottle overnight?

21 This is happening on an ongoing basis.

22 So we're asking you to give us summary leave
23 from pharmacy benefit managers.

24 Now, PSSNY supports passage of a legislation
25 that will define "pharmacy benefit managers," and

1 allow for regulations.

2 These are the entities that adjudicate our
3 claims.

4 Pharmacy benefit manager contract with health
5 insurers to manage pharmacy benefit.

6 The state insurance law regulates health
7 plans, but does not recognize or define, regulate,
8 pharmacy benefit managers, leaving pharmacies
9 vulnerable in their relationship to these pharmacy
10 benefit managers.

11 Just to say one thing, and make it very
12 clear, and I'll end this, because you have my
13 testimony:

14 To ensure that local pharmacies remain viable
15 in an era of managed care, state law and regulations
16 should include a process by which pharmacies are
17 able to address pharmacy-benefit-manager issues,
18 such as timely updating of drug costs.

19 This is the issue, for Medicaid, and for us
20 as well.

21 Pharmacies purchase inventory from a
22 wholesaler at current prices, and pharmacies should
23 be reimbursed at current prices.

24 And the problem is, nobody's keeping up with
25 those prices, and they use it to their advantage.

1 So if an insurance company has been paying me
2 \$3 a hundred, it's to their advantage not to update
3 their records when it comes to \$300.

4 And then what happens? The patient can't get
5 the medicine.

6 We need regulatory reform on this issue.

7 To date, there are no laws that exist to
8 protect local small businesses, small pharmacies.

9 And I got to tell you, I lose on certain
10 prescriptions on a daily basis.

11 And I welcome Patrick Gallivan --
12 Senator Gallivan; Senator Grisanti, you're in my
13 area; Senator Ranzenhofer's my guy; please, come
14 into my pharmacy. I will demonstrate to you, I
15 invite you into my pharmacy, and demonstrate to you
16 some of these problems.

17 You're more than welcome to come in.

18 I want to thank you for the opportunity to
19 speak to you today.

20 And if you have any questions?

21 SENATOR VALESKY: Just, very briefly, because
22 I know we're up against a time constraint, although,
23 you have a lot of issues in here that I think all
24 four of us --

25 DENNIS GALLUZZO: I tried to be brief.

1 I apologize.

2 SENATOR VALESKY: No, no, don't apologize.

3 It was good testimony.

4 Just the one comment that I would make on the
5 first issue, the flu, the county restriction issue,
6 I'll certainly look forward to supporting the
7 program bill.

8 The problem is, as you now, we're out of
9 session until January.

10 DENNIS GALLUZZO: Right.

11 SENATOR VALESKY: So for this flu season,
12 that presents a little bit of a problem.

13 But, if in previous years, and you're telling
14 us that this commissioner, and the previous health
15 commissioner, were able to address this
16 administratively, notwithstanding the law,
17 obviously, the long-term effects is passing
18 Senator Hannon's bill, but if we can, for this flu
19 season, my understanding is then, perhaps we could
20 reach out to the Governor and the
21 Health Commissioner to, in effect, issue an
22 executive order to override the statute.

23 DENNIS GALLUZZO: I would greatly appreciate
24 that.

25 And we actually did approach Deborah Black,

1 who's on the Bureau of Immunizations in the state.

2 And it would great -- you know, if you can
3 move that issue --

4 SENATOR VALESKY: Maybe we can work on that.

5 DENNIS GALLUZZO: -- that would be greatly
6 appreciated.

7 I have been working with the Senator Maziarz
8 in Niagara County, to ask these -- the
9 Niagara County officials to move forward on it, and
10 we've reached a brick wall.

11 And it's very frustrating, as I represent all
12 the pharmacists in Western New York, to have availed
13 this service to all of the other pharmacies in
14 Western New York, and to have these five pharmacies,
15 you know, quite -- you know, small -- you might
16 think eight or ten thousand dollars isn't a lot of
17 money, but for a small business like a small
18 pharmacy in a small county, you know, it hurts, and
19 it could be easily detrimental to the business.

20 Very detrimental.

21 SENATOR GALLIVAN: And we're able to follow
22 up with you?

23 DENNIS GALLUZZO: Yes, please do.

24 Thank you so much for your time.

25 SENATOR GALLIVAN: Thanks, Dennis.

1 DENNIS GALLUZZO: By the way, I think
2 40 volumes of those regulations have to do with
3 pharmacy.

4 [Laughter.]

5 SENATOR GALLIVAN: Roberta, I saw you
6 earlier.

7 Roberta Rifkin from Independent Health.

8 ROBERTA RIFKIN: Good afternoon.

9 Thank you for inviting me in representing
10 Independent Health, which is a local community-based
11 not-for-profit health plan with about
12 350,000 members.

13 We serve the continuum of coverage from
14 Medicaid, commercial, and Medicare products.

15 And I am -- given the time limit here,
16 Don Ingalls went before me and expressed as well,
17 our concerns with the issue of mandates.

18 We are in the business, as a health-insurance
19 plan, to provide coverage. In that coverage, we
20 need to provide certain types of options for
21 consumers.

22 And these mandates certainly constrict what
23 we can do.

24 Mandates are not all bad, as Don said.

25 And I think he and I, we all support the

1 legislation that you put forward and passed.

2 And we'd like to see that happen, a review
3 commission, especially today.

4 And I'm going to add just one point to what
5 Don said, given our time here, is that, with the
6 implementation of the Affordable Care Act, there is
7 a provision in there which says, that any new
8 mandates after 2011 will be paid for by the state,
9 so that new mandates that come on now, what that
10 means is, that the state will have to pay the plan
11 for that additional mandate.

12 So I think it's a really perfect timing to
13 really galvanize this Commission, to not only review
14 existing mandates, the more than 50 existing
15 mandates in the package of benefits that we need --
16 that we're required to offer for evidence-based
17 practice, and impact on costs, but, also, to look at
18 any kind of future mandates and future
19 recommendations for new benefits.

20 Not to say that there will be bad or there
21 might be good ones, but we really need to understand
22 what those will mean.

23 I also appreciate the opportunity, and to --
24 to -- that you're doing a thousand regulations.

25 And I know that I will be sending you lists,

1 as we have our meetings of -- people were giving me
2 very specific ones.

3 I said, No, no, no, that's not so important.
4 We want the big things, and it looks like you want
5 all the little things.

6 SENATOR GALLIVAN: Everything.

7 ROBERTA RIFKIN: So -- so I will send you --
8 we will make a big contribution to that list, okay?

9 So I will stop there, to give others some
10 time, and see if you have any specific questions.

11 SENATOR GALLIVAN: Yeah, thank you.

12 And for everybody's sake, we will be sending
13 a questionnaire, asking some specific things, to
14 everybody who has presented today, asking you to
15 follow up as well --

16 ROBERTA RIFKIN: Okay.

17 SENATOR GALLIVAN: -- with more specific
18 things.

19 But I appreciate you being here.

20 I have no questions.

21 SENATOR GRISTANTI: I just want to say that
22 I've had many conversations throughout the last
23 couple of years, and trying to have conversations
24 with Senator Kemp Hannon.

25 And I know that you are like an encyclopedia

1 of knowledge when it comes to what some of these
2 mandates are, what some of the things that need to
3 be corrected.

4 And I just want to say that I appreciate,
5 over the last, year and a half, two years, of your
6 the time and your effort that you have been putting
7 in to get some of these things corrected.

8 And we look forward, not only to the big ones
9 here, the three that you have in your testimony, but
10 also the small ones as well, because everything's
11 important.

12 And I just want to say, thank you for
13 contributing all that you're doing.

14 ROBERTA RIFKIN: Well, you've all made the
15 first step in reducing costs for businesses by
16 having this here, and us not having to travel to
17 Albany, so I thank you.

18 [Laughter.]

19 SENATOR GALLIVAN: Dr. Willie Underwood, from
20 the Medical Society of Erie County, their
21 legislative committee -- chairman of the legislative
22 committee.

23 Thanks for being here, and sorry to put you
24 under the gun --

25 WILLIE UNDERWOOD, M.D.: Oh, no. No, no.

1 SENATOR GALLIVAN: -- but we will be more
2 than happy to follow up afterwards as well.

3 WILLIE UNDERWOOD, M.D.: Did you get a copy
4 of my testimony?

5 I'm going to make it brief.

6 Chris was going to join me as well.

7 I think she stepped out for 30 seconds.

8 Again, like everyone else...

9 Do you have it?

10 SENATOR GALLIVAN: Yes, we do.

11 WILLIE UNDERWOOD, M.D.: Perfect.

12 I want to thank you, Senator Gallivan, for
13 having an opportunity to give some insight on some
14 health-care policy issues;

15 Erie County Medical Society, who has allowed
16 me to speak on their behalf;

17 And Roswell Park for having this venue.

18 I'm here to today to speak in opposition of
19 CON, in general; and more specifically, enhancing it
20 to include in-office procedures.

21 You have my titles and information, and all
22 that, but, just briefly:

23 I sit as a member of the council on
24 legislation for the American Medical Association.

25 I'm involved in a health-policy committee,

1 and a council on legislation for the
2 American Neurology Association.

3 And I'm chair, as you said--

4 SENATOR GALLIVAN: You were at one of those
5 meetings when we were at the Medical Society?

6 WILLIE UNDERWOOD, M.D.: Yes, yes.

7 SENATOR GALLIVAN: We had you by
8 teleconference?

9 WILLIE UNDERWOOD, M.D.: Exactly, you had me
10 by teleconference.

11 And I'm now chair of the legislative
12 committee for the Erie County Medical Society.

13 And you met Chris earlier. She was up here
14 earlier.

15 Perfect.

16 Just, in briefly, I'm gonna -- you have all
17 this:

18 So CON started in New York State, and that's
19 important, in 1964.

20 Why is that important? Because everybody
21 followed what New York State did.

22 So we now have 35 states with CON laws. Many
23 of those states are challenging those laws, but as
24 you know, it is very difficult to roll back policy
25 once it's has been introduced.

1 The United States Justice Department has
2 weighed in on this as well, and, basically, they
3 have said, and I've given you testimony on this:
4 It's bad.

5 It's bad for competition;
6 It's bad for business;
7 It's bad for growth;
8 It's bad for health care;
9 And it's bad for our patients.

10 Period.

11 All right?

12 Now, if New York State expands that, what
13 does that say?

14 It tells other states, maybe you should be
15 expanding it as well to in-office procedures, which
16 doesn't really make any sense.

17 We've already said that the current laws
18 impede growth and development of health care,
19 innovation.

20 They're outdated, because the reason it was
21 introduced no longer exists anymore anyway, and
22 that's because we had a cost-based payment system,
23 which is gone.

24 So since we no longer have a need for CON
25 laws, because the reason for developing them no

1 longer exists, then, guess what? Maybe CON laws
2 shouldn't exist anymore either. They should go by
3 the wayside as well.

4 So, just briefly:

5 What do CON laws do?

6 They create barriers to beneficial
7 competition. They impose other costs.

8 Why?

9 Because, competitors, when they want to keep
10 someone out of the marketplace, they use the system
11 to do so.

12 So what does that mean?

13 So, therefore, they're wasting resources by
14 having lobbyists involved, lawyers, other
15 consultants, on both sides of the table.

16 You're trying to get in, you got to hire
17 that.

18 You're trying to keep your competitors out,
19 you have to hire that.

20 So now we increase the costs; imposing
21 unnecessary costs. Right?

22 Or, they create anticompetitive behaviors.

23 What does that mean?

24 Hey, you know, if you don't do this, I'm
25 going to -- you know I'm going to oppose you if you

1 come in my market, but, I will -- but I won't oppose
2 you if you put it over there.

3 Or, they create collusions, and stuff like
4 that.

5 And that has happened in other states, and
6 there's documentation of that, according to the
7 states, in Virginia and in Georgia.

8 It impedes -- increase higher costs. Right?

9 And then, as I stated, the cost-control
10 measures for implementing CON laws no longer exist.

11 Now, I'm going to take this straight from the
12 Justice Department, as you think about CON laws in
13 the future.

14 Basically, what they basically say is this:

15 First, enhancement of CON laws should have a
16 significantly and clearly articulated justification,
17 because they are government intervention, and in the
18 marketplace, that creates barriers to entry into the
19 health-care markets.

20 That substantial justification should have a
21 basis in serious pervasive market studies that
22 demonstrate that the market has failed in some
23 significant way.

24 Secondly, an evaluation of pro CON laws
25 should consider, not only the justification for the

1 law, but also identify and weigh the harm to
2 consumers that are likely to result for creating a
3 barrier to entry.

4 The consideration of these potential harms
5 should include the ways in which the regulations
6 could distort the market, affect incentives, and
7 diminish competition. A state should enact and
8 maintain CON laws only if it finds the justification
9 does good; the good does outweigh the harm.

10 Thirdly, in cases where the evidence does
11 show a greater benefit than harm for CON laws, it
12 has been suggested that you consider whether you can
13 address the problem in an alternative fashion that
14 preserves competition, or at least it narrowly and
15 tailors the remedy to only demonstrate the need and
16 preserve such competition as possible.

17 So you create a law to the need, not some
18 broad blanket theme that decreases competition.

19 A state should only use the CON laws to
20 address some problem if that problem cannot be
21 addressed without government intervention in the
22 form of a barrier to entry.

23 If the state must erect a barrier to entry,
24 select the approach that accomplishes the objectives
25 with the least disruptive effects on competition.

1 Thank you very much for allowing me to
2 provide this testimony.

3 I can answer any questions.

4 SENATOR GALLIVAN: Amen.

5 My only question: In other words, if you go
6 back to the history of this, and why it was put in
7 place in the first place, that purpose no longer
8 exists?

9 WILLIE UNDERWOOD, M.D.: No longer exists.

10 SENATOR GALLIVAN: So it's -- in your
11 opinion, this would be an outdated regulation that's
12 in place, that does -- that does all the negative
13 things that you've articulated?

14 WILLIE UNDERWOOD, M.D.: It's not -- it is my
15 opinion, but it's also the opinion of the
16 United States Justice Department.

17 SENATOR GALLIVAN: Yes, and backed up by the
18 Justice Department and [unintelligible] --

19 WILLIE UNDERWOOD, M.D.: Exactly.

20 That's right.

21 SENATOR GALLIVAN: Thank you.

22 SENATOR GRISTANTI: Dr. Underwood, also, with
23 the presence of these regulations, they talk about
24 an increase in health-care costs itself.

25 Is there any figures, or anything, that you

1 have that shows what the increase in the health-care
2 costs is?

3 WILLIE UNDERWOOD, M.D.: Well, that would be
4 variable by the state, but it's the concept of
5 that -- that, okay, so, if I'm the only one in the
6 market, or I've had limited -- so if the cost to
7 barrier is great; so, therefore, I can block
8 competition out; therefore, I can negotiate with the
9 insurance carriers, and others, for a higher cost,
10 because I'm the one providing that service, so to
11 speak, that's how they believe they're drawing up
12 health care.

13 So there's studies to support that as well.

14 If you'd like, I can send those studies to
15 you.

16 SENATOR GRISTANTI: I'm just curious if there
17 are any that you know of that are there in
18 New York State, as a whole, because I think that Pat
19 and yourself hit it on the head.

20 You know, you have the U.S. Justice
21 Department behind you. You have regulations that,
22 you know, back in the '60s, with the history
23 lesson you talked about, but are no longer needed.

24 But if you have something that shows, you
25 know, roughly, what the potential health-care

1 costs --

2 WILLIE UNDERWOOD, M.D.: That's for
3 New York State?

4 SENATOR GRISTANTI: Yeah?

5 WILLIE UNDERWOOD, M.D.: We can look for
6 that.

7 I know Georgia did a big study.

8 SENATOR GRISTANTI: If you can get that to
9 us, and then if it's something that, you know, we
10 can add to it, to say, Hey, this is why this is not
11 the right way to go.

12 WILLIE UNDERWOOD, M.D.: Exactly.

13 Great.

14 Thank you very much for your time.

15 SENATOR GALLIVAN: Thanks a lot, Doctor.

16 SENATOR GALLIVAN: And last, but not least,
17 thanks for hanging in there, Marlene Kraft, from
18 Palladian; vice president of quality and marketing
19 Services, Palladian Health.

20 And, again, if -- being last is in a tough
21 position, I know. It's usually between people and
22 dinner, but, we are more than happy to follow up if
23 you're not able to get everything in.

24 MARLENE KRAFT: No, I'll try to be very, very
25 quick.

1 SENATOR GALLIVAN: You know we are, right
2 across the street.

3 MARLENE KRAFT: Exactly, you are. I see your
4 sign regularly.

5 Thank you for having us here this afternoon.

6 I'm here, Marlene Kraft, with
7 Dr. John Gillespie. He's the chief medical officer
8 at Palladian.

9 And Palladian administers managed-care
10 services for musculoskeletal conditions
11 specifically, on behalf of health plans in
12 New York State, as well as out of New York State, so
13 we have a perfect vantage point to see what
14 New York State requires, what other states require,
15 and, since earlier in the twenty-first century, what
16 the federal government requires.

17 And that's where we see a lot of opportunity,
18 let's say, for improving, because New York has had
19 utilization review regulations in place for a long
20 time.

21 And many states have taken the opportunity
22 to, let's not use the word "plagiarize" those
23 New York State regulations, but they have taken many
24 of them to heart, not only at other states, but also
25 in accrediting agencies.

1 Companies have duplicative reviews, because
2 the state looks at our documentation, the health
3 plans who delegate services to us review our
4 documentation, and, then, so do accrediting agencies
5 if we so choose to proceed with that process.

6 Article 49, specifically, both -- which is
7 duplicated in insurance regulation and in public
8 health law, contains a lot of those provisions, and
9 those are the ones that I would really want to
10 address.

11 4901, I believe it is, requires the every
12 two-year biennial registration to become a UR agent.

13 New York State can't even comply with the
14 review of those every two-year submissions because
15 they don't have the staff and the time to do so;
16 and, yet, we are consistently updating our
17 information and having a status of in-progress,
18 because the work is just overwhelming for everyone.

19 While other states, for example, is --
20 recognize URAC accreditation, and, if an agency is
21 URAC-accredited, they accept that for the
22 UR certification, rather than go through all of the
23 work.

24 But, in addition, Article 49 requires work
25 that is an additional business expense for the

1 people performing the review, whether it be a
2 UR agent such, as Palladian, or sometimes health
3 plans.

4 And that would reference -- I would reference
5 Article 4903, that requires both verbal and written
6 communications to members and providers.

7 And then, 4904, which also requires written
8 and verbal, but adds a monkey wrench into the
9 legislation, because it says it can be satisfied by
10 notifying the provider.

11 Unfortunately, doing business in
12 New York State across all areas, we are allowed to
13 see the effect, that that interpretation of that
14 regulation is also different, whether you go from
15 Western New York or from downstate.

16 So I think that Article 49 is an opportunity
17 to look at, and perhaps streamline specifically,
18 since the Patient Protection and Affordable Care Act
19 covers provisions that intersect what New York State
20 currently has in place.

21 And, in addition, Department of Labor
22 regulations that were put into effect way back in
23 2003, also intersect New York State, and make the
24 administrative implementation much more challenging
25 for health plans and UR agents.

1 DR. JOHN GILLESPIE: [Inaudible] one of the
2 issues with that, is that if you've asked for
3 something and it's approved, we're presenting them,
4 both, written, and to also tying up their phones.
5 And they don't want their phones tied up with us
6 telling them that it's there.

7 And in addition, if we have to tell a patient
8 that they've had something approved, they think
9 we're stupid, because their physician ordered it,
10 they're supposed to get it, and now we're calling
11 them and telling them, Gee, we hope you have a good
12 time getting it.

13 And it -- for denial, I understand why a
14 patient should know that, but for something that's
15 been approved, once the office knows it, which is
16 going to coordinate that care, it is just -- you
17 know, patients get a letter and they say, This is a
18 waste of money.

19 That other -- all patients know this has had
20 to be paid for, and that there's a certain cost for
21 a letter going out, and they're thinking that just
22 adds to their health care. And they're thinking,
23 Well, I was set to have this anyways.

24 And now it's the insurance agent, they're not
25 real happy with them anyways.

1 And they're -- so it's just duplicative, and
2 it's a waste of money.

3 SENATOR GRISTANTI: Marlene, you're talking
4 [inaudible] -- actually, in the public-health law,
5 that this --

6 MARLENE KRAFT: There's insurance law,
7 Article [inaudible], which are identical.

8 SENATOR GRISTANTI: Well, insurance -- under
9 insurance law and public-health law?

10 MARLENE KRAFT: Correct.

11 SENATOR GRISTANTI: Okay, thank you.

12 MARLENE KRAFT: One other item that we had on
13 our list, and I can send you the more detailed
14 information on it, Article 9 in public-health law
15 addresses some definitions of primary-care
16 practitioners and primary-care physicians.

17 And it appears that those definitions are not
18 complete, based on some of the expansion of service
19 providers, for one thing;

20 And, secondly, I think there seems to be an
21 interpretation that allows some of the providers
22 represented within our networks to be misclassified
23 as specialists.

24 For example, chiropractors and physical
25 therapists and occupational therapists tend to be

1 categorized by the insurance world as "specialists,"
2 and are, therefore, subject to a specialist co-pay.

3 I know there have been other pieces of
4 legislation that have, you know, made it to your
5 desks, potentially, and never made it to the floor
6 for discussion, but because they're classified as
7 specialists, sometimes they don't really get a fee
8 from the insurance company, suggesting that they're
9 really is no creditable coverage for that service.

10 If the fee is \$30, and the co-pay is \$50,
11 well, let's face it, there is no insurance coverage
12 that is subject to this situation.

13 The other pieces, and I don't have the
14 legislation for this, but I can certainly include it
15 in my follow-up documentation, there is a provision,
16 and we've been told this by health plans, that
17 practitioners who perform the same services should
18 be considered equivalent for those services.

19 And while I understand and accept the fact
20 that doctors of osteopathy are not equivalent to
21 chiropractors, they both can bill for spinal
22 manipulation, because doctors of osteopathy were
23 originally servicing that particular type of care
24 for patients; and, yet they would be subject to the
25 primary-care co-pay, while the chiropractor who's

1 performing the same service, in some cases, is
2 subject to the specialty co-pay.

3 DR. JOHN GILLESPIE: In point of continuity
4 of care, when you think of chiro, PT, occupational,
5 and dietary, these are all primary things to try and
6 take care of things in a preventive standpoint.

7 And when you -- they fall into a specialist
8 co-pay, they're being -- they're being, basically,
9 closed out, effectively, or an insurer can close
10 them out, effectively, and you're -- you're then
11 left, where it's almost easier to go to a
12 specialist, which is not a good solution, as a rule.

13 MARLENE KRAFT: It's not member-friendly
14 either, because, when a member does need
15 chiropractic care or physical therapy, they
16 typically see that health-care professional twice a
17 week, maybe even once a week, but for a prolonged
18 period of time; maybe it's four weeks, maybe it's
19 six weeks, because they're trying to rehab.

20 And that means that they -- the member is
21 paying a co-pay for each one of those visits.

22 So, potentially, even if there is some
23 coverage for it, they are paying a much more
24 escalated cost than they would seeing a specialist
25 sometimes.

1 DR. JOHN GILLESPIE: Although it isn't on our
2 docket, I just want to put our two cents in on these
3 ICD-9s, that I know that they're not yours, but, the
4 ICD-9s, when they go to 68,000 diagnoses, I'm a
5 cardiologist, and I usually work with 20.

6 So that means I have 67,980 to learn.

7 [Laughter.]

8 DR. JOHN GILLESPIE: The issue for it,
9 I think, is people want to correctly identify, very
10 exactly, what you have.

11 So instead of just having hypertension,
12 they'd like to know if it was caused by renal artery
13 stenosis on the left side, maybe in the upper third
14 of the kidney.

15 There are reasons, possibly, for doing that,
16 but you should remember that, for all hypertensives
17 in the country, only 50 percent are treated
18 effectively.

19 And one would wonder if it would be better to
20 have something based on outcomes, such as the number
21 of patients who have hypertension that are treated
22 effectively.

23 If we raised the 50 percent to the
24 95 percent, we could then worry about the 1 percent
25 that are odd hypertensives that this classification

1 may more correctly identify.

2 And people only have so much time in their
3 offices.

4 And I think that, with the technology,
5 there's a push for information that may not
6 effectively help people.

7 And I'm not saying that is totally bad, but
8 I don't think people have enough total time.

9 And I think it would be better served, in
10 viewing things, do they change outcomes?

11 And it's not clear to me that this is going
12 to change the outcome, because we're -- we've known
13 for a while we don't treat enough people; and, yet,
14 that isn't an evaluation.

15 I think if physicians knew that they would
16 have to self-report on their hypertensives, as some
17 of the boards are now asking people to do, that that
18 might be a much more effective way to improve care.

19 Two cents.

20 Thank you.

21 SENATOR GRISTANTI: Thank you, Doctor.

22 SENATOR GALLIVAN: Thank you.

23 DR. JOHN GILLESPIE: Have a nice day.

24 Thanks.

25 SENATOR GALLIVAN: Thanks to those of you who

1 have hung in here, our presenters. We appreciate
2 your preparation in what you've presented.

3 We will follow up with a questionnaire, and
4 we look forward to following up.

5 And, Lisa, thanks to Roswell, and Dr. Trump,
6 for hosting.

7 We do anticipate a report sometime in
8 November. Likely mid-to late November.

9 Thank you everybody.

10 (Whereupon, at approximately 2:08 p.m.,
11 the public forum held before the New York State
12 Senate Majority Coalition concluded, and
13 adjourned.)

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1 BEFORE THE NEW YORK STATE SENATE MAJORITY COALITION

2
3 PUBLIC FORUM/TOWN HALL

4 AGRICULTURE REGULATORY REFORM - TO LEARN FROM
5 BUSINESSES AND INDUSTRY EXPERTS WHICH REGULATIONS ARE
6 THE LEAST USEFUL, LEAST COST EFFECTIVE AND THEREFORE
7 SHOULD BE ELIMINATED

8 Dulles State Office Building
9 317 Washington Street
10 Conference Room 3, 11th Floor
11 Watertown, NY 13601

12 September 19, 2013
13 1:00 p.m. to 3:30 p.m.

14 SPONSORS PRESIDING:

15 Senator Patrick M. Gallivan
16 Deputy Conference Leader for Economic Development

17 Senator Kathleen A. Marchione
18 Chair of the Administrative Regulations Review
19 Commission

20 Senator David J. Valesky
21 Chair of the Senate Committee on Commerce,
22 Economic Development, and Small Business

23 CO-SPONSOR PRESIDING:

24 Senator Patricia Ritchie
25

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4	Also, member of		
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1 SENATOR RITCHIE: I'd like to thank everyone
2 for coming today.

3 I certainly want to thank my colleagues,
4 Senator Gallivan, who sits on the Senate Agriculture
5 Committee; Senator Valesky, who also sits on the
6 Agriculture Committee; and my colleague
7 Senator Marchione, who has been a strong advocate
8 for the agricultural industry, and represents rural
9 communities also.

10 We're here today because I reached out to my
11 colleagues in the Senate, to ask them to come up and
12 talk about regulatory reform as it deals with
13 agriculture.

14 And I know from many who are here today, I've
15 heard firsthand from you, all the rules and
16 regulations that you have to deal with.

17 And I believe this is a perfect opportunity
18 for my colleagues to hear directly from you, and for
19 us to go back to Albany and try to deal with it.

20 This industry is a \$5-billion industry that
21 supports the state's economy.

22 And I think, for many, we actually see
23 farming and agriculture as the ultimate small
24 business.

25 Just on the state level, there's so many

1 agencies that those in the room have to deal with.

2 And just to name a few:

3 The Department of Health, the Department of
4 Labor, DEC, Tax and Finance, DOT, Ag and Markets,
5 and the State Liquor Authority.

6 And I think today is the perfect opportunity
7 for us to hear directly from you about some of the
8 issues that you're dealing with.

9 And I know, for me, right after I was
10 elected, I met with some local farmers who told me
11 one of the first issues was a blue-card problem.

12 And I know Senator Marchione is familiar
13 because, as a former county clerk, a farmer has to
14 fill it out.

15 And as the years went on, they limited the
16 miles that you could travel with the farm plates to
17 twenty-five, but never got rid of the onerous
18 blue card, that you have to list all the routes and
19 the distances for each vehicle.

20 So, for me, I got a little frustrated that,
21 my colleagues here, we passed it three years in a
22 row to the Senate, and it never made it to the floor
23 in the Assembly.

24 So, I for one would like to thank the three
25 of them for making the big trip up here today, to

1 hear directly from those who work in the agriculture
2 industry, and certainly appreciate their big trips
3 up.

4 Thank you.

5 SENATOR GALLIVAN: Thanks, Senator.

6 And thank you, everybody, for being here
7 today.

8 You may or may not have seen this in the
9 news, but a recent report from the United States
10 Chamber of Commerce, called the "Enterprising States
11 Report," identified New York State as having the
12 worst business climate in the nation: 50th out of
13 50 states.

14 It's no secret what led to this distinction.

15 I mean, we know that taxes are high, among
16 the highest taxed, among the highest in the country,
17 of course, but just as burdensome is that other half
18 of it, that so-called "death by a thousand cuts,"
19 that regulatory environment.

20 We look at hundreds and thousands.

21 There are over 140,000 pages of regulations
22 in New York State, when you add them all together --
23 together.

24 Many are outdated, many are duplicative.

25 They raise the cost of doing business.

1 They siphon away resources.

2 They keep people from wanting to grow their
3 business in New York State, from wanting to move in
4 the state.

5 And, of course, they cost to combine jobs,
6 and lead our kids to try to go to so-called
7 "greener pastures."

8 So, we came together in a bipartisan manner
9 in the Senate, with a goal of looking at this entire
10 regulatory environment in an industry-specific
11 manner:

12 Agriculture, New York's number one industry,
13 is one of them; manufacturing, health, insurance,
14 financial services, and so on, to try to actually
15 drill down and identify those that are the most
16 costly, the most ridiculous, the most outdated, the
17 ones that make no sense, with a goal -- a beginning
18 goal, of eliminating at least 1,000 of these
19 regulations.

20 Now, we don't want to eliminate just 1,000,
21 but, we've identified that as a start.

22 We can only do that, though, with your help,
23 I mean, when it relates to agriculture, and those
24 that live in those other worlds, manufacturing,
25 financial services, and so on.

1 So, we are actually conducting a series of
2 ten of these across the state.

3 And with Senator Ritchie as Chair of
4 Agriculture, she had asked us to come on up here,
5 and thought this would be a very good place for us
6 to deal with an agriculture-related hearing.

7 So that's what we're going to do today.

8 And we have, I think, a great range of the
9 industry represented in our presenters today.

10 And, we're going to ask when, just
11 logistic-wise, that people come up, we'll try to
12 stick with the times; we'll try to stay on time, out
13 of respect for everyone's time, and how far some
14 people traveled.

15 And then, of course, we hope that everybody
16 becomes available for follow-up as we're looking to
17 put this together.

18 But, we really do appreciate the fact that
19 you're willing to be here today.

20 And you should know that this is really an
21 earnest effort to try to do something about this,
22 and not just deal with those great big things that
23 we hear all the time, but those things, like the
24 blue card, that have become outdated, and some other
25 things that we would otherwise never know about

1 without your input.

2 So we appreciate you being here, and I look
3 forward to hearing everybody's testimony.

4 SENATOR VALESKY: Thank you,
5 Senator Gallivan, Senator Ritchie.

6 It's always nice to be back in your
7 Senate District where it's always warm and sunny
8 365 days a year.

9 Right?

10 We wish.

11 Just to add a couple of other housekeeping
12 items to what Senator Gallivan has already talked
13 about:

14 Those of you who are testifying, we have you
15 in about 10-minute increments.

16 Don't feel that you have to read your
17 testimony.

18 If you'd like to summarize it, that's fine as
19 well.

20 And we may or may not have some follow-up
21 questions after that.

22 The other thing is, if you did bring enough
23 copies for all of us, if you could share those with
24 us.

25 If you don't have multiple copies, we can

1 maybe, through Todd, as the afternoon goes on, make
2 sure that we make copies for all the panelists.

3 So, we're very much looking forward to
4 hearing all of your input here this afternoon.

5 SENATOR MARCHIONE: It's an honor for me to
6 be here with all of you.

7 Regulation reform has been a very important
8 part of why I became a senator.

9 I feel that there are way too many
10 regulations, that unfunded mandates are killing our
11 small governments, and the taxpayers are paying much
12 higher prices, and businesses are hurting.

13 This is a very important hearing.

14 As Senator Ritchie said, I come from a rural
15 district as well.

16 And we really want to hear:

17 What's hurting you?

18 How can we help you?

19 I live in the town of Half Moon in
20 Saratoga County.

21 The regulations, right now, if they were laid
22 end to end, extend more than 12 miles.

23 And, we really need to do better.

24 We are not here to point fingers at anyone.

25 This is a bipartisan effort.

1 We're here to listen to you for one ultimate
2 goal, and that is, just to find solutions, real
3 solutions, to this problem.

4 So, I'm looking very forward to hearing your
5 testimony today.

6 SENATOR GALLIVAN: Our first presenter is
7 Mark Akins, who is a member of the St. Lawrence
8 County Legislature, and a member of
9 Senator Ritchie's Agricultural Advisory Council.

10 Thanks for being here, Mark.

11 MARK AKINS: Thank you.

12 SENATOR GALLIVAN: And when you're ready.

13 MARK AKINS: Thank you, guys, for putting in
14 your time and energy to be here today.

15 You know, this is an incredible opportunity
16 for us, as a local community, to come forward with
17 the knowledge base that you guys have and bring
18 forth to the table.

19 So let me start today by discussing my
20 background with agriculture and county government.

21 I operate a farm, a family farm, of
22 350 Holstein cows and 50 cow-calf Black Angus herd,
23 and we finish about 200 feeders a year for local
24 market.

25 I am a sixth-generation member of our family

1 farm.

2 And my kids are a senior at Cornell and a
3 sophomore at Cortland.

4 So, it's very exciting to be involved with
5 family every day, and that's what really drives our
6 communities.

7 We fall into a medium-sized "CAFO"; you know,
8 concentrated animal-feeding operation, and we're on
9 the small side of a medium, so we're constantly
10 getting crunched by the regulations everyone must
11 live under, but we're always on that short end of
12 the cash-flow stick.

13 So, this mandate is far and above the most
14 costly requirement from New York State for
15 agriculture.

16 It requires us to record detailed records of
17 all nutrients coming into the farm, and, to be used
18 for the farm for growing crops; in other words, all
19 the manure from our animals and fertilizer for our
20 field crops for production purposes.

21 Overall, this is an excellent program.

22 You can't say enough good things about the
23 environmental standards we've gained in the last
24 10 years that this program has interfered with.

25 And what we have discovered, is that the

1 monies that we have invested in these required crop
2 planners have paid us back many times over by
3 lowering fertilizer inputs and/or increasing the
4 yields of field crops.

5 So, overall, that program is great.

6 The limitations of the CAFO is where the
7 water and leachate containment systems operate.

8 These rules mandate accurate recordkeeping of
9 daily temperatures, precipitations, amounts of
10 manure in storage, with calibration tools.

11 Technology has far outpaced what these
12 requirements are.

13 There's many things today in the market, just
14 like weather.com, they're much more accurate than my
15 personal records or any other farmer's records, and,
16 they're at the touch of a button.

17 So why aren't we able to use that type of
18 technology, rather than recording paper after paper
19 every day throughout the course of the year?

20 Those are very simple things to be able to
21 accomplish.

22 The less air -- oh, I'm sorry.

23 I could spend hours on details of the CAFO
24 permits that technology can exist, and I don't think
25 we have that much time today, but we want to start

1 the track, where we can use technology more than
2 physical inputs.

3 And I'll leave it at that.

4 If you have more questions, I'll be happy to
5 follow up with lots of answers.

6 Okay?

7 The better -- the final thing of the medium
8 CAFOs, if we want a more balanced output, we have to
9 get more balanced people making the rules.

10 Civil engineers and environmental engineers
11 sometimes don't get the best product and the most
12 realistic product today on the operating farm.

13 Today's farms are very technology-advanced,
14 and, they have a very unique atmosphere because
15 everything goes wrong on a farm every day.

16 So, sometimes it's not a perfect environment
17 and you have to learn how to adapt; and who better
18 to adapt than people that are familiar with the
19 rules of what they're trying to accomplish.

20 But don't get me wrong, we have made great
21 strides in the 10 years that these programs are
22 involved, so let's be patient and see how much more
23 we can gain.

24 We don't have to reinvent the wheel here; we
25 just tweak it here and there, because, overall this

1 is a great program.

2 I don't believe that these CAFO requirements
3 impede business expansions.

4 It may require that we operate more with
5 environmental concerns, but I truly believe that
6 most farms have the environment in their best
7 interests.

8 With us personally, our two major concerns
9 are operating margins and obtaining a stable
10 workforce.

11 It may not be a mandate, but a nonaction is
12 the same thing as overaction.

13 The lack of an immigration bill continues to
14 force agricultural employers to a dangerous cliff.

15 We cannot continue to ignore thousands of
16 agricultural employees in New York State currently
17 doing an outstanding job with little to no
18 recognition or relief.

19 We need to act sooner, rather than later.

20 Secondly, I'm currently a member of the
21 St. Lawrence County Board of Legislators.

22 This is where I see the place to start
23 cleaning up our real act, and where real progress
24 can come on board.

25 We have layers upon layers of bureaucrats.

1 This surplus adds costs, fees, and
2 establishes roadblocks to every project that crosses
3 our desks.

4 The most frustrating and potentially
5 detrimental aspect to a project's success is cash
6 flow.

7 Any monies received by an organization must
8 be fronted, spent, and invoiced before hoping for
9 funding.

10 The nature of a project, is that there are
11 always delays, twists, and turns along the way.

12 Projects should have potential funding
13 mechanisms to reserve partial funding along the way
14 after reaching clearly defined milestones that are
15 established before prior start dates.

16 We had a project approved March 5, 2013.

17 A contract from New York State usually takes
18 about two months for signatures and start dates.

19 We are currently being told that we may not
20 see this contract before the first of the year.

21 Round 18 funding, last year's funding,
22 producers submitted vouchers last January 22nd, and
23 payment wasn't made until after July 18th.

24 In reality, this means that producers had to
25 pay for a project seven months before promised

1 reimbursements were made.

2 These projects run in the hundreds of
3 thousands of dollars, and these projects are not
4 usually for the producer's benefit, rather, for the
5 betterment of the society and environment.

6 I understand checks and balances are needed
7 with public monies.

8 My one recommendation, would be to place
9 responsibilities with people that have boots on the
10 ground: experiences, knowledge of the projects, and
11 the ability to approve funding in a timely fashion.

12 In order to be truly transformational, we
13 need to empower our current employees and remove
14 layers of processing.

15 Thank you again.

16 I hope I've piqued some interest in your
17 minds, but this is a huge process.

18 And if it was simple, it would have been done
19 years ago.

20 But each problem has started and evolved, and
21 it has to be changed over a long deal of time.

22 Okay?

23 Thank you.

24 And do you have any questions?

25

1 SENATOR VALESKY: Thank you very much for
2 your time.

3 SENATOR RITCHIE: Thank you, Mark.

4 SENATOR MARCHIONE: If you were to pick one
5 regulation that's the most difficult for you, that
6 you would like to see removed, which would it be?

7 MARK AKINS: One regulation, are you speaking
8 from the farm standpoint?

9 SENATOR MARCHIONE: I am, absolutely.
10 Yes.

11 MARK AKINS: Okay.

12 To allow us to use technology.

13 SENATOR MARCHIONE: Okay.

14 MARK AKINS: And let me go a step farther.

15 If you compare my father's generation to my
16 generation, to my son's generation, okay, it's very
17 unique, because, my father just shakes his head at
18 me, and I don't understand what my son's talking
19 about.

20 [Laughter.]

21 MARK AKINS: So, this is an evolvement.

22 This technology that we should be able to use
23 is going to be outdated probably as soon as it's
24 implemented, according to the next generation.

25 We can't keep up with the newest cell phone,

1 much less the GPS standards and the reporting
2 standards.

3 So that's the challenge.

4 And I don't know if there's an easy answer to
5 it, but technology makes everybody's life, from
6 reporting, to accurate recordkeeping of the past,
7 much more available.

8 SENATOR MARCHIONE: Thank you.

9 MARK AKINS: Thanks.

10 SENATOR GALLIVAN: Mark, I had wanted to ask
11 you about the technology that you had commented on
12 earlier, and not for right now, but are you able to
13 provide us something more specific; the more
14 specific examples where technology could be used?

15 MARK AKINS: I'll be happy to.

16 Would you like a list?

17 SENATOR GALLIVAN: That would be wonderful --

18 MARK AKINS: Okay.

19 SENATOR GALLIVAN: -- if we're able to follow
20 up with you and get those.

21 MARK AKINS: Absolutely.

22 SENATOR GALLIVAN: Those are exactly the
23 types of things that we're looking for, among
24 others.

25 MARK AKINS: Okay.

1 SENATOR GALLIVAN: The other question has to
2 do with the CAFO rules, in general, and the DEC
3 regulation, I don't know if it was a regulation or
4 the Governor executive order, raising the limit from
5 the -- the under 200, to under 300.

6 MARK AKINS: Yes.

7 SENATOR GALLIVAN: In your view, has that had
8 a positive impact, or will that have a positive
9 impact?

10 Or is that an appropriate number?

11 MARK AKINS: I think the appropriate thing,
12 to me, certain pockets of land can sustain much more
13 viable agriculture than other pockets.

14 So, an arbitrary number, whether it be 200 or
15 whether it be 300, there's plenty of 100-cow farms
16 that don't do justice to the environment, just as
17 well as there's plenty of 2,000-cow farms that do a
18 phenomenal job with the environment.

19 So, I have a hard time whenever you say,
20 there's's a -- but you have to pick a number
21 somewhere; and whether that number is 200 or 300,
22 okay, but let's live with the number, and go
23 forward.

24 I don't know if the number's as important as
25 the ability to evolve into a better system.

1 Because, if you think about soap and acids
2 that go into the environment, chances are, a 100-cow
3 dairy has the exact same wash cycles after milking
4 than what a 500-cow dairy does.

5 And, the soaps and acids are probably one of
6 the biggest pollutants.

7 So, you know, is the number right or wrong?

8 I don't know.

9 I hope that it is.

10 I hope there's people much more knowledgeable
11 out there making that decision than myself, but
12 I think we just have to live with the number, and
13 really be consistent, from farm to farm, and error
14 to error.

15 We're making progress.

16 Whether that's a 200-cow farm, they live
17 under the same -- my understanding of the rules,
18 they live under the same implications if they have
19 an environmental catastrophe as what a 2,000-cow
20 farm does.

21 So just because they may not be a
22 medium-sized farm, they still have to use best
23 operation practices.

24 And, they still over -- they don't have to do
25 the reporting systems, but they still have to

1 operate the same way.

2 They have to be practical with what they're
3 trying to do.

4 So I don't believe the numbers is as big a
5 deal as the actual environmental impact of where
6 they're operating.

7 SENATOR GALLIVAN: Okay.

8 MARK AKINS: Does that answer your question?
9 Probably not.

10 SENATOR GALLIVAN: It lends some insight.

11 I was really just more curious, I mean, about
12 what your thoughts were about that change, in
13 general.

14 MARK AKINS: Do I see it increasing the milk
15 production in the New York State?

16 No.

17 Do I see it as a goodwill effort to try to
18 relieve something?

19 Yeah, but I don't see it as really being
20 solving any issues.

21 SENATOR GALLIVAN: And when we get back to
22 technology, and using technology, that can be
23 helpful?

24 MARK AKINS: If you think of technology,
25 like, the way the planters are set up today, with

1 variable-rate populations, variable-rate fertilizer
2 attachments, variable-rate sprays, those things have
3 much more impact than what that number does, from
4 200, to 300.

5 So let's make -- if we put as much effort
6 towards putting new technology in place, that would
7 have a bigger impact on yield than just changing an
8 arbitrary number, in my opinion.

9 SENATOR GALLIVAN: Excellent.

10 That answers the question.

11 MARK AKINS: Okay.

12 SENATOR GALLIVAN: I may not have asked it
13 very directly, but --

14 [Laughter.]

15 SENATOR GALLIVAN: That was good.

16 Thanks, Mark.

17 MARK AKINS: Okay.

18 Thank you.

19 SENATOR RITCHIE: Thank you.

20 MARK AKINS: Thanks again.

21 SENATOR GALLIVAN: Our next presenter is
22 Eric Behling.

23 Did I pronounce that right?

24 ERIC BEHLING: Behling.

25 SENATOR GALLIVAN: Behling?

1 Okay, I think I was there.

2 He is with the-- is a board member of the
3 Oswego County Farm Bureau, and also a member of
4 Senator Ritchie's Ag Advisory Council.

5 Thanks for being here.

6 And when you're ready.

7 ERIC BEHLING: And I appreciate the
8 opportunity to be here.

9 I would have brought some honey crisp, but
10 the paperwork involved in getting them here and
11 through the front door and getting it to you was so
12 onerous and time-consuming that I had to forget that
13 part of it.

14 [Laughter.]

15 SENATOR GALLIVAN: Maybe next time.

16 ERIC BEHLING: Come on down.

17 Good afternoon, and thank you for inviting me
18 to this public forum.

19 My name is Eric Behling.

20 I serve on the board of directors for the
21 Oswego County Farm Bureau, which represents a robust
22 farm industry with over 100,000 acres in
23 agricultural production and over 39 million in farm
24 products sold from Oswego County, farms like mine.

25 My brother, my mother, and I co-own

1 Behling Orchards, a you-pick and agritourism farm
2 operation that has grown from the 6-acre farm my
3 grandfather started in the 1960s.

4 Agricultural has fundamentally changed from
5 my grandfather's generation.

6 Believe me, it has.

7 Experience has taught me that family farms
8 like mine must be agile and adapt to my generation's
9 new realities: volatility in the global marketplace,
10 increasingly extreme weather events, and a
11 relentless regulatory burden from government.

12 And the last one, I can say double on that
13 one too.

14 Our farm is not alone in that perspective.

15 Farms of all sizes and commodities identify
16 the myriad of regulatory stresses from the federal
17 and state level as the number one obstacle to
18 business growth, profitability, and in some cases,
19 business survival.

20 Government mandates have become a tangible
21 barrier to our farm families being able to pass
22 their business on to future generations as they
23 compete with foreign competitors who do not have to
24 tolerate such rigorous and expensive regulations.

25 No one wants lesser-quality food from

1 questionable sources, like China, but with the
2 diminishing number of farms in New York State due to
3 a hostile regulatory climate, who will be left
4 standing to fill in the food gap?

5 If food security, public health, and
6 accessibility to local, nutritious, high-quality
7 foods are state priorities, then something must be
8 done to rein in unreasonable regulations that demand
9 extremely high compliance.

10 Costs are consistently nickel, dime -- or as
11 it was mentioned earlier, "of a thousand cuts" --
12 family farms with little environmental, public
13 health, or any other beneficial gain.

14 Regulatory relief needs to eliminate
15 requirements and fees that are redundant.

16 Dual pesticide registration by the
17 U.S. Environmental Protection Agency and the
18 New York State Department Environmental Conservation
19 is a very clear example of state government
20 performing a duplicate function that offers no
21 additional environmental benefit, and prevents our
22 growers from taking advantage of newer, better, and
23 safer productive products that our neighboring
24 states have been or are already using.

25 Because of this duplicity, New York is known

1 for having the slowest pesticide-product
2 registration process in the nation.

3 New York Farm Bureau supports A531/S155
4 sponsored by Assemblyman-- Assemblywoman, excuse me,
5 Aileen Gunther and Senator Pat Gallivan, for their
6 bill that would eliminate the need for DEC to review
7 and approve these pesticide products that have
8 already been approved by EPA before farmers could
9 use them here in New York.

10 In addition to redundant regulation is the
11 New York State Department of Motor Vehicles.

12 Oh, this is my favorite subject here.

13 Listen up.

14 Requirement to include the blue
15 Certified Farm Vehicle Use form with the farm
16 vehicle's registration, state law limits farm-plated
17 vehicles that travel within a 25-mile radius from
18 the farm address that the vehicle is registered to.

19 Currently, the farmer must also designate any
20 travel routes within that 25-mile radius on a
21 blue card that is kept both in the farm vehicle and
22 filed with the New York State Department of
23 Motor Vehicles.

24 Each time a farmer finds it necessary to
25 travel to a different destination, or uses a

1 different route, he has to make changes to that
2 blue card and reflect that change, and be
3 resubmitted to the New York DMV.

4 And I could go on with that, but I think you
5 already get the gist of that.

6 It just -- Patty and Bill have been working
7 on this, obviously, and they've got legislation in.

8 And as she said earlier, she hasn't been able
9 to get it through the Assembly.

10 The high costs associated with state
11 regulations and the associated fees and tax
12 compliances makes it extremely difficult to maximize
13 our competitive advantage of being close to
14 New York City and its large nexus of consumers.

15 For example, the large majority of New York
16 farms utilize an LLC, C-corp, or S-corp business
17 structure as part of their transition plan to the
18 next generation of family operators.

19 In the eyes of the farm community, LLC is a
20 necessary business tax required for incorporation.

21 It feeds into the state's general fund.

22 If we are to continue to have farms in
23 New York, we have to make it easier for farmers to
24 form LLCs, and, particular, statutorily restructure
25 existing public policy to assess the LLC fee-based

1 on net farm income, as opposed to the current
2 protocol of using gross farm income.

3 LLCs are now assessed a fee based on gross
4 income, not net, and in farming, that difference is
5 vast.

6 Just ask me.

7 A farm can easily gross over a
8 million dollars, especially in today's climate, and
9 the size of our farms, but earn less than several
10 thousands in profit, depending upon how expensive
11 input costs, or, that particular year, how badly
12 yields, weather.

13 Either a flat fee for farm corporations, or,
14 LLCs, C corp or S corp, needs to be established, or
15 a mechanism put into place, that allows farms to
16 provide a Schedule F, a federal tax-income form, for
17 farmers to establish net income and pay the fee on
18 this verified net income amount.

19 Additionally, submission of the LLC
20 application with the associated fee is due by
21 January 31st.

22 It would be easier for farmers to file this
23 form and associated fee on March 1st, not
24 January 31st, with the farmer's tax return, as
25 opposed to submitting them on a separate deadline.

1 Similarity [sic], the publishing requirements
2 for the public notice of the formation of an LLC
3 seem, in this day and age, to be antiquated.

4 These may seem to be trivial changes, but it
5 is important to recognize that pragmatic minor
6 public-policy changes, such as these, are very
7 meaningful, given the wide range of regulatory
8 compliance a family farm must contend with.

9 These and other practical changes included in
10 the Farmers Regulatory Relief Act, sponsored by
11 Senator Ritchie and Assemblyman Magee, would bring
12 meaningful change to daily operations and business
13 costs for our farm and other family farms.

14 There are some regulations that can bolster
15 the farm communities, such as the pending DEC
16 regulations for maple tapping on state lands,
17 similar to the state of Vermont.

18 This type of proactive commonsense regulation
19 that brings parity to the marketplace is what family
20 farms, like mine, need to see more of, not less.

21 Without question, regulatory requirements
22 raise my cost of production that other competitors
23 do not have to deal with.

24 For example, fresh apple cider is a very
25 popular product with the visitors that come to my

1 farm.

2 I make fresh cider from the apples on my
3 farm, and, in compliance with New York's mandatory
4 cider-pasteurization law.

5 I use a UV light (ultraviolet) processing
6 machine to purify our cider before bottling and
7 selling it.

8 State law requires that the ultraviolet-light
9 processor be inspected every three years.

10 The cost for my reinspection this year has
11 tripled since the last time we had it inspected
12 three years ago.

13 The cost for this is -- is like forcing to
14 use the very rare people who do this kind of
15 service, and that are available to -- there's only
16 really one, and he's in Massachusetts to do this.

17 My only alternative is to close down the
18 cider business.

19 I am sure other commodity farms, like my own,
20 have similar examples.

21 As an apple grower, one of the game-changing
22 issues for me and my family are farm-labor mandates.

23 There has been a strong push in the Assembly
24 for factory-style labor mandates to be imposed on
25 family farms.

1 Proponents of legislation that would force
2 these mandates on family farms are based out of
3 New York City, and do not understand the realities
4 of providing nutritious food on people's tables.

5 Attempting to apply overtime and
6 collective-bargaining rules that exist for factories
7 are not appropriate or suitable for our state's
8 farms.

9 Simply put, harvesting crops doesn't fit in a
10 typical work-week schedule.

11 Rainy weather may keep farm employees out of
12 the fields for a couple of days.

13 And when the sun is out, ripe fruit can't
14 always wait for the next day's 8-hour shift to
15 begin.

16 Farms need flexibility that suits their
17 individual needs in order to get our local food to
18 local tables.

19 New York farmers are dependent on quality,
20 skilled agricultural labor, and go through great
21 lengths to ensure safe working, living, and wage
22 conditions for employees.

23 Farm-work agreements required by state law
24 above and beyond the Wage Theft Prevention Act lay
25 out the work to be performed, wages, workdays, and a

1 host of important arrangements.

2 If farm-labor advocates were serious about
3 helping farm employees, they would spend their
4 efforts in Washington advocating for immigration
5 reform, to bring migrant workers who are here in
6 this country with questionable documentation out of
7 the shadows where they can lead more open and
8 productive lives.

9 Family farms, like mine, are extremely
10 vulnerable to any increase in these farm-labor
11 expenses relative to other states.

12 New York farmers already spend substantially
13 more on labor than the national average, and
14 especially compared to most of the major farm states
15 which are some of New York's fiercest competitors
16 for our east-coast markets.

17 According to the U.S. Consensus data, for
18 every \$100 of production sold, New York farmers paid
19 \$13.82 to farm workers, compared to the U.S. average
20 of \$8.88.

21 Thank you, Senators Ritchie, Gallivan,
22 Valesky, and to your Senate colleagues, for keeping
23 these proposed labor mandates at bay.

24 Please continue to oppose such efforts on
25 behalf of your constituents, like me, and farm

1 families across the state.

2 In closing, thank you for the opportunity to
3 provide comments here today.

4 I look forward to working with you toward our
5 common goal of building a farm-friendly business
6 environment here in New York.

7 I would be happy to answer your questions at
8 this time.

9 SENATOR RITCHIE: Eric, just, you talked
10 about DMV.

11 And I know the blue card is something that
12 both Senator Marchione and I are, you know,
13 certainly aware of.

14 What else, when it comes to the DMV, can you
15 think of anything else that we need to look at?

16 ERIC BEHLING: Well, I'm glad you asked that.

17 Recently, I went in to switch over
18 agricultural plates to farm plates, because, we had
19 one vehicle that, no matter what we did, it was very
20 difficult, because of the age of the vehicle, to get
21 it to pass inspection, but, it still passed safety
22 inspection.

23 So, you can license it as a farm vehicle,
24 which was fine.

25 Okay, then we go through the rigmarole with

1 the blue tag, and all that, and the blue card, and
2 all that, which is a pain, like I just said.

3 But, I lost all I had on that registration
4 for the ag vehicle.

5 They said, You either use it or you lose it.

6 So, I'd either have to put it on another
7 vehicle, and this was, like -- I was only, like, a
8 month into the registration, so, I lost all the
9 money I put into that.

10 It was just, phewt, it was gone.

11 So that, in itself, I mean, it's just like
12 another fee, another fee.

13 And I know, Senator Marchione, you asked,
14 what thing in particular?

15 And I think the theme you can get from what
16 I'm saying here, it is, it's like a thousand cuts.

17 Every time I have -- my time at this time of
18 the year, and many other farmers, I mean, we're down
19 to minutes.

20 You know, minutes count.

21 And if I'm am sitting and doing more and more
22 and more paperwork, it's, like, I cannot get out,
23 and, things happen on the farm that I should have
24 been there for.

25 Or, you know, I should have -- I could have

1 used my time a heck of a lot more in taking care of
2 the farm.

3 SENATOR RITCHIE: He answered my question.

4 SENATOR GALLIVAN: Perfect.

5 Just one question, you may not be able to
6 answer, but the proposed, I think it's called the
7 "Farm Workers Rights Act," you talked about applying
8 the manufacturing rules to the labor force on farms.

9 Are you able to -- under what's currently
10 proposed, if you're familiar enough with it, are you
11 able to affix a percentage?

12 Like, how much additional percentage costs?

13 Or, how much in the way of additional labor
14 costs would that mean for you, if you know?

15 ERIC BEHLING: I think in trying to answer
16 your question, it's not necessarily how much --
17 yeah, it's relative to how much more it's going to
18 cost, but, as far as the time, and time is valuable
19 to a farmer.

20 If I'm forced to make those kind of
21 decisions, I will cut back.

22 I will not hire more people.

23 And, obviously, I will downscale before I get
24 into a position where I'm forced to make these type
25 of things, where I'm, more or less, guaranteeing

1 someone something I cannot guarantee, as far as,
2 days off, when -- especially if we have
3 weather-related incidences where we can't get the
4 crop picked.

5 I mean, the crop doesn't wait.

6 And I think that's true across the board on
7 any commodity: if it's gonna to sit there, we lose.

8 And I think this is very, very important:

9 You cannot have people possibly striking
10 during harvest, and that would be the time that they
11 would want to strike, because they would hit the
12 farmer at the worst time.

13 And, obviously, it doesn't work anywhere else
14 in the world.

15 I don't know why people think it's going to
16 work here in New York.

17 It's -- to have a crop not get picked, hours
18 turn into thousands and thousands of dollars.

19 Even a day late could result in \$100,000 for
20 us, particularly at our farm for picking apples.

21 You take the -- you know, we all know what
22 Macintosh is.

23 They're one of the worst apples to try to get
24 harvest, because the day they turn ripe is the day
25 they start dropping.

1 So if you don't get them off, you're not
2 going to get them picked, and, you're not going to
3 be able to pay anybody.

4 SENATOR GALLIVAN: Okay.

5 Thank you.

6 ERIC BEHLING: Thank you.

7 SENATOR GALLIVAN: Jay Matterson,
8 Jefferson County Agriculture Coordinator, and the
9 ag economic developer for Jefferson County IDA.

10 Jay, thanks for being here.

11 When you're ready.

12 JAY MATTERSON: Senators, thank you very much
13 for coming to Jefferson County, the land of milk,
14 honey, and wine.

15 If you'd like to try some of the world's best
16 naturally aged cheddar cheese, you've come to the
17 right county.

18 And I do brag very highly about our county
19 because we have a great agricultural industry.

20 I want to applaud your efforts, and the
21 efforts of your colleagues who are here today to
22 listen to the ag industry.

23 We in agriculture appreciate your partnership
24 in maintaining a strong and healthy ag industry.

25 This partnership is not just about providing

1 safe, healthy food for our dinner table.

2 That's the thing we'll hear commonly, is if
3 our farms go away, where's your food going to come
4 from?

5 There will be people that will provide the
6 food for New York City.

7 It will probably come from a third-world
8 country, or someplace else, that doesn't have the
9 safety-and-health standards that we do.

10 The food will come from someplace.

11 The question is, do you want to eat it?

12 More importantly than that for
13 New York State, is the fact that agriculture helps
14 maintain our rural economies.

15 It is about providing good, solid jobs for
16 our people.

17 Agriculture is about taking the sun, the
18 soil, and the water, and converting those natural
19 resources, which we have in great abundance-- well,
20 sun, sometimes -- those abundant natural resources
21 and making products that we can sell elsewhere, not
22 just to our neighbors, not just here in
23 New York State, not even just here in the
24 United States.

25 We're exporting soy beans, corn, wheat, wine,

1 overseas, and bringing that money back into
2 Belleville, Adams; rural economies.

3 That's what we're doing with agriculture here
4 in New York State.

5 It's not just about putting an ear of corn on
6 our own plates; it's about putting people to work.

7 I've had the opportunity to work in
8 agriculture since 1988.

9 Since 2000, I've served as Jefferson County's
10 Agricultural Coordinator.

11 My primary role, as the title says, is to
12 focus on ag economic development.

13 I've had the great opportunity to help small
14 farmers get started with vegetable operations and
15 roadside stands, and I've also had the great
16 opportunity to help multinational corporations
17 establish feed-manufacturing companies here in
18 Jefferson County.

19 On Tuesday, I had one of the best
20 opportunities; and that was to speak with the state
21 officers and a national officer of FFA.

22 And I think most of you are familiar with
23 FFA.

24 It is a tremendous youth-leadership
25 organization whose foundation is agriculture.

1 The neat part about my conversation with
2 these students is, as I sat down and discussed
3 agriculture, I learned that they came from across
4 New York State.

5 One young lady from Queens.

6 So even New York City has, I think it's the
7 largest FFA chapter in the state, actually, in
8 New York City.

9 Share that with some of your colleagues.

10 The message that I want to share from those
11 discussions, is that they're excited to look forward
12 to a career in agriculture, and, they want to stay
13 here in New York State.

14 These several students want to stay in
15 New York State.

16 They recognize the tremendous opportunity
17 that exists right now to work in agriculture.

18 The greatest barrier, in my opinion --

19 And you can call me on the table for it if
20 you want, that will be fine.

21 -- the greatest barrier for them is our
22 New York State government.

23 I've watched New York State, in the years
24 that I've been involved, place barrier after barrier
25 in place to keep our businesses from succeeding.

1 I'll answer your question, Senator Gallivan,
2 about the 200- to 300-cow level.

3 The answer to that is:

4 EPA is at 300 cows.

5 New York State set it at 200 cows.

6 Why did we need to go beyond what the
7 Environmental Protection Agency required for their
8 environmental regulations?

9 How long should it take, for a young
10 gentleman here in Jefferson County who wanted to
11 open a farm winery, why should it take month after
12 month after month to get the permits to open that
13 winery, for no good reason?

14 Why does a dairy farmer need to record
15 rainfall and wind-direction data for every day that
16 they operate, when that information, if it's needed,
17 can be pulled off the computer?

18 Why are we not asking commercial bee-keepers
19 what they feel the definition of "pure honey" should
20 be?

21 Instead, we're starting to talk about
22 changing that definition, so that the honey sticks
23 that they produce that have flavors in them, that
24 kids love to eat, has honey in it, they may not be
25 able to sell those as a honey product, because of

1 people, not commercial bee-keepers, trying to make a
2 definition for their products.

3 All of these things I've mentioned, how small
4 or how large they are, have a cumulative impact on
5 our ability to be successful, profitable
6 agricultural businesses, which is what creates the
7 desire of those FFA students that I talked about a
8 few seconds ago.

9 That's what creates their desire: the
10 opportunity to succeed, to be profitable, to be able
11 stay here in New York State.

12 The previous two gentlemen have testified
13 about some very important recommendations, and
14 I know that there is a variety of others that will
15 come, so I'm not going to go too in depth with a lot
16 of recommendations, but I do have a few.

17 First thing I'm going to recommend to you, is
18 to establish a 10-year moratorium on any new, or
19 changes to existing, environmental regulations in
20 New York State impacting our dairy farms.

21 If you want to grow the dairy industry here
22 in New York State, you don't need to change that
23 EPA -- the CAFO threshold.

24 I mean, yeah, it would be nice to have it be
25 at the EPA standard.

1 If you want to grow dairy, just create a
2 stable environment, where our dairy farmers, for the
3 next 10 years, will know what is expected of them as
4 far as environmental regulations.

5 It takes one level of risk out of their
6 business decision-making process, that when they put
7 in the bunk-silo leachate collection system, they
8 might know a year from now that they didn't waste
9 \$30,000, because the standards weren't quite right.

10 I believe it was in 2006 that the
11 Second Circuit Court of Appeals here in New York --
12 and I might have that year wrong, I couldn't find it
13 at the last minute -- but, 2006, the Second Circuit
14 Court of Appeals here in New York, in a ruling,
15 stated that New York's dairy farms are among the
16 most highly regulated in the nation.

17 So let's leave it where it's at.

18 Let's -- we've set a high bar, let's let the
19 farms meet it.

20 Let's not keep changing it.

21 Another item you've already heard about a
22 little bit, and asked some questions about it:

23 Do not pass a Farm Labor Omnibus Bill.

24 And senators that threaten farms, to say,

25 "You know what?

1 You might want to compromise on this, because
2 things are going to change down the road," I'd love
3 to have those senators come up to Jefferson County,
4 and I'll take them on a tour of our dairy farms and
5 let them see how horrible an environment it is for
6 those employees to work in.

7 And if people have daughters, that think it's
8 so bad, I'd welcome them on the tour as well,
9 because the Farm Labor Omnibus Bill will put
10 employees out of work.

11 It will take farms that have full-time
12 employees earning benefits, down to part-time
13 employees.

14 Or, at least that is according to many of the
15 dairy farms that I've talked to about having to pay
16 overtime benefits.

17 If they're required to pay overtime, those
18 employees just became part-time employees.

19 That's not what we want, but that's what our
20 government will force to happen if the Farm Labor
21 Omnibus Bill is passed.

22 Third item I would recommend, is make sure,
23 that when we are passing laws defining "agricultural
24 products," as I mentioned, that we're involving the
25 commercial producers of those products.

1 The example being, our honey producers.

2 You know, that's about a million-dollar
3 industry here in Jefferson County.

4 It's small compared to wine and dairy, but,
5 to those folks that make part of their living from
6 that industry, it's huge.

7 So let's involve them in the decision-making
8 process.

9 Senator Ritchie, I know you've been very
10 active on this.

11 It's not so much a regulation as just a
12 solution:

13 Help our farms find ways to afford
14 three-phase electrical power where it is required to
15 expand their business.

16 That is a barrier across New York State.

17 Our farms tend to be at the end of the line,
18 and our utilities are charging them to put in the
19 infrastructure, then they're charging them for the
20 delivery of that electricity, and they're charging
21 them for the supply of that electricity.

22 I have talked to numerous farms who have said
23 this is a barrier to our growth.

24 If we are serious about growing our milk
25 supply for those Greek-yogurt plants, this is a real

1 barrier to growth in the dairy industry.

2 You've heard a little bit about it, and I'm
3 sure there is going to be more said:

4 Improve the service and efficiency and reduce
5 the fees of permitting processes here in New York.

6 And I'm going to give you an example that was
7 shared with me just before this forum started.

8 A friend of mine who makes a fantastic pepper
9 jam had her own kitchen certified a 50-C -- and
10 I might get that wrong -- 50-C kitchen.

11 She had that certified, she had it permitted.

12 She paid \$400 to Ag and Markets to do so.

13 We just started a shared-use 50-C kitchen
14 here in Jefferson County, thanks to some private
15 businesses, and the works of some of the
16 agricultural agencies, like Cooperative Extension.

17 My understanding is, again, I just heard
18 about this before this meeting started, is that,
19 now, she will have to go through the permitting
20 process again.

21 That kitchen will have to be inspected every
22 time a new user comes into the kitchen to use it.

23 That, is stupid.

24 If it's a shared-use kitchen that's already
25 permitted been by Ag and Markets, why do we have to

1 have such a regulatory burden on those small
2 businesses that are trying to get started and
3 operate?

4 Those are entrepreneurs, those are small
5 businesses.

6 Those are the folks that we need more of.

7 So let's not create these crazy barriers to
8 their growth.

9 So those are just a few of the examples that
10 I see.

11 Sometimes I pull my hair out.

12 I'm lucky I'm not bald yet, because part of
13 my job is to advocate for agriculture.

14 And, as I said, I've been in this business
15 since 1988, and the greatest barrier that I see to
16 growth is from our state government and our federal
17 government.

18 We have young folks who are ready, willing,
19 and able to come back into agriculture.

20 They want to live in New York State.

21 They want to pay taxes here.

22 God bless them.

23 Let's take those barriers out of the way.

24 Thank you.

25

1 SENATOR RITCHIE: Jay, can you just explain,
2 you're talking about the certified kitchen.

3 Does each person that's going in there have
4 to get a permit each time?

5 Is that where the inspection comes from?

6 JAY MATTERSON: Okay, I'm going off the cuff
7 here a little bit, Senator.

8 To my understanding, it's not necessarily a
9 permit every time.

10 I believe they have to get a permit to go
11 into the kitchen now.

12 I could be wrong on that.

13 But, the one thing that was said, with
14 certainty, is that Ag and Markets will have to
15 inspect the kitchen every time.

16 That does not make sense, to inspect the
17 kitchen between each user.

18 Now, part of that information, I may not be
19 relaying it correctly.

20 I can look into it further.

21 It was, literally, about 15 minutes before
22 you sat down.

23 And I'm not sure if the person is going to
24 have the opportunity to speak here at the forum, so
25 I wanted to make sure I relayed that.

1 I'd be happy to get clarification on that,
2 but if any of that is the case, it does not make
3 sense.

4 SENATOR RITCHIE: Thank you.

5 SENATOR GALLIVAN: We would be interested if
6 you could follow up on that with us?

7 JAY MATTERSON: I certainly will.

8 SENATOR GALLIVAN: My question is kind of
9 along those lines.

10 You talk about the different layers and the
11 duplication of the various regulations.

12 So, we understand the duplications, like,
13 when you made mention, pesticides, for example;
14 CAFO, for example; between state and federal, and
15 then state.

16 Are there duplications in that permitting
17 process and regulations that go between state,
18 county, and local governments as well?

19 If you're aware of it.

20 JAY MATTERSON: Yeah, I can't say that I'm
21 aware of at least many duplications that go between
22 county and state.

23 I don't believe that's the case as much.

24 It's more of the state and federal
25 government.

1 SENATOR GALLIVAN: Okay.

2 All right, thank you.

3 JAY MATTERSON: Thank you.

4 SENATOR GALLIVAN: Phil Randazzo --
5 Randazzo, Coyote Moon Winery.

6 Thanks for being here, Phil.

7 PHIL RANDAZZO: Well, thank you for having
8 this meeting.

9 This is just wonderful, Senators; thank you
10 one and all.

11 And a special thanks to Jay Matterson, who's
12 probably delivered the shortest presentation I've
13 ever heard.

14 [Laughter.]

15 SENATOR GALLIVAN: Very impactful, though.

16 PHIL RANDAZZO: Mark, Eric, and Jay have
17 covered a lot of points.

18 I was thinking about the wine industry
19 specifically, preparing to come here the other day,
20 and I was reminded of a meeting I attended in
21 Richmond, Virginia, several years ago, and the
22 governor of Virginia spoke to a group of winery
23 owners, and I was in the audience.

24 And, he did a great presentation about all
25 the wonderful things they were doing in Virginia to

1 help wineries become established, and how he saw
2 that it was going to be one of the big growth
3 industries of Virginia.

4 And he vowed that he was going to make
5 Virginia the largest wine-producing state this side
6 of the Rocky Mountains, and went through a laundry
7 list of things the State was doing on behalf of
8 helping wineries get started; everything from
9 putting business-plan samples online, and, just,
10 really a friendly -- business-friendly gestures, and
11 tools, to help business survive and grow and start
12 up.

13 And I walked out of the meeting kind of
14 disappointed, thinking, well -- this was a few years
15 ago now -- coming back, saying, Oh, man!

16 Why doesn't New York State start to do some
17 of that?

18 So, here we are in the wine business for
19 several years now, and I've watched some bit of
20 growth.

21 The -- it's important to think about,
22 "What are we doing right?" and let's keep doing
23 that.

24 There's lots of things that we need to fix,
25 and we can always do better, but I'd like to reflect

1 just a little bit on some of the things that we're
2 doing right.

3 After attending Governor Cuomo's Wine, Beer,
4 and Spirits meeting that he had, I was really
5 impressed with the dedication that is being put
6 forth in the state with regards to our industry.

7 There's been an awful lot of change, and
8 there's been an awful lot of positive moves that I'm
9 sure could be applied to other agricultural
10 industries as well.

11 We fund research and marketing to the
12 New York State Wine and Grape Foundation that's
13 being put to great use.

14 The press that we're getting internationally
15 is just tremendous with New York State products --
16 wine products.

17 That's something that we should continue to
18 do.

19 The SLA has been doing a surprising job
20 making life easier for us.

21 Where it took almost a year to get approved
22 to open a winery, that time frame has just shortened
23 up.

24 And I can't say enough about the help that
25 Patty has given us.

1 And Darrel Aubertine over at Ag and Markets,
2 he's just been a great help.

3 Pat Hooker, oh, my God!

4 I mean, he's been bending over backwards,
5 helping us on all kinds of issues.

6 And, Sam Filler, this one-stop shopping,
7 where you can call one person and he can work your
8 way through the bureaucracy?

9 Wow, that's huge!

10 And we're really seeing some of these
11 applications get escalated, and they're doing a
12 great job.

13 Chairman Rosen; it's like they've got some
14 kind of a customer-service program going, because
15 you really feel like a customer when you talk to the
16 SLA these days.

17 And they are really helping a lot;
18 Kerri O'Brien.

19 Tom Donahue; you call there and he's just,
20 you know, making it as simple as possible to
21 understand the laws and rules and regulations.

22 When I applied for my farm winery license,
23 I needed to hire a lawyer and a private consultant,
24 and it took us almost a year to get through all the
25 paperwork and put the package together.

1 And the last application we made for a store
2 in downtown Clayton happened within weeks, not
3 months.

4 So, you're all to be commended on support of
5 the wine industry, and getting through some of these
6 regulations.

7 Research, in the wine business, for certain,
8 is one of the most important things that a state can
9 help us do; either through our university system or
10 through the State itself.

11 The northern varieties of grapes that we grow
12 were developed by the University of Minnesota
13 through a very extensive research program.

14 Today, in our area up here, Jefferson County,
15 Lewis, those surrounding areas here, we now have
16 eight wineries, employing over a hundred people,
17 doing millions of dollars in sales, and research is
18 the reason that that has happened.

19 If it wasn't for the University of
20 Minnesota's research program developing cold-hearty
21 varieties that can be grown here, it's the only
22 reason that we're now able to take abandoned farms,
23 brushland, and hay fields, and turn them into
24 vineyards, is because of research that they've done.

25 And, so, anything we can do to keep our

1 research programs intact, or grow them, is going to
2 benefit.

3 It's going to benefit all of us.

4 Coyote Moon Vineyards, I mean, we're now, not
5 only growing grapes and making wine, but we're
6 probably the most award-winning winery in the entire
7 state of New York, including all the Finger Lakes
8 regions, because of the kind of grapes that we're
9 able to grow.

10 We're not only growing grapes on our farm,
11 but we have a network now of small farmers that
12 we've developed.

13 I treat it like a little franchise company.

14 And, so, I put small growers in business, and
15 then we help them with their soil analysis; we tell
16 them what to plant, how to plant; where to buy
17 things.

18 And many of these folks have six and
19 seven acres, two and three acres, and we're starting
20 a whole network of small farms, numbering probably
21 close to fifty in total in the North Country.

22 And it's all because of the research program
23 that was started by the University of Minnesota;
24 they came up with the grapes that would grow.

25 So, that's the message that I took home from

1 that program.

2 So, we're not only making great wine, we're
3 creating an entire industry.

4 And, because of these grapes, the
5 North Country is going to be seen as wine country
6 and doing a whole lot more business than we're
7 doing.

8 Cornell, for example, is now working on a
9 USDA grant.

10 It's \$5 million that goes -- they headed up
11 the grant, but there's 12 universities involved over
12 9 states, I believe.

13 I'm a New York State advisor to that grant,
14 and work with Dr. Martinson [ph.], who's been doing
15 a great job administering that grant.

16 And our vineyard is a research site for that
17 grant.

18 So, we've got scientists in there every
19 Monday, doing samples, and, etc.

20 This is just helping us grow our grapes
21 better, and getting more and more production up.

22 And, so, anything the State can do to help in
23 that regard is certainly nice.

24 Now, are there areas of improvement?

25 Sure.

1 I think we could use a little more
2 regulation, quite frankly, and those regulations
3 ought to be put on public utilities.

4 If they're going to do business in this
5 state, they give need to give rural communities
6 three-phase power, and maybe it's done on some
7 formulation; a population, or something.

8 But, I mean, if they're going to do business,
9 and take our money under the monopoly that they
10 have, they have to be able to give us three-phase
11 power so that we can grow our companies and grow our
12 businesses, because it's a huge stumbling block for
13 us.

14 Internet service:

15 It's not too much to ask for Time Warner
16 Cable to run a cable line down East Line Road where
17 our farm is.

18 There's already 40 some odd residences.

19 We need Internet service bad.

20 What we have to do in our -- in our Internet,
21 a side of our business, is tremendous, just trying
22 to get those Internet sales.

23 And it's not like we're amateurs at it.

24 We have a significant portion of our sales
25 are done on the Internet now.

1 Social media:

2 There's a social-media rating site.

3 It's called "VinTank." It's a think-tank
4 that rates social-media sites.

5 Coyote Moon Vineyards was rated in the top 10
6 recently, in the world, for winery sites.

7 We're trying hard.

8 We've got towers we're putting up, and we're
9 doing satellite stuff.

10 I mean, it's crazy.

11 A nice high-speed Internet solution for
12 ag businesses is critical to our growth in today's
13 age.

14 And like some of my predecessors that talked,
15 are fortunate to have some 30-some-odd-aged kids
16 and -- in the business, and they know a whole lot
17 about -- more about it than I do, and how we're
18 making all this stuff work, but, we need Internet
19 service.

20 Speed up NYSERDA applications:

21 The grants are great, when you can get them.

22 I think we got one little itty-bitty tiny one
23 when we first started.

24 Something to do with light bulbs, or
25 something.

1 But, we did apply for a NYSERDA grant, and it
2 takes forever.

3 We don't need the grant to be approved
4 immediately, but it would sure be nice to know that
5 it's not going to be approved, so that we can do our
6 financial planning, and not have to wait months and
7 months for those grants to be approved.

8 So, if there's a way to speed that up, that
9 would certainly be helpful, and it would probably
10 allow more people to apply for some of those grants
11 as well.

12 Because, when I tell some of my buddies in
13 the ag business, they just say, "I don't bother
14 applying anymore.

15 It's just a waste of time."

16 And so that's a shame, because, here we are,
17 looking at some refrigeration systems, that they
18 were very excited about us doing, and actually came
19 to us and asked us if we would.

20 And, you know, that time has come and gone.

21 We had to go ahead and step up and buy that
22 stuff, or have a problem.

23 Ag and Markets has an interesting program,
24 where we have to state the price that we will pay
25 for grapes as a winery.

1 And, so, if a particular brand of grapes,
2 Marquette, for example, if we're going to pay
3 \$1500 a ton, we have to make that price available to
4 everybody, and we have to post that price with
5 Ag and Markets.

6 I'm not so sure I know what happens to that
7 price posting, but I do know Cornell has a survey
8 they that they do, and it's just a few wineries,
9 unfortunately, and a few growers participate, where
10 people say what they pay for grapes, and what
11 they'll buy or sell grapes for, the pricing.

12 And that would be really helpful if
13 Ag and Markets information could be available, in an
14 anonymous basis, but the database is tremendous.

15 And it would be a great marketing tool for
16 grape growers, so they can look at this site on the
17 Internet and see that this Marquette grape, you
18 know, sells for between \$800 and \$1500 a ton, or
19 whatever the number is.

20 That's a small, little easy-to-fix issue.

21 It could be done anonymous so that it's not
22 giving away, and it would be a big help to us.

23 And last, but not least, what you could
24 really do for us in our industry, is we're facing a
25 barrier called the "Canadian-tariff" issue.

1 Canada charges almost as much as a bottle of
2 wine for a tariff on that wine going into Canada.

3 You know, it's darn near criminal what's
4 going on.

5 In 1989, the United States, Ronald Reagan,
6 Prime Minister Brian Mulroney, signed the trade
7 agreement -- Free-Trade Agreement, and wine was
8 supposed to be part of it.

9 Somewhere along the line, Ontario figured
10 they didn't have to deal with their own country, and
11 they could have their own taxation issues.

12 And they pretty much run company-owned
13 stores, Ontario owns the stores, and they don't want
14 a flood of American wine coming across the border,
15 and liquor, and spirits.

16 And we've been dealing with our federal
17 representatives, and I got to tell you, it's
18 really -- maybe it isn't disappointing, but the
19 results are absolutely disappointing.

20 And I can understand, you know, they're
21 dealing with wars, and they're dealing with fiscal
22 cliffs, and they're dealing with a lot of issues,
23 and maybe this tariff issue isn't exactly at the top
24 of anyone's list.

25 But, you know, we had Schumer, at one point,

1 said that he was going to use the
2 TransPacific Partnership talks that the Canadians
3 separately wanted to get involved, and he was going
4 to use the tariff as a leverage, for them to look at
5 that, before he'd let them in.

6 I mean, none of that happened.

7 I mean, there's article after article
8 about -- written at the "Berkeley Law Journal of
9 International Law" that cites Reagan and Mulroney's
10 agreement, going all the way back to 1989.

11 And this is just a travesty.

12 I have some solutions, and they really -- we
13 need State intervention.

14 Even if the State acts as a growling dog on
15 this, to threaten to charge state tax, which we
16 believe, and my -- some of my legal reviews shows
17 that it can be done, to threaten that, to get the
18 Canadians to talk to us.

19 Patty Ritchie has started conversations with
20 some of the folks in Ontario, and that's promising.

21 At the Governor's summit -- Wine, Beer, and
22 Spirits Summit, we were promised a working group to
23 discuss that tariff issue.

24 That's not happened yet.

25 I'm hopeful that I'll be getting a call from

1 the Governor's Office one of these days, saying,
2 Hey, we started a working group.

3 But, in the meantime, we're working on some
4 plans.

5 For example:

6 Rather than trying to make it a national
7 program, why don't we, as a state, say, Let's do a
8 pilot program, Ontario, with just you, and we'll
9 call it the "Thousand Islands International Wine
10 Trail."

11 Wow!

12 What a marketing idea.

13 And let's limit it to farm wineries, so that
14 the Ontario stores don't have a huge problem with
15 it.

16 And the farm wineries on the Ontario side and
17 on the New York side could form a wine trail,
18 advertise it internationally, and both sides of the
19 border would benefit financially.

20 It's a huge amount of money to us.

21 The Niagara Escarpment, folks, it's estimated
22 the Canadian tasting rooms do 35 percent of their
23 business with American purchases on that side of the
24 border.

25 I can't tell you what a 35 percent increase

1 in our business would be in our tasting room.

2 I mean, it would be tremendous.

3 We'd be hiring more people.

4 So, we need to work on this, and we need to
5 give it a spotlight.

6 We can create a tax-free zone if the
7 wine-trail thing doesn't fly.

8 Somewhere where there's a sticker program,
9 I mean, we can certainly figure out a way to sticker
10 these bottles of wine that are wine-trail-only
11 wines, or free -- tax-free-zone wines, and be sold
12 on both sides of the border.

13 Define distance from the border, if they're
14 concerned about it going to Pennsylvania or points
15 south.

16 I don't know.

17 And as a last resort, let's threaten the
18 Canadians with a level playing field: what's good
19 for them ought to be good for us.

20 And I guarantee you, there will be an outcry
21 from their wine industry that will be really loud
22 enough to get the Ontario representatives to the
23 table to talk about this.

24 But I think, there's no reason for us to sit
25 there and take this beating that we've been taking

1 since 1989, and just -- why are we doing that?

2 As a country, why are we doing that?

3 Why do we enter into stupid negotiations like
4 that?

5 We got to have to have smarter negotiators
6 than we're [unintelligible].

7 But, as a businessman, I just absolutely
8 shake my head.

9 Why would you say, Okay, we won't charge you
10 a tariff if you don't charge us a tariff?

11 That makes sense.

12 But why would we let them, you know, create a
13 barrier to business for our guys on this side,
14 especially now that we've eight wineries, and a
15 couple more due to open, so close to the border in
16 the Thousand Islands region.

17 That would be a real economic boon, not only
18 to us, but to the state.

19 Like I said, we already have 100 employees
20 working.

21 I mean, that could easily double in the next
22 five years.

23 And the grapes are growing fine, and the
24 business is growing fine, and the State is doing a
25 great job helping us with our objectives.

1 Please keep doing that.

2 And, please, put pressure on whoever you can
3 to get this work group started so that we can come
4 up with a plan to overturn these barriers.

5 Thank you.

6 SENATOR VALESKY: Thank you very much, Phil,
7 for your testimony.

8 You've given us some great things to
9 consider, both what the State is doing well, and
10 where we can improve.

11 The committee that I chair, the
12 Small Business, Commerce, and Economic Development
13 Committee, we provide oversight.

14 One of the state agencies that we oversee is
15 the State Liquor Authority, so I'm particularly
16 interested to hear your positive comments, and we're
17 starting to hear that.

18 That had been a particular problem not so
19 long ago.

20 And all of us, as legislators, have been
21 working on various constituent matters.

22 So, it's nice to hear that things are moving
23 in the right direction there.

24 Just one, I guess, technical question.

25 Someone else had brought it up before you,

1 and maybe I should know the answer to this question.

2 I just don't, so I'm just going to ask you:

3 When you were talking about power, you used
4 the phrase "three-phase power."

5 What does "three-phase power" mean?

6 PHIL RANDAZZO: It's a form of electricity,
7 that, basically -- I don't know all the
8 electrician's terms of it, but, it's three legs of
9 power that most big equipment and machinery run on.

10 And, so, in order to even buy a bodily line,
11 for example, or a crusher-destemmer or a press, all
12 those run on three-phase motors because of the
13 efficiency and the pureness of the power.

14 And if you don't have a three-phase power to
15 your building, you can't use those better pieces of
16 equipment, and so what you're forced to do is use
17 three-phase generators.

18 And there's these digital generators that you
19 can buy, and they're very expensive.

20 And, literally, what we have to do, is we
21 can't run the press and the crusher at the same time
22 because of the power output of the digital
23 three-phase generator.

24 We can't bottle at the same time as we can
25 crush and press.

1 All of those [unintelligible] switches, we
2 got to be shutting off and turning on.

3 If we had three-phase power to the building,
4 we can wire in all of these various motors and they
5 can run on them.

6 And the three-phase power that comes from the
7 power company, it's pure three-phase power; it's
8 clean, and it can run these very sensitive machines
9 that are -- you know, they're all driven with
10 computers and microchips.

11 SENATOR VALESKY: So are the utilities, by
12 and large, not willing to provide this?

13 JAY MATTERSON: That's correct.

14 They cite the cost of running the wire some
15 long distances, and it is expensive, but the same
16 token, they're selling us power.

17 And, it's just the thought of them being such
18 a monopoly, and, you know, there's not even a
19 discussion.

20 SENATOR VALESKY: Okay, thank you.

21 SENATOR GALLIVAN: Phil, I too am very
22 interested in your comments about the SLA, and it's
23 very good to hear.

24 But the one particular that I'm really
25 interested in, is when you mention the

1 one-stop-shopping concept.

2 Could you first tell me the name of the
3 individual?

4 You mentioned the -- that individual's name,
5 first of all.

6 Can you tell me that again?

7 PHIL RANDAZZO: Yeah, Filler.

8 SENATOR GALLIVAN: And then just tell me what
9 you know about that one-stop shopping.

10 PHIL RANDAZZO: Yeah, Sam Filler is the
11 directory -- here's his actual title: Director of
12 Industry and Strategic Business Development.

13 And Sam's job is to, when you call there
14 about a question about how to get a permit or get
15 something approved through the SLA, he cuts through
16 the red tape of all the different bureaucracies,
17 makes the phone calls.

18 And he's also responsible, if there's a
19 deadline missed or an application put in wrong,
20 because he's overseeing that for the individual
21 that's calling.

22 And it's -- the Governor put it, kind of a
23 one-stop shop, where you call one person who can
24 help direct you through all the various bureaucracy
25 levels of government.

1 And it's working sensational.

2 SENATOR GALLIVAN: Like a concierge.

3 PHIL RANDAZZO: It's there, and it's working.

4 And we talk to Sam.

5 I mean -- and he's doing a great job with it.

6 SENATOR GALLIVAN: That's come up a number of
7 times, and we have heard, anecdotally, about other
8 states having that for small business, in general.

9 PHIL RANDAZZO: You mean it wasn't the
10 Governor's original idea?

11 [Laughter.]

12 SENATOR GALLIVAN: Well, this is the only
13 place in New York State that I've heard of that; and
14 so, I mean, we're very interested in that concept.

15 The idea of making it easier for people to
16 start a business, and how to navigate the
17 bureaucracy, no one knows.

18 PHIL RANDAZZO: Yeah.

19 Yeah, I just talked to a fellow that's
20 starting a brewery, and he was just, also, accolades
21 all over about Sam and the wonderful job he did.

22 And Sam's got a, you know, staff, and they
23 work on this project.

24 And, Director of Industry and Strategic
25 Business Development.

1 And it's, Empire State Development is the
2 agency.

3 SENATOR GALLIVAN: Okay.

4 SENATOR VALESKY: Oh, it's at ESD, not the
5 SLA?

6 Okay.

7 PHIL RANDAZZO: It's not SLA.

8 Yeah, and it's crossing over SLA and all the
9 various permits.

10 And, you know -- and like I said, Rosen, and
11 their whole crew, has been doing great.

12 And, my God, Julie Suarez from the
13 Farm Bureau, awesome support in the wine industry,
14 as getting through some of the municipal issues.

15 There may not be state regulations, but, of
16 course, there's zoning issues and legal issues
17 between state and local ordinances that could be
18 streamlined, if it's possible.

19 And even our own Mike Mannigan, you know,
20 he's been doing a great job helping us out here,
21 although, he's out of the USDA.

22 SENATOR GALLIVAN: Got it.

23 PHIL RANDAZZO: And, we've had a lot of good
24 things happening in the last two years.

25 SENATOR GALLIVAN: Great, appreciate your

1 time and testimony.

2 Thank you.

3 PHIL RANDAZZO: You're very welcome.

4 Thank you.

5 SENATOR GALLIVAN: Ron Robbins from
6 North Harbor Dairy Farm and Old McDonald's Farm.

7 And I do want to say that you are very well
8 represented on the billboard on I-81, coming up.

9 We saw it.

10 RON ROBBINS: Glad you saw it.

11 SENATOR GALLIVAN: So, advertising money well
12 spent.

13 RON ROBBINS: Good afternoon.

14 Thanks for having me here today, and thanks
15 for offering the opportunity to hear from those
16 involved in agriculture here in Jefferson County.

17 I want to give just a brief introduction of
18 our farm business.

19 My wife, Nancy, and myself, along with our
20 three children, operate a family farm operation just
21 to the west of here near Sackets Harbor.

22 We're pretty diversified, probably a little
23 more diversified than most typical farm operations
24 here in the county, but that diversification has
25 allowed us the opportunity to be profitable, and to

1 involve more of our family members in the operation.

2 Our son Brian is the general manager of our
3 dairy-herd operation which consists of, currently,
4 950 cows, and we're currently in the midst of a
5 3-year expansion project that will take us to
6 1,400 cows.

7 Both our son Jeff, and daughter, Julia, work
8 off the farm, but are actively involved, with Julia
9 doing all the PR and marketing for the ag-tourism
10 business; and, Jeff, a schoolteacher, helping out on
11 weekends and whenever he can, and, especially
12 through the summer.

13 We, along with the dairy operation as
14 mentioned, we do have the ag-tourism, ag-education,
15 business that's become very popular.

16 This is our 27th year in that business.

17 And then we have a large crop operation as
18 well, that I manage.

19 It consists of about 7,000 acres, growing
20 corn, soy beans, wheat, and hay.

21 And that operation serves all the needs of
22 the dairy, as well as sells crops to the open
23 market, to feed meals, and we do some exporting of
24 soy beans to the Far East.

25 We -- it's a very exciting time to be in

1 agriculture.

2 You know, I've been involved in this business
3 since I was old enough to sit on my father's knee on
4 a tractor, and, you know, grew up with it, and saw
5 the trials and tribulations through the years.

6 But, what's gone on in the past five years is
7 monumental change in our industry.

8 As previous speakers have talked about,
9 technology coming into it.

10 The fact that we've seen growth in processing
11 plants, cheese manufacturing, yogurt manufacturing.

12 We have two operating ethanol plants here in
13 New York that are supplied with corn, pretty much
14 wholly from New York-grown corn.

15 We're exporting soy beans from numerous
16 locations around the state, and to the Port of
17 Newark, and then into containers, that ultimately
18 end up in fish-farming operations in small-island
19 countries and parts of China.

20 You know, to see that technology and see the
21 excitement.

22 I had a situation this spring, just a quick
23 example, where, you know, if your corn planters
24 stopped planting corn, you used to go get some
25 bailing wire and pliers, and, usually, you could get

1 it up and running.

2 Now I go get the laptop computer.

3 We log in, we talk to a technician somewhere
4 in a cubicle, and he gets us back up and running.

5 On that particular day, it was a software
6 glitch, and we had to actually have software
7 downloaded so we could go back and start planting
8 again.

9 That's the kind of technology we're seeing.

10 So with all that excitement and all the
11 enthusiasm, and the growth that we're seeing in our
12 business, having to deal with bureaucracy really
13 puts a damper on that.

14 And I might mention, too, that our farm
15 employs 35 year-round employees and 25 seasonal
16 employees; so, we are a large employer here in the
17 area.

18 And when I left here today, just to give you
19 a feel for what's going on on the farm:

20 We had a crew of about 12 individuals
21 harvesting corn silage;

22 Of course, our dairy crew was milking cows,
23 getting ready to start the afternoon milking;

24 Our second load of milk for the day was
25 leaving the farm to go to Great Lakes Cheese in

1 Adams;

2 A roof was being put on one of our older
3 heifer barns;

4 Manure system was being installed by a crew
5 from Western New York.

6 And, you know, that's real economic activity.

7 And I failed to mention, also, that there was
8 a school group there, visiting the tourism business
9 today.

10 So, I mean, those are things that are
11 providing real economic activity and growth to our
12 local area.

13 So I want to talk a minute about the
14 bureaucracy that puts a damper on our excitement
15 every day when we get up and get ready to go out the
16 door and go to work.

17 At the state level, we deal, of course, with
18 the Department of Ag and Markets, DEC,
19 New York State Department of Transportation,
20 New York State Department of Labor, New York State
21 Department of Health, and New York State Department
22 of Taxation and Finance.

23 Those agencies are part of our everyday life
24 every single day.

25 At the federal level, we have, of course,

1 USDA, Federal Motor Carrier Compliance, Federal DOT;
2 we have the EPA, we have the Federal Department of
3 Labor, we have the Internal Revenue Service, we have
4 federal health inspections; and last, and most
5 recent, we have OSHA now on that list, that we have
6 to think about when we go out the door every
7 morning.

8 The problem is, is that not only is that a
9 burden to us, but many of the New York regulations,
10 as some of the previous speakers have talked about,
11 are not necessarily compatible with federal
12 regulations.

13 Good example--

14 And Senator Ritchie would know full well,
15 being a county clerk and dealing from motor-vehicle
16 standpoint.

17 -- last winter we had a federal DOT audit in
18 our office at the farm.

19 The inspector was very helpful, worked with
20 my bookkeeper and safety officer on the farm, to
21 make sure that all of our paperwork was in order for
22 the trucks that we have on our farm fleet; making
23 sure driver requirements were there, in place, and
24 that we understood those regulations.

25 We were so impressed with this guy, that a

1 multi-farm safety meeting that was held at the
2 Belleville Fire Hall in the end of March, we
3 actually invited this individual to come back and
4 speak to the group, so that our employees would
5 understand what regulations they needed to comply
6 with.

7 Little did we know, after the fact, that
8 everything that was explained to us is not
9 compatible with New York State law.

10 Driver regulations, safety regulations,
11 driver-licensing requirements, is not compatible
12 with federal DOT standards.

13 They are more stringent.

14 The farm-plated vehicle, that was talked
15 about earlier, license is so unworkable, so
16 complicated.

17 As our farms get bigger and we spread out,
18 I mean, we go 25 miles now, either direction, north
19 or south.

20 There may be days where a road is closed
21 because, on a Saturday, there's a 10K run, and we
22 have to take a different route.

23 What are we going to do if we take a
24 different route and it's not on that little blue
25 card?

1 Federal regulations are much less stringent
2 than that.

3 As long as you're within your area of
4 operation and you're doing things correctly, you're
5 fine.

6 Rules change in the middle of the game.

7 EPA and DEC here, our farm operation has been
8 involved in trying to meet CAFO requirements.

9 We've installed bunk-silo leachate systems,
10 that we find a year later, are now no longer
11 compatible with regulations, because somebody
12 changed them.

13 So that money and concrete, that doesn't make
14 our farm a lot of money to begin with; so, then,
15 I mean, it's more of a cost of doing business with,
16 really, no return to us specifically, other than
17 environmental compatibility.

18 But then we have to rip up, with a track hoe,
19 that concrete and reinstall it, because somebody
20 decided the rules needed to be different.

21 Staying on top of the rule changes becomes
22 more of a full-time job every day: environmental,
23 safety, DOT, labor.

24 I mean, we're even talking about hiring a
25 full-time person that would do nothing but

1 regulatory compliance for the business, because it's
2 that burdensome.

3 We just can't get all the work done in a day.

4 And then it was mentioned earlier --

5 I want to just change gears a little bit and
6 talk about a couple things.

7 -- NYSERDA was mentioned.

8 We did a \$2-million expansion project last
9 year at our dairy facility.

10 Applied to NYSERDA.

11 Hired a private consultant to help us through
12 that bureaucracy, which, it's very complicated.

13 But, anyway, we were looking for cost-sharing
14 for energy-efficiency: chillers, lights, fans; that
15 kind of thing.

16 We were approved for funding.

17 The project was fully completed.

18 And keep in mind, the invoicing requirements,
19 and other things, are very, very complicated.

20 It would make the average farmer just throw
21 it in the wastebasket and walk away; but,
22 fortunately, we had a consultant willing to work
23 with us.

24 We went online on November 18th last year.

25 The project was completed, and cows started

1 being milked in the new facility.

2 We have yet to receive our cost-share
3 payment.

4 We're coming up on a full year.

5 Now, I was promised last week that we're in
6 the hopper and that money should be coming to us.

7 But keep in mind, you know, we borrowed that
8 money, paid the invoices, paid the suppliers, so
9 that cost-share payment continues to get smaller and
10 smaller every day that goes by with the interest
11 that we've paid on that money.

12 Whether we borrowed the money or pulled it
13 out of our pocket, that is a cost to us.

14 And, you know, why should it take that long
15 if we did everything to meet the requirements?

16 What good are those programs if they can't be
17 workable to the folks that they're meant to serve?

18 Lastly, I want to talk a little bit:

19 I'm a board member for the New York Farm
20 Viability Institute, and that's where the
21 frustration with bureaucracy reaches its peak.

22 Our mission at the institute is to utilize
23 funding sources, mainly State dollars, but we also
24 rely on other funding sources -- grower investment
25 through check-off monies, private funding, federal

1 dollars through Cornell -- to put forth research and
2 education programs, that are not only going to
3 improve the profitability for farmers here in
4 New York State, and all farmers, but, also,
5 communities and citizens that live within those
6 farming regions.

7 You guys know very well the heavy lifting
8 that has been done to keep that funding stream
9 coming from the state level.

10 And we very much appreciate that.

11 This Governor has touted his ability to have
12 on-time budgets every year in his administration,
13 but that's where the problem starts.

14 You do the heavy lifting, we get a budget
15 passed, and then the bureaucracy kicks in.

16 The Comptroller's Office has to first review
17 those allocations.

18 Then it goes to the Department of Budget.

19 The Department of Budget then goes back to
20 Ag and Markets and begins to work on a contract.

21 And I'm being told now, we have this new
22 one-size-fits-all contract format for
23 New York State.

24 The problem is, it doesn't fit anything.

25 It's like having a shirt that's

1 one-size-fits-all, but it doesn't fit anybody,
2 because it doesn't have a hole for their head and it
3 doesn't have sleeves for their arms.

4 That's what's happening here.

5 So, here we go:

6 We're in contract negotiations.

7 We are now, budget was passed, what, March,
8 April, time frame.

9 We've now gone through a whole growing
10 season.

11 We still don't have a contract for our
12 allocation for farm viability, so we've missed a
13 whole growing season.

14 We'll approve some projects here shortly,
15 with the caveat that, hopefully, our contract will
16 be approved, which we have no reason to believe that
17 it won't be, but, when, we have no idea.

18 So then what happens?

19 Most of those projects are geared towards the
20 growing season.

21 So now we're into -- coming into the late
22 fall and winter, and, the end of the year, we now
23 hit the re-appropriation time.

24 So any funds that are not used, the
25 Department of Budget comes back to us and says,

1 "Well, you didn't spend the money.

2 We have to kick you over to
3 re-appropriations."

4 And then we fight the battle, hoping that the
5 Governor will then reappropriate previous-year's
6 spending, without taking a piece of the action along
7 the way to cover some other costs.

8 So we -- in fact, we had a conference call --
9 a board conference call yesterday, and the comments
10 were made was:

11 We have totally gotten away, as a board, from
12 our mission of identifying needs of the industry,
13 and, what we can best do to provide research and
14 education dollars to meet those needs, to dealing
15 with a process.

16 That's all we do as a board now, is deal with
17 a process.

18 And it's-- as a producer, volunteering my
19 time to that cause, the frustration level goes
20 sky-high.

21 I'm a guy that wants to get things done, and
22 it's not happening.

23 And, you know, if we're -- all those exciting
24 things that I talked about earlier -- milk
25 processing, expansion in dairies, land coming back

1 into production, wineries being built -- that
2 doesn't happen just because it happens.

3 It happens because, as the previous speaker
4 mentioned, research and education happens.

5 That fosters growth within our industry.

6 If we're going to be serious about that, we
7 got to somehow break down this bureaucracy, and
8 allow us at the institute to get back to doing what
9 our mission is; and that's providing a service to
10 the industry, to identify the greatest needs out
11 there, in all commodity sectors, for research and
12 education programs.

13 So, lastly, I just want to close by, you
14 know, asking the question:

15 Are the citizens of New York better off with,
16 you know, our regulations not being compatible with
17 federal standards, with dollars being made available
18 through NYSERDA and through the Farm Viability
19 Institute, but access to those dollars being slow
20 and cumbersome and burdensome?

21 You know, I would bet not.

22 I certainly appreciate the opportunity to
23 speak to you today, and certainly applaud all of
24 your efforts.

25 Senator Ritchie, you know, we've worked very

1 well together here in the county, and you've been a
2 real champion.

3 And, Senator Valesky, we just went through,
4 with our dairy expansion last year, the
5 three-phase-power issue with National Grid.

6 Private consultant again.

7 Several months of talking to a person in
8 cubicle in Massachusetts, that had no idea of what
9 we were trying to do, and how we were going to do
10 it.

11 We had to get our own right-of-ways for that
12 line to be changed; so, new pole settings and
13 everything.

14 We had to go out and actually knock on doors,
15 to get those right-of-ways, because National Grid
16 would not do it for us.

17 Plus, we had to pay for the line.

18 And, we actually ran our new operation on a
19 diesel generator for about five weeks while we were
20 waiting to get that line in.

21 And if it hadn't had been for Ron Rausch at
22 the Department of Ag and Markets, and the Senator,
23 and some other folks, twisting some arms, we may
24 have -- we might very well have run all winter on
25 that generator.

1 But, fortunately, we were able to grease the
2 skids, and we actually-- Ron Rausch was effective in
3 going to the Governor's Office and getting him to
4 put an inquiry into the Public Service Commission,
5 which then started getting some things going.

6 So, thank you very much.

7 Any questions?

8 SENATOR MARCHIONE: I have one.

9 You seem to have done a lot of building
10 projects on your farm.

11 I wondered, could any reform of the
12 New York State Building Code be helpful to you?

13 RON ROBBINS: We don't necessarily get into a
14 lot of trouble there.

15 Our county codes and New York State Building
16 Codes are pretty easy on the eyes for agricultural
17 buildings.

18 Even our ag-tourism business, our county-code
19 people have been very helpful in making that happen.

20 So, we're pretty fortunate.

21 SENATOR MARCHIONE: Okay.

22 Just a statement:

23 As a previous county clerk, like
24 Senator Ritchie, I feel your pain when you're
25 telling me about waiting.

1 We used to participate, even as county
2 government, in a grant program, relative to our
3 records.

4 And the grants should have been awarded in
5 July.

6 Grants are never awarded, any longer, until
7 January.

8 You have to complete them in the same
9 time frame, and if you don't, you lose the money.

10 RON ROBBINS: Yeah.

11 SENATOR MARCHIONE: And there's nothing as
12 frustrating as taking the time and effort, because
13 it's a great deal of effort to apply, to wait; to go
14 through the process, and then just to have your
15 hands tied after you've done everything.

16 And on top of that, you're waiting for money
17 back for your pocket.

18 So, I certainly feel that pain, and that's
19 something I hope we can do something about.

20 RON ROBBINS: Thank you.

21 SENATOR GALLIVAN: Ron, the contract, the
22 Farm Viability Institute, I'm assuming it's the same
23 from year to year, so they go through the
24 bureaucracy and administration of it.

25 I mean, is there any reason, other than the

1 state bureaucracy, why it just couldn't be
2 automatically renewed if there was no change?

3 RON ROBBINS: That was the conversation we
4 had yesterday, is, Why do we continue to go through
5 this, year in and year out, when nothing changes?

6 We operate under the same rules this year as
7 we did last year, and the year before that.

8 The process is the same; the application for
9 the grants for research and education projects is
10 the same; how we go through that, in picking those
11 projects, is the same.

12 Nothing changes; yet here we are, still not
13 sure when we're going to get a contract.

14 SENATOR GALLIVAN: But you're not -- now, if
15 I understood you right, you're not identifying the
16 particular projects in the application?

17 RON ROBBINS: No.

18 SENATOR GALLIVAN: That's done after you get
19 the money?

20 RON ROBBINS: Yes.

21 And then --

22 SENATOR GALLIVAN: So this is just a contract
23 for the money.

24 RON ROBBINS: Yes.

25 SENATOR GALLIVAN: And your agreement to stay

1 within the parameters of the rules, I'm assuming?

2 RON ROBBINS: Correct.

3 SENATOR GALLIVAN: Okay.

4 Thank you.

5 SENATOR RITCHIE: Ron, I just have one
6 question.

7 I remember we had an issue not too long ago,
8 with a sign for your agritourism business.

9 I can't remember specifically what the
10 problem was, but, is there anything there that's an
11 impediment?

12 RON ROBBINS: Yes, and, you know, that was an
13 issue that I -- you know, that's a -- another
14 DOT issue that's very frustrating.

15 In fact, we have a neighbor who has a winery,
16 and he's been met with the same frustration.

17 You know, we're off the main highway.

18 Route 3 -- coming from Watertown to Sackets,
19 New York State Route 3, is a scenic byway.

20 And signage along that, I can understand
21 signage having to meet certain standards, and,
22 certainly, meet DOT requirements for setbacks and
23 other things, but, they flat-out will, one, unless
24 you have a grandfathered location, not let you
25 construct a sign.

1 They make you put the little "blue sign," we
2 call them, that costs a lot of money, and hardly
3 anybody sees.

4 And, you know, these are businesses that are
5 not necessarily on the main highway, that need to
6 attract people off the main highway.

7 We just bought some property this past year.

8 And, coming out of Watertown, there's a barn
9 that's in somewhat disrepair.

10 So, we're in the process, we're going to side
11 that barn and put a roof on it.

12 We wanted to hang a billboard on the side of
13 that barn, identifying our business as being, you
14 know, "straight ahead, turn left."

15 And we were told by DOT that we could not put
16 a banner on that barn.

17 Well, I said to my wife:

18 You know, we own the barn.

19 We can write anything we want, I would think,
20 on that barn, but, they're saying that we can't?

21 And -- so, correct.

22 I mean, it's an issue.

23 And signage for agricultural businesses along
24 main highways and scenic byways does need to be
25 addressed.

1 And I'm sure some of the speakers, especially
2 the winery operators, would agree.

3 SENATOR RITCHIE: Thank you.

4 RON ROBBINS: Good point, thank you.

5 SENATOR GALLIVAN: Thanks, Ron.

6 Morris Surbello.

7 Hi, Morris, how are you today?

8 Ready when you are.

9 MORRIS SURBELLO: First of all, thank you
10 for -- all the Senators, for taking the time out to
11 have this.

12 This is an important function, as you have
13 heard.

14 I can't see where there's anything wrong,
15 after all of my previous speakers, so we're going to
16 go from apples and wine and dairy, to onions.

17 My sons and I raise about 300 acres of onions
18 and about 300 acres of soy beans here in
19 Oswego County, and, it's a family operation.

20 I have twin sons.

21 They do an excellent job so I can do a lot of
22 other things.

23 And, we do that.

24 We have obstacles, of course, as my cohorts
25 have mentioned in the last five speakers, of course,

1 is the numerous regulations with vehicles.

2 We harvest with numerous vehicles, and try to
3 do the same thing with the farm plates, and things
4 of this nature.

5 As they have said, there is problems.

6 Because things have changed so dramatically
7 with the technology we have today, that we have to
8 travel farther and go farther distance, getting land
9 farther away from our initial operations.

10 So, it leads into a lot of issues.

11 One of the issues, I'm sure, as my previous
12 speakers have said, about the Farm Omnibus Bill,
13 time-and-a-half is an issue, because, today, we have
14 beautiful sunshine; two days from now, we've got
15 rain.

16 In our particular business, when you're
17 harvesting this time of year, an onion has to be
18 dry.

19 No matter how you do it or how you go about
20 it, it's got to be dry on the ground before we can
21 pick it up.

22 In the mornings, we cannot harvest because
23 it's damp, for example, if you have dew.

24 Maybe 12:00 we start in.

25 So, from 12 to 7, you go like crazy and

1 harvest, but that's all.

2 So you have to, numerous days.

3 Sometimes you get a day that's real hot.

4 Sunday, whatever day it is, you're going to
5 work.

6 So, it's a problem, I don't understand it.

7 My workers, for example, are a combination of
8 Guatemalans, Mexicans, and even, recently, Burmese,
9 and nobody complains about hours, nobody complains
10 about times or where.

11 So, I don't understand why the regulations
12 would want to change.

13 If Downstate New York doesn't like that,
14 well, I'm sorry, that's the way the farming business
15 is up here: we have to go by the weather and
16 understand what we're doing.

17 We're not in a nice structure.

18 In the winter months, I'm in a structure
19 where we run our onions.

20 You can regulate things a little more there,
21 but you can't do that in the summertime when you're
22 growing this crop.

23 So, I just wanted to touch down on that.

24 Some of the issues that I personally have,
25 for example, is, how do you hand down these

1 operations through the New York State code system to
2 your children?

3 I've been in the process of trying to work on
4 that.

5 I've hired attorneys.

6 You look at the deductions, for example, that
7 the State allows us.

8 It could possibly make a difference, where we
9 would have to sell property, or they would have to
10 sell property, to pay the tax bill.

11 These are issues that I think should be
12 addressed because, as we all know in this business,
13 we build up -- we build up buildings, we build up
14 these things.

15 They're not something you can liquidate.

16 You got to have them to operate.

17 So, therefore, we should find means of trying
18 to make this issue less comprehensive in the
19 regulations that we have.

20 Some of the issues I had:

21 I've worked on I-4, which is a -- out of
22 Rutgers, where we used to get the appeal -- I mean,
23 used to make the presentation for pesticides and
24 herbicides, and all those, throughout the nation.

25 And when it came to New York State, it

1 stopped, and we had to go through the whole process,
2 altogether, in New York State again.

3 Digging holes in the soils and doing other
4 tests which were done before that in other states,
5 or whatever -- wherever it was designed to have that
6 particular herbicide or insecticide processed.

7 They have to -- it has to be on the label for
8 a farmer to use it.

9 So, in some cases, we're a minority crop.

10 And minority crop probably takes in
11 80 percent of everything you eat, because unless
12 it's a grain, it's not a minority crop.

13 But, onions, lettuce, apples, whatever, you
14 name it, are minority crops.

15 For them to get a labeling on their products
16 they can use in the state of New York, it is a
17 process.

18 It can go through the whole country and be
19 cleared, because, when I was on Rutgers panel, it
20 did do that.

21 And we come to New York State, it was another
22 process, and it hasn't changed much.

23 So that is something that we should be
24 concerned about.

25 I think, myself, we have here in the state of

1 New York a tremendous farm situation for our
2 consumers.

3 "Fresh"; you name the vegetables, you name
4 the fruits, you name everything, we have it in this
5 state.

6 Some states don't have even half of what
7 we've got.

8 And we've got water; and water's something
9 that we have in this state, which is gonna help in
10 the future, I'm sure, as it has helped in the past.

11 My cohorts out west tell me stories, where
12 they got to buy their water and they can't compete
13 because it's being outbid.

14 So, they can't even buy water out there
15 because they're outbid.

16 That whole food-shifting is taking place.

17 Is it good?

18 I hope it's good, in a sense, for the farmers
19 maybe in this area; but at the same time, it's not
20 good for our nation, which will be bringing product
21 from other countries.

22 So I'm concerned about that.

23 There's other issues, of course, and
24 I could -- all my cohorts that spoke before me, more
25 or less, touched on most of them, but, I don't see

1 any reason for me to take up a lot of your time.

2 I appreciate every bit of it.

3 There's drainage reasons, and
4 Senator Ritchie's helped a great deal.

5 And we've been through that issue, with --
6 where we grow onions is a wetland, so to speak, at
7 one time, and we've made it into a muck land.

8 And we're at the bottom of the drainage
9 system, and, of course, everything is regulated by
10 DEC.

11 So when you want to clean a ditch, because
12 you got to have drainage in a farm production to
13 make any kind of crop, it's a problem.

14 Sometimes you have great cooperation, and
15 sometimes you don't, but the DEC is constantly
16 monitoring it, "constantly regulating the streams,"
17 as we call them, because you are on the bottom end
18 of the stream, so to speak.

19 And all you want to do, you'll do it all at
20 your own cost, but you can't do it because, for
21 whatever reasons.

22 So there's problems with that, because
23 undrained farmland gets to be wetland in a very
24 short time, then it's completely impossible.

25 So other than that, I haven't got any great

1 demands.

2 I think the labor situation is very critical.

3 I've never had so many different changes of
4 labor in my experience as I had this year, where the
5 government's not responsive for immigration as they
6 should be.

7 It's something to be done.

8 In my opinion, they should be -- something
9 should be done in a card process, where they would
10 be able to come into this country and be regulated,
11 and you know where they are.

12 And, then, if they don't have a job, of
13 course, they're found and put to work, or, there is
14 work to be done.

15 There's so many people here that want to
16 work, but some of our people in this country do not
17 want to work.

18 When I have to go out, as a grower, and get
19 Burmese from Syracuse, and a person -- people from
20 Guatemala and Mexico, and the welfare roles are full
21 of people taking money, frustrates me beyond means.

22 And as the Senator knows, I'm a
23 county legislator, and I sit on the committees, and
24 I get upset about things like that.

25 As far as incentives for farming, I think

1 it's a great opportunity for anybody in our state.

2 There's a lot here to be offered.

3 And, I praise all the people, whether you're
4 dairy, vegetable, or fruit, to put up with the
5 regulations we have to in this state, and do what
6 they're doing.

7 Thank you.

8 SENATOR VALESKY: Thank you, Morris.

9 SENATOR MARCHIONE: I'm good.

10 Thank you.

11 SENATOR GALLIVAN: Thanks, Morris.

12 MORRIS SURBELLO: I appreciate it very much.

13 Thank you.

14 SENATOR GALLIVAN: Appreciate your time.

15 Pronounce your last name for us.

16 KATHRYN CANZONIER: Canzonier.

17 My husband says, think of it like "cans of
18 beer."

19 [Laughter.]

20 SENATOR GALLIVAN: Oh, that makes it easy.

21 KATHRYN CANZONIER: He can take the blame for
22 it.

23 SENATOR GALLIVAN: Farm Credit East.

24 KATHRYN CANZONIER: Thank you.

25 SENATOR GALLIVAN: Appreciate you being here.

1 Thank you.

2 KATHRYN CANZONIER: Good afternoon.

3 I'm Kathryn Canzonier.

4 I'm vice president of Farm Credit East.

5 That's my day job.

6 My husband operates North Ranch Farms, which
7 is a small vegetable farm here in Jefferson County.

8 We have a couple of retail locations and
9 wholesale, mostly fresh sweet corn this time of
10 year.

11 Today's our first day of our you-pick
12 pumpkins, and we have a good looking crop, if you
13 care to stop down in Jefferson County.

14 I grew up here in Jefferson County on my
15 family's former dairy farm.

16 And my dad and brother, together, still
17 operate in a grain farm.

18 They're formed in an LLC, transferring from
19 one member of the family, the senior generation to
20 the junior generation, so, just like some of the
21 topics that you've heard earlier.

22 I've been kind of reorganizing my notes
23 because a lot of it's redundant.

24 A lot of the issues that you've heard from
25 the former speakers, I hear every day, working with

1 members that we serve out of our branch office, so
2 I won't repeat those, and, I've kind of got it here,
3 just some real general comments, so I hope that's
4 helpful.

5 Farm Credit East is the largest lender to
6 New York agriculture.

7 We have \$2.7 billion in loans to about
8 8,500 farms, forest-product businesses, agricultural
9 processing, and marketing businesses in
10 New York State.

11 We provide extensive financial services,
12 focused on supporting and growing agriculture.

13 As a finance cooperative, we're owned and
14 operated by the very same farmers that we serve, so,
15 we're well positioned to meet the future credit
16 needs of agriculture.

17 We have made a commitment to serving all
18 types of agriculture: traditional, nontraditional,
19 operations, and farms of all size.

20 So, again, that's partly why I've kept my
21 comments fairly general.

22 To start off with a few positives that I see,
23 we actively work with farms to utilize the
24 Empire State Link Deposit Program for farm
25 expansions, and we administer the Farm Worker

1 Housing Loan Program for New York State.

2 These programs have been very successful in
3 supporting New York State agriculture, and should be
4 continued.

5 I was just notified yesterday by the
6 Empire State Development that the project cap for
7 the Link Deposit program was recently increased from
8 \$1 million to \$2 million.

9 You've heard of the scale of some of the
10 sizes of the expansion projects here.

11 It's very easy to hit that \$1 million cap.

12 We have a local dairy farm that was just
13 completing a project that was over \$1.5 million.

14 So, Cynthia is helping me work through the
15 process of taking that Link Deposit application from
16 the former cap of 1 million, to \$1.5 million, and
17 that's just a great opportunity for that borrower,
18 and a really great value to them.

19 So I really see that as a positive.

20 Farm Credit East is one of the largest users
21 of the Link Deposit program, and we only use it in
22 agriculture, so that gives you an idea of our
23 utilization of that.

24 We also wanted to express our appreciation to
25 the Senate's passage of the legislation to cap

1 increases in agricultural-value assessment to
2 2 percent.

3 I believe it's still pending the Governor's
4 approval.

5 On average, New York farmers pay
6 significantly higher property taxes than farmers in
7 most other states.

8 Our analysis indicates, average property
9 taxes per acre paid in New York State farmers is a
10 little over \$26 per acre, compared to a little under
11 \$7 per acre on the U.S. average.

12 So that gives you an idea of the comparison.

13 When viewed as a percentage of net farm
14 income, New York farmers pay 15 percent of their net
15 income for property taxes, compared to, 10 percent
16 on U.S. average; 8 percent in Michigan; 7 percent in
17 Ohio.

18 As we look at -- well, we're also extremely
19 optimistic about New York agriculture.

20 There is increased interest in local foods:
21 "Know Your Farmer."

22 The yogurt dairy expansion that's been
23 mentioned provides new market opportunities.

24 We've completed an economic analysis that
25 indicates New York agriculture generates

1 \$38.4 billion in economic activity in the state, and
2 is responsible for 196,000 jobs.

3 As we look to New York State agriculture, the
4 factors that are of utmost concern include the
5 following:

6 Significantly increasing costs of production,
7 coupled with national and global market pressures,
8 are squeezing margins for many dairy farms.

9 Actually, all farms.

10 So you're hearing nationally about unheard of
11 gross farm income, but that's only part of the
12 story.

13 You've really got to focus on net farm
14 earnings, and, the profit margin is getting
15 squeezed.

16 The public-sector-driven costs contribute to
17 the increased costs of production.

18 And you've heard mention of what a lot of
19 those are.

20 Number two is farm labor.

21 The uncertainty related to farm labor, and to
22 some degree farm-labor costs, are limiting
23 agricultural expansion in New York.

24 This labor uncertainty is even greater when
25 New York farmers consider the ongoing debate in the

1 New York Legislature regarding overtime pay and
2 collective bargaining for farm workers.

3 And, number three, uncertainty in the
4 regulatory climate, changes relating to labor,
5 health care, environmental, and food-safety
6 regulations create constant challenges for farm
7 businesses.

8 From a state standpoint, the DEC action on
9 increasing the CAFO threshold from 200 to 300 cows
10 was a positive sign, not just for dairy, but to all
11 of New York State agriculture, as a positive can-do
12 gesture.

13 The outcome of the current lawsuit against
14 that change is, of course, a concern to many
15 farmers.

16 Working with producers as I do, when we're
17 looking at future plans for the business, we hear so
18 many times that uncertainty is one of the greatest
19 risks in their business plans when they're looking
20 at expansion.

21 When, for example, the dairy manufacturers
22 are asking them to produce more milk, they say:

23 I'm taking on all the risk.

24 I don't know these what changes may or may
25 not be coming in the next one year, two years, three

1 years.

2 I just don't have a way to know for sure what
3 some of that will be.

4 And a lot of the producers we work with,
5 they're risk-takers.

6 They're in this industry because they're
7 willing to take on a lot of those risks.

8 But, this uncertainty is just something
9 that's outside of control of the things that they
10 are comfortable with the risks that they deal with
11 every day in their business.

12 We conducted a survey recently that we call
13 the "Pulse of Agriculture."

14 The results for New York State indicate that
15 agriculture producers in New York State ranked
16 business challenges, and they ranked the following
17 eight as being their major business challenges:

18 Number 1: Volatility of prices, costs, and
19 operating margin;

20 Number 2: Changing or shrinking margins for
21 my product;

22 Number 3: Availability of labor;

23 Number 4: Federal government regulation;

24 Number 5: Environmental compliance;

25 Number 6: State and local government

1 regulations;

2 Number 7: Availability of other labor;

3 And, Number 8: Changing consumer patterns.

4 For New York farms to be successful and grow,
5 we need to ensure New York's regulatory and tax
6 burdens on farm businesses are not greater than
7 those that farmers have in competing states.

8 Furthermore, we urge support for
9 New York State economic-development programs that
10 encourage agricultural and dairy-processing firms to
11 locate in New York.

12 This creates jobs, allows expanded markets
13 for New York farmers, and ensures consumers with
14 products produced locally.

15 Avoid passage of any legislative proposals
16 that put New York farmers at a competitive
17 disadvantage with farmers in other states, and work
18 to ensure that public-sector-related costs for
19 New York farmers are not higher than other states.

20 Changes relating to farm labor, including the
21 processed requirement for overtime pay, will have a
22 major negative impact on net farm income,
23 reinvestment, and competitiveness.

24 And, support and enhance applied research
25 efforts, including those of the New York Farm

1 Viability Institute, to ensure future industry
2 competitiveness.

3 And, once again, I think this is fairly
4 consistent with the comments you've heard from the
5 producers.

6 So I thank you for the opportunity to
7 comment, and I'll gladly answer any questions.

8 SENATOR GALLIVAN: Thank you.

9 KATHRYN CANZONIER: Thank you.

10 SENATOR GALLIVAN: Tonya Van Slyke, who
11 happens to be from Senator Gallivan's district, in
12 Wyoming County, and serves as the executive director
13 of the Northeast Dairy Association.

14 Thanks for making the trip.

15 TONYA VAN SLYKE: I love coming to the
16 North Country.

17 So I'm going to sift through my notes a
18 minute, too, because I have a lot of the same
19 comments that the speakers before me have shared.

20 But, just a little bit of background on who
21 I am.

22 I come from a family dairy farm that's been
23 in business for over 200 years.

24 And, I'm married to a dairy farmer who's
25 seventh generation, so our children are

1 eighth generation.

2 We have a 1200 cow dairy farm in
3 Wyoming County.

4 And I'm also the executive director of the
5 Northeast Dairy Producers Association, so
6 I represent 115 farm families, some of which are
7 here with me today in the room.

8 So, I want to start out by just talking about
9 farmers, in general, for a minute.

10 So, we have a lot of resources that we
11 utilize to be able to make our businesses
12 successful.

13 One is our labor; so, our farm labor is very
14 much a part of our farm team.

15 They are the key to our success as farm
16 owners.

17 And also, the land.

18 Our land is what we have, that we pass on to
19 the next generation, to be able to maintain our farm
20 businesses, whether you're a dairy farm or a fruit
21 and vegetable farm.

22 So it's in our best interests to take care of
23 our land to the best of our ability.

24 And, so, when we talk a lot about government
25 regulations, you know, there are folks that assume

1 that we don't want to take care of our labor, we
2 don't want to take care of our land, and -- as well
3 as our animals.

4 So if you're a dairy farmer, obviously,
5 healthy cows make more milk, which leads to more
6 profitability.

7 So, again, it's in our best interests to do
8 our best to take care of our animals to the best of
9 our ability, and to train our employees to do that
10 as well.

11 So there's some things that I want to
12 address, one of which hasn't really been addressed
13 today, and that is the "FOIL" issue; the Freedom of
14 Information Law.

15 I know that Senator Gallivan has introduced
16 Senate Bill 5929, which would enact -- which is an
17 act to amend the Ag and -- Agriculture and Markets
18 Law in relation to limiting disclosure of certain
19 information.

20 So I want to talk about the NYSCHAP program
21 for a minute, because our association has spent a
22 tremendous amount of resources this year fighting an
23 anti-agriculture group, as well as the lawsuit --
24 supporting the Department of Agriculture and Markets
25 in a lawsuit against that same organization; folks

1 that are anti-agriculture at least feel that we're
2 not taking care of our animals.

3 So the NYSCHAP program is a voluntary
4 program, and dairy farmers and other farmers
5 participate in order to improve animal health, and
6 also to work toward food safety and public health.

7 So we test our animals, to be able make sure
8 that we're getting ahead of any issues we might
9 have.

10 We share a lot of data with the State of
11 New York, with the Department of Agriculture and
12 Markets; and, again, this is all voluntary.

13 We do this on a voluntary basis.

14 And that relationship was compromised
15 a year and a half ago when a lawsuit occurred.

16 And, again, it's something that we spent a
17 tremendous amount of time on.

18 And I have to tell you that, farmers that
19 signed up for the NYSCHAP program, signed up under
20 the assumption that they were volunteering their
21 information and that it was confidential, and some
22 of that information has since been released to other
23 organizations.

24 And so, this FOIL issue is huge, because it's
25 twofold.

1 One, if you don't allow the protection of
2 farm data, you're not going to have farms
3 participate.

4 And I'll talk about my farm as an example.

5 We went as far as we could in the NYSCHAP
6 program.

7 We were one of the few farms in the state
8 that was animal-welfare certified.

9 So, we invested a tremendous amount of
10 resources, in terms of employee training, consulting
11 and financial investment, to really design good
12 protocols, train our employees, and to be able to
13 excel at that level of animal-welfare certification.

14 My husband was proud enough, that he had a
15 banner created, so when we go to our county fair
16 with our farm float, with our children, and our
17 employees, that we display that banner.

18 We no longer participate in that program, as
19 do many other farms that I work with, have put their
20 participation on hold.

21 This bill is very important to the farming
22 community.

23 It's also important to the constituents of
24 New York State, because we want our farms to be
25 participating in the voluntary program.

1 We want them to be giving the State of
2 New York our information, not only for animal health
3 and food safety, but also for emergency
4 preparedness.

5 So if we were to have some kind of an
6 emergency in the state, you have our information.

7 You know how many employees we have; where we
8 are, our GPS coordinates.

9 You have all that information.

10 If you don't protect us, if you don't protect
11 our farm data, you will have fewer and fewer farms
12 participate, and that's a negative impact overall.

13 So I would encourage you to talk with your
14 colleagues about the importance of this bill.

15 It's extremely important to both farms and to
16 the constituents of New York.

17 So that's the first thing.

18 The second thing I want to talk about is
19 another area that hasn't been discussed today --

20 And, I brought some information, and, Todd,
21 I can leave this with you so that you can have
22 direct information on the website.

23 -- but we've heard a lot about DEC.

24 One of the requirements that some of the
25 larger farms have is annual reporting of water

1 withdrawals for ag facilities.

2 And, so, I'm going to read this directly so
3 that I'm not misinterpreting.

4 "All agriculture facilities with the capacity
5 to withdraw groundwater or surface water equal to or
6 in excess of the average of 100,000 gallons per day
7 in a 30-day consecutive period must file an annual
8 report with the New York State Department of
9 Environmental Conservation on an annual basis."

10 So, if we're not selling water; if we're
11 using water on our farms, on our own property, why
12 do we have to report that?

13 And I'll explain the concern a little bit
14 further.

15 So, farms that do this, and have done this,
16 one of the things that they have to do, is submit to
17 DEC their farmstead map.

18 On that is well locations.

19 Not only well locations on our farm, but if
20 you rent land from somebody else, from a neighbor,
21 you also have to identify their well locations.

22 Let's go back to FOIL requests.

23 If this information were to fall into the
24 wrong hands, let's say, folks that are anti-animal
25 agriculture, and they want a way to be able to put a

1 farm business out of business, what a better way
2 than to contaminate their water supply.

3 So, many of the farms in the state that have
4 to do this have a real concern with submitting these
5 maps.

6 I mean, we already had our CAFO information
7 released by EPA this year to folks that -- that FOIL
8 bad information, and so we have some real concerns
9 in terms of the water-withdrawal requirements and
10 submitting farmstead maps, along with well
11 locations, to DEC.

12 We have addressed this with them, and I know
13 that they're looking into it, but it's something
14 that we're very concerned about.

15 Farms are happy to have these farmstead maps
16 available on the farm, so if they wanted to come,
17 they were there, but we would prefer not to have
18 them in the hands of state government, because there
19 is a little bit of a trust issue with the concern
20 about FOIL.

21 CAFO regulations has been discussed quite a
22 bit today, but I guess I would just point out that,
23 in the next year, we are going to be working on the
24 next round of CAFO permits.

25 So, there's two different types of permits

1 that dairy farmers can participate in, and one is at
2 the federal level, the "CWA"; the Clean Water Act,
3 and then the other is at the state level.

4 And, so, I'm just going to read part of my
5 report here.

6 For several reasons, it is likely that many
7 NEDPA members will consider opting into the
8 "ECL" permit, which is the New York State permit,
9 the Environmental Conservation Law permit, that for
10 non-dischargers that have implemented a
11 comprehensive nutrient-management plan.

12 So, it was stated earlier by Mark, but,
13 there's a tremendous amount of documentation that,
14 as a CAFO, that you are required to have.

15 And so, one of the concerns, moving forward,
16 is, again, in terms of multiple-agency reporting.

17 So we develop these comprehensive
18 nutrient-management plans.

19 And they're talking about, maybe in the new
20 permit, that's something that might have to be
21 submitted.

22 And, again, with the concern of release of
23 data, we have a lot concern about how those reports
24 might be used, or whose hands they might end up in,
25 so that's certainly a concern.

1 But the other part of the concern is, the
2 time -- there is time to avoid costly regulations
3 impacts on farms.

4 So, when we look at the permit process, when
5 we look at CAFOs, the best way to describe it in
6 easy terms is, sometimes, when we are embarking on
7 new construction, it seems like we're having to have
8 engineers design facilities on our farms that would
9 withstand a nuclear blast.

10 And, so, we end up spending a tremendous
11 amount of money and resources with overengineered
12 plans.

13 And this is a real concern that we have.

14 So, again, it's to our best interests to
15 protect our land, to protect the environment,
16 because that adds to our profitability.

17 What takes away from our profitability is
18 overengineered plans.

19 And, so, we all want to do the right thing,
20 but there seems to be a tremendous amount of
21 overregulation.

22 And, so, that's an area, and I have that
23 documented here, that we'd like to see looked into,
24 in terms of preparation for the next CAFO-permit
25 development process.

1 Labor:

2 I know labor has been touched on, but, I want
3 to go back to a conversation that we had,
4 Senator Valesky, when you came to the Farm Bureau
5 commodities session; and that is: what is a farm
6 family, and what is a corporate farm?

7 So when I came here, I said that I represent
8 115 farm families, and I do.

9 I said that my children are eighth generation
10 on my farm, and they are.

11 But by definition of the bill that was passed
12 in the Assembly, we're a corporate farm.

13 If I look behind me at my members that are in
14 the room, they're all family farms.

15 You know, they're on their farm, their
16 children on are their farm.

17 They're talking about the next generation,
18 they're talking about generations prior to them;
19 but, yet, by definition of the Assembly, they're
20 corporate farms.

21 I would encourage you to take a look at that,
22 and to help us with that.

23 I don't know where the Omnibus Bill is going
24 to go in the next year.

25 In the discussion that we had, we have been

1 told, as has previously been said today, that we
2 need to come to some kind of an agreement.

3 But, I would challenge you to help educate,
4 and if that means calling any of us that are here,
5 farmers here, and bringing your colleagues out our
6 the farms and helping them understand what a
7 family farm is, I would challenge you to help us
8 change the definition of "What is a family farm?"

9 Labor is a real issue.

10 You all know that immigration is an issue.

11 So, if -- I've said -- I've talked a lot this
12 year about unintended consequences.

13 So, we're trying to get immigration reform
14 passed.

15 We know what the House has in front of them.

16 Doesn't mean we're going to stop trying.

17 We're going to work to the bitter end, and
18 hope that we get something done.

19 But then we also have this Omnibus Bill
20 that's looking us in the face.

21 And, so, we don't have enough labor on a
22 given day.

23 I mean, you'll hear some farmers around the
24 state talk about, they just couldn't harvest their
25 crops, in terms of the vegetable farms and some of

1 the fruit farms.

2 On the dairy farms, we're constantly looking
3 for good labor.

4 So labor is an issue; and, yet, we produce
5 the food and fiber for this country.

6 So, I would challenge you to help us with
7 that.

8 Senator Gallivan, earlier you asked the
9 question about, overtime, and has anybody really
10 looked at the numbers?

11 We actually have a member that has a 200-cow
12 dairy, so, she and her husband do most of the work.

13 They have one full-time employee and a couple
14 part-time employees, and it would have cost them
15 \$12,000 in terms of overtime.

16 And that's just dollars and cents.

17 That doesn't address things that have been
18 talked about in terms of timeliness, in terms of
19 making sure crops are harvested; just dollars and
20 cents alone for that size farm.

21 Somebody mentioned -- Ron mentioned hiring
22 somebody full-time to just work on regulation.

23 And that's true; I've said that.

24 Farmers that don't have a full-time
25 bookkeeper are gonna have to hire one, because of,

1 not only the state regulation, but the federal
2 regulation that's in place and that's coming down
3 the line.

4 There's a lot for us to keep track of, and
5 you talk about the next generation, you know, that's
6 something our universities are gonna have to
7 incorporate into their curriculum, because the
8 amount of regulation that needs to be paid attention
9 to is incredible.

10 And so, again, another area that we need to
11 be looking at.

12 So, I would compliment everybody that spoke
13 before me.

14 I think they're all excellent issues.

15 The other thing I wanted to mention, we
16 talked about this, Senator Gallivan, in our
17 district: electricity.

18 Vermont has a great model.

19 And so, as you move forward on looking into
20 that, I would look at Vermont's model in terms of
21 how they work with the farming community.

22 I thank you for the invitation to be here,
23 and for your time and for your commitment to
24 agriculture.

25 And I would entertain any questions that you

1 may have.

2 SENATOR RITCHIE: I just have one question.

3 When you're talking about water withdrawal,
4 what kind of wording would help that situation, as
5 far as, having that available on site versus having
6 it sent in, so it's an issue later?

7 TONYA VAN SLYKE: We certainly can work on
8 that.

9 That's a request that we've made to DEC.

10 We had a couple conference calls with the
11 Governor's Office.

12 And.

13 Nobody seems to understand our concern as
14 much as we do.

15 SENATOR RITCHIE: So if that's something you
16 could get to us, possibly we can work to put
17 legislation in in January?

18 TONYA VAN SLYKE: Absolutely.

19 SENATOR RITCHIE: Okay.

20 SENATOR GALLIVAN: Tonya, I have one
21 question.

22 You didn't mention it today, but we had a
23 separate conversation out in the district, about,
24 with the attention on the yogurt -- the Greek yogurt
25 coming into New York, increased need for dairy

1 production, the unintended consequences that you
2 mentioned, do you now have a different spotlight on
3 you regarding the OSHA or PESHT [ph.] inspections?

4 Are you able to elaborate on that?

5 TONYA VAN SLYKE: Sure.

6 Well, Kathy and I spent a tremendous amount
7 of time on that in the last month.

8 Farm -- so there is -- there's a workgroup
9 here in New York that is working to prepare for
10 these OSHA inspections; and that's, NEDPA, New York
11 Farm Bureau, PRO-Dairy, and Farm Credit East as
12 well, is working on trying to help farms prepare.

13 So where we're at with that,
14 Senator Gallivan, is that, OSHA contacted us and
15 said that they are going to start to target dairy
16 farms.

17 The person that we initially met with said,
18 you know, the Governor had the yogurt summit, and
19 dairy farms are growing larger --

20 We've already had that discussion today about
21 what the reality is.

22 -- and, so, we need to make sure that they're
23 safe workplaces.

24 We've since met with OSHA.

25 They don't have their "LEP," their Local

1 Emphasis Program, approved yet, but Farm Bureau
2 actually -- and Ron McCormick is speaking after me,
3 he can speak more about this -- but, we met with
4 OSHA in New York last week, and they don't have
5 their LEP approved yet.

6 They've applied for the process.

7 And, they say it will be a random inspection.

8 They don't know when they'll be approved.

9 What Farm Bureau I believe heard in
10 Washington, is that they're thinking, maybe, in the
11 late summer.

12 But what we asked them is, you know, making
13 our farms a safer workplace is okay, but you need to
14 give us time.

15 You need to give us time to be able to make
16 sure that the safety programs that we have here in
17 New York State align with what you're going to be
18 inspecting for.

19 We would like you, OSHA, to please review
20 those programs and give us suggestions for updates.

21 We then need to make sure that we're
22 delivering these to the farms.

23 So, generally, OSHA does not come in onto
24 farms unless you have 10 or more employees, or,
25 there's a fatality, or, there's a major injury, or,

1 there's a complaint.

2 However, written into their law is something
3 to the effect of, We can come on if you have migrant
4 camps.

5 What does "migrant camps" mean?

6 That means one or more immigrant laborers.

7 So, there's a lot of farms that could be
8 affected by this.

9 What does it mean financially?

10 It means infractions are anywhere from zero
11 to \$70,000 per infraction.

12 And, so, the big thing is, is that, you know,
13 agriculture really hasn't been targeted by OSHA
14 before, so there's a lot to be learned.

15 There's a lot of education that needs to be
16 done, and we need time to be able to pull our
17 resources together and deliver that information to
18 the farms.

19 Wisconsin was targeted back in November 2011,
20 so they've been going through this, and they're
21 working with us as well, on what they've been
22 through.

23 SENATOR GALLIVAN: Thank you.

24 TONYA VAN SLYKE: Thank you.

25

1 SENATOR GALLIVAN: David Fisher, New York
2 Farm Bureau, District 7, and, Maple View Dairy Farm.

3 DAVID FISHER: Good afternoon.

4 Thank you for inviting me.

5 My name is David Fisher.

6 I serve on the board of directors of New York
7 Farm Bureau, the state's largest general advocacy
8 organization.

9 Our 26,000 members are involved in a diverse
10 array of ag production, from dairy farm, equine,
11 fruit and vegetable production, as well as many
12 value-added ag businesses, like our state's many
13 farm wineries, distilleries, and breweries.

14 I, too, am in partnership with my sister, an
15 operator of Maple View Dairy.

16 We are a seventh-generation family farm.

17 We've been farming in the Madrid area in
18 St. Lawrence County since the 1800s, or, our
19 ancestors have.

20 I'm proud to say I have a son that's just
21 returned to the farm, and another one that will
22 return in January, so, we're looking forward to a
23 bright future.

24 I hope we'll be able to continue this family
25 business.

1 One of the challenges we face is the
2 increase, or the high level, of regulatory demands
3 that the state and federal government makes of our
4 business.

5 As a family farmer, a Farm Bureau board
6 member, and town councilman, I'm concerned about the
7 viability of our state's farmland, as well as the
8 people involved in farming.

9 We can have the best soil, most abundant
10 water resources, and diversity of production, and
11 robust markets, but without the farms themselves,
12 we'll not have local food production or an
13 ag industry.

14 Farming in New York is a difficult business.

15 Our taxes are high, as other people have
16 said.

17 Paperwork and regulatory burdens are more
18 extreme than many other neighboring states that we
19 compete with.

20 I have attached a list on the back of this,
21 with many agencies that we have to deal with.

22 SENATOR GALLIVAN: You'll leave that with us.

23 DAVID FISHER: And at times, duplication.

24 And I can attest to that, and in some
25 situations of our own, where we've had multiple or

1 overlapping agencies thinking that they're doing the
2 same thing, or bothering us multiple times to
3 investigate something, that there should have been
4 some communication and not had to do that.

5 I think there needs to be an ongoing
6 conscious effort for state regulations and
7 internal-agency policy tools that carry the
8 authority of a regulation to recognize today's means
9 and methods of farming.

10 Farm Bureau has found it necessary to request
11 legislation to redirect tax-policy interpretation
12 that made an incorrect assumption or exclusion of
13 valid farm practices.

14 Example is, commercial equine operations and
15 maple production had to be defined as legitimate
16 farm practices by specific legislation, at the
17 urging of New York Farm Bureau, in order to be
18 recognized by the New York State Department of
19 Taxation and Finance as an eligible farm practice.

20 Many thanks to Senate Chair Patty Ritchie and
21 Assembly Chair Bill Magee and Senator Valesky, and
22 Marchione, for sponsoring, and getting this passed.

23 These kinds of things should be able to be
24 handled internally, or through Ag and Markets help.

25 Another example of how regulatory policy

1 needs to be -- recognize modern practices touches me
2 as a dairy farmer, as it pertains to anaerobic
3 digestion.

4 At first glance, the digester may look out a
5 place in the landscape with metal cylinders,
6 concrete blocks, and, et cetera, but it's really
7 quite a high-tech system, and could not be better
8 suited to the dairy farm.

9 It's designed to partner with dairy farms
10 perfectly, taking manure and scraps to generate
11 methane that's converted to electricity.

12 The digestion process also produces
13 high-quality fertilizer, bedding, for a significant
14 savings to the farm.

15 The fertilizer produced by the digestion can
16 be applied, and it's lower in odor, not as offensive
17 to surrounding residents.

18 With energy, fertilizer, and bedding costs on
19 the rise, all three products of this anaerobic
20 digestion will bring financial and environmental
21 value to the farm, not to mention fostering
22 neighborly goodwill which can be priceless.

23 As farms like us continue to look at these
24 things or adopt these technologies, State tax
25 officials wavered on whether the digester was an

1 energy-production facility, or if it was classified
2 [inaudible].

3 The corresponding permits, regulations, and
4 taxes would have put this technology out of reach.

5 Legislation sponsored by Mr. Gallivan and
6 Bill Magee was signed into law last month, that
7 statutorily recognized digesters as an ag facility.

8 Again, thanks to Senator Gallivan, and Magee,
9 for sponsoring this.

10 Statutory clarification could have been
11 accomplished quickly and easily through state-agency
12 policy guidance, but had to be put through the
13 Legislature instead.

14 If the State truly wants to keep farms here
15 in New York and secure the local food network, it
16 has to embrace and encourage today's innovative and
17 environmentally-friendly farming practices without
18 instinctively putting up obstacles of more
19 permitting and regulatory red tape.

20 State policy and regulations need to
21 recognize and address the complexities and
22 challenges New York farmers face.

23 Farmland is diverse, our farms are diverse,
24 and the food we grow is diverse.

25 This also means the problems we wrestle with

1 are diverse and cannot be managed with a
2 one-size-fits-all.

3 We have to be careful not to treat our farms
4 like traditional year-round businesses by imposing
5 labor regulations or statutory mandates that do not
6 recognize us as seasonal businesses, and especially
7 at the mercy of mother nature.

8 When we have to get things done, then we have
9 to get it done.

10 We can't schedule things as we would
11 always -- often like to do.

12 I'm sure some -- there will be comments on
13 our worker's comp rate structure and unemployment
14 costs, and things like that.

15 We'd like to comment again on the labor
16 mandates that may be forced to the farm community
17 through the Farm Worker Fair Labor Practices Act, as
18 it's a misguided and outdated proposal that could
19 fundamentally change New York agriculture.

20 I'd like to thank you all who have worked
21 hard to hold back this.

22 I know it's going to continue to come up
23 again; and so, hopefully, we can find some common
24 ground with some of those people, to push back at
25 least parts of this, if we need to, that need to be

1 pushed back.

2 Otherwise, I fear that New Yorkers may be
3 importing their food, as a local farm network will
4 be eroded under unreasonable and costly labor
5 mandates that this proposal could bring to all sizes
6 of farms.

7 I think Tonya outlined the FOIL issue with
8 the NYSCHAP's program very well, but I'd like to
9 thank Senator Gallivan for sponsoring 5929, which
10 would provide some FOIL protection.

11 I think this is a very serious issue, and
12 we're going to have to try to work something out.

13 I've also attached a letter from our state
14 vet, which is cautioning producers about that
15 program and the FOIL issues that come with it.

16 Thank you for your time.

17 SENATOR GALLIVAN: Questions?

18 SENATOR RITCHIE: Thank you.

19 SENATOR VALESKY: Thank you.

20 SENATOR GALLIVAN: Thank you.

21 We appreciate your time.

22 Thanks, David.

23 Vice President of the Wyoming County Farm
24 Bureau, also from Senator Gallivan's district,
25 appreciate you making the trip, Pat McCormick.

1 PAT McCORMICK: Good afternoon, Senators.

2 I'd like to say a little bit about my farm to
3 begin with.

4 I work on a seventh-generation farm.

5 We've been in family business since the early
6 1850s.

7 I work in partnership with my parents and my
8 brother.

9 We have a 400-cow dairy, and, hopefully, we
10 consider ourselves, very much, a family farm.

11 We run it, like, all work together.

12 We even work together with our employees.

13 We don't just send our employees out in the
14 fields and tell them, Here, go do what they want.

15 We work together, just like we're all family.

16 We get along great, and, hopefully, we can
17 continue that.

18 For farmers in my generation, sobering
19 changes lie ahead: the questions, the methods and
20 means of the way we operate our farms.

21 I agree with comments that have already been
22 made today, but as a younger farmer, I see areas of
23 regulation and mandates that affect my ability to
24 stay in business in the near future.

25 Farm families, like mine, are at a

1 crossroads of several controversial policy areas
2 that state lawmakers, that design regulations and
3 laws, are giving serious consideration to despite
4 the consequences of the farm community.

5 This gives me great reason for concern, which
6 I would like to share with you now.

7 Animal-welfare mandates:

8 Animal welfare and animal rights are the
9 popular themes that seems to go -- keep resonating
10 with the public.

11 As a dairy farmer, I take great pride in how
12 I treat my -- care for my animals and treat them.

13 I work hard in keeping up with the latest
14 best-management practices based on sound research
15 and science.

16 We have professional medical recommendations.

17 Any attempt to legislate and regulate how a
18 farmer should care for his animals outside of the
19 oversight of a state veterinarian is a misplaced
20 initiative, and should be rejected, which leads me
21 to my second point, the FOIL issue.

22 Dave and Tonya have both done a great job at
23 expressing this issue already.

24 I won't speak to it that much.

25 I would just like to say, it's very important

1 to our financial and environmental stability that we
2 keep FOIL, the exemption for the Farm Animal Act,
3 farm and our -- and DEC.

4 I would like to thank Senator Gallivan for
5 sponsoring the Senate bill.

6 And I would like to talk about reversing
7 policies that nickel-and-dime our family farms.

8 There's a sweep of major changes that reverse
9 the trending of nickel-and diming farm businesses,
10 through various mandates, become various
11 comprehensive strategy to transform New York into a
12 business-friendly state.

13 For example, one of the biggest ones is the
14 filing fee for farm partnerships.

15 Small farms, like mine, often feel like we're
16 being nickeled-and-dimed to death, just pushes up
17 our costs of production.

18 The State filing fee for partnerships, which
19 I have an LLC, is a poster child for this, because
20 it's based on gross receipts and not net profit.

21 This makes for an expensive proposition
22 toward moving to a multi-ownership structure to keep
23 the farm in the family.

24 Please support eliminating this fee.

25 This fee on our farm, for example, it can

1 range anywhere from 1500 to 2500 dollars a year,
2 depending on how much receipts we have taken in on
3 the farm; whereas, you know, we have a separate LLC
4 for our land, which is a \$50 LLC fee.

5 It should be a straight fee for the LLC.

6 Just, no matter what goes on in the LLC, it
7 should be a straight 50- or 100-dollar fee, or,
8 based on the net profit, not gross proceeds.

9 One of the other things I'd like to talk
10 about is worker's compensation costs.

11 These costs are very -- make us very
12 uncompetitive in the market with our neighboring
13 states and global competitors.

14 The recent increase in lost-cost filing rates
15 raises the cost to pay into the worker's
16 compensation programs, while there are no
17 initiatives to reduce the program costs overall that
18 help -- might mitigate future increases.

19 These are important programs that protect
20 workers and support them if there is an injury;
21 however, the employee costs are always on the rise,
22 as they have been.

23 Farms are unable to absorb these financial
24 mandates, that still provide local food, and for
25 local employment to -- for our workers.

1 In the last calendar -- comparing our last
2 two calendar years on our farm, for example, in
3 2012, we paid \$5600 for unemployment insurance.

4 In early 2013, we had one incident, our
5 second incident in 13 years since we've been hiring
6 outside employment, and our rates went up to just
7 over \$10,000 a year, for one incident that was not a
8 major incident.

9 The guy broke his hand, and, he didn't have
10 to have surgery.

11 He was just off work for a week, and it went
12 up \$4500, just about.

13 I would like to reiterate that we have
14 serious concerns about, there's overregulation.

15 You've already heard about CAFO -- the CAFO
16 regulations, and our -- about the labor bill, and
17 what's coming down with that, and, currently, with
18 the new OSHA regulations.

19 In closing, I would like to thank you for
20 your time today, and I would entertain any questions
21 you might have at this time.

22 SENATOR GALLIVAN: Anyone?

23 Did you follow the speed limit on the way up
24 here?

25 PAT McCORMICK: Yeah, I did.

1 [Laughter.]

2 PAT McCORMICK: The cops were out all over
3 the place.

4 SENATOR GALLIVAN: The questions have already
5 been asked.

6 PAT McCORMICK: All righty.

7 SENATOR GALLIVAN: We do appreciate your
8 time.

9 PAT McCORMICK: All right.
10 Thank you.

11 SENATOR GALLIVAN: And taking the time to
12 drive on up.

13 PAT McCORMICK: Thank you.

14 SENATOR GALLIVAN: And we'll follow up, of
15 course.

16 Thanks, Pat.

17 Faye.

18 Faye Beckwith, from the Christmas tree
19 industry.

20 FAYE BECKWITH: Thank you.

21 SENATOR GALLIVAN: You are welcome.

22 Thanks for your patience.

23 FAYE BECKWITH: I am Faye Beckwith, and my
24 husband and I run a very small Christmas tree farm
25 in Oswego County.

1 I'm here today to speak on behalf of the
2 Christmas tree farmers across the state, and
3 I appreciate the opportunity as being viewed as a
4 part of the agricultural community.

5 It's a little bit new to us, I guess.

6 Christmas tree farmers, you probably realize,
7 but may not, we work between 10 and 11 months of the
8 year, for 7, 8, 10, or 12 years, to produce a
9 product; a marketable product.

10 It isn't a plant that you just put in the
11 ground and it grows, and then we sell it.

12 It's just as much work as any other
13 agricultural commodity.

14 We do make valuable use of marginal lands, in
15 many instances-- excuse me -- across the state.

16 We contribute to the economy, not only with
17 work, you know, employing people, and purchasing
18 products, but, also, we pay sales taxes.

19 Other than the floral industry, and perhaps
20 the wineries, I'm not sure, we pay a lot of sales
21 tax.

22 I don't have stats with me today.

23 But, Christmas tree farmers are very
24 environmentally conscious.

25 We produce a product that is environmentally

1 friendly; however, the regulations that we face are
2 not.

3 Because our marketing takes place, or our
4 product takes place, over a very short period of
5 time, you realize, we have, maybe, a 4- to 6-week
6 window of opportunity to market our product; and,
7 so, we're target marketers.

8 And I will keep my comments then brief,
9 because we have a target issue.

10 Many of our issues are federally-related, but
11 one of the problems we have with the state is that,
12 DOT, very often their regulations change without
13 adequate notice.

14 Our industry is less sophisticated.

15 We do have some sophisticated members, but,
16 for the most part, we're just small farmers.

17 And, we have people who really are in areas
18 where they don't have even Internet access.

19 So, the state does require that we pay our
20 sales tax over the Internet.

21 It doesn't present a problem to the majority
22 of our members, but, there certainly are a number of
23 them that have been disadvantaged, and are learning,
24 but, there was no advanced notice or advanced
25 warning to that.

1 The biggest issue we have is with the DEC.

2 New York State does not accept EPA

3 regulations or the registration process.

4 New York State requires a totally separate

5 process, and, it's very, very difficult.

6 All of our competitor states take the EPA

7 approvals and they automatically adopt them, so this

8 puts our members at a competitive disadvantage.

9 Those that live near the borders of Vermont

10 and Massachusetts, Connecticut, Pennsylvania, are

11 really at risk for breaking the law by buying

12 chemicals in a neighboring state and using them on

13 their farm.

14 It takes up to two additional years after a

15 product has been approved by the EPA for

16 New York State to approve the product.

17 And, oftentimes, the newly-improved products

18 are safer and more environmentally friendly, and in

19 New York State, we can't use them.

20 Our hands are tied.

21 The other issue, is that our products are

22 more expensive, which, clearly, doesn't make sense

23 to me, and I'd like to give you just an example: the

24 product, Valor.

25 Valor cannot be used on Christmas trees.

1 It's not approved in New York State for use
2 on Christmas trees.

3 In other states it can.

4 It can only be used in an open-field
5 application.

6 This is a herbicide.

7 SureGuard is approved in the state of
8 New York, but it costs a lot more.

9 And depending on the size of your farm, it's
10 very, very expensive.

11 So it's almost like, if you use the analysis
12 of generic drugs versus the name brand, we're forced
13 in New York State to use SureGuard, and we can't use
14 Valor for our Christmas tree application.

15 So, the DEC is our major stumbling block,
16 I think.

17 Most of our members are -- we hire,
18 predominantly, independent contractors, so some of
19 the regulations don't necessarily apply.

20 The -- obviously, the increased minimum wage,
21 many of us are resorting to the temporary agencies,
22 hiring of our workers, especially young workers.

23 The other issue we have is, of course, the
24 New York City market, for some reason, is closed to
25 a New York State product: Christmas trees, wreaths,

1 evergreens.

2 We don't understand that.

3 Perhaps you would have some answers for us as
4 to why that is occurring.

5 We've had people come to our farms, load
6 up -- make purchases, load up their trucks, take
7 them downstate, and then are turned away.

8 They cannot -- you know, they file for the
9 appropriate permits, whatever, and they can't market
10 their product.

11 Most of the trees that are being sold and the
12 wreaths that are being sold in New York City, we
13 understand to be Canadian imports.

14 The bigger competitor for us, of course, is
15 the Chinese tree.

16 And, the fake-tree industry has created an
17 organization called the "American Christmas Tree
18 Association."

19 And these trees are coming, predominantly,
20 out of China.

21 And the American Christmas Tree Association
22 has lots of money and no regulations at all to
23 promote their product.

24 And the most recent exciting event on the
25 Internet and on Facebook, relative to the

1 American Christmas Tree Association, is that you
2 should definitely buy a fake tree because your dog
3 won't pee on it.

4 You know, we don't have those kinds of funds.
5 Our hands are tied for marketing.

6 And we just -- this regulation with the DEC,
7 I don't know if it's going to make any difference at
8 all, but we really need some attention to that.

9 Anything that can untie our hands, or at
10 least bring them, you know, one hand out from behind
11 the back, would really be beneficial to our
12 industry.

13 And I guess that's really all have I to say.

14 I know it's a very late hour, and
15 I appreciate your time.

16 Any questions for us?

17 SENATOR VALESKY: I may have misheard you,
18 but, before, you talked about the EPA regulations
19 and applications in other states.

20 I thought you had mentioned DOT.

21 Did I hear you incorrectly, that you had
22 issues with the department -- with the
23 Transportation Department?

24 FAYE BECKWITH: Yeah, relative to
25 transporting trees and trucking, we are not directly

1 involved in that, so I don't have any firsthand
2 information.

3 But, I can certainly glean some, if you're
4 interested in that.

5 SENATOR VALESKY: Sure.

6 FAYE BECKWITH: Because, what I've been told
7 is that, and I don't have a clear example, but that
8 they'll make a new regulation and not inform
9 anybody.

10 And then what happens is, guess what? You're
11 pulled over on the road.

12 So, I don't have the details about that.

13 Fire codes are always an issue.

14 We do want, and appreciate the opportunity,
15 to display real Christmas trees properly in a proper
16 container.

17 Fresh foliage cannot burn under any
18 circumstances.

19 So I think, you know, that's a struggle that
20 we have.

21 But, the DEC is really more important at the
22 moment.

23 SENATOR GALLIVAN: Thank you.

24 FAYE BECKWITH: I appreciate it.

25 Thank you.

1 SENATOR GALLIVAN: Two questions.

2 FAYE BECKWITH: Yes.

3 SENATOR GALLIVAN: The first, you talked with
4 the DEC and the EPA, and you gave an example of
5 Valor and SafeGuard [sic], you used the idea of
6 generic versus name brand.

7 For the example you gave, are they the same
8 ingredients, or the same chemicals?

9 FAYE BECKWITH: They're an identical product.
10 Now, I'm not a chemist.

11 SENATOR GALLIVAN: But, that's okay.

12 FAYE BECKWITH: But that's what I've been
13 told.

14 SENATOR GALLIVAN: Are you able to get us
15 that specific information?

16 FAYE BECKWITH: I'll be glad to, yes.

17 SENATOR GALLIVAN: And just make sure we have
18 the exact --

19 FAYE BECKWITH: And, of course, the cost
20 differential is what concerns our membership, or,
21 our Christmas tree --

22 SENATOR GALLIVAN: No, understood.

23 But, I mean, whether there's the labels, so
24 we can see that and have that right in front of us.

25 FAYE BECKWITH: Glad to.

1 SENATOR GALLIVAN: The second thing has to do
2 with New York City, the market being closed.

3 And right at the end, you talked about a DEC
4 regulation.

5 Is the market closed in New York City because
6 of New York City government --

7 FAYE BECKWITH: I think it's because --
8 I think it's New York City --

9 SENATOR GALLIVAN: -- or because of the state
10 DEC?

11 FAYE BECKWITH: -- government, or, whatever
12 is going on there.

13 SENATOR GALLIVAN: But you don't know exactly
14 why?

15 FAYE BECKWITH: I don't know exactly why.

16 We've been trying to get answers, and it's
17 been forever --

18 SENATOR GALLIVAN: Because we can look into
19 it, but you're not -- but the DEC -- does the DEC
20 have anything to do with --

21 FAYE BECKWITH: I'm not sure that they would.

22 Now, and I may have misspoke.

23 SENATOR GALLIVAN: That's all right.

24 I'm just trying to understand it.

25 All right, thank you.

1 FAYE BECKWITH: Yeah, we've been trying to
2 understand that for a while.

3 You know, it's New York State; we want to
4 promote a New York State product in New York State.

5 And the other concern we have is not relative
6 to regulatory, but, we are concerned about the
7 appearance of the dissolving of the Pride of
8 New York program.

9 And, you know, we understand that the
10 grape -- I like wine.

11 So I do understand that the grape industry is
12 really the darling of agriculture right now, things
13 that you can taste.

14 I think that's valuable, to "taste" New York.

15 I think it's a wonderful program, but I'm
16 hoping that they won't discard the Pride of New York
17 for a product that can't be "tasted."

18 And that's important to our industry as well.

19 So, thank you very much.

20 SENATOR GALLIVAN: Appreciate your time.

21 SENATOR VALESKY: Thank you.

22 SENATOR GALLIVAN: We're good.

23 FAYE BECKWITH: Oh, okay.

24 SENATOR GALLIVAN: Thank you.

25 I would like to thank, first, Senator Ritchie

1 for inviting us up here;

2 And then, of course, all of you for being
3 here today.

4 We are -- we have about a month -- an --
5 approximate, another month of hearings in different
6 parts of the state with the different industries.

7 The goal then, ultimately, is to compile a
8 single report with recommended proposed changes,
9 whether it comes in the form of regulations or a law
10 to eliminate these regulations, and whatever we do
11 with the process.

12 So, that can be made available.

13 Ultimately, we will make it available when
14 it's published, on all of our websites, and
15 accessible that way.

16 We would anticipate, our goal is to get that
17 done, sometime by the end of November.

18 I'm not sure if that's possible, but, the
19 idea is, to have it fully prepared, so that when we
20 begin the legislative session right after the first
21 of the year, that then becomes the project and our
22 priority to take on as we move into that next
23 session.

24 So, thanks again.

25 Thank you, Senator.

1 SENATOR RITCHIE: Well, and I would just like
2 to thank the three of my colleagues for making the
3 trip up.

4 Certainly appreciate all the hours that
5 you're putting in, traveling the state, to hear
6 firsthand from, not only those involved in the
7 agriculture industry, but health and the many other
8 areas that you're focusing on.

9 So, thank you all.

10 SENATOR MARCHIONE: And I certainly just want
11 to thank Senator Gallivan, and Senator Ritchie as
12 well, certainly, for chairing these hearings.

13 Senator, thank you so much for this.

14 And, Patty, thanks for having us.

15 Today I think we've heard some very
16 compelling testimony from the leaders in the
17 critical field of agriculture, and, of course, on
18 family farms as well.

19 And I just want to thank all of you for
20 taking part in this, and to know that this is a
21 very -- these are very serious issues to all of us,
22 and that we will be working on them, and taking it
23 forward. And in November, we will be looking at
24 moving forward.

25 So, again, thank you all.

1 It was very eye-opening to me, and
2 I appreciate it.

3 SENATOR GALLIVAN: Thanks, everybody.

4 (Whereupon, at approximately 3:40 p.m.,
5 the public forum on agriculture regulatory reform
6 held before the New York State Senate Majority
7 Coalition concluded, and adjourned.)

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PUBLIC FORUM/TOWN HALL

3

4 MANUFACTURING REGULATORY REFORM - TO LEARN FROM
5 BUSINESSES AND INDUSTRY EXPERTS WHICH REGULATIONS
6 ARE THE LEAST USEFUL, LEAST COST-EFFECTIVE; AND,
7 THEREFORE, SHOULD BE ELIMINATED

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September 20, 2013
10:00 a.m. to 12:00 p.m.

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SPONSORS PRESIDING:

13

Senator Patrick M. Gallivan
Deputy Conference Leader for Economic Development

14

15

Senator Kathleen A. Marchione
Chair of the Administrative Regulations Review
Commission

16

17

Senator David J. Valesky
Chair of the Senate Committee on Commerce,
Economic Development, and Small Business

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CO-SPONSOR PRESIDING:

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Senator John A. DeFrancisco

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1 SENATOR VALESKY: All right, we're going to
2 get started. We're just a few minutes late.

3 We have a number of speakers who will be
4 participating today, so we'll get going.

5 I'm Dave Valesky, the Chair of the
6 Senate Standing Committee on Small Business,
7 Commerce, and Economic Development, and one of the
8 co-chairs of a Senate Majority Coalition series of
9 public hearings that we're holding across the state,
10 to look at the other issue, the other side, of the
11 business-climate situation in New York State.

12 My colleague Senator DeFrancisco is joining
13 us as well, who chairs the Finance Committee.

14 He's focusing his efforts this fall primarily
15 on the tax structure, and we are looking at
16 regulatory reform.

17 And, this is the third of those 10 hearings.

18 We're looking to hear testimony we'll be
19 receiving today, as the third of those hearings, as
20 to what regulations are making it difficult for
21 businesses to be successful: to retain jobs, to add
22 new jobs, and to grow their business, which, in
23 turn, grows the New York State economy.

24 Co-chairing the hearings with me is,
25 Senator Pat Gallivan, from Western New York. He

1 heads up the economic-development efforts for the
2 Senate Republican Conference;

3 And, Senator Kathy Marchione, from Saratoga.
4 She is the Chair of the Administrative Regulations
5 Review Commission.

6 So, delighted to welcome them both to
7 Syracuse.

8 And before we begin, I would just ask my
9 colleagues if they have any opening comments that
10 they would like to make.

11 Pat?

12 SENATOR GALLIVAN: Thanks, Senator.

13 Good morning, everybody.

14 I appreciate the fact that you took time out
15 of your day to be here, or to travel here.

16 A recent U.S. Chamber of Commerce report
17 ranked New York State 50th out of 50 states
18 regarding its business climate and it's business
19 environment.

20 And it's no secret why there's problems.

21 Senator Valesky touched on both of them:
22 we're among the highest taxed and highest regulated
23 in the state.

24 So, we are conducting that series of
25 hearings, focusing, chaired by Senator DeFrancisco,

1 on tax reform, and, then, the panel before you,
2 conducting the series across the state to deal with
3 the rest of it, that so-called "death by a thousand
4 cuts," in hope that we can do this in an
5 industry-specific manner, where you can help us
6 drill down beyond those big things, beyond
7 worker's-comp issues, beyond Scaffold Law, beyond
8 Wage Theft Prevention Act; get down to things that
9 stand in the way or prove to be impediments to your
10 businesses, your industry, on a daily basis.

11 And our goal, of course, is to put out,
12 publish a report sometime, probably late in
13 November.

14 It would be part of our set -- our -- a part
15 of our priority and our agenda as we move into the
16 next legislative session, in hopes, that at least with
17 the regulatory reform, that all these little things,
18 that we can look at the outdated regulations -- the
19 ones that make no sense, the ones that are
20 duplicative, the ones where the costs greatly
21 exceeds the benefit -- in hope that we can take all
22 of these, and they can add up to have some sort of
23 meaningful change.

24 To give you an idea, there's, I think the
25 number is 83 volumes of rules and regulations in the

1 state, over 140,000 pages.

2 So, we certainly think that there's room for
3 improvement.

4 I'm sure you do, or else you wouldn't be
5 here.

6 And, I'm anxious to hear your testimony, and
7 hopeful that you can help us in this initiative,
8 which I think ultimately, of course, helps the
9 manufacturing industry and New York's economy.

10 So, thank you.

11 SENATOR VALESKY: Thank you,
12 Senator Gallivan.

13 Senator Marchione?

14 SENATOR MARCHIONE: Thank you.

15 It's an honor for me to be here with you this
16 morning, and I look forward to hearing your
17 testimony on regulations relative to manufacturing.

18 As the Chairman of the Administrative
19 Regulations Review Commission, I've stated a number
20 of times that the red tape, our regulations, travel
21 about 12 miles when you lay the volumes end to end.

22 Senator Gallivan was talking about, for me,
23 that's from Albany to almost my home in Half Moon.

24 We really do need to do something about that.

25 It is what prevents our businesses from being

1 able to expand and, perhaps, land here in New York.

2 And it's very serious to us; thus, the reason
3 for this hearing.

4 Also, I'll let you know that the
5 Administrative Regulatory Review Commission, beyond
6 these hearings, has been looking itself at
7 regulations, to see what's there, and almost
8 spending our full time this summer working to do
9 that.

10 But, we need to hear from you.

11 And, you know, our only goal here is to find
12 solutions, real solutions.

13 And we believe that your testimony and what
14 you bring before us today is what will help us do
15 that.

16 So thank you so much for being here.

17 SENATOR DeFRANCISCO: I don't have really
18 much to add.

19 I mean, you wouldn't be here if you weren't
20 concerned about regulations, overregulations, in the
21 state of New York, and sometimes non-cooperation by
22 some of the agencies that you're dealing with.

23 And, we get a lot of calls about that issue.

24 It's a big government.

25 The big government, there's a lot of layers,

1 and a lot of layers sometimes don't speak to each
2 other.

3 But, what we want to be able to do, is be in
4 a position to make serious recommendations, real
5 recommendations, that actually get implemented,
6 because everyone, from the Governor on down, wants
7 to make this a better business climate in the state
8 of New York.

9 So from my perspective, I appreciate your
10 being here to give your perspective of what needs to
11 be done in the state of New York, and the more
12 specific, the better.

13 Thank you.

14 SENATOR VALESKY: Thank you.

15 We'll start today with Brian Sampson, who is
16 the executive director of Unshackle Upstate.

17 Good morning.

18 BRIAN SAMPSON: Good morning.

19 Thanks for having us here.

20 Senator Valesky, Gallivan,
21 Senator DeFrancisco, Senator Marchione, we thank you
22 for the opportunity to sit before you today and
23 present our testimony.

24 I want to thank you and your Coalition for
25 taking on this important issue of regulatory reform.

1 It is certainly one that we hear about often
2 as we travel about the 48 counties and the
3 40,000 square miles of Upstate New York.

4 In my testimony you have more detailed
5 regulations of some of the things that we're looking
6 at, so I won't go into great depth here today.

7 And I know that my good friends Deb Warner
8 and Karyn Burns will cover many of those.

9 So -- but, again, my name is Brian Sampson.
10 I'm the executive director of
11 Unshackle Upstate.

12 We're a non-partisan pro-taxpayer,
13 pro-economic growth, education, and advocacy
14 organization dedicated to the revitalization of
15 Upstate New York.

16 As an organization, Unshackled's purpose is
17 to push for policies in Albany that make upstate a
18 better place to do business.

19 I recently had the opportunity to present our
20 New Era Plan for upstate to two Senate Committees.

21 Senator DeFrancisco and Senator Valesky, you
22 were there last week.

23 That plan, which I won't detail here, is made
24 up of five proposals to provide broad-based tax
25 relief and stimulate job growth across upstate.

1 Senator Marchione, I think you were there
2 last week as well, so, thank you.

3 But equally as important to the success of
4 the upstate economy is the topic of today's hearing:
5 reducing State-imposed mandates on business.

6 Over the past few years, a new phrase has
7 frequently been heard emanating from the halls of
8 the Capitol in New York.

9 That phrase, that "New York is open for
10 business."

11 While progress has been made, it is far too
12 early to make such bold and provocative statements.

13 The reputation of New York is often seen as a
14 place where businesses tend to experience --
15 Senator Gallivan, to your point -- a death by a
16 thousand cuts; those cuts being taxes.

17 Unfortunately it's a reputation that we have
18 earned, and we deserve.

19 Further, New York is widely regarded
20 throughout the nation as one of the states with the
21 highest levels of regulation.

22 You recall that earlier this year,
23 Texas Governor Rick Perry launched an advertising
24 campaign, focusing on our state's anti-business
25 regulations as a means to lure New York businesses

1 to his state of Texas.

2 I believe that it even included an iconic
3 graphic of "New York Loves Regulations."

4 Today I hope to provide you with a
5 perspective of the upstate business community on the
6 issue, and with some suggestions that will help you
7 change this, and to improve the state's
8 competitiveness and the perception that others have
9 of us.

10 I truly hope that this is a first step
11 towards reducing New York's ever-thickening snarl of
12 government regulations.

13 While manufacturing-specific regulations are
14 devastating, so, too, are the general business taxes
15 and regulations.

16 Consider the following:

17 On energy: Things like the systems-benefit
18 charge, as well as the Regional Greenhouse Gas
19 Initiative, make our energy the most costly in the
20 country.

21 Health insurance: New York has more than
22 4.2 billion, that's billion with a "B," dollars in
23 taxes on our health insurance.

24 Tort reform: New York is often considered a
25 judicial hellhole due to our court systems and laws

1 that defy logic.

2 The poster child for that is the
3 Scaffold Law, Labor Law 240/241, that, thankfully,
4 you Senator Gallivan sponsored that reform bill.

5 Those are just indications of how New York
6 isn't serious about helping our business community.

7 All of these things hurt manufacturing,
8 especially small manufacturing, the lifeblood of
9 many communities across upstate.

10 These are the companies that can't afford to
11 stay, but they also can't afford to leave.

12 In contrast, many large manufacturers located
13 in upstate have simply shifted work to other
14 facilities or just abandoned New York altogether.

15 Here in Syracuse you can point to the absence
16 of the Carrier Corporation.

17 The only real presence it has in this
18 community today is the dome where the beloved Orange
19 compete.

20 But let me highlight what I consider to be,
21 as we call it, the "grand slam" of unnecessary
22 regulation, the annual notification provision
23 mandated in the 2010 Wage Theft Prevention Act.

24 Senator DeFrancisco, thankfully, you support
25 and endorsed the bill that will repeal that

1 provision.

2 In 2010, the Legislature decided there were a
3 number of problems relating to the nonpayment of
4 workers that needed to be addressed, including
5 nonpayment of overtime, improper deduction from
6 wages, and the payment of below minimum wage.

7 This was an effort motivated by good
8 intentions, certainly, but that well-intentioned
9 effort was missing one component: common sense.

10 Under New York's Wage Theft Protection Act,
11 private-sector employers must provide, each year, a
12 written pay notice to all of their employees.

13 The employer must also obtain a written
14 acknowledgment of the receipt of this notice, that
15 must be obtained in the employees' files for
16 six years.

17 Unshackled Upstate did not oppose efforts to
18 protect employees who were being cheated by bad
19 employers.

20 In fact, we will never defend bad employers.

21 We took no issue with the increased penalties
22 for intentional and repeated violations of the law,
23 or against more diligent enforcement of the law.

24 We felt that this was indeed a problem, and
25 that there were fair and appropriate solutions.

1 But what was not an appropriate response was
2 the imposition of a new employee notification and
3 recordkeeping mandate on every private employer in
4 the state.

5 The aspect of the law was simply an overkill.

6 Besides being a compliance nightmare, the law
7 treats every employer as if they were underpaying
8 their employees. They are guilty before even having
9 the chance to presume their innocence.

10 Since the vast majority of employers follow
11 the law and pay their employees the way they owe,
12 the law needs to go.

13 For the record, I note that the Senate has
14 passed a bill that would eliminate the annual
15 notification requirement.

16 I commend you for that, and urge you to
17 continue to advance the bill.

18 We continue to pressure your Assembly
19 colleagues on the issue, and we hope that they will
20 do it in this next session.

21 In terms of changing the regulatory
22 environment of New York State, most people
23 understand that we did not get here overnight, and
24 we will not be able to solve this problem overnight
25 either.

1 Unshackle Upstate has in the past solicited
2 input from upstate businesses regarding what
3 regulatory reforms should be undertaken.

4 What at first seemed to us to be a simple
5 request turned into something very different.

6 What we heard was, that it was a complex
7 mosaic of rules that the State has in place,
8 combined with little thought to providing assistance
9 to those who have to comply to them.

10 That has created such a challenging
11 regulatory environment.

12 In other words, it's not just the forest,
13 it's the trees.

14 What New York State needs is a serious and
15 sustained effort to change the way the State deals
16 with business.

17 My members recognize the need for the State
18 to have health, environmental, and consumer
19 protection regulations in place, but we also believe
20 that those regulations must be fair and predictable.

21 Critically, regulations must be aligned with
22 understandable and clearly articulated public-policy
23 goals, they must be achieving the goals for which
24 they were adopted, and they should do so in a manner
25 that is not unduly burdensome.

1 To this end, we recommend two overarching
2 strategies as you move forward.

3 First, we urge the Senate to undertake an
4 agency-by agency review of regulations to identify
5 those that are truly unduly burdensome, that have
6 outlived their usefulness, or more importantly, ones
7 that conflict or are duplicative of federal
8 requirements.

9 Continuing to shine a light on the
10 challenging regulatory environment is crucial.

11 Second, and probably most importantly, we
12 urge you to stop enacting laws that result in the
13 imposition of new mandates on new businesses until
14 the State has taken steps to improve the regulatory
15 environment.

16 There's an old saying: When you find yourself
17 in a hole and want to get out, the first thing you
18 need to do is stop digging.

19 So, please, stop digging.

20 I understand that this can be difficult for a
21 legislative body, especially in an election year,
22 but your first priority should be to do no harm.

23 I'm going to conclude my testimony with a
24 plea for SEQR reform.

25 We have no objection to SEQR itself.

1 It makes absolute sense to consider the
2 environmental impacts of a particular project, to
3 see if adverse impacts can be mitigated, or, if
4 there are alternatives to a particular proposal that
5 will impose and improve a project, and make the
6 environment better.

7 That's just common sense.

8 But as presently structured, SEQR is too
9 often a project-killer in New York State.

10 In fact, over the course of the last
11 two years, many of you and the Governor have put
12 hundreds of millions, if not billions of dollars out
13 on the street through the regional councils.

14 Each and every one of those projects that
15 requires building, bricks and mortar, they're all
16 delayed due, in large part, to the SEQR.

17 What troubles many businesses most, and in
18 some cases even troubles them entirely, is
19 uncertainty.

20 I will offer, that the State Department of
21 Environmental Conservation's review of natural-gas
22 development in the Marcellus Shale region is also an
23 example of an environmental review process run
24 amuck.

25 There does not appear to be any timetable for

1 the conclusion of DEC's environmental-review
2 process, the one that began more than five years ago
3 in July 2008.

4 It was just over one year ago today that
5 DEC Commissioner Martens asked State Health
6 Commissioner Nirav Shaw to assess the DEC's
7 health-impact analysis.

8 That has been one year, and the oil and gas
9 industry has heard nothing.

10 More importantly, it is the landowners in the
11 Marcellus area that continue to hear nothing, and
12 continue to have uncertainty.

13 The silence that we hear from the DEC is
14 deafening.

15 Our view is, that natural gas can and should
16 be developed in the Marcellus Shale region, and that
17 the State should finalize its comprehensive review
18 of the potential environmental impact of natural-gas
19 development, and put into place regulations that
20 strike an appropriate balance between economic
21 development and environmental protection as soon as
22 possible.

23 This is exactly the type of "only in
24 New York" situation that we must avoid in the future
25 if we want New York to shed its anti-business

1 reputation.

2 In closing, the focus in Albany needs to
3 shift.

4 We need to hit the restart button on our tax
5 policies, as well as our regulatory structure.

6 We must reduce regulations so that our
7 entrepreneurs may thrive.

8 We must lower taxes that impede our growth,
9 and we must do it today, not at some random point in
10 the future.

11 We don't have time to wait anymore.

12 Again, thank you for the opportunity to speak
13 with you today on this important issue, and I'm
14 happy to answer any questions you may have.

15 SENATOR MARCHIONE: You mentioned the
16 Regional Greenhouse Gas Emission Initiative as being
17 problematic.

18 Can you give me some additional information
19 on that?

20 BRIAN SAMPSON: Sure.

21 So there's a charge on everybody's energy
22 bill called "RGGI," and that's to go to fund some
23 alternative development in the energy industry.

24 While we don't have an issue with developing
25 solar and developing wind, the RGGI, combined with

1 the systems-benefit charge, combined with 18-A,
2 makes energy so expensive here in New York State
3 that, from a manufacturing standpoint, when things
4 can come down to pennies on a dollar, that extra
5 penny or two that somebody may pay through a RGGI or
6 a systems-benefit charge makes their product too
7 expensive and they lose the bid.

8 SENATOR MARCHIONE: Thank you.

9 SENATOR DeFRANCISCO: I'm glad you mentioned
10 the Wage Theft Prevention Act as the poster child of
11 ridiculousness in government.

12 Just to remind you: In 2010, the entire
13 government was controlled by downstate.

14 BRIAN SAMPSON: Yes, it was.

15 SENATOR DeFRANCISCO: And, to require people
16 to give, especially when they give checks with check
17 stubs, talking about exactly what's being taken out,
18 to give another annual notification of what they
19 earn so that they know what they're earning, is the
20 most asinine thing I've seen in government.

21 Now, what I don't understand, for the life of
22 me, there's businesses downstate, I think?

23 BRIAN SAMPSON: Sure, many.

24 SENATOR DeFRANCISCO: And I know
25 Upstate New York, and Unshackle Upstate, and all the

1 manufacturers I hear from on a daily basis, tell me
2 what I just said, and what you said, about this
3 bill.

4 We've passed a repealer two years in a row.

5 Is there any voice downstate of the business
6 community saying: This is ridiculous. It's costing
7 us hundreds of thousands of dollars to do nothing?

8 BRIAN SAMPSON: We actually had an agreement
9 from the Assembly this past session that they were
10 going to advance your bill, and that it would go
11 through the House and be passed.

12 Unfortunately, at the last minute, many of
13 the public-employee unions down in the city wanted
14 to attach a whistleblower provision to the bill.

15 That whistleblower, to us, changed the
16 negotiations of the bill; and, ultimately, it wasn't
17 advanced in the House.

18 So, there is a voice in the city that is
19 speaking on that issue.

20 SENATOR DeFRANCISCO: Well, the next part of
21 that question then is: What about accountability?

22 Do these business people go after some of
23 these people that do not -- are in the government,
24 that do foolish things, and cost them a lot of money
25 for no reason?

1 Are there any organized efforts to run a
2 primary against somebody who's maybe holding up a
3 bill?

4 Or -- I mean, it seems to me, the only
5 solution is political.

6 And if something is so foolish, it has to get
7 done, and it's stopped by one group of people,
8 there's got to be some political consequences.

9 I'm not suggesting -- you, obviously, are
10 very astute at what you're doing. You get your
11 message out very quickly.

12 But, somehow, the same effort's got to be
13 made downstate, because that should not be allowed
14 without accountability.

15 BRIAN SAMPSON: You know, we couldn't agree
16 with you more, Senator.

17 And, thankfully, I only get to deal with the
18 things north and west of the Tappan Zee. And that's
19 difficult enough.

20 I think that there are --

21 SENATOR DeFRANCISCO: Yeah, but we're up here
22 and we get criticized from down --

23 BRIAN SAMPSON: Well, you know, this -- I'll
24 tell you what, this is one of those classic
25 examples, though, of upstate bearing the burden of a

1 downstate marketplace.

2 Now, if there are concerns and issues with
3 the bodegas and the construction industry in
4 New York City, then maybe this law should apply just
5 to the five boroughs.

6 I have no problem with that.

7 Here in Upstate New York, we have good
8 employers.

9 We have great manufacturers. We have
10 wonderful farms.

11 They're not skirting the laws.

12 And if they are, we're not going to defend
13 them, and there are laws in place to prosecute them.

14 Couldn't agree with you more.

15 SENATOR VALESKY: Brian, thanks for your
16 testimony.

17 Just a couple of quick points.

18 BRIAN SAMPSON: Sure.

19 SENATOR VALESKY: And I appreciate the
20 specificity, even though you didn't get into in your
21 oral testimony.

22 BRIAN SAMPSON: We would be here all day if
23 you wanted to do that.

24 SENATOR VALESKY: Yes, if we went through it
25 point by point.

1 So, I do appreciate your specificity.

2 One: As I'm sure you remember, the Senate,
3 in the last few days of a recently concluded
4 session, approved a series of, I think it was
5 14 separate pieces of legislation regarding
6 regulatory reform.

7 I think a couple of them you have in your
8 recommendations for next year.

9 One of them that comes to mind, and I think
10 it was sponsored by Senator Griffo, that would
11 establish a Berger-style commission to look at the
12 regulatory climate.

13 I would just certainly suggest, that as you
14 prepare your 2014 legislative agenda for Unshackle,
15 that you review those bills that we've taken up
16 already --

17 BRIAN SAMPSON: Absolutely.

18 SENATOR VALESKY: -- and, you know, the ones
19 that you feel would be of benefit, from your
20 organization's perspective, certainly would be
21 helpful to us --

22 BRIAN SAMPSON: Of course.

23 SENATOR VALESKY: -- to continue to advance
24 them in next year's session.

25 The one thing I'm just going to pick out

1 among your recommendations, has to do with
2 worker's compensation.

3 BRIAN SAMPSON: Yes.

4 SENATOR VALESKY: Your headline is:
5 "Adopting the AMA and ACOEM Guidelines."

6 And you talk about the worker's-comp reforms
7 that we passed in 2007 --

8 BRIAN SAMPSON: Sure.

9 SENATOR VALESKY: -- and you indicated that
10 they haven't particularly worked.

11 We did do some worker's-comp reform in this
12 year's budget.

13 And I don't know whether you've had time to,
14 or whether businesses have had time to, analyze the
15 impact of what we did earlier this year.

16 Do you have any --

17 BRIAN SAMPSON: Yeah, we actually worked with
18 the Senate and the Governor's Office on those
19 provisions, and they were more long-term changes to
20 the worker's-comp system.

21 In essence what you have, is the reforms that
22 were done in 2007 is a very quick, forced reduction
23 in premiums on worker's comp, and then you
24 established the equivalent of The AMA Guidelines
25 (The American Medical Association Guidelines) for

1 the state of New York.

2 By the times that those rules and regulations
3 were promulgated and put into place, we had already
4 suffered 4 1/2 years of increased growth in
5 worker's-comp premiums, paid on a weekly basis.

6 So in order to revert -- the example is, the
7 minute you drive a car and you drive it off the lot,
8 the rumor is, it's worth about half of what you just
9 paid for it.

10 You passed a law in 2007, changing
11 worker's comp, but by the time you put the rules in
12 place, you were already 4 1/2 years behind the rest
13 of the country that is using AMA Guidelines.

14 Our point is, 30 -- I believe 38 states
15 utilize the AMA Guidelines.

16 They're very -- they're created by doctors.

17 They're designed to ensure that there is, as
18 we like to say, predictability, there's cost
19 ensurement [sic], but there's also good treatment
20 for the injured worker.

21 So what we'd like the State to do is adopt
22 those guidelines, and then to follow them up with
23 ACOEM.

24 ACOEM is a list of treatment protocols.

25 So it's, basically, you know, if you try this

1 treatment and it doesn't work, then you go to B.

2 And if B doesn't work, you go to C.

3 But there's a progression there.

4 A predictable progression.

5 If the State were to adopt those, what you
6 would see is a tremendous decrease in the pressure
7 on the premiums under Worker's Compensation.

8 When we got there, obviously, then, that's a
9 relief to the business community, yet you've still
10 ensured that there is proper treatment for the
11 injured worker.

12 We want to see them get back to work.

13 We don't want to see them sit out on worker's
14 comp, even for the maximum of 500 weeks.

15 We want them back to work.

16 ACOEM and AMA guidelines would make
17 New York State more competitive. Again, would bring
18 us to a national standard that 38 other states are
19 using.

20 SENATOR VALESKY: Would adoption of those
21 guidelines require legislation from us, or could
22 that be done administratively?

23 BRIAN SAMPSON: We're checking on both.

24 My sense is, because the 2007 reforms were
25 done legislatively, this would probably have to be

1 done as well.

2 But, we are talking to the
3 Worker's Comp Board about adopting those
4 regulations.

5 SENATOR VALESKY: Anything?

6 SENATOR GALLIVAN: No, I'm good.

7 SENATOR VALESKY: Brian, thanks very much.

8 BRIAN SAMPSON: Thanks.

9 Appreciate your time.

10 Next we'll hear from Nathan Andrews, who is
11 the president of Morse Manufacturing in
12 East Syracuse.

13 Welcome back.

14 We heard from Nathan at Senator DeFrancisco's
15 hearing here in Syracuse a couple of weeks ago.

16 NATHAN ANDREWS: Yes, indeed.

17 SENATOR VALESKY: Good to see you again.

18 NATHAN ANDREWS: Thank you very much.

19 Thank you.

20 Again, Nate Andrews, Morse Manufacturing
21 President.

22 Thank you for this opportunity, and thank you
23 for addressing the need for regulatory reform in
24 New York State.

25 Morse Manufacturing was founded in 1923, and

1 making it a 90-year-old company.

2 I'm currently third generation. We're a
3 family business.

4 We are a manufacturer of drum- and
5 barrel-handling equipment.

6 Think of a steel drum.

7 We don't make the drums, we make the
8 equipment that properly lifts, moves, and handles
9 it.

10 Two weeks ago, I was here testifying before--
11 regarding tax reform.

12 At the time, I spoke a little bit about the
13 type of products that we make, in light of the
14 uniqueness and the kind of engineering know-how that
15 is required behind it, in light of the ongoing
16 denial that we have had of the Qualified Emerging
17 Technology Credit that is still ongoing.

18 Nothing's changed in the last two weeks, by
19 the way.

20 But, today, I would like to share a picture
21 of Morse Manufacturing, in light of regulatory
22 reform, and I'd like to focus on the employees that
23 we have.

24 We have, roughly, 40 employees, and our
25 average employee has been with us over 15 years.

1 I have been with the company 10 1/2 years,
2 and so I'm still, relatively, a new face in the
3 organization, even though, you know, a lot of them
4 knew me as a kid, growing up.

5 We offer full benefits: health, dental, life
6 insurance.

7 Last year's profit sharing was over 7 percent
8 contribution to 401(k) plans.

9 And we offer all sorts of incidentals that a
10 lot of bigger companies can't do. We have the
11 flexibility.

12 New York State Fair tickets, or, we get
13 season tickets to the Syracuse Chiefs, and give them
14 away to employees.

15 I got tickets to the SU football game this
16 weekend, that we're giving away.

17 We do a full week's pay at Christmas.

18 SENATOR VALESKY: Do you have trouble giving
19 them away?

20 [Laughter.]

21 NATHAN ANDREWS: The Chiefs tickets we did,
22 but...

23 We do -- in the winter, we have a fruit
24 basket, where the employees can come help
25 themselves, you know, to keep themselves healthy

1 throughout the winter. You know, avoid downtime.

2 We do lunch-and-learns for employees. Bring
3 people in to talk about different nonprofits.

4 It's a family business, in the sense that
5 it's owned by my family, but, it's a family in the
6 sense that our employees are our family.

7 We believe that if we put our employees
8 first, they're, in turn, going to put our customers
9 first.

10 It establishes a sense of trust throughout
11 the entire organization, and that's what keeps us in
12 business for 90-plus years.

13 And, hopefully, for my grandkids to stay
14 within the business.

15 It's within that sense of trust -- and I hate
16 to discuss what's already been mentioned -- but the
17 Wage Theft Prevention Act, twice a year I personally
18 go around and have people sign these papers,
19 declaring all the same information that's on their
20 paycheck.

21 And it's the same conversation every time
22 I walk out back:

23 "Well, what is this?"

24 "Well, it's to show you that I'm not stealing
25 from you."

1 "Well, what's on it?"

2 "Well, it's the same information that's on
3 your paycheck."

4 "Well, why do I have to sign it?"

5 "Well, New York State makes us do that."

6 It's a nonsensical requirement.

7 It invalidates the kind of trust that we're
8 trying to build with our employees.

9 And, it's something -- I won't belabor the
10 point.

11 I'd like to talk about New York State
12 unemployment as well.

13 Morse Manufacturing, as I'm sure you're well
14 aware, is liable for unemployment expenses for
15 employees that we have let go for rightful cause,
16 they've been terminated, who are subsequently hired
17 by another organization, and then let go, in the
18 amounts of thousands of dollars over the course of a
19 year for an employee that was let go for cause.

20 Over the last 10 years that I've been a part
21 of the organization, we have never once let go a
22 single employee that was not for cause, and,
23 therefore, was not eligible for unemployment.

24 Yet, they got hired somewhere else, were laid
25 off, we're liable for unemployment.

1 Back in '08, '09, back when the economy
2 tanked, our sales plummeted.

3 As a family business, we were able to not lay
4 employees off.

5 We kept people busy.

6 We had employees on our roof, painting the
7 roof, just to keep people busy.

8 When the economy turned around, we were able
9 to benefit from it.

10 But, over the course of those 5 years, our
11 unemployment costs have gone up over 83 percent.

12 And that's just not because of the fact that
13 other employees had left and had subsequently been
14 terminated, but I know there's all sorts of other
15 reasons for unemployment expenses going up, but,
16 83 percent over the last 5 years is a big burden for
17 us to bear.

18 We have -- in the past five years, we
19 purchased a paint booth.

20 We have a painting process.

21 We have a water-based paint, very low
22 volatile content. It doesn't smell very toxic, or
23 anything. And, we use a dip tank. It's a
24 500-gallon large dip tank.

25 You don't want to fall in it because you'll

1 turn blue.

2 Everything we do is blue, and it's called the
3 "Morse blue." That's what our products are.

4 We were running into problems because we're
5 limited by the size of the dip tank for painting our
6 products, and so we wanted to acquire a paint booth.

7 We were having to have everything outsourced.

8 We were buying a simple 10-by-10 paint booth,
9 and we started going through the process with the
10 DEC to get the permitting required to purchase this
11 paint booth.

12 We were spending hundreds of
13 thousands of dollars to outside suppliers to have
14 this painting done on some of our larger equipment.

15 A paint booth was twenty, thirty thousand
16 dollars.

17 It paid for itself in a matter of weeks,
18 literally, but the permitting process took us over a
19 year to go through the DEC.

20 Apparently, New York State -- we gave these
21 MSDS sheets that spell out the contents of the
22 chemicals and the paint, and everything else.

23 And the federal government has guidelines on
24 VOC content (volatile organic compounds).

25 And unbeknownst to us, New York State has its

1 own set of calculations and guidelines for
2 VOC content.

3 And so this application process, we --
4 without the help of the New York State Environmental
5 Facilities Corp., I don't know, we just may have
6 given up.

7 It was -- the application is -- I'm not a
8 stupid person, but it makes you feel really stupid.

9 I can show you a copy of it if you're
10 interested.

11 The last issue I'd like to touch on, and it's
12 been brought up, is the Scaffolding Law.

13 We have absolutely nothing to do with
14 scaffolding in manufacturing drum- and
15 barrel-handling equipment; and, yet, we have to have
16 an entire process set up within our organization to
17 make sure any contractor that comes into our
18 facility is insured and named additional insured
19 through our insurance company.

20 It's a nonsensical rule, whereby, you know,
21 if someone, if they're standing on a footstool, no
22 matter if they were drunk, if they were anything, we
23 are 100 percent liable, according to the best of my
24 understanding.

25 And it's an additional burden that we really

1 don't need to have.

2 Again, I really thank you.

3 To the Senator's point, New York State is
4 regulation "death by a thousand cuts."

5 It's all these little things that burden;
6 take my time, take the time of our employees, and
7 take it away from truly doing what's in the best
8 interest of our employees and our customers.

9 I thank you for the opportunity once again to
10 be here.

11 And, I applaud you all for taking on these
12 tough issues.

13 SENATOR GALLIVAN: I'm just curious, and
14 nothing specific --

15 I appreciate your testimony, and I guess
16 I would put big exclamation points behind it.

17 -- but I'm curious: How many state agencies
18 regulate you, if you know?

19 NATHAN ANDREWS: Well, Department of Labor,
20 Worker's Compensation, DEC.

21 I would guess at least a dozen.

22 SENATOR GALLIVAN: Of all of them, when there
23 are changes, do you get notice from the various
24 state agencies of the changes in the regulations or
25 the laws that affect you?

1 NATHAN ANDREWS: Generally, no.

2 You know, that -- as a small business, that's
3 a huge fear, that there's regulations out there that
4 we want to be in compliance with. We just don't
5 know about them.

6 SENATOR GALLIVAN: Do you have State
7 auditors?

8 I mean, do state auditors show up from time
9 to time?

10 NATHAN ANDREWS: From time to time.

11 SENATOR GALLIVAN: Do they call?

12 Are they, announced? unannounced?

13 NATHAN ANDREWS: Unannounced.

14 SENATOR GALLIVAN: What are the things that
15 they're auditing?

16 NATHAN ANDREWS: Well, New York State Tax was
17 the most recent one that we've been facing.

18 Fortunately, we've been under the radar in
19 the past 10 years, but, I know people that have been
20 audited by the Labor Departments, and some others,
21 that have not had pleasant experiences.

22 SENATOR GALLIVAN: Yeah, okay.

23 Thank you.

24 SENATOR MARCHIONE: Do you have any
25 duplicative regulations between EPA and DEC with

1 your business?

2 NATHAN ANDREWS: Well, as I mentioned, the
3 VOC-content issue that we had --

4 SENATOR MARCHIONE: Is that both?

5 NATHAN ANDREWS: -- the New York State
6 guidelines are completely different.

7 Fortunately, we had some help in going
8 through that process to notify us.

9 At this point, we simply pay an ongoing
10 permit fee to have the paint booth established.

11 SENATOR VALESKY: This Panel was in Watertown
12 yesterday, and our topic yesterday was the
13 agriculture industry, and many of the speakers
14 raised the issue of DEC. In many cases, having
15 regulations that go way beyond the federal
16 EPA standards.

17 So just following up on Senator Marchione's
18 questions: So, the permit for your paint booth,
19 there's a separate -- there's obviously a permit
20 from the Department of Environmental Conservation,
21 but the requirements the State DEC requires for you
22 to obtain that permit go above and beyond what the
23 federal EPA requirements specify?

24 Is that correct?

25 NATHAN ANDREWS: As I best understood the

1 process, correct.

2 The calculations for VOC content were
3 separate from what the MSDS sheets, set forth by the
4 federal guidelines, established.

5 SENATOR VALESKY: Thank you, Nate.

6 Thanks very much for your testimony.

7 SENATOR GALLIVAN: I do have one more
8 question.

9 NATHAN ANDREWS: Sure.

10 SENATOR GALLIVAN: I've been told that
11 there's -- now, if I understand correctly -- for
12 energy, you do not have to pay sales tax for energy
13 used in the manufacturing process?

14 NATHAN ANDREWS: Correct.

15 SENATOR GALLIVAN: Is that accurate?

16 NATHAN ANDREWS: Yes.

17 SENATOR GALLIVAN: However, you do have to
18 pay sales tax for any energy that's not used for
19 manufacturing; for your administrative office --

20 NATHAN ANDREWS: Correct.

21 SENATOR GALLIVAN: -- or things of that
22 nature?

23 NATHAN ANDREWS: Uh-huh.

24 SENATOR GALLIVAN: How do you calculate that?

25 NATHAN ANDREWS: We do it based on

1 square footage of our manufacturing facility
2 compared to our office environment.

3 We have not been questioned on that in the
4 fact of --

5 SENATOR GALLIVAN: That was my next question:
6 You have not been questioned?

7 NATHAN ANDREWS: We have not.

8 SENATOR DeFRANCISCO: Yet.

9 NATHAN ANDREWS: It's not -- yet.

10 For the most part, our sales, as a
11 manufacturer, we sell through a distributor network.

12 Our sales-and-usage tax is extremely low
13 because we don't sell anything direct, so we're not
14 really paying taxes.

15 So, that tax on our energy usage is the only
16 sales-and-use tax that we really have an obligation
17 to pay, so it's not a large amount, comparatively.

18 SENATOR GALLIVAN: All right.

19 Thank you.

20 SENATOR VALESKY: Thanks very much, Nate.

21 NATHAN ANDREWS: Thank you again.

22 SENATOR VALESKY: Next is Karyn Burns,
23 vice president, communications and government
24 relations for The Manufacturers Association &
25 The Manufacturers Alliance of New York State.

1 Good morning, Karyn.

2 KARYN BURNS: Hello, how are you?

3 First of all, obviously, thank you very much
4 for coming together and holding this forum.

5 I think it's terrific it's in Syracuse.

6 Obviously, we have a great manufacturing
7 sector here, robust, growing, but certainly not
8 without their share of challenges.

9 I will spare you the details. I believe most
10 of you are aware of MACNY.

11 Just a brief overview:

12 We've been around for over 100 years. We're
13 celebrating our 100th birthday this year.

14 And, we represent about 55,000 manufacturers.
15 We have 330 manufacturing companies within
16 26 counties.

17 Very proud of what we do.

18 We serve our members, whether it's HR
19 services, or training, advocacy.

20 Essentially, we try to make it easier for
21 them to do what they do best, which is manufacturing
22 products.

23 I've been doing it a long time, hoping to do
24 it for a longer time.

25 But I'm also here wearing a separate hat, and

1 that actually has to do with The Manufacturers
2 Alliance of New York State.

3 This came together in 2006.

4 And, essentially, we came together with some
5 other regional organizations also representing the
6 manufacturing sector throughout the state.

7 That's to include the Buffalo Niagara
8 Manufacturing Alliance; the Rochester Tooling-- I'm
9 sorry, they just changed their name-- Technology and
10 Manufacturing Association; the Council of Industry
11 of Southeastern New York; the Long Island Forum for
12 Technology; Manufacturers Association of the
13 Southern Tier; Finger Lakes Advanced Manufacturing
14 Group.

15 I apologize-- oh, and the Chief Executive
16 Network in the Albany region.

17 It's a great representation, primarily of
18 upstate manufacturers, but we all came together,
19 because we realized that together, collectively, we
20 were going to get a lot more done on the statewide
21 level.

22 We tend to advocate on sector-specific issues
23 rather than regional.

24 So that's also what I'm here representing
25 today.

1 What I want to talk to you about-- and feel
2 free to read through my testimony -- but what we
3 ended up doing, we've actually, this summer, we've
4 been receiving a lot of inquiries, not only from the
5 Senate, but from the Assembly as well, and from the
6 Administration.

7 And it sounds like everyone is looking for
8 some regulatory reform to make changes on.

9 And that, to us, is very positive.

10 Obviously, we want everyone to work together.

11 Businesses are happy to work with you.

12 So I'm here speaking on behalf of those
13 businesses.

14 And we took the initiative, and we actually
15 ended up surveying our membership a couple weeks
16 ago.

17 And I apologize, we're still in the process
18 of finalizing that information and quantifying those
19 results.

20 But some of those results that came through
21 allowed me to write my testimony, and a couple
22 things I want to talk about specifically today.

23 And some of the --

24 SENATOR VALESKY: Karyn, just before do you
25 that --

1 KARYN BURNS: Yes?

2 SENATOR VALESKY: -- when you do finish that
3 process, if you could share that with us?

4 KARYN BURNS: Absolutely.

5 Absolutely, yes.

6 We were planning on doing that under our
7 research institute, so we'll be happy to send you
8 those results once they come in.

9 But what we've found, so far, is that there's
10 a pattern; that there's three areas of regulation
11 that we'd like to discuss today, and they're in the
12 areas of:

13 Economic regulation, which has to do with
14 prices and wages.

15 And I'd like to discuss some specific
16 examples that were given to us.

17 One had to do with the unemployment-insurance
18 issue that happened a few years ago within the
19 Department of Labor.

20 I've never seen my members so angry.

21 I'll talk about that in a minute.

22 The second component that we found was more
23 social issues; had to do with DEC, for example,
24 environmental regulations.

25 I'll be talking a little bit about SECRA.

1 That was something that we've gotten back a
2 couple specific responses.

3 And then the third one had to do with
4 compliance.

5 So you have economic, social, and compliance.

6 And within the compliance issue, I want to
7 talk about the Wage Theft Prevention Act; however,
8 what I would like to talk about, is some specific
9 complaints that we've gotten about the oversight
10 from -- in terms of the Wage Theft Prevention.

11 Obviously, I believe we're all on the same
12 page that the legislation needs to be repealed, but
13 the fact is, is that it's an active law right now,
14 and there are some issues that we're getting -- we
15 tend to be getting some complaints about the
16 oversight of it.

17 So, I'd like to talk about that.

18 If it's okay, I'd like to just read through
19 them, because they are specific quotes from some of
20 these.

21 So the first thing I'm going to talk about is
22 economic regulation.

23 Economic regulation on businesses includes
24 areas such as prices or wages and allocations of
25 public resources, such as usage of the tax dollars.

1 And one significant area, as I mentioned,
2 that is in need of reform here is through the
3 Department of Labor, and their unemployment
4 insurance regulations.

5 Historically, manufacturers have taken a
6 significant hit from the UI fiscal irresponsibility
7 and the lack of oversight.

8 Most recently, resulting from overborrowing
9 in 2011, New York owed the federal government
10 3.3 billion for borrowed funds so it could afford to
11 pay for unemployment benefits.

12 In 2011 alone, 115 million was owed by
13 New York in interest costs.

14 And, over 500,000 New York State employers
15 were blindsided by the aforementioned fees, with no
16 reason, other than the State could not afford to pay
17 it back.

18 These added fees, whether permanent or not,
19 significantly impact a manufacturer's ability to
20 operate a business here in New York.

21 And that's, obviously, because they weren't
22 expecting to pay those fees, so, that goes towards
23 paying those fees that are now required of them.

24 And they're told, it's just because we need
25 you to help us out.

1 We need to -- basically what my manufacturers
2 are saying is, they paid it, but, this is the second
3 time this has happened.

4 So, essentially, something needs to be done
5 about the regulation of this.

6 So they're asking that you help us out, and,
7 basically, not putting a Band-Aid on it, but making
8 sure that it doesn't happen again.

9 The second component I'd like to discuss is
10 the social regulation, as I mentioned.

11 And this also comes at a fiscal cost for
12 manufacturers, including areas in environmental
13 protection, consumer safety, employment
14 discrimination, and public health.

15 And a significant example is already
16 discussed, which is a DEC regulatory reform that
17 comes with improving SECRA, and permitting programs
18 to give business a more certain workable timetable
19 for the environmental review of major investment
20 projects, including, a more appropriate standard for
21 issues and DEC permit hearings, assuring the
22 regulatory timetables for project reviews are
23 adhered to, and creating an expedited process for
24 applications that meet certain criteria.

25 So, basically, with that one, too,

1 self-explanatory.

2 Brian spoke to it quite well.

3 But, that's one of the responses that we've
4 gotten back, is that there are specific issues in
5 the DEC and overregulatory, specific in the SEQRA
6 area.

7 So, we ask that you visit that as well.

8 And then the third part I want to talk about,
9 and I'm pleased with this, because, again, it has to
10 do with the Wage Theft Prevention.

11 But, we are pleased to actually be getting
12 back some real feedback about how the oversight is
13 going right now.

14 So, I'm hoping hope you can visit this when
15 you head back to Albany.

16 But, compliance regulation significantly
17 hinders the manufacture's ability to function
18 effectively.

19 And this would include paperwork, for
20 example.

21 The Wage Theft Prevention Act that was passed
22 in 2009 is a prime example.

23 And then a specific area specified by our
24 members in need of reform, is by way of regulating
25 the Wage Theft Act.

1 The New York State Legislature recently
2 passed amendments to Section 193 of the Labor Law,
3 which governs deductions from wages, which then
4 signed into law.

5 Specifically, employers were given the right,
6 in writing, to deduct for the correct repayment of
7 an overpayment of wages.

8 Also, they are now able to deduct for a loan
9 repayment when they allow their employees to borrow
10 against future wages.

11 The issue is, that these new rules require:

12 "That the employer shall comply with
13 regulations by the commissioner for this purpose,
14 which regulations shall include, but not be limited
15 to, provisions governing the size of overpayments
16 that may be covered by this section, including the
17 timing, frequency, duration, and method of such
18 recovery; limitations on the periodic amount of such
19 recovery; a requirement that notice be provided to
20 the employee prior to the commencement of such
21 recovery; a requirement that the employer implement
22 a procedure for disputing the amount of such
23 overpayment or seeking to delay commencement of such
24 recovery"...and on and on, end quote.

25 This is specific from the language.

1 And to date, we have spoken with our members,
2 and the commissioner has not issued any regulations
3 for employers to follow and ensure compliance.

4 As a result, employers are going to be held
5 to a standard, retroactively, once it is written.

6 And it is our belief that by addressing some
7 of these regulatory burdens, that you'd be enabling
8 manufacturers to operate more efficiently and more
9 effectively.

10 In closing:

11 I actually spoke with Nate Andrews before.

12 We were talking about our testimony, and
13 I thought he made a great point.

14 You know, he spoke to it, but I'd like to
15 speak to it again today, that, you know, in terms of
16 even bringing business into our state, you know,
17 he's -- I hope it's okay, I'm speaking on your
18 behalf -- he was telling me that he's, you know,
19 talked to state -- you know, he's talked to
20 economic-development groups from out of the state,
21 and they're not talking about rolling out a red
22 carpet and saying, Here are all these
23 economic-development programs.

24 They're simply pointing out all the
25 regulatory burdens and taxes that Nate has to deal

1 with in New York State.

2 And that's not really the best strategy for
3 economic development.

4 MACNY has always remained a firm believer
5 that there's two components to getting us back on
6 track, and that's, matching economic-development
7 incentives, which we've taken a large
8 [unintelligible] approach in, and doing quite well
9 in the state, but, we need to couple it with
10 lowering taxes, easing the regulatory burden.

11 Because, other than that, it's not going to
12 happen.

13 Economic dollars can come in and in, but if
14 you have high taxes, you're not going to recruit
15 those people taxes, or incentivize those who are
16 here to keep building their businesses here.

17 I hope I answered some of your questions.

18 I'm happy to answer some.

19 If I don't know the answers, I can certainly
20 find them and get them back to you.

21 So, thank you very much.

22 Thank you.

23

24

25

1 SENATOR DeFRANCISCO: What regulations are
2 you waiting for from the commissioner, pertaining to
3 compliance with the Wage Theft Act?

4 KARYN BURNS: This actually had to go through
5 our HR department.

6 I'd like -- if it's okay with you, I just
7 don't want to speak out of line.

8 You know, basically what they were saying
9 was, the regulations that were put in place, there's
10 been no real instruction.

11 This is my understanding.

12 And so what they're looking for is, instead
13 of a retroactive, having to do it, it should be --
14 the regulation should be put in place.

15 If they're gonna say they have to do
16 something, then they should have to do it now.

17 SENATOR DeFRANCISCO: But you're complying
18 with something now, the law; right?

19 KARYN BURNS: Uh-huh.

20 SENATOR DeFRANCISCO: Why would you want to
21 encourage more regulation?

22 Because the regulation may be more onerous
23 than the bill.

24 KARYN BURNS: That's not -- actually, what
25 they're saying is -- what the members were saying

1 is: The law's in place.

2 They should be following, by right -- you
3 know, it just appeared to them that it wasn't being
4 regulated at all.

5 So, they're being told they have to do
6 something.

7 It's somewhat similar to what the
8 unemployment insurance was, where, they just didn't
9 know, and the next thing you know, they had to
10 comply by it.

11 So, they want to follow the rules, but
12 they're concerned that if they don't follow the
13 rules now, but they're not being told to do so,
14 they're gonna have to do it.

15 SENATOR DeFRANCISCO: Okay, can you just get
16 back to us and let me know what the bill -- what's
17 confusing about the bill that requires further
18 regulation, because you may get what you ask for.

19 KARYN BURNS: Absolutely.

20 SENATOR DeFRANCISCO: And that may not be --
21 then there might be another set of regulations you
22 want to remove next year.

23 KARYN BURNS: Absolutely.

24 And I just -- actually, so you know, we did
25 an HR meeting about this, a conference call,

1 discussed it with our members.

2 This is all HR directors from manufacturing,
3 so, they'd be happy to do that as well.

4 SENATOR DeFRANCISCO: Okay.

5 Thank you.

6 KARYN BURNS: Thank you.

7 SENATOR VALESKY: Otherwise, I assume if we
8 get final legislative approval on repealing in law,
9 the Wage Notification Act --

10 KARYN BURNS: Well, that's it.

11 SENATOR VALESKY: -- well, that's kind of
12 irrelevant.

13 KARYN BURNS: Yes, it's the lesser of
14 two evils.

15 But, they're complaining about the regulation
16 of it, because, they're not finding it there, and
17 they're concerned.

18 SENATOR GALLIVAN: Is it a concern that it
19 would then be applied retroactively --

20 KARYN BURNS: Correct.

21 SENATOR GALLIVAN: -- and then they'd have to
22 be reaching into their pockets?

23 KARYN BURNS: Correct.

24 So --

25 SENATOR GALLIVAN: And the larger concern --

1 I mean, that's a good specific example -- but, a
2 similar process --

3 KARYN BURNS: Absolutely.

4 SENATOR GALLIVAN: -- the State implements
5 something, you don't hear anything, you don't hear
6 anything, you don't hear anything.

7 And now, in this case, we're, what,
8 four years later, and you still haven't heard of
9 anything --

10 KARYN BURNS: And then they get a notice --

11 SENATOR GALLIVAN: -- and, yet, you're held
12 accountable for everything immediately?

13 KARYN BURNS: Absolutely.

14 The conversation that I had with the
15 HR members within our council were specifying just
16 that: that they're more concerned -- they don't want
17 the regulation at all, but they're concerned,
18 because the regulation is in law, but then they're
19 not being asked to execute it, or being held
20 accountable.

21 So they're kind of concerned, because they
22 don't know whether they're adhering to it or not.

23 And, the ramifications afterwards could be
24 far worse, because there is a history of that in
25 New York State.

1 SENATOR GALLIVAN: Your survey?

2 KARYN BURNS: Yes.

3 SENATOR GALLIVAN: We're anxious to see the
4 results.

5 KARYN BURNS: Absolutely.

6 SENATOR GALLIVAN: I mean, the timing of it
7 might coincide with what we're trying to accomplish.

8 KARYN BURNS: Wonderful.

9 SENATOR GALLIVAN: That, if we're able to get
10 this over the course of the next several weeks?

11 Is that reasonable?

12 KARYN BURNS: The final date due back is the
13 24th, which is next Wednesday.

14 SENATOR GALLIVAN: Excellent.

15 KARYN BURNS: So we'll compile those results.
16 I think you'll be pleased.

17 It's asking, specifically, we actually list
18 out every department --

19 SENATOR GALLIVAN: Excellent.

20 KARYN BURNS: -- and ask them to rank it, in
21 order, which one they have most issues with.

22 The information I collected from here came
23 from a, "Do you have any other comments with,
24 specifically."

25 And then, of course, there's the statistics

1 of, "Do you think you're overregulated?"

2 Which I can probably tell you is a yes.

3 A concise yes.

4 So, I will be happy to share that survey with
5 you, all of you.

6 SENATOR VALESKY: Thank you very much.

7 KARYN BURNS: Thank you very much.

8 SENATOR VALESKY: Next, Deb Warner,
9 vice president of public policy and government
10 relations for Center State CEO.

11 DEB WARNER: Good morning, Senators.

12 SENATOR GALLIVAN: Good morning.

13 DEB WARNER: Thank you again for this
14 opportunity.

15 It's been very interesting and encouraging to
16 see how much attention is going on recently with
17 regards to looking for reform, whether it's tax
18 reform or regulatory reform, to get ready for 2014.

19 So, that's making us very hopeful that we're
20 going to see some great things happen.

21 For some of the Senators who might not be
22 familiar with Center State, we're the regional
23 business and economic-development organization,
24 representing 2,000 companies in a 12-county region
25 in northern and central New York.

1 So, I also want to thank you for your efforts
2 on repeal for WTPA, and some other efforts that
3 you've already done earlier in the legislative
4 session.

5 There's three or four specifics I'd like to
6 talk to you about today that particularly relate to
7 manufacturing.

8 One of them has to do with sales tax, in
9 compliance of purchasing for equipment that
10 manufacturers buy, and whether or not it's exempt or
11 nonexempt, it's causing a problem.

12 As we've done outreach to our members in the
13 last month, with regards to the hearings that have
14 come up, this one came up a couple of times.

15 And one of our members said that they have to
16 have two or three employees spending about 20 hours
17 a month trying to keep track of complying with this
18 particular regulation, that's mentioned in the
19 testimony, and this relates to equipment that has
20 both manufacturing production-related and safety
21 applications.

22 So, one example told us that a rebar lanyard,
23 which is something that you use on a work-site,
24 manufacturing, and if it is positioned on the shop
25 floor so the employee can lean against it, and use

1 it for -- to, you know, make them more stable while
2 they're welding, then that application is tax
3 exempt.

4 But if they turn around and use the same
5 lanyard in a similar circumstance, and it's just
6 there for safety purposes, well, then it's taxable.

7 And another example is, with some analyzers
8 the a company has bought, and they use it in
9 multiple applications throughout their manufacturing
10 process.

11 So, if it's used in the
12 research-and-development function, it's exempt.

13 If they use it on the shop floor, that's
14 exempt.

15 But if a service technician takes that same
16 analyzer and uses it in the field, then it's
17 taxable.

18 So what I would ask you to do, is to work
19 with the Department of Taxation and Finance, and get
20 them to declare that any equipment purchased by a
21 manufacturer for safety purposes is tax exempt.

22 Let's just sort of clear that and get rid of
23 any nuances.

24 Another thing, which actually was surprising
25 to me when I started talking to some folks, and

1 found that, in New York State, the burden of proof
2 for some insurance claims, especially if it relates
3 to something that's happened in the past, is really
4 on the insured.

5 The insurance companies keep their policies
6 for a certain period of time, and then, you know,
7 they destroy them or have them shredded.

8 So, if something happens, and there's a
9 timeframe -- and this happens particularly with
10 manufacturers, because their products are out, being
11 used for a period of years -- now it's up to them to
12 produce an insurance policy to prove that they
13 actually had coverage, and bring the insurance
14 company in when they do have some problem with
15 liability.

16 So, apparently, we need to use some
17 technology and come up with a new document-retention
18 policy and system so that manufacturers don't have
19 to spend time doing forensic research for their
20 lawyers, and other people involved, when there is a
21 lawsuit and they need to -- or have a claim, and
22 they have to come up with proof that they had
23 coverage at whatever point in time in the past.

24 I know you were speaking to the folks about
25 agriculture recently.

1 That's great.

2 That's a growing industry for us.

3 That's really important.

4 One of the things I'd like bring up is
5 something that relates to manufacturing of
6 agriculture, food products, and sort of the
7 ecosystem, as New York State is -- our dairy
8 industry is growing, and with the yogurt plants and
9 cheese industry growing in our state, we really need
10 to increase dairy production.

11 So, we need to have systems and regulations
12 that further enhance that.

13 And there are regulations, mostly within the
14 DEC, about how agricultured byproducts are used and
15 regulated, permits, all the paperwork and all of the
16 various permitting and regulations that have to be
17 complied with when you're using an agricultural
18 byproduct.

19 And that's becoming very burdensome.

20 Also, the amount that we're increasing, as
21 these large yogurt plants come on, they have -- are
22 putting forth larger and larger amounts of
23 agricultural byproduct when they're done with their
24 food processing.

25 We need to find positive ways and incentives

1 to use those.

2 An example is, something that comes out of
3 both the cheese and yogurt industry, is one of the
4 byproducts is whey; that thin liquid that comes
5 after the manufacturing process.

6 That can be used by agriculture.

7 It can be spread on farm fields as
8 fertilizer, and it can also be used as feed for
9 animals.

10 It's got a lot of protein in it, and it's a
11 pretty good -- it's a strong -- I understand from
12 farmers, some farmers I've talked to, that's a great
13 product to be able to feed your animals.

14 But, there's a lot of regulations and
15 paperwork and permitting, and we need to take a
16 fresh look at that, so that the regulations and
17 policies that are in place really help enhance the
18 ability of the agriculture industry to be able to
19 put those things into good use, and not end up with
20 prohibition, where -- and regulations that prevent
21 the use of those products safely within the state.

22 SENATOR GALLIVAN: Are curds, as well, a
23 waste product?

24 DEB WARNER: I think curds are what becomes
25 the cheese.

1 SENATOR GALLIVAN: Oh, okay.

2 DEB WARNER: Yeah, curds is the -- my
3 understanding, is that's the solid --

4 SENATOR GALLIVAN: [Unintelligible] curd with
5 whey, so I wasn't sure.

6 DEB WARNER: Curds and whey.

7 Yeah, curds are the coagulant that happens
8 when you make cheese and yogurt.

9 SENATOR GALLIVAN: Yeah, I know.

10 I'm just kidding.

11 DEB WARNER: I think.

12 Okay, so their Part 360 permit process is one
13 of the places to start when trying to address that
14 challenge.

15 A couple of more broadly -- more broadly
16 mentioned things with members, not so much specific,
17 with regards to agencies and regulations, and trying
18 to comply, and accessibility is an issue.

19 When -- whether it's a company individually,
20 or one of their accountants or lawyers, are trying
21 to deal with state agencies, they often have
22 trouble, and spend a lot of unnecessary time, just
23 trying to stay in touch with whoever they need to
24 talk to in the agency.

25 In particular, two accountants that I talked

1 to, talked about Taxation and Finance, when they're
2 working with clients.

3 One, in particular, had to do with tax
4 credits.

5 Working -- there had been a challenge within
6 the Taxation and Finance Department about whether a
7 company was eligible for tax credits or not, so the
8 accountant was going to bat for their client.

9 And they have -- every time they call, they
10 have to go through this lengthy auto-attendant
11 process, and they frequently don't get back to the
12 exact same person, so they may hear a different
13 story. There isn't always consistency.

14 And, they don't get a call-back number.

15 You know, the agency employee could say,
16 "Okay, if we're going to follow up, here's is my
17 number, call me back directly," so they don't have
18 to spend all that time on the auto-attendant.

19 In one instance, too, they said, Well, we
20 need to do a conference call. We need to talk to
21 your client and you at the same time. That would
22 expedite things.

23 And, the State employee told them, they said,
24 Well, we can't do conference calls.

25 I will tell you, I tried this -- I tried this

1 for -- to help a member who has an established
2 business, which, technically, is a manufacturer, and
3 he now wants to sell over the Internet within
4 New York State, and has some challenges with trying
5 to be in compliance with sales tax for local --
6 collecting local sales tax around New York State.

7 So I called this -- that Division of Taxation
8 and Finance, and went through the auto-attendant,
9 which was lengthy. Many, many questions. And then,
10 supposedly, I was being transferred then to a
11 person, an individual, who could actually answer the
12 question.

13 And, I ended up with a fast-busy, and I got
14 cut off. And I probably spent 5 to 10 minutes, just
15 trying to do that.

16 So, technically, a state regulation? No, but
17 it's within the regulatory realm of how businesses
18 and taxpayers interact with the agencies that
19 regulate them.

20 So, if you can do something to help encourage
21 better technology and policies so that agency
22 employees can give direct phone numbers, and when
23 you've already got a relationship or a situation
24 established, they should be able to just call up the
25 person, follow up with the same person; not have to

1 go through all that waste of time every time.

2 I don't know if the conference-call thing was
3 true or not, but, it's just kind of crazy that they
4 can't do that.

5 And this was pretty consistent. I talked to
6 several clients who had manufacturers -- or, several
7 accountants who had manufacturing clients, and they
8 all cited that it's just very, very difficult
9 dealing with Taxation and Finance.

10 The other thing I'd like to suggest is,
11 something based on the other experience that we had
12 in outreach to our members, is, they're very
13 reticent to come forward, because they're afraid of
14 retaliation from the agencies.

15 They don't want to cause trouble.

16 They're afraid that, you know, somebody is
17 going to come down on them, just because they've,
18 you know, pushed back a little bit.

19 So, I wonder if you couldn't look at perhaps
20 establishing some sort of whistleblower procedure
21 that would have anonymity or some whistleblower
22 protections, so if a business, or even an employee
23 within the state agency, if they see something that
24 they see -- that could be remediated, improved, or
25 eliminate a regulation, that there's a safe

1 environment to do that.

2 Because, right now, I mean, if somebody's
3 being audited and there's problem with their audit,
4 with Taxation and Finance, or with the DEC, they
5 don't dare push back.

6 So, thank you very much for your time this
7 morning.

8 I'd be glad to answer any questions.

9 SENATOR VALESKY: Kathy?

10 SENATOR MARCHIONE: No, no questions.

11 SENATOR VALESKY: Thank you, Deb, very much.

12 DEB WARNER: Thank you.

13 SENATOR VALESKY: Next we'll hear from
14 Kip Hicks.

15 Is Kip Hicks here?

16 Kip here?

17 No?

18 I didn't see him come in earlier.

19 No?

20 Okay.

21 Then we'll move to Laura Miller.

22 Laura Miller, general manager of
23 Darco Manufacturing.

24 Good morning.

25 LAURA MILLER: Good morning.

1 And I'd like to thank you for holding this
2 hearing, and for listening, and for the opportunity
3 to submit a brief statement, I hope.

4 I don't do this regularly, so I'm kind of
5 nervous.

6 But, I am the general manager of
7 Darco Manufacturing, and we-- actually, the
8 description on this piece of paper from you guys is
9 a little bit off, so I'll correct that.

10 Maybe that's an example of government,
11 something.

12 I'm not sure.

13 [Laughter.]

14 LAURA MILLER: Anyway, but we do production
15 CNC machining, primarily.

16 We've got 26 people.

17 And I'll read the statement, it will just
18 take a minute.

19 SENATOR GALLIVAN: Production of, what?

20 LAURA MILLER: I'm sorry.

21 "CNC." Computer numerical-controlled
22 machining.

23 SENATOR GALLIVAN: What does that mean?

24 LAURA MILLER: Well, if you remember from
25 shop class, the -- you know, your bridge ports? The

1 milling machines and your lays?

2 You take that, enclose it, and apply computer
3 programming to do pretty efficient manufacturing.

4 So, it's all metal cutting.

5 It's not stamping. It's not hammering. It's
6 not bending.

7 It's -- we machine, with those basic
8 concepts.

9 So, anyway, our story is very similar to what
10 we heard from Nate Andrews.

11 It's not quite as old, but our values and our
12 philosophies are the same.

13 We understand that people are really what
14 make your company, not your machines, and not any of
15 the other things we hear about.

16 Really, your human resources is your most
17 valuable resource.

18 So, I have a slightly different take, though,
19 on the impact of government in our daily lives on
20 the production floor, than we heard from Nate
21 Andrews.

22 Do you mind if I just read the statement?

23 SENATOR VALESKY: Go right ahead.

24 LAURA MILLER: Okay.

25 I'm Laura Miller. I'm general manager of

1 Darco Manufacturing.

2 We've been in business since 1978, and I've
3 been with the company since 1988.

4 We have 26 employees. Our employees have
5 been with us, on average, for 16 years.

6 We, like dozens of privately held companies
7 in Central New York, do contract machining,
8 generally, CNC, for durable goods OEMs.

9 You know what "OEMs" are; right?

10 "Original equipment manufacturers"?

11 So, our stuff goes into, you know, planes,
12 automobiles, trains, hydraulics, whatever.

13 We make about 5,000 different things, by the
14 way.

15 Anyway, at this moment in time, we are
16 busy -- busy, busy, busy -- with work from a wide
17 array of industries. We're starting to book
18 overtime, and we're starting to hire.

19 It's a very exciting time.

20 I'd like to submit a few numbers for the
21 record, as part of the discussion here today.

22 As a manager, I try to focus my time on the
23 workplace issues that improve or impede our
24 competitiveness.

25 So here are some numbers:

1 The New York State franchise tax costs our
2 company \$1500 per year.

3 We sell \$3 million worth of widgets every
4 year.

5 So, if I've done my math correctly, that's
6 one-half of 1 percent of our revenue.

7 You guys can check that math if you want.

8 Our company produces -- we use electricity to
9 do what we do. That's our main input.

10 Our total electricity bill is 1.27 percent of
11 revenue. That's the total number.

12 And those machines hog a lot -- our machines
13 hog a lot of energy.

14 I don't -- I really would like some help
15 here.

16 I don't know what the 18-A energy tax is.

17 Is it on my bill here?

18 I don't know.

19 Some of the taxes we've discussed earlier,
20 I don't know what they are, but, I think they're
21 probably small numbers.

22 I don't know.

23 So, anyway, we can write that in this blank.

24 I've brought with me a blank wage-reporting
25 form from the New York State Department of Labor.

1 Do you guys have it?

2 SENATOR GALLIVAN: Yes.

3 LAURA MILLER: I'm really not good at forms.

4 I don't like forms. They're slightly
5 irritating.

6 But this particular form, as you can see, is
7 pretty intuitive and pretty easy.

8 So, the mandate, you know, administering the
9 mandate, takes about 5 or 10 minutes per employee
10 per year.

11 So, anyway, I'd like to put these numbers
12 into perspective.

13 We spend at Darco more on perishable tooling.

14 Now, "perishable tooling" are cutting tools,
15 drills, inserts. You know, reamers. Whatever.

16 These are things, they're "wear" items.

17 We spend more on perishable tooling than we
18 do on energy.

19 We spend more on coffee for our troops, which
20 we provide free, than we do on the New York State
21 franchise tax.

22 We, quote/unquote, lose anywhere from 10 to
23 30 minutes per employee, every day, to the
24 complexities of human beings working together to
25 move good quality product out the door.

1 That's reality. That's what it's like on the
2 floor.

3 I don't consider any of the aforementioned
4 items to be significant drags on our organization as
5 we compete in the marketplace.

6 If you'd like to come out, I'd like to invite
7 any of you to come out and visit us, so you can see
8 what we really do spend our time focusing on.

9 That's my statement.

10 SENATOR DeFRANCISCO: I have a question.

11 Okay, the form that you got attached, that
12 you have to do for the Wage Reporting Act --

13 LAURA MILLER: Uh-huh.

14 SENATOR DeFRANCISCO: -- you said it's not
15 overly burdensome.

16 LAURA MILLER: Uh-uh.

17 SENATOR DeFRANCISCO: Is there anything on
18 this form that isn't on your pay stub already?

19 LAURA MILLER: Probably not.

20 SENATOR DeFRANCISCO: Okay, so it's a waste
21 of time then, isn't it?

22 LAURA MILLER: It's a waste of a small amount
23 of time, yes.

24 SENATOR DeFRANCISCO: Yeah, so would you like
25 us to waste small amount of times in other areas, or

1 would you like us not to do these things to waste
2 any time?

3 LAURA MILLER: Well, this particular example,
4 I don't know the intent of the law. I don't know
5 who it's trying to protect.

6 What I'm trying to share with you, is it
7 doesn't really hurt us all that much.

8 That's my reality.

9 That's all can I tell you.

10 SENATOR DeFRANCISCO: Okay.

11 Go ahead.

12 SENATOR GALLIVAN: Not who; where do your
13 competitors come from: locally or across the
14 country?

15 LAURA MILLER: We have local competitors, and
16 from across the country.

17 SENATOR GALLIVAN: Now -- so your competitors
18 that you're dealing with from across the country,
19 are there things that New York State imposes upon
20 you that put you at a competitive disadvantage?

21 LAURA MILLER: I'm not aware of what they
22 would be.

23 What I know right now, is that work is moving
24 into this area so fast that we don't have enough
25 capacity.

1 And, when someone calls up and asks for some
2 emergency help to get going, they oftentimes have to
3 leave the area because other areas have capacity.

4 That's what I know.

5 SENATOR GALLIVAN: Well, if you -- and when
6 you go back, if you think of some -- if some things
7 that come up, that we might be helpful in trying to
8 take on, if you could just get back to us.

9 LAURA MILLER: Sure. I can try that.
10 I'll think.

11 SENATOR GALLIVAN: I mean, if -- you know, as
12 you're driving home, you're thinking, Gosh, I should
13 have thought about this, or you're talking to
14 somebody.

15 LAURA MILLER: Yeah.

16 SENATOR GALLIVAN: When you go back, if
17 things come up, please let us know.

18 LAURA MILLER: Sure.

19 SENATOR VALESKY: Thank you very much, Laura.
20 We appreciate your input today.

21 LAURA MILLER: You're welcome.

22 SENATOR VALESKY: That completes the list of
23 speakers.

24 We did have a few others who were scheduled
25 to testify --

1 Oh, I'm sorry, we do have Kip.

2 Oh, there he is.

3 SENATOR GALLIVAN: Now he lost his chance.

4 SENATOR VALESKY: Oh, that's it, I was about
5 to close.

6 KIPP KICKS: Sorry to be late, guys.

7 SENATOR VALESKY: Kipp Hicks, executive
8 director of Madison County IDA.

9 SENATOR GALLIVAN: Perfect timing.

10 SENATOR VALESKY: While Kipp is preparing,
11 Karyn, we have -- we're going to revisit the topic
12 of general manufacturing in Corning on --

13 October 9th?

14 SENATOR GALLIVAN: October 9th, yes.

15 SENATOR VALESKY: -- on October 9th.

16 So the surveys that you were talking about,
17 if they're finished in time for that, we would like
18 to include that.

19 KARYN BURNS: Absolutely.

20 SENATOR VALESKY: Kipp, go ahead.

21 KIPP KICKS: Thank you.

22 Again, I'm Kipp Hicks with the Madison County
23 Industrial Development Agency.

24 We actually represent the Madison County
25 Center for Economic Development. We are the voice

1 of economic development in the county.

2 SENATOR VALESKY: Kipp, just hold on just one
3 second.

4 KIPP KICKS: Yeah, yeah, please.

5 SENATOR VALESKY: Just want to make sure we
6 all have the same paperwork here.

7 What are you reading from?

8 Or, what are -- you're using--

9 KIPP HICKS: I put together a letter. I've
10 got a --

11 SENATOR VALESKY: Okay, so these handouts --

12 KIPP KICKS: The handouts are backing up some
13 of the --

14 SENATOR VALESKY: Okay. We just don't have
15 enough for all of us.

16 KIPP HICKS: I'm sorry. I didn't know how
17 many people I'd be presenting to.

18 SENATOR VALESKY: That's okay. We'll get
19 copies. That's fine.

20 KIPP KICKS: And, again, I submit that for
21 the record, and, hopefully, speak a bit off-the-cuff
22 on specific issues.

23 And, I walked in during the Darco discussion,
24 but, 18-A is a regressive tax.

25 I'll give you one example.

1 I'm working with a major agriculture producer
2 that's looking at Upstate New York for a site.

3 The monthly tax, the 18-A benefit, based on
4 the calculations worked up by National Grid, is
5 going to exceed \$15,000 per month to this company.

6 It's substantial.

7 It's something that should have expired at
8 the end of last year.

9 As you guys are aware, it was extended for an
10 additional year.

11 It's grown from .3 percent, to 2 percent, of
12 the total electricity bills.

13 The system-benefit charge for this potential
14 prospect exceeds \$40,000.

15 These are expensive bills that makes
16 New York State less competitive.

17 And it's very tough for us to make a hard
18 argument that they ought to be looking at
19 Madison County, the city of Oneida specifically,
20 versus other sites in Pennsylvania and New Jersey.

21 Another item that I mentioned was, the IDA
22 pilots lacks the step-up on the tax-levy growth
23 factor.

24 I'm sure you've heard this from your other
25 constituents, but, when a company approaches us, a

1 new company, adding to the tax base, constructing
2 new facilities, and they enter into a pilot
3 agreement through their local development
4 corporation, the taxing entities are not seeing that
5 increase.

6 It does not count above and beyond the
7 2 percent property-tax cap.

8 It's not affecting those taxing entities on
9 their revenues on the front end, nor are they
10 getting it on the back end once the pilot expires.

11 So, there's no step-up. There's no real
12 impact to those taxing entities.

13 And I hear that from school districts time
14 and time again.

15 It's a real issue.

16 And I'm under the impression there's at least
17 been some proposals.

18 Camoin & Associates I think was working along
19 with Brian McMahon from the NYCDC.

20 Third item I brought up was SEQR.

21 It's really an open-ended component that can
22 delay development projects.

23 We're trying to develop a business park at
24 the Ag and Renewable Energy Business Park at the
25 Madison County landfill.

1 We've been dealing with the DEC and SHPO.

2 We have finally published our draft generic
3 environmental impact statement and our finding
4 statement, but it was in excess of 18 months, and a
5 lot of that was waiting to see if there was going to
6 be a holdup by any of these regulatory agencies.

7 In speaking with Brian McMahon, he said he's
8 got a cement company that was held up for four years
9 before they finally got an answer.

10 And, again, I think what people, what
11 companies want, they're not afraid of hearing no,
12 but they need to have an answer.

13 And right now, there's not a very -- there's
14 not a clear timeline in which these state agencies
15 need to get back to private companies, to IDAs, to
16 help us with guidance on specific projects.

17 This next one might be a little bit touchy,
18 but, if you could help us work with regulators, in
19 helping them to understand, or what their
20 interpretation, of IDA statute.

21 Both the ABO and the Office of State
22 Comptroller view the IDA statute very, very
23 narrowly; whereas, in my opinion, our interpretation
24 is, that it's supposed to be an open-ended; it's
25 supposed to allow us flexibility.

1 The attachments, the addendums, that
2 I included with my testimony, there's three
3 different pieces there.

4 One is that -- is a lack of -- the State
5 seems to be pushing for consolidation.

6 And the Office of -- the Authority Budget
7 Office seems to want to, again, look at IDAs through
8 a very specific glass, through a very narrow focus,
9 and say, Now, it's not appropriate for industrial
10 development agencies to create a local development
11 corporation.

12 I've got a project, in particular, in which
13 we've got a C&D waste-recycling facility looking at
14 the -- our park as a regional repository to bring in
15 material.

16 We applied for State assistance through the
17 Environmental Facilities Corporation.

18 EFC said, Well, we can't grant to private
19 companies, but we can grant to IDAs.

20 So, they wrote the grant agreement to the
21 IDA.

22 Our legal counsel said, Wait a minute. Where
23 is the protection of liability? All of a sudden,
24 we're tied up with this private activity, someone
25 slips and falls, gets hurt on the job, the IDA needs

1 some insulation.

2 And they said, Well, we understand. Create
3 an LLC., a local development corporation. Hold the
4 grant or facilitate the grant through that
5 sub corporation, and you're insulated.

6 Well, we've gone and done that, and the
7 Authority Budget Office, I think the third and
8 fourth paragraphs of the correspondence from
9 David Kidera specifically says, Well, we don't know
10 where you get off thinking that you can create a
11 local development corporation.

12 And our legal counsel simply said, Hey, the
13 state statute says you can do anything necessary to
14 facilitate economic development. The State has,
15 actually, a state agency has, instructed us to take
16 this path.

17 And we're currently in a little bit of a
18 battle with the ABO, and asking them for the
19 Attorney General and the Office of State
20 Comptroller's opinion on interpreting what the IDAs
21 do and don't have the power to do.

22 Again, it's frustrating.

23 There's even a third example there, with
24 granting financial assistance. It's a special
25 report by the Office of the State Comptroller there,

1 that IDAs aren't allowed to provide grant fundings
2 except for very specific, narrow project-related
3 projects. Initiatives.

4 There are a handful of examples.

5 There may be, half of the examples submitted
6 within that special report that you can see, they're
7 economic development-related.

8 They're helping the community colleges to put
9 together business-plan competitions, or supporting
10 trade shows sponsored by the Economic Development
11 Corporation.

12 And those are being pointed at as, Hey, this
13 is irresponsible. These are -- money is being given
14 away for improper uses.

15 It's my opinion, that we need to help rein
16 in, or provide a little more guidance, on how these
17 state agencies, or these oversight agencies,
18 interpret our role as economic-development
19 councils -- as economic-development agencies.

20 And that's my final bullet, also.

21 When people talk about IDAs
22 (industrial-development agencies), it's perceived as
23 very narrow and specific industrial development.

24 I'm here testifying in front of you, trying
25 to promote business for all types of businesses.

1 We try to push for export initiatives.

2 We try to build collaboration between
3 colleges and universities.

4 All of this is part of economic development.

5 But through the definition of industrial --
6 or, through the title "industrial-development
7 agency," I think it's time for a change to
8 "economic-development agencies," just to help
9 broaden, to help other state agencies, or even our
10 prospects, to understand what our role is.

11 I'm happy to answer any questions.

12 And, again, I hope the written testimony is
13 helpful and more concise, I guess.

14 SENATOR MARCHIONE: From your perspective,
15 and you've done a great job in outlining some of the
16 issues you have, what's the single -- if you had a
17 issue single issue that was most onerous, if you
18 could tell us -- if you can't, I understand -- but
19 what would it be from your perspective?

20 KIPP HICKS: Again, taxes and regulations,
21 I think, are the biggest inhibitor.

22 SENATOR MARCHIONE: But not any specific --

23 KIPP HICKS: Well, again, I think we can add
24 them up. We've got the --

25 SENATOR MARCHIONE: I understand.

1 KIPP HICKS: -- corporate income tax, the
2 18-A assessments, the system-benefit charges;
3 I mean, all of those.

4 It -- I spent the start of my career,
5 seven years in eastern Idaho, doing economic
6 development for a private nonprofit.

7 Taxes at 2 1/2 percent. Electricity at
8 4 percent. A very stable, conservative State
9 Legislature.

10 I mean, just things -- I didn't realize how
11 difficult it was, moving home to my hometown and
12 doing the job of economic development, that other
13 states are exceptionally competitive.

14 And New York State does a good job through
15 NYSERDA, through our -- through Empire State
16 Development, there are ways to help lower the cost
17 of doing business, but usually that's very narrow
18 for specific industries or specific types of
19 companies.

20 We really need to take a big-picture approach
21 and try to lower the cost of operating businesses in
22 New York State.

23 SENATOR MARCHIONE: Thank you.

24 KIPP KICKS: I mean, it -- it --

25 SENATOR MARCHIONE: We agree with you.

1 KIPP HICKS: Thank you.

2 SENATOR VALESKY: Kipp, thank you very much.

3 We appreciate your input today. It will be
4 very helpful as we move forward.

5 KIPP HICKS: Thank you for your time.

6 SENATOR VALESKY: Again, another reminder:

7 We'll touch general manufacturing issues in
8 the Southern Tier on October 9th in Corning.

9 Our next scheduled hearing topic is the
10 construction industry. We'll be in Long Island on
11 Wednesday.

12 I want to thank my colleagues
13 Senator Gallivan, Senator Marchione, and
14 Senator DeFrancisco.

15 That concludes today's hearing.

16 Thank you.

17 (Whereupon, at approximately 11:21 a.m.,
18 the public forum on manufacturing regulatory
19 reform held before the New York State Senate
20 Majority Coalition concluded, and adjourned.)

21 ---oOo---

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2

PUBLIC FORUM/TOWN HALL

3

CONSTRUCTION REGULATORY REFORM - TO LEARN FROM
4 BUSINESSES AND INDUSTRY EXPERTS WHICH REGULATIONS
5 ARE THE LEAST USEFUL, LEAST COST-EFFECTIVE, AND,
THEREFORE, SHOULD BE ELIMINATED

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Nassau County Theodore Roosevelt
Executive and Legislative Building
9 Ceremonial Chambers - 2nd Floor
1550 Franklin Avenue
10 Mineola, New York 11501

11

September 25, 2013
1:00 p.m. to 3:00 p.m.

12

13

SPONSORS PRESIDING:

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Senator Patrick M. Gallivan
Deputy Conference Leader for Economic Development

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Senator David J. Valesky
Chair of the Senate Committee on Commerce,
17 Economic Development, and Small Business

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CO-SPONSORS PRESIDING:

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Senator Philip M. Boyle

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Senator John J. Flanagan

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Senator Jack M. Martins

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1 SENATOR GALLIVAN: Well, good afternoon,
2 everybody.

3 I'm Senator Pat Gallivan.

4 Senator Dave Valesky (indicating).

5 I'm from out Western New York way, and I'm
6 Deputy Conference Leader for Economic Development.

7 And, Dave is -- Senator Valesky is from the
8 Central New York area, and chairs the
9 Senate Commerce, Economic Development, and
10 Small Business Committee.

11 And we are co-chairing, along with
12 Senator Kathy Marchione from the Albany area, and
13 Senator Dave Carlucci from Lower Hudson Valley, a
14 series of regulatory-reform hearings,
15 industry-specific, across New York State.

16 A recent U.S. Chamber of Commerce report
17 ranked New York 50th out of 50 states for doing
18 business; least-friendly business environment.

19 So we see, time and time again, New York
20 being ranked 47th, 49th, highest taxed, most
21 regulated, and so on.

22 People can split hairs where we are, but,
23 clearly, we've got issues to deal with as it relates
24 to the things that stand in the way of our economy
25 growing.

1 Now, we see the New York City economy ends up
2 somewhat different than the rest of the state, as
3 I'm sure many of you from the Island are aware of.

4 And, of course, that remains true upstate.

5 So we've undertaken a series of initiatives,
6 some of -- we are -- we will be joined today for
7 portions of this by some local senators who are also
8 involved in similar efforts across the state.

9 Senator Carl Marcellino actually is
10 co-chairing a series of hearings on tax reform.

11 So, we look at the things that stand in the
12 way of business growth in New York, economic growth
13 in New York, growth of private-sector jobs, an
14 environment that can help create opportunities.

15 And time and time again, we hear from people,
16 and we see it: it's taxes and regulations.

17 So, we are trying to address both of them,
18 but in particular, Senator Valesky and I are taking
19 on the regulatory-reform aspect of it, and we're
20 trying to do this in an industry-specific manner.

21 Today we're focusing on the construction
22 industry, in general.

23 We are doing banking/financial services,
24 agriculture, health/medical, manufacturing, and
25 several other industries, but the idea is, to focus

1 on the regulations that don't get talked about all
2 the time.

3 We often hear of the larger regulations that
4 are out there: worker's comp issues,
5 unemployment-insurance issues, and things of that
6 nature.

7 New York has over 140,000 pages of
8 regulations, and our goal is to shrink that,
9 somehow, over 83 volumes.

10 So, we're on a mission, and looking for help,
11 to identify duplicative regulations, ridiculous
12 regulations that no longer make any sense, those
13 that are outdated, those where the costs greatly
14 exceeds any benefit that may be there.

15 And we can't understand what goes on in your
16 world, or we can't understand what goes on in the
17 medical world, agriculture world, because we're not
18 in it on a daily basis.

19 So our purpose in being here today is looking
20 for your help to identify the things that just don't
21 seem to make sense, and then we can try to do
22 something about it.

23 Our goal is to publish a report mid to late
24 November, to identify a minimum of 1,000 regulations
25 to just eliminate, and, look to put that together,

1 as we move into the next legislative session, to be
2 part of a legislative agenda, going forward, along
3 with the tax reform, and then, of course, the other
4 larger issues that you read about in the papers and
5 see on the news all the time.

6 So, I appreciate you being here, and ask
7 Senator Valesky if he'd like to say a few words.

8 SENATOR VALESKY: Great, thank you very much,
9 Senator Gallivan.

10 It's good to be with you again today.

11 This is the fourth of this series of
12 regulatory-reform hearings, and you've certainly
13 covered all the bases very well.

14 I would just mention that a number of your
15 local senators from Long Island are on the way.

16 Apparently, there's some traffic issues as a
17 result of a public-safety situation that's
18 happening.

19 So, we will move right into the hearing.

20 We have each speaker slotted in 15-minute
21 intervals, so we'd ask, as you come forward to the
22 front table, to offer your testimony.

23 And then to the degree that Senator Gallivan
24 or I, or other senators, when they get here, have
25 some questions for you, we'll move right into that

1 phase.

2 So we'll start with Mitch Pally, who's the
3 CEO of the Long Island Builders Institute.

4 Mitch.

5 SENATOR GALLIVAN: By the way, you don't have
6 to use all 15 minutes if you don't want.

7 SENATOR VALESKY: Right, right.

8 [Laughter.]

9 SENATOR GALLIVAN: And because we had the
10 assistance of members of the Long Island Senate
11 Delegation, and, in trying to coordinate, we may not
12 have gotten everybody on the list to speak, but
13 we'll make sure that we work our way through that.

14 Mitch, thanks for being here.

15 MITCH PALLY: Welcome to Long Island, both of
16 you.

17 SENATOR VALESKY: Good to be back.

18 MITCH PALLY: We were on the --

19 SENATOR GALLIVAN: Temporary Commission on
20 Low Cost Power; yes, we were.

21 MITCH PALLY: They still were good
22 recommendations.

23 SENATOR VALESKY: Yes.

24 MITCH PALLY: Nobody else agreed.

25 We thought they were good.

1 SENATOR VALESKY: That's right.

2 MITCH PALLY: Good afternoon, and thank you
3 for letting us testify today.

4 I have a couple things I want to talk about,
5 some regulatory, some legislative, that we think
6 will be helpful.

7 First and foremost, obviously, within the
8 building industry, especially the residential
9 real-estate industry, which I represent, is our
10 concern over Sections 240 and 241 of the Labor Law,
11 the Scaffold Law, which significantly increases the
12 cost of doing business in this state.

13 And, in fact, New York is the only state in
14 the country still with this law on the books.

15 On your list of speakers is Artie Cipoletti,
16 the current vice president of LIBI, and the
17 president of DaVinci Construction, who will testify
18 regarding the specific cost issues which must be
19 taken into account by construction companies.

20 And I will leave the dramatics to him.

21 He's a forceful advocate for repeal.

22 Second, in many cases, development projects
23 receive the necessary state and local permits from
24 the appropriate agencies, and are ready to start to
25 build and create hundreds of jobs, only to be

1 stopped by lawsuits under Article 78 of the CPLR.

2 In these cases, which often take from
3 1 year to 18 months to solve, it is almost
4 impossible to get financing for the project because
5 of the possible uncertainty of the outcome of the
6 lawsuit.

7 Even if the municipality wins and the
8 development project moves forward, there are no
9 penalties imposed upon the losing side,
10 notwithstanding the fact that the developer has been
11 delayed, in many cases, over 18 months, and may have
12 missed the market for his product, and the fact that
13 the construction industry has lost 18 months of jobs
14 and New York State has lost 18 months of tax
15 revenues.

16 Legislation sponsored by
17 State Senator Jack Martens would require a bond to
18 be posted before an appeal could take place on these
19 activities.

20 And such legislation passed the State Senate
21 in June, and we are hopeful that the entire
22 State Legislature and the Governor will see the need
23 to protect permanent development projects from
24 unnecessary delays and expenses by passing this
25 legislation next year.

1 Third, there are two specific requirements
2 within the State Building Code, which many of my
3 members refer to me as imposing additional costs,
4 especially here on Long Island, which is all I can
5 talk about:

6 First, the requirement that all buildings in
7 the state, and here on Long Island, regardless of
8 location, conduct seismic evaluations and
9 construction levels, can add up to 20 to 25 percent
10 of the cost of the building;

11 Second, the requirement that air
12 modifications be continually evaluated and
13 exchanged, even in buildings in which few people
14 work, such as warehousing facilities, add
15 substantially to the cost of the development of
16 these of types of buildings which have become much
17 more prevalent on Long Island.

18 We would urge a review of both these
19 requirements.

20 Fourth, the protection of stormwater runoff
21 has become an major issue in many places, with
22 significant requirements being imposed even in
23 places where such runoff does not take place.

24 While DEC has clearly become more flexible in
25 this regard, and, in fact, changed two of their

1 regulations as a result of the efforts of LIBI, we
2 continue to try and fashion a system which will
3 allow for the control of runoff in ways which do not
4 significantly increase the cost of development.

5 Fifth, we remain concerned with the
6 subjective nature of many of the new questions being
7 required as part of the new Environmental Quality
8 Review Act forms which will take effect next month.

9 While we fully support the need to update the
10 forms, it continues to be our belief that many of
11 the new questions are more subjective rather than
12 objective, requiring assumptions and estimates on
13 many answers, which could lead to more aggressive
14 litigation on these issues because of the nature of
15 the answers being provided.

16 Sixth, there are many instances where a
17 developer must negotiate with DEC on specific uses
18 of parts of their property, which will have a
19 dramatic impact on the ability of the property to
20 fulfill the economic-development needs of the state.

21 In these cases, such as the reuse of property
22 at Calverton, which is 3,000 acres, we believe it is
23 essential that the Empire State Development
24 Corporation be included within these discussions and
25 the decision-making process so that a balance can be

1 achieved between both the environmental and economic
2 needs of our community.

3 Seventh, the need for affordable housing for
4 our young people is an ever-increasing need for our
5 economic-development goals.

6 And, unfortunately, most of the
7 municipalities on Long Island do not want such
8 housing in their communities.

9 The need for rental housing on Long Island
10 is, far and away, one of the most important aspects
11 of keeping our young people here.

12 And the inability to build such housing in
13 all parts of Long Island continues to damper the
14 opportunities to grow our companies.

15 Over 40 years ago, in a similar situation
16 with regard to housing for our citizens with
17 disabilities, the New York State Legislature enacted
18 the Padavan Law, which allowed the State to impose a
19 specific process with regard to the development of
20 housing for our citizens, because the municipalities
21 at that time refused to allow such development in
22 the amount necessary for the needs of
23 New York State.

24 We would urge you to once again look at this
25 process and include affordable housing within the

1 law to ensure that such rental housing, which is in
2 dire need here, can be developed.

3 The Long Island Builders Institute thanks
4 this Committee for reviewing these regulatory and
5 legislative issues which are of great importance to
6 the ability of our builders to continue to provide
7 the American dream for our citizens.

8 Yesterday, LIBI and its charitable arm,
9 Long Island Home Builders Care Development Corp.,
10 announced the names of six U.S. service veterans who
11 will be the occupants of the first subdivision in
12 the country built especially for returning veterans.

13 The six houses are being sold to these
14 American heroes for less than 50 percent of the cost
15 of the house, through the donations and work of my
16 LIBI members.

17 We would very much like to be able to do the
18 same for all of our citizens who need housing in our
19 communities, and we are hopeful that your work will
20 allow us to expedite the building of such housing
21 now.

22 Thank you very much for this opportunity.

23 We appreciate it.

24

25

1 SENATOR VALESKY: Thank you, Mitch,
2 particularly for being so specific in giving us a
3 number of items.

4 MITCH PALLY: As Senator Boyle knows, I'm not
5 bashful in being specific.

6 SENATOR VALESKY: That's good, that's good.

7 Thank you also for your efforts on behalf of
8 our military men and women.

9 That's outstanding.

10 MITCH PALLY: Our pleasure.

11 SENATOR VALESKY: I think your final issue,
12 need for affordable housing, underscores why it's so
13 important that we're doing statewide hearings.

14 From Senator Gallivan and my part of the
15 state, that's not typically an issue that would be
16 on a top 7 or 8 list, so we appreciate, very much,
17 that.

18 And all of us have been working together in a
19 legislative capacity in the Senate, particularly
20 with the Majority Coalition that we're all members
21 of, and, we'll be certainly anxious, as we put our
22 report together following these -- this series of
23 hearings.

24 MITCH PALLY: The interesting thing that is
25 happening on Long Island, housing development at the

1 moment, is that it is almost impossible, unless you
2 finance it yourself, to get financing for for-sale
3 projects, which is what the communities, of course,
4 want.

5 It is absolutely possible in any way -- I can
6 talk tomorrow about 10 projects that could be funded
7 for rental housing, because the financing community
8 knows the dramatic need for such housing on
9 Long Island, and it gets filled up right away.

10 And that's the exact type of housing the
11 communities do not want.

12 And so we face a dilemma with the marketplace
13 calling for rental housing, especially for our young
14 people.

15 Long Island has the smallest percentage of
16 rental housing of any metropolitan area in the
17 country: 17 percent.

18 Westchester has 38 percent.

19 That dramatically impacts the ability of
20 young people to live on Long Island.

21 The changing demographics, as Senator Boyle
22 knows in his district, are unbelievable on the
23 Island.

24 People do not get married until their 30s.

25 They do not want the single-family home

1 until -- and they want housing options.

2 That's why the city of New York is booming,
3 because it has housing options, which we don't have
4 here.

5 And our ability to provide that is going to
6 be able to house these young people, who, sooner or
7 later, are going to get tired of living in mom and
8 dad's basement, or mom dad are going to get tired of
9 them living in their basement, and decide, You know
10 what? I'm going to go live someplace else.

11 Now, the funny thing is, where they go to
12 live, is in the city, because that has the housing
13 options we don't have here.

14 It has the lifestyle they want, that we don't
15 have here.

16 And we're not talking about changing the
17 lifestyle that 90 percent of Long Islanders know and
18 love, including myself, in a single-family home.

19 What we're talking about is integrating
20 within that, in places where it can happen,
21 especially our downtowns, additional rental housing
22 for our young people, because that's where they want
23 to live.

24 And, so, these opportunities, these issues,
25 will allow us to hopefully do so.

1 SENATOR VALESKY: Thank you.

2 SENATOR GALLIVAN: Just one question.

3 MITCH PALLY: Yes.

4 SENATOR GALLIVAN: When were you talking
5 about the Environmental Quality Review Forms --

6 MITCH PALLY: Yes.

7 SENATOR GALLIVAN: -- and their subjective
8 nature, the new ones, could you provide them to us?

9 MITCH PALLY: Oh, sure.

10 They actually go into effect October 7th.

11 In fact, I just got another e-mail from DEC,
12 which I sent out to my members, but, the form went,
13 from 11 pages, to 30 pages.

14 Now, that by itself has issues, but,
15 I'll take away the issue of the length.

16 Many of the questions are now much more
17 subjective in nature.

18 And a developer trying to answer those
19 questions is answering them, of course, before the
20 project has happened.

21 They're trying to get permission to do the
22 project, not afterward.

23 So the ability to know exactly how many cars
24 are going to be there, or how many schoolchildren,
25 or all of these issues, are estimates, because you

1 don't know.

2 And our concern is, the subjective nature of
3 those questions could lead to additional litigation,
4 which Senator Martins and I have had many
5 conversations about, about Article 78.

6 And the goal there is not to end up in
7 litigation.

8 The goal there is to end up with a project
9 that meets the needs of the community and can meet
10 the environmental needs of the community; not to
11 say, okay, yes or no, on something.

12 So that is of great concern to us.

13 I'll be more than happy to share the forms
14 with you so you can see those directly.

15 SENATOR GALLIVAN: Yes, please.

16 And Zach right behind you can provide you our
17 e-mail address.

18 MITCH PALLY: Will do.

19 SENATOR GALLIVAN: It will probably be
20 easiest.

21 Any questions?

22 SENATOR BOYLE: No, I'd just like to thank,
23 Mitch, for your leadership, both the Long Island
24 Builders Institute, but in the other capacities
25 you've had over the years, to lessen the amount of

1 regulation.

2 And I'd like to thank the Chairmen for coming
3 to Long Island, and holding this hearing here.

4 We appreciate it.

5 SENATOR GALLIVAN: Thanks.

6 All right, Mitch, thank you.

7 MITCH PALLY: Thank you.

8 Thank you very much.

9 SENATOR GALLIVAN: Of course, we've been
10 joined by Senator Phil Boyle and
11 Senator Jack Martins, both who helped put this
12 together, and we appreciate your help.

13 And is there anything else that you wanted to
14 add to your comments, and then Jack, you, too?

15 SENATOR BOYLE: Just to thank the Chairmen
16 for holding these hearings around the state.

17 Whether it's agriculture, health care,
18 regulations have been making it more difficult to
19 start up businesses and to maintain businesses here
20 in the state of New York.

21 Long Island, we've had particular problem in
22 the construction industry.

23 I've talked to developers and real-estate
24 people, and citizens who are looking for housing
25 options, business options.

1 And, our overregulation; there's a certain
2 amount of regulation that's needed to protect the
3 workers and environment, and other things, but we
4 are overregulated, and it's stifling our
5 development.

6 And I thank you.

7 I hope we have some legislation coming out of
8 these hearings that will lessen that.

9 SENATOR GALLIVAN: Thanks, Phil.

10 Jack?

11 SENATOR MARTINS: Thank you.

12 You know, people say that the regulations are
13 the hidden tax.

14 It's a tax increase on our businesses and
15 impacts our businesses, because it requires you to
16 do certain things that you otherwise may not need to
17 do; or to do things over and over and over again,
18 and supply the same forms and the same information
19 over and over and over again; where, you shouldn't
20 have to do that.

21 I want to applaud Senator Gallivan for his
22 initiative in taking on this task, not only with
23 respect to the topic we have here today, which is
24 the construction industry.

25 And, obviously, it's something close to me,

1 but, throughout the state, whether it's agriculture,
2 whether it's business, whether it's insurance, or
3 construction, very important issue.

4 And to the extent that we can begin getting
5 into this issue a little more carefully, hearing
6 from those of you who are in the industry, giving us
7 your firsthand impressions, maybe we can actually do
8 something about it.

9 If we can roll back some of these
10 regulations, if we can take some of the pressure
11 that you have on you that is put on there by a State
12 and a bureaucracy that oftentimes is overbearing,
13 then we've partially done our job.

14 I'm looking forward to the testimony here
15 today.

16 Thank you.

17 SENATOR GALLIVAN: Thanks, Jack.

18 Matt Cohen from the Long Island Association.

19 Hi, Matt.

20 MATT COHEN: Good afternoon, Senators, and
21 thank you for the opportunity to be with you today.

22 My name is Matthew Cohen.

23 I am vice president of legislative affairs
24 for the Long Island Association, which is the
25 leading business organization in the region.

1 Our membership is comprised of small and
2 large businesses: technology and manufacturing
3 companies, universities, financial-services firms,
4 banks and credit unions; hospitals, real-estate
5 companies, and sole proprietors, which, together,
6 employ more than one-half of the region's workforce.

7 Our mission is to lead the region's economic
8 development and bring together disparate factions
9 within the community to forge regional solutions for
10 Long Island.

11 We are very pleased the Senate Majority
12 Coalition is holding a series of public forums on
13 regulatory reform, and that you have chosen
14 Long Island to discuss the construction industry in
15 particular; an industry that has always been
16 important to us and, now more than ever, as we
17 continue to rebuild from the devastation of
18 "Superstorm Sandy."

19 While Long Island and New York State are
20 still struggling with the slow and bumpy economic
21 recovery, Albany has properly repurposed its focus
22 on creating jobs and supporting the business
23 community.

24 We have witnessed important efforts to
25 provide meaningful relief to our municipalities and

1 employers through some pension and Medicaid reforms,
2 and the implementation of some modest tax cuts and
3 the 2 percent property-tax cap, and we applaud all
4 of your efforts to see that become a reality.

5 But there's more work to do and difficult
6 battles to wage to create more jobs, spur private
7 investment, reduce the property-tax burden, and
8 further improve the overall business climate.

9 That is why the input you receive at your
10 hearings and the work you do through your Committees
11 is so important to our economic future.

12 So in addition to more tax relief for small
13 businesses, I'd like to start off talking about
14 commonsense reforms that we need to antiquated
15 regulations, like The Scaffold Law; and, thus, we've
16 supported Senator Gallivan's legislation,
17 Senate Bill 111.

18 As you know very well, I'm sure, the current
19 law imposes a standard of absolute liability upon
20 contractors and property owners for all
21 gravity-related industries.

22 The approach advocated by the legislation
23 would replace the absolute-liability standard with a
24 fair comparative negligence standard only in
25 situations where a worker's injury is founded and

1 caused by that worker's failure to follow safety
2 training or use available safety devices,
3 intox- --I'm sorry, intoxication -- intoxication
4 or commission of a crime; meanwhile, negligent
5 employers will still be held fully liable and the
6 injured worker may still collect worker's
7 compensation benefits.

8 New York is the only state which retains this
9 antiquated law which was originally enacted in 1885;
10 thus, insurance costs for construction projects in
11 New York are higher than anywhere else in the
12 country, and many small companies simply cannot
13 afford the policies.

14 Reducing these jobs [sic] would allow
15 businesses to grow and spur more investment.

16 In addition to construction companies,
17 high insurance costs also impact businesses and
18 consumers that pay hundreds of thousands of dollars,
19 if not millions more to build commercial and
20 residential projects, and our local governments and
21 taxpayers are forced to pay more for public
22 infrastructure projects, such as roads, bridges, and
23 the "Superstorm Sandy" recovery; or even worse, they
24 do not build at all.

25 And, municipalities also bear the costs of

1 the judgments and settlements when they are sued
2 under the Scaffold Law.

3 A recent article that you may have read in
4 the Associated Press cited a few startling examples
5 of the impact of the larger insurance costs in
6 New York.

7 It noted that building groups estimate that
8 the current law will add an extra 200 to
9 400 million dollars to the State's replacement of
10 the Tappan Zee Bridge;

11 That New York City's school system says the
12 insurance costs it incurs from the law is enough to
13 build two new schools every year;

14 And that, in Western New York, the
15 general-liability insurance premium was \$380,000 to
16 cover rehabilitation on just 23 miles of the
17 State Thruway.

18 As a result, the cost of business is higher
19 than it needs to be, there's a disincentive to
20 invest in our infrastructure, and fewer jobs are
21 created.

22 This is one area of regulatory reform that
23 can be addressed while not impinging upon the
24 workplace safeguards that have been established
25 since the original passage of the Scaffold Law.

1 Secondly, the State Legislature should also
2 consider reforming the Wicks Law, which requires
3 state and local government construction projects to
4 issue multiple contracts for plumbing, HVAC, and
5 electrical work, with the balance of the job going
6 to a general contractor for all public-works
7 projects.

8 While perhaps well-intended to promote fair
9 competition and protect workers' rights, it has also
10 led to expensive inefficiencies and delays, higher
11 construction costs for municipalities and school
12 districts, and tax pressures on the business
13 community.

14 According to a report of the New York State
15 Commission on Local Government Efficiency and
16 Competitiveness completed in April of 2008, several
17 studies have estimated higher costs resulting from
18 the Wicks Law provisions, and New York City had
19 estimated, at that time, that it would save
20 \$3.7 billion over the 10-year capital plan with a
21 full repeal of Wicks.

22 Other studies have indicated that the
23 Wicks Law could add anywhere from 8 percent to
24 30 percent to the project's price tag.

25 In 2008, the Wicks Law was amended to set an

1 exemption threshold of \$1.5 million for Nassau,
2 Suffolk, and Westchester counties, \$3 million in
3 New York City, and \$500,000 for upstate.

4 While we enjoy good working relationship with
5 our brothers and sisters from labor, and we are not
6 suggesting anything to hurt labor, we need to strike
7 the right balance.

8 The Wicks Law should either be eliminated,
9 but, in the absence of that, see its thresholds
10 dramatically increased in order to generate
11 significant savings, and, thus, improve the business
12 climate.

13 A third area in which regulatory reform could
14 promote economic development and assist the business
15 community relates to the time frame of municipal
16 decisions for land use, and building on what Mitch
17 had testified to.

18 Under current Article 78 law, any delay in
19 moving a development project forward results in
20 additional costs to the developer because it's not
21 feasible to secure financing and start a project
22 while such an appeal is moving forward.

23 This has had a negative effect on important
24 development projects throughout Long Island,
25 including Avalon Huntington Station, the Meadows at

1 Yaphank, and New Village in Patchogue.

2 In total, Article 78 has jeopardized projects
3 that represent a total statewide economic impact in
4 excess of \$1.5 billion, and has either delayed or
5 curtailed thousands of employment opportunities.

6 That is why we have supported
7 Senator Martins' bill, Senate Bill 985, that would
8 require a bond be submitted by the party appealing a
9 decision, so as to protect the developer from
10 associated costs relating to delays caused by
11 frivolous appeals of decisions made by
12 municipalities, in favor of these development
13 projects.

14 The proposed legislation, sponsored by
15 Senator Martins, would lower business costs and
16 generate critical economic activity.

17 Expediting and streamlining the
18 State Environmental Quality Review Act process would
19 also be helpful.

20 There is an unfortunate practice of
21 municipalities here on Long Island to keep secret
22 hearings open even though the totality of impacts
23 have been vetted and mitigated.

24 Municipalities sometimes only do this to
25 delay votes and approvals.

1 While there are timelines and deadlines that
2 are set forth within the regulations implementing
3 SECRA, these need to be made mandatory and
4 enforceable.

5 The imposition of default provisions for
6 noncompliance with timelines and deadlines would
7 provide leverage to the private sector to expedite
8 the approval process.

9 We could also support longer timelines and
10 deadlines with the condition that default approvals
11 will be a consequence of noncompliance.

12 It is important that local government have
13 the ability to positively encourage improved
14 economic conditions by expediting projects
15 consistent with the comprehensive plan of each
16 municipality and municipal home rule.

17 For example, an application in conformity
18 with, and a principle permitted use under, local
19 zoning should be the benefit of accelerated approval
20 process.

21 Similar to the reenacted Article 10 Law, the
22 State should establish a fast-track process for
23 applications that also meet certain environmental
24 criteria that address economic-development needs.

25 While some sensible reforms to SECRA could

1 foster economic development, we do not wish to do so
2 at the expense of protecting the environment,
3 something we all agree we must do.

4 We are not in any way suggesting anything
5 anti-environment; however, the harsh reality is,
6 that, many times, the SECRA process delays or
7 prohibits good projects that do not truly have a
8 negative impact on the environment.

9 California has also recently sought to amend
10 its version of SECRA, the Environmental Quality Act,
11 because, while it too has helped keep the air and
12 water clean, the law has also stalled projects that
13 would spur economic growth.

14 Finally, we should explore
15 self-certifications for certain construction
16 projects like some other states permit.

17 I believe North Carolina is one of them.

18 Here, an engineer or architect, licensed by
19 New York State, would certify that all plans and
20 drawings meet or exceed all building-permit
21 requirements, and once filed with the local
22 municipality, construction can start.

23 The municipality can always review and/or
24 audit the submissions, and if there were any
25 evidence of misrepresentation, then the license of

1 the engineer or architect could be revoked by the
2 State.

3 This would significantly accelerate
4 construction of single-family homes, additions, and
5 certain commercial projects.

6 The LIA applauds the New York State Senate
7 for passing 14 regulatory reform bills in the last
8 session as part of your initiative, that includes
9 these statewide public hearings, to identify and
10 eliminate costly and unnecessary government
11 regulations that inhibit job growth and drive up
12 property taxes.

13 Thank you for allowing me the opportunity to
14 testify today, and I respectfully urge you to
15 consider our recommendations during your
16 deliberations.

17 Thank you.

18 SENATOR GALLIVAN: Any questions?

19 SENATOR MARTINS: Thank you.

20 Matt, good to see you.

21 MATT COHEN: Good to see you, Senator.

22 SENATOR MARTINS: Thank you.

23 Let's take these one at a time.

24 The Scaffold Law reform:

25 With Senator Gallivan's proposed, sort of

1 levels the playing field, I think.

2 Under the current scenario, who wins, in your
3 opinion?

4 MATT COHEN: Well, I can tell you who loses:
5 it's taxpayers and businesses that are paying extra
6 costs for insurance.

7 SENATOR MARTINS: No, I get it.

8 I understand that.

9 But, you know, if our goal is safety; and our
10 goal is safety on job sites, and make sure that our
11 workforce is in a safe environment, is there any
12 benefit to continuing with an absolute-liability
13 statute, as opposed to a statute that takes into
14 consideration personal responsibility?

15 MATT COHEN: Well, I've read stories, and
16 know, anecdotally, that there are folks that have
17 been injured on the job, that would say that the
18 absolute-liability standard is important, and help
19 them pay for their medical bills.

20 And I completely understand and appreciate
21 that, but I think we've come a long way since 1885,
22 and I think there are a lot -- there is a lot that
23 we're doing to protect our workers.

24 And, of course, there's got to be a balance.

25 And no one wants to see workers get penalized

1 or punished for an accident that's not their fault.

2 SENATOR MARTINS: Yeah, I don't disagree with
3 you.

4 I'm actually going to your point.

5 MATT COHEN: Okay.

6 SENATOR MARTINS: You know, I'm concerned
7 that we are the only state that has this standard,
8 and this absolute standard, and it's being enforced
9 in this way.

10 I have, over the years, actually seen various
11 examples of this particular statute having been
12 taken advantage of, and inappropriately taken
13 advantage of.

14 And, obviously, if that's replicated
15 throughout New York State, we can see the impacts of
16 that on the cost of construction, and you pointed
17 that out.

18 Wicks Law, you mentioned there was an issue
19 for labor.

20 Isn't it Wicks Law specific to a certain area
21 of labor, certain trades?

22 MATT COHEN: Electric, HVAC, and plumbing.

23 SENATOR MARTINS: All right, so everyone
24 else, whether it's laborers themselves, carpenters,
25 operating engineers, and the like, they're not

1 impacted by Wicks Law one way or the other?

2 MATT COHEN: Directly, not to my knowledge,
3 no.

4 SENATOR MARTINS: And, of course, the SECRA
5 reviews, you talked about timelines.

6 There are different types of projects out
7 there.

8 You mentioned some very significant projects
9 that were impacted by SECRA and Article 78
10 proceedings.

11 How do we provide a timeline that covers, not
12 only the mega projects and the large projects, but
13 the smaller projects as well?

14 How do we strike that balance?

15 Because I know the imposition of a timeline
16 may work for, you know, an average project.

17 When we do have larger projects, those
18 timelines then become arbitrary.

19 You know, have you given any thought to how
20 we can perhaps evaluate the type of project, the
21 complexity of the project, and put timelines in that
22 are commensurate with the size project, for example?

23 MATT COHEN: Yeah, that's a great question.

24 And, we have not gone to that level of
25 specificity, but I would be happy to talk to our

1 members, and to Kevin, and offer you some
2 recommendations, you know, in preparation for your
3 report that you're going to complete, that has some
4 more specifics and suggestions.

5 SENATOR MARTINS: Because, again, there is a
6 valid purpose, obviously, to SECRA.

7 There's a valid purpose to having it, in
8 measuring environmental impacts, protecting
9 neighborhoods, protecting communities.

10 On the other hand, not every project
11 requires, or even should require, the same level of
12 review.

13 MATT COHEN: Sure.

14 SENATOR MARTINS: And, so, there should be a
15 baseline.

16 And then there are, certainly, for those more
17 complex projects, certainly have the ability to have
18 a greater analysis.

19 MATT COHEN: Yeah, good point, and I'd like
20 to be back in touch with your office, if that's
21 okay?

22 SENATOR MARTINS: Self-certification:

23 With the construct that we have out here,
24 with all of our villages and towns, and their
25 individual building departments, are you suggesting

1 that, perhaps, we replicate the process that they
2 have in New York City, with architects and engineers
3 being able to self-certify their projects?

4 MATT COHEN: Yeah, and we think the
5 self-certification process, you know, we know that
6 it's done in other states.

7 We know it's been worked -- it's worked well
8 in other states.

9 And, again, you want to guard against fraud
10 or abuse or someone taking advantage of the systems,
11 but, I think, you know, with the proper audits and
12 safeguards in check, it's something worth looking at
13 and studying further.

14 You know, I'm certainly not an expert on it
15 but I think it's something that we should look at
16 further because, again, it just goes to that larger
17 point, which is sort of symptomatic of a lot of our
18 issues on Long Island, as I think you'll probably
19 agree on on some level, that there's just too many
20 delays, too many inefficiencies.

21 And big things that we want to get done, you
22 know, whether it's at Belmont, or the Hub, or
23 anywhere, it's just -- there's too many of these
24 types of examples of process-type issues of
25 bureaucracy-type issues that sort of slow everything

1 down.

2 So that may be a little bit more of an
3 in-the-weeds suggestion, but it's just something
4 I think we should-- me and Kevin thought we should
5 take a look at.

6 SENATOR MARTINS: Yeah, we have too many
7 examples of no --

8 MATT COHEN: Right.

9 SENATOR MARTINS: -- when we deal with these
10 projects on the Island, and elsewhere in
11 New York State, and too little effort in working
12 together to try to get to yes.

13 And, I appreciate your suggestions in that
14 context.

15 Thank you.

16 MATT COHEN: Thanks, Senator.

17 SENATOR GALLIVAN: You're good?

18 SENATOR BOYLE: I'm good.

19 SENATOR GALLIVAN: You're good?

20 Thanks, Matt.

21 MATT COHEN: Okay, thank you very much.

22 SENATOR GALLIVAN: Charles Gardner, from the
23 Long Island Chapter of the National Electrical
24 Contractors Association.

25 CHARLES GARDNER: I got moved up.

1 Good afternoon, Members.

2 And again, as has been reiterated, I thank
3 you for the opportunity, and very glad that you have
4 come to our section of the state.

5 My name is Charles Gardner.

6 I'm the -- currently director of government
7 affairs for the National Electrical Contractors
8 Association, the Long Island Chapter.

9 I have been on both sides of the regulatory
10 divide, in that, I'm the immediate past president of
11 the -- for 12 years, of the King's Park Chamber of
12 Commerce;

13 I am past president of the King's Park School
14 Board, for nine years;

15 And I also was Commissioner of Consumer
16 Affairs for the Suffolk County, for more than
17 ten years.

18 So I have been on both sides of regulatory
19 issues.

20 And, there are two points I'd like to bring
21 up today, and, really, not necessarily a repeal.

22 The first is -- refers to a bill that has
23 been introduced by Senator Zeldin and
24 Assemblyman Thiele, and it would empower
25 Suffolk County to assume more licensing duties for

1 our electricians within the county of Suffolk.

2 The -- our chapter, the members of our
3 chapter, we have more than 100 signatory members.

4 We're in partnership with our electrical
5 workers from Local 25 of IBEW.

6 And, for more than six years our chapter has
7 really been a leading voice in the electrical
8 construction industry on Long Island, and as such,
9 we work throughout Nassau and Suffolk county.

10 We are concerned with the number of smaller
11 municipalities that have gone to requiring licenses,
12 or, in some cases, they'll call them
13 "registrations," for people to work as master
14 electricians.

15 In our view, it is strictly a
16 revenue-producing requirement.

17 It has nothing to do with competence,
18 protection of consumers, leveling of the marketplace
19 for contractors.

20 For instance, the requirements of the Village
21 of Mastic Beach, within several months after
22 incorporation in Mastic Beach, they decided that
23 they were going to require electricians to have
24 their license in order to work anywhere within the
25 confines of the village.

1 The Town of South Hampton forces electricians
2 already licensed by Suffolk County to be registered
3 or licensed separately.

4 These are two perfect examples of unnecessary
5 governmental duplication for the sole purpose of
6 raising revenue.

7 Instead of using the Suffolk County law as a
8 complement to their code and enforcement policies,
9 at no cost to the town or village, they have chosen
10 to add a redundant layer of compliance on the backs
11 of all contractors.

12 We have no dispute with the town or village
13 building codes or enforcement of those codes.

14 Our concerns are the extra fees for the
15 registration of contractors, the burden of extra
16 administrative costs for a contractor, and the
17 burden of having to appear in person to pick up
18 registration stickers, or for renewals, for example.

19 It is about the illusion of more protection
20 for consumers, and the illusion that, somehow, these
21 jurisdictions are better able to keep untrustworthy,
22 incompetent contractors from working within their
23 boundaries.

24 With or without the extra license, the
25 enforcement policy to the town or the village, and

1 the available sanctions against incompetent
2 contractors, are exactly the same.

3 Licenses or registrations are only issued to
4 contractors who already possess a Suffolk County
5 license.

6 Why require these redundant licenses,
7 especially when there is the implication that there
8 will be more consumer protection, or, somehow,
9 better licensed contractors, when, in fact, there
10 will be neither?

11 We are most concerned about the snowballing
12 effect in Suffolk County, and we need to prevent the
13 nightmare of regulations that currently exist in
14 Nassau County, where, if you want to work as a
15 master electrician anywhere within the boundaries of
16 Nassau County -- 3 townships, 2 cities,
17 64 incorporated villages -- you would need,
18 approximately, 26 separate licenses.

19 You have to administer them.

20 You have you to manage them.

21 Terms of these license vary, from one year,
22 to two years.

23 Terms vary, from a calendar year, to a date
24 of inception of the license.

25 Fees range from \$50 to \$400 per year,

1 sometimes for two years.

2 You have to appear -- you have to have your
3 same stack of worker's comp insurance, your work
4 experience within the industry, et cetera.

5 You have to carry these around, over and over
6 and over again, the same packet of papers to all
7 these jurisdictions.

8 To our mind, the requirement of so many
9 licenses is truly an unfair burden, overregulation,
10 and redundancy.

11 One of our major contractors, for instance,
12 he does hold all of the required licenses for
13 Nassau County.

14 He has one employee whose sole job is to keep
15 track of these licenses: when they are expiring,
16 when they are coming due.

17 Any regulations that may change.

18 That is her full-time job: keeping track of
19 the licenses required in Nassau County.

20 Now in Suffolk County, where you have three.

21 So, the law that has been introduced by
22 Senator Zeldin and Assemblyman Thiele does require a
23 home-rule message from Suffolk County.

24 That has already been filed in the
25 Consumer Affairs Committee in the county by

1 Legislator Thomas Cilmi.

2 It has been tabled, awaiting for the next
3 session, whenever that might be called.

4 We would certainly ask for your support in
5 allowing this bill to go forward.

6 It would preempt the existing regulations,
7 and prevent any further small municipalities within
8 the county of Suffolk from going ahead and requiring
9 additional licenses for a master electrician.

10 Some of the -- some of the little things,
11 besides the management of it and keeping up with it,
12 people don't realize that, if you're in a
13 jurisdiction that requires a license, and you don't
14 have one, you can't even give an estimate, legally.

15 So, if somebody calls you, maybe you're
16 working across the street or down the block from --
17 let's, for instance, use the village of
18 Mastic Beach -- and, you know, people see you, and
19 their neighbor's getting work done, and see
20 ABC Contractor, or whatever, and they say, Hey, you
21 know, we have a job. Could you come over and give
22 an estimate?

23 They say, No, I can't, because, you know,
24 you're in Mastic Beach, and I don't have that
25 license, so I can't -- legally, I can't even give

1 you an estimate.

2 So there are contractors who won't even go to
3 the smaller municipality to apply for that license,
4 wait the month, sometimes several months, to get a
5 license, then go give the estimate, and then wind up
6 not getting the job anyway.

7 So, it is certainly a burden in the
8 day-to-day activities for the contractor.

9 It increases the cost of the contractor.

10 And as we know, when the contractor's costs
11 increase, where do they get passed on to?

12 The consumer.

13 And, there is really no additional protection
14 or benefits to either the contractors or consumers
15 by these smaller municipalities requiring additional
16 licenses.

17 So we would hope we could get some support
18 for that in the coming session.

19 The second item I would like to speak about,
20 and it's been mentioned already today, is the
21 Wicks Law.

22 And I was a little bit of a pariah when I was
23 president of the school board, because I never could
24 really understand the insistence on doing away with
25 the Wicks Law.

1 I'd like to read a statement from the
2 chapter.

3 "The Long Island Chapter of the
4 National Electrical Contractors Association strongly
5 protests any proposal that might repeal the
6 Wicks Law for public-works projects, allowing
7 municipalities and school districts to bid projects
8 using a single prime contractor instead of the
9 current multiple-prime system.

10 "There is a perception that contracts for
11 large projects will always save taxpayer dollars if
12 let to by a single prime bidder.

13 "The fact is, that using multiple prime
14 contractors will always result in increasing
15 competition and eliminating third-party or middleman
16 payments" --

17 Competition is truly the lifeblood of a free
18 marketplace.

19 -- "both of which are strong factors in
20 reducing costs associated with any project.

21 "In single prime, the subcontractors, those
22 who are actually doing the day-to-day work, are
23 chosen by the GC (the general contractor).

24 "In most cases, their criteria for being
25 chosen by the GC are not known by the customer.

1 "One might assume that the subs are being
2 picked based on the quality of work, financial
3 stability, and credibility within the industry, but,
4 too often, the main factor for being chosen is
5 lowball price from the GC.

6 "'You get what you pay for' is a cliché that
7 is understood by all of us when applied to
8 purchasing any goods or services.

9 "A repeal of the Wicks Law would not help
10 taxpayers, in our opinion; would benefit a
11 relatively small number of general contractors with
12 the resources to bid on multimillion dollar
13 projects"; --

14 The larger the projects, the more that our
15 local contractors are, effectively, shut out,
16 because they just do not have the resources to be
17 able to bid on, you know, a single prime.

18 -- "would adversely affect hundreds of both
19 union and non-union, small and medium-sized
20 businesses, and their thousands of employees and
21 family members.

22 "We ask that you act to protect the interests
23 of taxpayers, our working families, and the small
24 businesses of New York by ensuring that the state's
25 Wicks Law remains in effect.

1 "Thank you for your attention to this serious
2 matter, and stand ready to meet with you at any
3 time."

4 And, again, we do appreciate the ability to
5 get our remarks on the record.

6 Thank you.

7 SENATOR MARTINS: Mr. Gardner, thank you.

8 Let me take your first point, first.

9 In Suffolk County, do they have -- any of the
10 municipalities, the towns, have tests for
11 electricians, that you actually have to go through
12 in order to be certified and be licensed in that
13 town?

14 CHARLES GARDNER: In South Hampton, the main
15 requirement is, you show up and you show them that
16 your Suffolk County license.

17 SENATOR MARTINS: Right, no, any of the other
18 towns, that you're aware of, you know, any of the
19 towns in Suffolk County, any of the municipalities
20 in Suffolk County, are any of them -- do any of them
21 have a licensing requirement?

22 CHARLES GARDNER: No.

23 Many of the ones in Nassau do.

24 SENATOR MARTINS: Right.

25 CHARLES GARDNER: Yes, they do.

1 SENATOR MARTINS: Right, and that's why --

2 CHARLES GARDNER: Correct.

3 SENATOR MARTINS: -- I started with Suffolk,
4 come back to Nassau.

5 But, you know, there -- and I hope you would
6 agree that there is a benefit to localites, because
7 there are certain requirements that some
8 municipalities may want to see in the construction
9 in their municipality.

10 They make those decisions for themselves.

11 There are different standards that can be
12 applied with regard to electrical work, or plumbing
13 work.

14 And that if a municipality chooses to
15 exercise its own prerogative to have different types
16 of construction within its municipality, shouldn't
17 it have the ability to do that?

18 CHARLES GARDNER: If that were the case,
19 I might agree, but, it really isn't, because the
20 building codes are -- you know, the New York State
21 building code, the national fire codes, they are --
22 they're standard.

23 That's what the building inspectors enforce.

24 And, Senator, I think if you checked most of
25 the testing requirements, even within Nassau County,

1 you would find that the tests are pretty -- very,
2 very, very much similar, as well as the prior-work
3 requirements.

4 And, by the way, one of the main reasons
5 we're not even addressing Nassau County -- because
6 it is what it is -- is because there is no --

7 SENATOR MARTINS: I appreciate the way you
8 put that, by the way.

9 [Laughter.]

10 CHARLES GARDNER: Well, what I mean is, that
11 there is no -- let's just say that I was able to go
12 to the village associations, you know, the -- the
13 independent villages --

14 SENATOR MARTINS: Oh, sure, right.

15 The Nassau County Village Officials
16 Association?

17 CHARLES GARDNER: Right.

18 -- and they said, Fine, next Monday, we'll
19 give up licensing.

20 Who's going to do it?

21 See, right now, there's no setup.

22 Nassau County Consumer Affairs only licenses
23 the home-improvement people.

24 SENATOR MARTINS: Right.

25 CHARLES GARDNER: So there is no overarching

1 agency that would be able to pick up and start
2 saying, Okay, we'll license everybody.

3 Suffolk County has that.

4 It's been in effect in Suffolk County since
5 1972.

6 So, that's why it's -- that's a horse of a
7 different color, in Nassau.

8 So, it is -- it's not going to change.

9 It's not going to change in the very near
10 future.

11 We're very concerned that it does not
12 snowball in Suffolk County.

13 We can maintain -- we've been doing that --
14 doing it since 1972, requiring that one master
15 electrician's license.

16 We feel it's the best way to go, and it's
17 less burdensome on our contractors for Suffolk.

18 SENATOR MARTINS: All right.

19 I do appreciate that.

20 And I do appreciate the distinction as well.

21 CHARLES GARDNER: Yes.

22 A big one.

23 SENATOR MARTINS: Going to Wicks for a
24 second:

25 You know, you mentioned it may not allow

1 smaller contractors to bid on these larger projects.

2 But wouldn't a smaller contractor, or any
3 contractor, be bidding on exactly the same work?

4 If you have an electrical contractor that
5 currently can bid on electrical work as a prime
6 directly to the owner, let's say, to a local school
7 district that wishes to either build a school or put
8 an addition onto a school, there is a GC that's
9 going to do general work.

10 They're going to have subcontractors to
11 them --

12 CHARLES GARDNER: That's correct.

13 SENATOR MARTINS: -- for everything other
14 than the mechanical trades.

15 Then you have your mechanical trades that are
16 going to bid directly to the owner.

17 If the GC was to, and if Wicks was to be
18 amended, or if it was below the thresholds we
19 discussed earlier, wouldn't the GC have the ability
20 to go to those same exact contractors and ask them
21 to bid on that same work that they otherwise would
22 be bidding to the owner?

23 CHARLES GARDNER: Of course.

24 SENATOR MARTINS: And it's not as if these
25 contractors are going to be bidding on the entire

1 project.

2 They're still going to be bidding on that
3 portion of the contract that corresponds --

4 CHARLES GARDNER: Electrical, plumbing, and
5 HVAC.

6 SENATOR MARTINS: Right.

7 CHARLES GARDNER: Right.

8 But from the customer's point of view, when
9 I say that competition is the lifeblood of the free
10 marketplace, if you're the electrical contractor,
11 let's just say, for instance, it's \$100,000 for the
12 electrical job, and I'm the GC.

13 Well, if you're going to bid 100,000, the
14 school district is not going to pay a hundred,
15 because if I'm the GC, and it's 100,000 of work, I'm
16 going to the school district with maybe a hundred
17 and twenty, maybe a hundred and fifteen.

18 SENATOR MARTINS: If the GC doesn't want to
19 get the job, because the GC is also competing
20 against other GCs for the work.

21 CHARLES GARDNER: They shop it.

22 SENATOR MARTINS: And, that electrical
23 contractor is also bidding that work to every one of
24 those GCs and giving the lowest possible price.

25 So, again, competition being the lifeblood of

1 what we do, and of our economy, not only will the
2 owner have the benefit of the lowest possible price,
3 generally, from the general contractor, but that GC,
4 in giving them the lowest possible price, is also
5 going to request that the subs provide that GC with
6 the lowest possible price so that they can package
7 it together.

8 My concern, when we discuss Wicks, is more
9 along the lines of coordination of jobs, and
10 different trades on the jobs, and sequencing of
11 trades, and the difficulties that arise when you
12 have multiple primes on a job site, and the lack of
13 coordination between those primes that sometimes
14 leads to delays when one trade refuses to get out of
15 the way for another one, and there is no
16 coordination that would normally fall to a general
17 contractor.

18 It becomes unwieldy.

19 And, so, to the extent that there is a model
20 out there that works in the private sector, to the
21 extent that there are savings associated with that,
22 and I think there are studies out there that bear
23 out that there are savings to the taxpayer of
24 coordinating the various trades, and, frankly, to
25 the extent that, if we go back to when the Wicks Law

1 was originally enacted, nearly 100 years ago--

2 CHARLES GARDNER: 112.

3 SENATOR MARTINS: Right.

4 -- that, you know, it was predicated on
5 preventing fraud.

6 CHARLES GARDNER: Corruption was one of the
7 prime movers in that, yeah.

8 SENATOR MARTINS: And, today, our bidding
9 process, especially on our public-works projects,
10 requires an extraordinary level of oversight.

11 You know, you have sealed bids.

12 And the opportunity for there to be
13 collusion, or the kind of fraud that led to the
14 Wicks Law being enacted to begin with, just simply
15 doesn't exist.

16 Certainly not here in New York State with all
17 of the requirements for the bidding process.

18 So, although I certainly understand the
19 reluctance of the industry, and in the electrical
20 industry and the various mechanical trades, to see
21 this go away, I would also, in fairness, say that
22 there are alternative points of view that would lead
23 to the kinds of savings that you were talking about
24 when you were advocating consolidating our efforts
25 in Suffolk County.

1 And I would hope that we would keep that in
2 mind as well.

3 Thank you, sir.

4 CHARLES GARDNER: Thank you, Senator.

5 Senator Boyle?

6 SENATOR BOYLE: Thank you again for your
7 testimony.

8 And just to get back to Senator Martins'
9 point about the licensing from the different
10 municipalities, as a layman I'm really not sure of
11 the difference.

12 So, can you tell me just a couple of the
13 differences that, say, a normal license for an
14 electrician in Suffolk County, versus the one that
15 the town of South Hampton or village of Mastic would
16 require?

17 What would the village require on top of or
18 instead of, for licensing?

19 CHARLES GARDNER: That's one of the
20 grievances, is that there really isn't anything
21 extra.

22 SENATOR BOYLE: Just the money.

23 CHARLES GARDNER: Yeah, it's just the money,
24 that's correct.

25 SENATOR BOYLE: So how do they prove that?

1 Do they just come in -- would they just go
2 in -- in practice, how does that work?

3 Do they come go in and show their regular
4 license and say, Oh, here, fill out this form?

5 CHARLES GARDNER: One of the benchmarks,
6 Senator, before you can go any further is, you have
7 to have a Suffolk County license.

8 SENATOR BOYLE: Right.

9 CHARLES GARDNER: So if you don't have the
10 Suffolk County license, then you can't get the other
11 one.

12 SENATOR BOYLE: Okay.

13 CHARLES GARDNER: Which we're saying, well --
14 I mean, I can -- so, for instance, when the village
15 started two years ago, I mean, we've had master
16 electricians been in business 40 years, working.

17 And now, all of a sudden, in this little
18 area, they can't work anymore.

19 And, you know, I can bring up a little
20 anecdote about, again, what Senator Martins was
21 talking about, with Nassau County.

22 It's very typical for contractors -- many our
23 contractors don't have all of the licenses.

24 They might have 10 or 12 or 14 in Nassau
25 County.

1 I can remember when Nassau County first
2 instituted their red-light cameras.

3 The first three they put in, if you remember,
4 two of them had to be removed.

5 You know why?

6 Because the County installed them -- I think
7 Senator Martins knows -- on other than county
8 property.

9 They were installed in -- within the confines
10 of the jurisdiction of a village.

11 SENATOR MARTINS: An incorporated village,
12 sure.

13 CHARLES GARDNER: Or what we say is,
14 These are our guys.

15 These are just guys out working every day.

16 Now they have to know, well, where does
17 Mineola stop, where does Williston Parks begin.

18 I'm across the street.

19 It's the same thing now, you know, in
20 Mastic Beach.

21 The town of South Hampton requires it; the
22 village of South Hampton does not.

23 So, I mean, our guys have to keep up with
24 the -- they have to be geography experts as well as
25 jurisdictional experts.

1 So, it is definitely a burden.

2 And that's why we're really enthused about
3 Senator Zeldin's and Assemblyman -- and
4 Assemblyman Thiele, you know, he's an east-end guy,
5 so, we're really hoping that it gets through.

6 SENATOR GALLIVAN: Senator John Flanagan has
7 also joined us.

8 SENATOR FLANAGAN: Yes.

9 Nice to be here.

10 CHARLES GARDNER: I saw him.

11 SENATOR FLANAGAN: Just want to say hello to
12 one of my constituents.

13 Charlie, it's nice to see you.

14 How are you doing?

15 CHARLES GARDNER: Good, good.

16 Thank you.

17 SENATOR GALLIVAN: Thank you very much.

18 Artie Cipoletti, president of
19 DaVinci Construction.

20 ARTIE CIPOLETTI: Senators, thank you for
21 having me.

22 Yes, Artie Cipoletti, president of
23 DaVinci Construction; vice president of Long Island
24 Builders Institute; and, Scaffold Law expert by
25 default.

1 [Laughter.]

2 ARTIE CIPOLETTI: Matt Cohen did a good job
3 explaining some of the history behind the
4 Scaffold Law, going back to the 1800s.

5 And, you know, there was a time and a place
6 for that, as there is a time and a place for
7 everything.

8 I'm the guy in the fields.

9 I'm the guy that it makes a big difference
10 to.

11 And whether or not a law that was put into
12 effect to protect people that were working on
13 skyscrapers equates to people that are in
14 residential construction of two to four stories is
15 an equivalent, I would argue the fact that it isn't.

16 The main factor is, the fact that the law is
17 there, but it's abused.

18 And because it's absolute, it's easy to
19 abuse.

20 There's an example in the paperwork in front
21 of you, and I'm not prepared to sit here and read
22 testimony like my constituents are.

23 You know, I'm the guy in the field. I make
24 things happen.

25 I'm the guy it affects, that costs me money.

1 At any given day, I have 200 employees out
2 there.

3 I work in four states:

4 New York, New Jersey, Connecticut, and
5 Massachusetts.

6 I live in New York on Long Island.

7 My main office is on Long Island.

8 I have a suboffice in Massachusetts, and I'm
9 much more competitive in Massachusetts because of
10 the fact of the Scaffold Law not being in place over
11 there.

12 There's an example on the cover page over
13 here, of a -- of what a general-liability policy,
14 with a payroll of \$450,000, would be in the state of
15 New York.

16 That premium, now, this is just the GL.

17 You know, when you're doing major projects,
18 there's all kinds of additional insurance.

19 Besides auto, there's umbrellas, and whatnot,
20 that you have to cover, all of which relate in a
21 higher-percentage premium.

22 So the premium in New York for a typical job
23 of this size, would be \$43,000-and change.

24 Typical job in Connecticut is
25 \$37,000-and-change.

1 And a typical job, all the same, in
2 Massachusetts, is \$24,000.

3 Now, there's a little caveat that goes along
4 with Connecticut.

5 Over the past ten years, prices have
6 increased insurance in Connecticut.

7 It's still 14 percent lower than New York.

8 But the reason that the prices have
9 increased, is you got to keep in mind that you're
10 dealing with insurance companies.

11 They're very smart people.

12 You don't get a lot past them for too long.

13 The marketplace out there in New York is very
14 shallow.

15 There's two or three companies that can place
16 these liability policies.

17 The reason is, because the law is absolute,
18 they lose money on it; and if they're losing money
19 on it, they don't want to sell you the policy.

20 And if they are going to sell you the policy,
21 it's going to be more cost-effective for them.

22 So that would even blow this premium up even
23 further.

24 Now, the reason I bring Connecticut into the
25 fold here, is that, in Connecticut, they figure that

1 the proximity to New York is such, that you're
2 likely to have a Connecticut contractor get
3 insurance and work in New York; and, so, now they've
4 been raising the premiums there.

5 I'm not guilty of that.

6 I have separate corporations that work in all
7 of these states.

8 So, you know -- but the fact is, that I work
9 for the same rates here in Long Island as I do in
10 Connecticut and Massachusetts and New Jersey.

11 And the apartments are exactly the same, the
12 work that goes into them is exactly the same; but,
13 yet, we're more competitive in other states.

14 So where would I rather have most of my
15 employees working?

16 Living here in New York, I would rather have
17 them here, but, for business purposes, they're
18 working up in Massachusetts.

19 The more work there for me, the better.

20 I look at the example that Matt brought up
21 about the Tappan Zee Bridge.

22 I mean, you know, look at these percentages
23 right here.

24 43 percent lower to build the same bridge in
25 Massachusetts, for insurance premiums.

1 "43 percent."

2 What's that mean to our taxpayers?

3 That's a lot less money that they got to go
4 and take a bond out for.

5 And there's the cost of money, everybody
6 knows that.

7 And there's the cost of doing business, so
8 doing business in New York is counterproductive to
9 the economy.

10 We want to be as competitive.

11 We have a law in effect that's here in
12 New York, and it exists no place else because, were
13 they smarter than us?

14 I don't know.

15 Well, do they have better lawyers that are
16 able to make a good living off of this law? -- which
17 they do.

18 And, they're not just protecting, you know,
19 contractors, or, let's say, employees of contractors
20 that are injured.

21 They're protecting their law firms from --
22 you know, for the future.

23 I'm not here for that.

24 I'm here for the people that I have working
25 out in the field;

1 I'm here to continue doing business in
2 New York;

3 And I'm here to help, you know, push this
4 bill along, because we need some reform.

5 If somebody is standing -- there's an example
6 in here of a case that's ongoing right now, where an
7 employee, who had placed lumber the day before on --
8 horizontally on the ground, with another co-worker.

9 The following morning, they were going to
10 work in that area.

11 The one co-worker walked around the lumber.

12 The other co-worker walked over the lumber,
13 and because it was the morning, there was a mist on
14 it.

15 A morning dew, so to speak.

16 He slipped on it; he fell, he broke his leg.

17 This lawsuit's been going on for nine years
18 now, the litigation, and the numbers are being
19 thrown out of around \$650,000.

20 He broke his leg; he could have returned to
21 work in 12 weeks.

22 But because there's, what their term out in
23 the field, as a "come line," he's on the come line
24 and he's waiting for his payday to come in.

25 That's abuse of this law.

1 And that's the kind of abuse that has to be
2 avoided.

3 And that's why I'm here today.

4 SENATOR GALLIVAN: Well, appreciate your
5 being here.

6 I have two questions.

7 The first, you gave us the example, and then
8 you talked about your higher liability insurance,
9 and compared to the other states.

10 And I think you mentioned something to the
11 effect, is that you're less competitive with these
12 out-of-state companies -- or, New York is less
13 competitive because of this Scaffold Law.

14 My question is:

15 Are there any other factors that make New
16 York less competitive, that affect you and your
17 business, outside of labor law --

18 ARTIE CIPOLETTI: You know, I'm here
19 specifically for that purpose.

20 I didn't really do any research to say that
21 there is other things.

22 SENATOR GALLIVAN: Fair enough.

23 ARTIE CIPOLETTI: You know, we work union,
24 non-union.

25 We do prevailing-wage work.

1 We do public works.

2 We're on an equal playing field when there's
3 equal rules.

4 So, over here, you know, with equal rules on
5 prevailing wage, we're as competitive as the next
6 guy that has to be under those same rules.

7 But, state to state, we're not as
8 competitive, because the cost of somebody doing
9 business in these other states is much less.

10 So, you know, businesses go to where they can
11 make the most profit.

12 I want to make money.

13 Everybody wants to make money.

14 We want our employees to make money.

15 And we can't do it here.

16 We've got to ship them up to Massachusetts.

17 SENATOR GALLIVAN: Now, along those same
18 lines, and this is -- I had several conversations
19 earlier with some individuals, and the same thing
20 kind of came up.

21 You mentioned out-of-state companies coming
22 into New York without a state liability insurance.

23 Does that mean that they're not coming --
24 they're not following our rules, as they exist?

25 ARTIE CIPOLETTI: I might not have

1 pronounced [sic] that correctly.

2 SENATOR GALLIVAN: I may have misunderstood
3 it.

4 ARTIE CIPOLETTI: I'm not talking about
5 out-of-state contractors coming into Long Island to
6 do work here.

7 Although, I was very -- I participated in the
8 "Sandy" rebuild from day one.

9 I was one of the authors of the STEP program.
10 I wrote the Nassau program, and then I got it
11 implemented into Suffolk County.

12 And it's been successful; so successful, that
13 the government is going to use this statewide, you
14 know, to help people.

15 One of the big concerns that we had was, yes,
16 out-of-state contractors coming in and taking work
17 from people that we had on the bench that we wanted
18 to put back to work.

19 We did get people back to work, and we
20 weren't able to stop other contractors coming in,
21 because there was such a big need, and there was --
22 you know, we didn't really have the staffing --
23 although we thought we did -- we didn't have the
24 staffing to keep everybody happy.

25 And that's what you need to do.

1 You know, when there's a time of crisis, you
2 have to have rules that qualify people, but also get
3 people working, because they got to get back in
4 their houses.

5 Now, the out-of-state contractors did have an
6 advantage because, when it came down to, after
7 things were approved, and, say, the temporary work
8 was in place, and they were going to rebuild their
9 houses, the out-of-state contractors weren't bound
10 by the same rules as us, and the cost of their
11 insurance was a lot less.

12 So, they were able to underbid us and come in
13 and do the work.

14 You know, it was a good idea by
15 Consumer Affairs, and then by Sammy Chu out in
16 Suffolk County, to relax the rules, to an extent;
17 that, you know, there wasn't an inspector going
18 around, knocking on doors, to find out if the guy
19 was licensed in Suffolk or licensed in New York, or
20 Long Island, or any of the village municipalities.

21 It would have only slowed the recovery down
22 further.

23 It would have made everybody look bad.

24 That wasn't what it was all about.

25 But keep that in mind, when you see, you

1 know, a truck, or trucks, you go down the block and
2 you see 20 trucks from out of state, and they won
3 the job over me, because, they're not bound by the
4 same rules, you know.

5 And I was okay with bending it, too, but you
6 do have to have something that equalizes the playing
7 field, such as like they do in prevailing wages.

8 But I'm not here for that.

9 Knock the Scaffold Law out.

10 SENATOR GALLIVAN: Thank you.

11 Jack?

12 Question?

13 All right, thank you, sir.

14 ARTIE CIPOLETTI: You must have heard my
15 point.

16 Thank you.

17 [Laughter.]

18 SENATOR GALLIVAN: Wilbur Breslin from
19 Breslin Realty Development Corp.

20 When you're ready, sir.

21 WILBUR BRESLIN: I was asked here to come
22 this afternoon to discuss my involvements in
23 development and construction, and what type of
24 impacts we're feeling now as a result of the state's
25 new regulations.

1 I'm referring to the regulations that I think
2 went into effect somewhere around 2010.

3 I started a project approximately six years
4 ago.

5 That project consists of 18 acres of land,
6 which was to be redeveloped.

7 On the existing site was an old motel that
8 was in disrepair and breaking for approximately
9 ten years; a gas station, and some other ancillary
10 buildings.

11 When we looked at that parcel, we defined it
12 as an improved property, only to find that the
13 interpretation of the ORV regulation by DOT was that
14 it was unimproved; and, therefore, we were subject
15 to the new regulations, which was a difference of
16 about \$2 1/2 million to our project, none of which
17 we believe that \$2 1/2 million materially affected
18 the health, welfare, and hazardous conditions and
19 environmental conditions in there.

20 So our engineers, feeling that the
21 interpretation was wrong, tried to set up a meeting
22 with the DOT.

23 That took approximately five months to
24 accomplish.

25 And at that meeting, they were disillusioned

1 by the statement that, what we thought would be the
2 proper way to develop the site, and to take the
3 appropriate steps to do so, and save \$2 1/2 million
4 in the interim, they thought it was a good idea,
5 but, disillusioned us to the fact that it would take
6 three years to get it approved.

7 And, obviously, I'm now in my sixth year on
8 this project.

9 I have \$6 1/2 million already spent on soft
10 costs.

11 I don't own anything with the \$6 1/2 million,
12 because we haven't taken title as yet.

13 So, recently, I sought help, and, very
14 frankly, I got it as well; and I got it, a meeting
15 set up with people that were anxious to move forward
16 and produce revenue, and things of that nature,
17 because the property is already pre-leased by a
18 national tenant, and so forth.

19 So the moral of that story is, that the
20 obligations that I already agreed to, which is,
21 I'm putting up \$3 million to improve the road
22 situations, if I now have to spend another
23 \$2 1/2 million to \$3 million on ORV, okay, I can't
24 afford, on this budget, to give the DOT \$3 million
25 for improvements.

1 So that's kind of foolish.

2 It shouldn't take, five, six years to find
3 this out, number one.

4 And that's my tale.

5 Will we finally resolve the issue? Yes, we
6 will, because we always do.

7 But it shouldn't take, five, six years to do
8 so, and millions of dollars spent needlessly.

9 That doesn't do anybody any good, except the
10 engineers, and the lawyers, etc.

11 So if anybody has any questions, I'll be glad
12 to try to answer them.

13 SENATOR BOYLE: Mr. Breslin, thank you very
14 much for your testimony.

15 Where was this project you were referring to
16 located?

17 WILBUR BRESLIN: In Yorktown, Westchester
18 County.

19 SENATOR BOYLE: Okay.

20 And, so -- but how did the municipality feel
21 about it?

22 Did the local folks want it?

23 Was it the State that was causing the
24 problem?

25 WILBUR BRESLIN: Yes.

1 When I introduced myself to the community in
2 there, I went to the supervisor and the board.

3 I got their support.

4 The town board supports this project, the
5 residents support this project, because it really is
6 a win-win situation for everyone.

7 Residents are supporting us, primarily
8 because they're getting a great deal out of it.

9 They're getting their traffic condition,
10 which is deplorable, improved.

11 They're getting their sewage improved.

12 We have a situation where all our
13 environmental studies, and so forth say, we're doing
14 the right thing.

15 And economically speaking, we can't afford
16 another \$2 1/2 million for something that really
17 isn't going to improve the conditions.

18 And just because there's a regulation, there
19 should be a board there that can define it, and
20 clarify what is reasonable and what is not.

21 And you don't have that today.

22 You have people that are looking at the words
23 in the regulations and saying, "That's what you have
24 to adhere to," and making their interpretation as to
25 what the law really calls for.

1 A prime example is what I said before, not to
2 be redundant, but, you have an old motel, you have a
3 gas station, you have ancillary buildings on there,
4 and they say it's not an improved property.

5 SENATOR BOYLE: Yeah, thank you, Mr. Breslin.

6 I would just point out to my colleagues that
7 Mr. Breslin, obviously, for those on Long Island
8 know, he's an iconic developer here on Long Island
9 for many years.

10 And if he could not get this done with his
11 resources, can you imagine what a smaller developer
12 without those resources?

13 I think it says, not only that the
14 regulations need to be pulled back, but, also, it's
15 a shame that he could not get a meeting for
16 five months, when we're trying to bring development
17 and jobs to New York State.

18 Thank you, sir, for your testimony.

19 Appreciate it.

20 SENATOR GALLIVAN: John?

21 SENATOR FLANAGAN: I have a couple of
22 questions.

23 Mr. Breslin, I appreciate your testimony as
24 well.

25 I have two basic things that I think should

1 be applicable.

2 For anyone who works in the public sector, as
3 part of your resume and your job experience, I think
4 before you're allowed to issue any permits, you
5 should have the obligation to learn how to get one
6 first "before" you're in that position.

7 But, a couple of times, the builders have
8 come up on issues, and one of the things, it kind of
9 ties into two components:

10 One is, vesting of property rights, so that
11 even if there are regulatory changes, that you are
12 sort of grandfathered in.

13 We grapple with that, and sometimes when we
14 advance ideas like that, people say, Oh, no, no, you
15 can't do that.

16 It seems to me that we should be able to
17 craft a law that says, that at the time of your
18 application, that whatever the status of the
19 regulatory framework is, that that should be what
20 you operate under for the time that you have your
21 application pending.

22 WILBUR BRESLIN: I wholeheartedly agree with
23 that.

24 SENATOR FLANAGAN: Okay.

25 And also, too, not to be glib in any way, it

1 strikes me that, if you are going to be in a
2 position of potentially getting a permit, that a
3 municipality should have either one of two things:

4 Either a fail-safe or a time-certain, where,
5 if they have not worked on your application in a
6 fair and efficient fashion, that it's, by default,
7 approved;

8 Or, as a parallel, that if it took you
9 27 months to get your permit, that at the time that
10 it's issued, that it should be issued for 27 months
11 at least.

12 Would you generally agree with that?

13 WILBUR BRESLIN: Absolutely.

14 On the point that you bring up, when we
15 started this job, we signed a contract for
16 engineering for \$950,000.

17 Right now, our budget is over \$2 1/4 million,
18 just for engineering, as a result of delays.

19 SENATOR FLANAGAN: Well, as a lawyer, I wish
20 you were paying the lawyers, but I know you have to
21 pay those engineers as well.

22 WILBUR BRESLIN: That's another subject.

23 [Laughter.]

24 SENATOR FLANAGAN: Thank you.

25 SENATOR GALLIVAN: Thank you.

1 WILBUR BRESLIN: I have --

2 SENATOR GALLIVAN: Mr. -- oh, go ahead, sir.

3 WILBUR BRESLIN: If you like, I have some
4 handouts here that were prepared by my engineer,
5 that gives you some more details than I elaborated
6 on.

7 SENATOR GALLIVAN: Excellent.

8 WILBUR BRESLIN: And I'd like to pass them
9 around, if I may?

10 SENATOR GALLIVAN: Okay.

11 I was actually going to ask you for details.

12 Do you see the gentleman in the striped tie?

13 WILBUR BRESLIN: Yeah.

14 SENATOR GALLIVAN: He'll grab them from you,
15 and he'll get those to us.

16 But if I may, thank you very much for being
17 here.

18 What seems consistent, and I can understand
19 the frustration that we have heard, no matter the
20 industry, so far is the timeliness, timeliness,
21 timeliness; the duplication; and the accountability,
22 or lack of, accountability on behalf of the state
23 agencies.

24 WILBUR BRESLIN: Once again, I agree
25 wholeheartedly.

1 SENATOR GALLIVAN: We appreciate your
2 testimony today.

3 And the gentleman in the back will grab that
4 stuff from you.

5 Thank you.

6 SENATOR VALESKY: Thank you.

7 WILBUR BRESLIN: Thank you.

8 SENATOR GALLIVAN: Walter, you're here;
9 right?

10 WALTER PACHOLCZAK: Good afternoon, Senators.
11 Thank you for having me here today.

12 I'm Walter Pacholczak.

13 I'm the vice president of government affairs
14 for the Associated General Contractors of
15 New York State, better known as "AGC."

16 AGC is the largest statewide trade
17 association representing the unionized and
18 non-unionized construction industry, with over
19 650 contractor and related firms, and over 80 years
20 of experience working with public agencies and
21 private developers to deliver quality projects that
22 are the lifeblood of our economy.

23 Our members perform the majority of the
24 public and private transportation, education,
25 environmental, and building-infrastructure work in

1 New York State.

2 Today's topic about regulatory reform is a
3 continuation of an ongoing and critical dialogue
4 between AGC, legislators, the Executive Chamber, and
5 state agencies and authorities.

6 So on behalf of the membership of AGC, we
7 appreciate this opportunity to participate in
8 today's Senate public forum.

9 We regularly host executive-level partnering
10 meetings with state agencies and authorities,
11 including the Department of Transportation,
12 Thruway Authority, DEC, State University of New York
13 Construction Fund, New York City School Construction
14 Authority, and others.

15 The purpose of these meetings is for the
16 construction industry and government to discuss the
17 multitude of laws, rules, and regulations that
18 impact business, and work on solutions to help
19 rebuild New York's deteriorating infrastructure.

20 It will take a strong partnership between the
21 construction industry, Legislature, Executive, and
22 state government to truly enact the significant
23 reforms supported by the construction industry.

24 And, obviously, I'm going to start with the
25 Scaffold Law, and I'm not going to reiterate what

1 was said here in the past.

2 I think what I'd like to do here today, is to
3 discuss with the Committee some data that the AGC
4 was able to put together with the help of some state
5 authorities, the insurance industry, and the
6 Bureau of Labor Statistics.

7 And, you know, obviously, we're the only
8 state with an absolute-liability standard, like the
9 Scaffold Law.

10 And, in fact, the Scaffold Law is, really,
11 the only area of civil liability in New York State
12 in which comparative negligence does not apply.

13 Other than Illinois, no other state has such
14 an absolute-liability standard since at least the
15 1940s when worker's compensation became the norm.

16 What I did with today's testimony, is to
17 provide the Senators with a copy of some PowerPoint
18 slides we've been presenting to both the
19 Executive Chamber, legislators, and anybody willing
20 to listen, about the call for Scaffold Law reform.

21 And I think the front cover of this
22 PowerPoint says it all.

23 I see a picture, the iconic picture, of the
24 ironworkers sitting on the beam of what I believe is
25 the Empire State Building, and, a more modern

1 scaffold which you see, which previously adorned the
2 State Capitol.

3 A lot has changed in the past 100 years, and
4 we think this law, it's long overdue.

5 I think if you go to the third page, I want
6 to talk a little bit about the most recent reform
7 experience of a Scaffold Law-type statute.

8 It was in 1995 when Illinois repealed their
9 statute known as the "Structural Work Act."

10 What happened there is, in addition to
11 significant reductions in insurance loss costs,
12 Illinois experienced a significant increase in
13 construction employment, and significant reductions
14 in construction workplace fatalities and injuries.

15 Post-reform Illinois, construction jobs rose
16 by 25 percent, workplace fatalities decreased by
17 30 percent, over a six-year span, and overall worker
18 injury rates decreased by 53 percent, giving
19 Illinois the 10th lowest injury rate in the country.

20 The next chart shows the loss costs and how
21 they declined dramatically post reform.

22 The source of this information is the ISO,
23 which has confirmed, went from 32.90 in 1995, down
24 to \$2.90 in the year 2000.

25 Moving on to the next slide, Illinois

1 construction employment increased, while fatalities
2 post reform decreased.

3 There's clear, clear correlation here with
4 reforming the Scaffold Law.

5 You know, there are attempts at repealing the
6 Illinois Structural Work Act, and, uhm -- by the
7 personal-injury trial lawyers, and, they failed, and
8 they failed over and over, because the law works.

9 In fact, they tried to get Dennis Gannon, the
10 president of the Chicago Federation of Labor
11 involved in their appeal efforts, and he rejected
12 it.

13 And he said, quote, "It's a legislative issue
14 for the trial lawyers, but not necessarily for
15 organized labor at this time. If the construction
16 industry does well, our members do well, and this is
17 going to erode that relationship."

18 That's a very, very strong comment by
19 Mr. Gannon at the time when this was going to try to
20 be repealed by the plaintiffs' bar.

21 When you look at the cost of insurance, in
22 the next chart, for bridge and elevated-highway
23 construction and structural metal construction, this
24 is clearly a telling graph here of the costs of
25 New York compared to, not only the northeast states,

1 but to other major states, such as California,
2 Texas, Florida, and Illinois.

3 It's all right here.

4 I mean, I don't need to go through this
5 anymore.

6 And these are just two examples of that.

7 We move on to the next slide, and we talk
8 about non-fatal injuries, and how costs are not
9 proportional to injury.

10 And, finally, on the VLS data, fatal
11 construction-industry accidents, New York is on par
12 with the rest of the country, which shows you that
13 the Scaffold Law simply does not increase safety at
14 work sites.

15 So what does all this mean to us?

16 Well, on a private sector, obviously, the
17 cost of insurance increases the cost of doing
18 business.

19 But on a public sector, one of the things
20 that we always sought for years and years, and we
21 finally have some partners willing to provide us
22 with some detailed information, is the actual fiscal
23 impact of this law on projects, such as the
24 Tappan Zee Bridge, the New York City School
25 Construction Authority, and the Port Authority of

1 New York and New Jersey.

2 I heard Thruway Authority -- I'm sorry,
3 Tappan Zee Bridge, 100 to 200 million dollars,
4 conservatively.

5 That's absolutely true.

6 We know some of the folks that have gone in
7 and talked to the Thruway Authority about this, made
8 presentations regarding the insurance package to
9 cover this \$3.9 billion project.

10 That number is confirmed.

11 It's undeniable, it costs hundreds of
12 millions of dollars of more money -- or, taxpayer
13 dollars, to build the Tappan Zee Bridge replacement
14 program.

15 Moving along, I want to talk a little bit
16 about the New York City School Construction
17 Authority.

18 For 25 years or more -- a little bit more,
19 the School Construction Authority has operated under
20 what is known as a "wrap-up insurance program."

21 The School Construction Authority puts the
22 bid -- puts out the bids -- solicits bids from
23 insurers to provide their wrap-up insurance program.

24 And, the wrap-up insurance program covers the
25 whole construction program of the

1 School Construction Authority.

2 So, we asked them to provide a comparative
3 about, What would it cost to build in New York City
4 compared to New Jersey?

5 I'm talking about right across the river in
6 New Jersey.

7 I'm not talking South Jersey; right across
8 the river.

9 So, in 2012, it cost the School Construction
10 Authority \$100 million for the insurance.

11 By 2013, \$125 million, compared to New Jersey
12 at \$25 million.

13 What compounds this problem for the
14 School Construction Authority, is that their
15 upcoming capital program in 2014 is, right now,
16 without insurance.

17 They're unable to find an insurer that is
18 willing to come into New York State and provide a
19 policy for over \$1 billion of School Construction
20 Authority work.

21 It's amazing that no insurer wants to come
22 into this state and write insurance policy for a
23 billion dollars of work.

24 That tells it all.

25 We're in contact with the School Construction

1 Authority this week to confirm that no complete bids
2 have come in.

3 This is highly problematic for the
4 contractors and subcontractors that do these
5 projects, many of which have never had gone out to
6 procure insurance in the past. They worked under
7 the wrap-up program.

8 Now, without a wrap-up program, they will be
9 forced into the insurance market.

10 We had a few members go and try to get
11 insurance.

12 These are mid-sized contractors with over
13 20 years of experience.

14 Weren't able to get it.

15 This law will have a disproportionate impact
16 now on the MWBE subcontractors that do work for the
17 SCA.

18 The SCA has probably -- them and the
19 Port Authority have the best mentor-protege program
20 for the MWBE development.

21 When you're looking at what this will do to
22 the MWBE contractors, this will just be another
23 incredible hurdle for them to get by, and to try to
24 continue to grow.

25 Our friend is the chairman of the

1 School Construction Authority's Diversity Program,
2 Reverend DeGraff, and he's been instrumental in
3 raising this issue for us.

4 We appreciate the Reverend's efforts, and he
5 is a partner with us, to try to move this forward.

6 Moving away from the School Construction
7 Authority, when you look at the Port Authority of
8 New York and New Jersey, and this is a telling
9 slide:

10 Average incurred claims costs on the -- on
11 the -- this would be the Goethals Bridge project:

12 New York side, \$22.7 million; Jersey, \$10.3.

13 Is there anything different when you cross
14 the border of New York and New Jersey?

15 I don't think so.

16 It's the same contractor, same group of
17 people, working on this project.

18 It's the insurance costs.

19 I apologize for my coughing.

20 So what would reform do in New York?

21 What would it do?

22 Well, first, it would reduce the cost of
23 construction in New York by reducing the cost of
24 insurance.

25 It would allow New York to build more, both

1 publicly and privately.

2 It would protect the MWBE firms.

3 It would reduce New York's
4 second-highest-in-the-nation cost of doing business
5 and increase our economic competitiveness.

6 It would clearly create jobs.

7 That's the most important thing here, is
8 creating jobs.

9 More money, through insurance costs, should
10 be reinvested on the public side into public
11 infrastructure.

12 It would provide relief for taxpayers at all
13 levels, and strike a blow for fairness, justice, and
14 common sense in the state.

15 So, I think when you look, when you talk
16 about Scaffold Law, I don't know what else there is
17 to say.

18 It's bad, it's getting worse, and we're
19 looking at a cliff here, particularly for the
20 School Construction Authority of New York.

21 Some of the other presenters talked about the
22 Wicks Law.

23 Again, I think that that -- they said -- made
24 eloquent comments on that.

25 Obviously, all village, towns, and cities,

1 it's not just state, all under Wicks Law.

2 I think one of the interesting things about
3 the Wicks Law is not even application of the Wicks
4 Law.

5 So, for example, some public authorities, but
6 not all, are covered by reference or a version of
7 Wicks.

8 School Construction Authority being one of
9 them, which the School Construction comes back to
10 the legislature for passage of a bill.

11 You look at the State University Construction
12 Fund, DASNY, it's an uneven application of the
13 Wicks Law; and, therefore, we think it should be
14 repealed.

15 The federal government doesn't require it.

16 Other states don't require it.

17 I mean, if there's a cost savings to it, why
18 is it mandated?

19 Doesn't make any sense.

20 If there's cost savings, it doesn't need to
21 be mandated.

22 My final two or three items, I just want to
23 touch briefly upon, are the Diesel Emissions
24 Retrofit Act, better known as "DERA." It was passed
25 in 2006.

1 It was enacted to address the public-health
2 threat posed by diesel-fuel emissions.

3 Obviously, we appreciate the work in the
4 Senate and the Assembly, and the Governor, in
5 pushing back on the implementation of DERA.

6 Most recently, it was passed in this year's
7 state budget.

8 It delays the implementation of DERA through
9 2014.

10 And let's face it, DERA was a great idea at
11 the time.

12 Clearly, technology has outpaced the
13 legislation.

14 2007 and later trucks are already
15 retrofitted.

16 We use ultra-low-sulfur diesel fuel.

17 Those two items right there, according to the
18 EPA, really cut emissions by almost 90 percent.

19 And that's the most important thing.

20 And we look for-- we request that the
21 Legislature repeal DERA, and let the federal
22 government regulate this.

23 Two other items, just quickly, we're running
24 short on time:

25 Timely notice of prevailing-wage violations:

1 Under 223 of the Labor Law, prime contractors
2 are responsible for the subcontractor's failure to
3 pay prevailing wages to employees; however, the
4 statute doesn't contain a requirement to notify the
5 GC of such underpayment in a timely manner.

6 So what happens there?

7 Often, the prime contractor is notified about
8 underpayment years later, long after the offending
9 sub has been paid, left the job, is no longer in
10 business, and we are -- we're responsible for that.

11 And, finally, in terms of government
12 efficiency, back in 2009, under Governor Paterson,
13 he established -- or, his budget office established
14 Budget Bulletin B1184.

15 What this does, is it establishes revised
16 guidelines for the implementation of agency
17 contracts.

18 But what this does to the construction
19 industry, is that it eliminates overtime for
20 employees that work, say, at the DOT or the
21 Thruway Authority.

22 The construction industry is a very fluid and
23 dynamic business that requires all sorts of
24 manhours.

25 Now what we're -- we have found is becoming

1 problematic, since the tight time frames, are these
2 contracts are now taking place, that DOT employees
3 cannot work overtime.

4 That delays projects, obviously.

5 You know, the DOT needs the flexibility to
6 bring these people on, as needed, to complete these
7 projects.

8 So, in conclusion, I want to thank the
9 members of this Committee for the opportunity to
10 discuss these costly mandates, and to hopefully
11 provide the Committee with some solutions here to
12 improve New York's business climate to create new
13 jobs.

14 The members and the staff of AGC look forward
15 to continuing this dialogue, and implementing the
16 recommendations presented here today.

17 Thank you.

18 SENATOR GALLIVAN: Thanks for your testimony,
19 Walter.

20 We're good, thank you.

21 WALTER PACHOLCZAK: Thank you.

22 SENATOR GALLIVAN: Jeff Greenfield and
23 Gene Sandy, Professional Insurance Agents of
24 New York.

25 JEFF GREENFIELD: Good afternoon, Senators.

1 Thank you for this opportunity afforded us to
2 appear before you.

3 Jeff Greenfield, past president of the
4 Professional Insurance Agents of New York.

5 I'm joined with my colleague Gene Sandy,
6 who's a vice president, and, hopefully, a future
7 president, of our organization.

8 We appear here with no slides, no preprinted
9 testimony; just real-life stories of insurance
10 problems that our members, your constituents, our
11 customers, have with respect to insurance in the
12 construction arena.

13 I'm going to cover small artisans; small
14 contractors.

15 But, first, I want to say we're delighted to
16 be here, because we've been part of the Scaffold Law
17 Reform Coalition for years.

18 We see the need every day, when we meet with
19 our clients in the construction arena, of changes,
20 the 240 and 241 of the Labor Law, changes that make
21 us unique, in that, we're the only state with this
22 law.

23 We see the job-crippling effect this law has
24 in New York.

25 We see firsthand when we deliver.

1 We hear from our clients about premiums, and
2 the difference in premiums.

3 I do business in multiple states, and you
4 heard testimony earlier.

5 And, the premiums in New York reflect the
6 company's experience, and the fact of the adverse
7 experience encouraged by this law, and the effect
8 the law has on it.

9 There's real questions today in New York and
10 the insurance arena with respect to affordability
11 and availability, and these are two very, very real
12 issues.

13 The artisan small-contractor community has
14 been dramatized in the post-"Sandy" arena.

15 I have a Lynbrook independent insurance
16 agency.

17 We have a lot of contractors that have a lot
18 of business, fortunately, or unfortunately, because
19 of "Sandy." And, they have a lot of insurance
20 problems and challenges.

21 The State Insurance Fund is a quasi state
22 agency, which I can tell you is out of control, with
23 respect to the way in which they conduct business,
24 especially when it comes to small business.

25 First and foremost, I don't know why or how

1 over the years you have them in the insurance
2 business and they don't answer to the New York State
3 Department of Financial Services. They never
4 answered to the New York State Insurance Department.

5 They have rules and regulations that are
6 unique, different, and challenging to clients
7 because the manner in which they do business.

8 They are an agency in need of further
9 oversight.

10 Everybody has oversight.

11 Everybody answers to somebody.

12 You answer to your constituents, the voters.

13 We answer to our clients, the bill payers.

14 They answer to nobody, and that's wrong,
15 wrong, wrong.

16 I know it's the favored piggy bank of prior
17 governors, with respect to the ability to tap them
18 for money to balance the budget.

19 The number one issue in their manner in which
20 doing business which needs change, is the
21 requirement of 30-days' advanced notice to cancel a
22 policy.

23 Where in America do you have to tell somebody
24 30 days in advance you want to make a change in
25 insurance, car?

1 You don't tell the car dealer before your
2 lease is up, 30 days in advance, I'm not going to
3 take that lease.

4 And if you don't tell them 30 days in
5 advance, you're required to lease another car?

6 It doesn't happen that way.

7 With the New York State Insurance Fund, if
8 you don't put them on notice 30 days in advance that
9 you're not taking the policy, you can't leave them,
10 and they make it very difficult and very onerous.

11 30 days in advance is ridiculous.

12 It's anti-American.

13 It deprives the contractors, especially the
14 small contractors, of the freedom of choice.

15 When a contractor is starting out, the
16 State Insurance Fund is the insurer of last resort.
17 No other standard insurance carrier will take them
18 because they're new in business.

19 They get a few years of good experience under
20 their belt, they want to shop their insurance, and
21 they want to go someplace else, and we want to help
22 them do that.

23 We provide, as independent insurance agents,
24 a service to our clients.

25 We don't just renew policies.

1 We review them, we shop them.

2 We look for better opportunities.

3 When it comes to the State Insurance fund,
4 it's very difficult.

5 You have to send them a Reservation of Rights
6 letter 30 days in advance.

7 And over the years, they've treated those
8 Reservation of Rights letters in different manners.

9 At one time, they stopped accepting
10 Reservation of Rights letters and they treated them
11 like a cancellation request, like you were going to
12 cancel the policy.

13 Recently, I sent the State Insurance Fund
14 Reservation of Rights letters for clients.

15 They wrote back to the clients, and copied
16 me, fortunately, saying, that if they didn't make up
17 their mind 10 days in advance of the effective date,
18 they were going to treat it like a cancellation and
19 report them to the Worker's Compensation Board.

20 Where is that written?

21 It isn't in the Old Testament or the
22 New Testament.

23 They make up their own rules.

24 Every other insurance company reports after
25 the cancellation date, within 30 days of

1 cancellation.

2 They made a decision, 10 days in advance
3 you're going to make a decision.

4 Sometimes we don't have a quote.

5 Why should the contractor be put under the
6 gun that he has to notify them like that?

7 No other business operates like that.

8 It's time for change at the State Insurance
9 Fund.

10 Even the Pope announced he was making
11 changes, so --

12 [Laughter.]

13 JEFF GREENFIELD: -- so I hope there's hope
14 out there that the State Insurance Fund can be
15 brought under some changes here.

16 Now my -- I'll come back for some other
17 remarks.

18 GENE SANDY: Thank you.

19 JEFF GREENFIELD: Gene.

20 GENE SANDY: I'm the director of marketing
21 for an agency in Syosset.

22 We do around \$27 million in commercial
23 premium. A majority of that is contractors and
24 real estate.

25 We write general contractors and we write

1 trade contractors.

2 I'm here to talk about the Scaffold Law.

3 It is hurting the contractors.

4 It is making the availability -- the
5 insured -- insurance contracts not affordable.

6 We are seeing increases of premium of -- on
7 the general-liability policies and on the umbrella
8 policies, of anywhere from 25 percent to 200 percent
9 increases in premiums, because of this law.

10 And if you're a new venture, like Walter was
11 saying before, the cost for them to get insurance,
12 some of the carriers start -- and I'm talking where
13 there's coverage carriers -- where, it starts at
14 \$15,000, and up.

15 It's just not affordable for small businesses
16 and mid-sized businesses.

17 You heard about all the big contractors, but
18 the small contractors are getting hurt.

19 The people who are flipping houses,
20 commercially, for a living. Not residential, but
21 they're selling them, and setting those things up.

22 Also we're seeing a lack of availability of
23 quality insurance.

24 A lot of the, what you would call, the
25 "mainstream admitted carriers" are not writing

1 contractor's insurance in New York because of this
2 law.

3 We are being -- going to what we call the
4 "excess and surplus lines" carriers.

5 These are insurance carriers who are
6 non-admitted, but approved to do business in the
7 state of New York.

8 But the problem with that is, there is
9 nobody -- they don't come under the insurance laws.

10 They can charge what they want.

11 And, also, they can put on restrictive
12 endorsements.

13 And that's what's happening to us.

14 We're seeing a lot of restrictive
15 endorsements going on, where, based on the type of
16 work they're doing.

17 If you're doing residential or condos or
18 co-ops, no coverage.

19 It's based on where you're working.

20 If you're working in the five boroughs, no
21 coverage.

22 If there's a height -- if there is height
23 involved in a job, if it goes over a certain
24 stories, no coverage.

25 Contractual liabilities: These are the

1 contracts that these contractors are signing, where
2 there's a hold-harmless indemnification agreement.

3 They're carving out these agreements, saying,
4 Well, we're not going to cover indemnification
5 strict liability.

6 Also, we're seeing for the contractors, if
7 they hire a subcontractor, now they have to be
8 worried, because in their contract it will say,
9 If your subcontractor doesn't have the proper
10 insurance, that we respond to a Labor Law claim,
11 then your policy may not respond; or, if it does
12 respond, it could be a sublimit of \$50,000; or,
13 there could be a sizeable deductible of 25,000 to
14 50,000 dollars.

15 And these are being built into the policies.

16 Lastly, the building owners:

17 The tenants go out and hire a contractor.

18 Building owner doesn't know what's going on.

19 But, because this is a strict
20 absolute-liability law for the building owners, too,
21 they're getting dragged in, and they had nothing to
22 do with setting up the job, reviewing the contracts,
23 seeing who's coming, and they're at risk for these
24 Labor Law claims.

25 JEFF GREENFIELD: On the Labor Law claims and

1 the Scaffold Law, I have a lot of real-estate
2 clients, and they're calling me up constantly,
3 frustrated and upset, that they're getting hit with
4 these summonses and claims, and they don't even --
5 they get certificates of insurance to try to protect
6 themselves from the contractors doing work and the
7 subs, and don't realize that they can be brought in
8 and they're liable, also.

9 It's driving their premiums up to insure
10 their real estate.

11 It is making it problematic for market
12 conditions.

13 You heard Gene mention the non-admitted
14 carriers, and with all the conditions they have on
15 their policies.

16 The small contractors, especially, have no
17 place to go to secure coverage, so they turn to that
18 marketplace.

19 They don't read their policies properly.

20 They bid a job, or get a job.

21 They don't realize all the exclusions.

22 We tell them; we write cover letters, we
23 explain it to them.

24 And then it happens, you get the summons and
25 the claim, and then the denial letter in, and then

1 they get upset with us, and we get involved.

2 And our members get involved in
3 errors-and-omissions insurance claims, also, making
4 wild accusations.

5 When this was the only company, they're
6 desperate to present a Certificate of Insurance.

7 They're desperate to get the job and to get
8 the work.

9 And, they go ahead and do that, and don't
10 understand that they put themselves in harm's way.

11 We have insurance companies requiring us to
12 review all certificates of insurance for all
13 subcontractors who work.

14 We're constantly writing cover letters and
15 telling our real-estate clients not to let anybody
16 in any building at any time for any kind of work
17 without a Certificate of Insurance, and that still
18 isn't enough.

19 We have to reengage the New York insurance
20 market to be more competitive, and we need relief --
21 mandated relief and changes to 240 and 241.

22 You heard about the big-premium items with
23 the Tappan Zee bridge, that's a given.

24 It affects every small contractor struggling
25 and trying to do business in the state of New York.

1 And, we need your help.

2 We're counting on the Senate to try to make
3 some changes, and try to influence your peers in the
4 Assembly to go along with some changes that are
5 needed.

6 Reasonable changes.

7 We're not looking to hurt anybody.

8 And we're always there for our clients.

9 And because we're always there for the
10 clients, we're on top of what changes that are
11 happening out there.

12 So thank you again.

13 And if you have any questions, or -- we have
14 a professional staff in Albany.

15 You've seen our building by Exit 23 of the
16 Thruway.

17 They'll be happy to supply you or your staff,
18 any additional information for your report.

19 SENATOR GALLIVAN: Thanks for your testimony.

20 SENATOR MARTINS: I do have a question.

21 Jeff, can you -- can you tell us about
22 experience mods?

23 JEFF GREENFIELD: Experience modifications
24 are -- on the worker's compensation are--

25 GENE SANDY: Well, experience mods are on

1 both.

2 It is on workmen's [sic] compensation, but it
3 is also on all casualty lines -- certain casualty
4 lines.

5 Like, automobile; if you have a certain
6 amount of automobiles.

7 And on general liability, if your base
8 premium is over a certain amount.

9 And that goes into effect to rating.

10 But what I'm talking about with the
11 excess-and-surplus-lines companies, they don't have
12 to worry about experience ratings, because they
13 don't follow the rules and regulations of ISO.

14 They don't have to because they're not
15 admitted; so, therefore, they can charge whatever
16 they want.

17 So, what they feel is the proper rate for
18 that exposure, that's what they're going to charge.

19 JEFF GREENFIELD: Experience mods were put in
20 to reward those with good experience, with a credit
21 mod;

22 And those with bad experience, a debit mod,
23 to be punished, and encouraged, to do better.

24 And then you pass some good legislation
25 requiring, on worker's compensation, for people that

1 have very high mods, to go ahead and to do some
2 workplace safety.

3 And that's good.

4 That was good legislation. It's going on out
5 there.

6 But what's happening now is, because of the
7 Scaffold Law, there are claims.

8 And the mods are based upon reserves; not
9 necessarily payouts.

10 And the clients are being very frustrated
11 because it escalates their premium.

12 And if it escalates their premium, it makes
13 them noncompetitive in trying to bid jobs.

14 So, it has a job-killing negative effect, and
15 that was something that was never considered out
16 there.

17 And that's another byproduct of the law.

18 SENATOR MARTINS: So if I have a small
19 contractor that -- or medium-sized contractor, that
20 has a claim made for a job-site injury, regardless
21 of whether the claim bears itself out, regardless of
22 whether or not there's any correlation between the
23 job-site injury and that particular worker's
24 experience on the job site, the fact that they have
25 a claim against the company immediately spikes their

1 experience mod to a point where it impacts the cost
2 of their procurement of insurance, going forward?

3 JEFF GREENFIELD: Absolutely.

4 SENATOR MARTINS: And if --

5 JEFF GREENFIELD: And the State Fund is
6 famous for this.

7 SENATOR MARTINS: And if that -- and, so,
8 that's why I brought it up.

9 If there is a -- then, a finding down the
10 road -- three, four, five, six years down the
11 road -- once litigation has been completed, where
12 the reserve that was set aside was far exceeded what
13 the actual damages were --

14 GENE SANDY: Well, the experience rating only
15 looks back three years after the current.

16 And the way the lawsuits are going, they
17 could take anywhere from five to ten years to be
18 settled.

19 So, you could have a large reserve up there
20 during the experience period, and then get settled
21 for a fraction of what it was, and there is no
22 look-back.

23 SENATOR MARTINS: But that contractor never
24 gets a look-back, never recoups the additional
25 premiums that they may pay.

1 JEFF GREENFIELD: No.

2 SENATOR MARTINS: And, so, I would ask
3 whether or not there was an alternative.

4 Some -- perhaps a suggestion that the
5 industry may have, with respect to that additional
6 cost that contractors bear as a result of, perhaps
7 just the fact that there is a lawsuit, just the fact
8 that that lawsuit happens to be venued in certain
9 counties as opposed to others, the reserves that are
10 set for that lawsuit, irrespective of whether or not
11 it's successful, the impact to the contractor is
12 immediate.

13 JEFF GREENFIELD: Absolutely.

14 SENATOR MARTINS: And, so, is there a
15 recommendation that perhaps we can look at, as to
16 how we can adjust that?

17 Because, there are impacts, immediate
18 impacts, to our contractors that don't necessarily
19 reflect, perhaps, their best actions on a job site
20 and any safety precautions that they may have in
21 place.

22 JEFF GREENFIELD: We'll huddle with and
23 brainstorm with our professional staff in Albany,
24 and get back to your staff.

25 I think we can come up with something.

1 I think that's a very good suggestion,
2 Senator.

3 And I think it would be very well-received by
4 the business community and the contractor community,
5 because it goes beyond just contractors.

6 It affects the real-estate community.

7 And people get upset when -- I have one
8 person now, with a very large loss runs.

9 And because of reserves, not necessarily paid
10 claims, and it affects his renewal premium, and he
11 doesn't understand that.

12 So, this, we have to address.

13 SENATOR MARTINS: And the impacts can be
14 significant.

15 I mean, the impacts to a premium for a
16 medium-sized contractor can add, literally,
17 25 percent to their premium cost, year to year,
18 depending on their experience mod.

19 I would appreciate your looking into it.

20 JEFF GREENFIELD: We absolutely will.

21 It will be -- and it makes them
22 noncompetitive, and it's job-killing.

23 And we got to do more to bring jobs back.

24 If I can make a comment, Senator, on wearing
25 another hat, on another note, is an earlier speaker,

1 my friend Mitch Pally mentioned, one of my favorite
2 subjects is, workforce housing for young people.

3 My daughter, a Hofstra law graduate, who's
4 working in Jericho, can't work in New York City
5 because she doesn't want to reverse commute.

6 And I served her with eviction papers from
7 her childhood room a year ago.

8 And, her mother and I wanted to get her out
9 of the house, and it took her over a year to find
10 housing that she could afford.

11 And, Senator, she's now in your district.

12 She left Senator Skelos's district for your
13 district, and she's living in Great Neck.

14 And, she did that because then she can afford
15 to commute to the city if she ever gets a job in the
16 city.

17 But, meanwhile, there is a definite shortage.

18 We've done a great job in Nassau County with
19 senior-citizen housing.

20 And, there is a definite shortage of
21 young-people housing, and the Senate should come up
22 with some incentives to bring in rental housing,
23 workforce housing, for young people.

24 SENATOR MARTINS: Well, I think if you check
25 with the Long Island Housing Partnership, or,

1 Long Island Housing, there is a \$25 million stipend
2 that was awarded some years ago, prior to my arrival
3 in the Senate, that was to encourage the development
4 of affordable next-generation housing.

5 But there is also good news, Jeff, aside from
6 that:

7 Tell your daughter, across the street here on
8 Old Country Road in Mineola, right by the train
9 station, there will be 300 new rental units breaking
10 ground in the next year, 10 percent of which are set
11 aside for next-generation housing.

12 So --

13 JEFF GREENFIELD: I remember, when you were
14 mayor, I moved that very quickly through the
15 planning commission.

16 Not like Wilbur's story.

17 SENATOR MARTINS: You did, and I appreciate
18 it.

19 But there are, you know, projects that are
20 taking place.

21 And, certainly, to the extent that we can
22 help, we'll be looking to do so.

23 JEFF GREENFIELD: Thank you, Senators.

24 Thank you for your time.

25

1 SENATOR GALLIVAN: Thank you.

2 Michael Posillico.

3 And before you start, I don't know if
4 anybody's driving a GMC, the license plate is
5 FPY-2323.

6 STEPHEN LEFEBVRE: That could be mine.

7 SENATOR GALLIVAN: If you are, just touch
8 base with the good-looking guy with the striped tie
9 there, please.

10 Thank you.

11 When you're ready, Michael.

12 MICHAEL POSILLICO: I'm going to make it
13 short and sweet.

14 Good afternoon, Senators, and thank you for
15 hosting this.

16 I think it's very important to get
17 information that's occurring in our industry, plus
18 in our communities, back to you, so that you can act
19 legislatively, or continue to act legislatively, to
20 make change, to make New York more competitive.

21 And I think when Senator Marcellino had
22 reached out to me, we are -- again, my name is
23 Michael Posillico.

24 Our company, Posillico, Inc., employs,
25 roughly, 500 employees in New York and New Jersey,

1 in the construction industry: heavy civil,
2 environmental, development, and material production.

3 Predominantly, we're a union shop, and we pay
4 a very hefty wage to our employees who deserve every
5 penny of it.

6 Unfortunately, a significant amount of the
7 dollars, as expense from our operations, go to
8 insurance; and, again, the Scaffold Law is one of
9 the primary causes of these exorbitant expenses.

10 And you touched on EMR as one of the methods
11 for valuating the expense, where, good contractors,
12 or people that perform work, get rewarded if they
13 have a low EMR.

14 Ours is .8, so we're below industry standard.

15 Those that above 1.0 are somewhat punished.

16 We employ 12 safety professionals and risk
17 professionals to monitor, to train.

18 We have a mobile safety unit that goes around
19 to all our job sites.

20 We have Safety Day, safety calendars, for all
21 of our employees.

22 And nothing is more important than our
23 employee safety.

24 However, despite that, I feel our company is
25 engaged in a nanny state, in terms of what we must

1 do for employees to protect them from themselves.

2 And I have cases here, a couple that we've
3 settled out.

4 Where, the Scaffold Law, again, in the 1800s,
5 with fall protection, or, you know, being
6 responsible for people, their training, so they
7 don't fall and get killed, because anything over,
8 really, a couple -- you know, 10 feet, you can kill
9 yourself.

10 And, it's important.

11 But, when you have cases now, where -- and
12 I'll give instances, where a couple of employees are
13 putting a generator on a loading dock, which is
14 probably about, this high (indicating).

15 One of the employees gets his clothing stuck
16 on the generator, a little hand generator, as we
17 have for our homes, it falls on him.

18 And during a three-year period, I think it's
19 called a, uhm -- let me find the case here -- there
20 was case law that now took this law to a new level,
21 the Runner case.

22 And, now, that case was interpreted that
23 we're 100 percent liable, because it's now
24 considered a fall under the Scaffold Law.

25 A huge award, you know, from his injury, a

1 broken leg.

2 Another case, an employee on a forklift had a
3 beam.

4 He was in charge of the operation, directing
5 it, and the beam from the forklift slid off, about
6 3 feet, hit his leg.

7 He broke his leg.

8 Again, the case, which dragged on for years,
9 was interpreted, where it qualified as a fall,
10 because the beam fell about -- it slid off and fell
11 about 3 feet, now it's considered a fall.

12 Now this case, again, went into that, where
13 the employee, again, self-directing the operation,
14 had been trained, now we're 100 percent liable.

15 We're at wit's end, almost, as to what we can
16 do in terms of employee training, employee safety.

17 There's a new level of supervisor training.

18 We're one of the first in the states to
19 employ that training.

20 We see we must do everything to avoid an
21 accident.

22 And nothing is worse than hearing about an
23 employee that we know.

24 Again, we're four generations, over 70 years
25 of experience, something happening to one of our

1 employees.

2 But unless there's change, and, again, we're
3 one company, where it costs us millions of dollars
4 over a period of time, independent of, you know, our
5 general-liability cases with accidents, and things
6 of that sort.

7 Those dollars are coming out of our --
8 they're getting added to our expense.

9 We can get insurance.

10 We do have a good EMR, we have a great safety
11 record.

12 But as previous people mentioned, you know,
13 the smaller contractor or a medium-sized contractor
14 can't afford a safety department, a risk director,
15 and all of these burdens that, you know, just to
16 keep yourself competitive, let alone manage your
17 expenses in a direction, along with your employees,
18 that are reasonable.

19 So, again, doing work in New Jersey, we don't
20 have those expenses, we don't have those exposures.

21 When we're in New York, we do.

22 And, again, us, along with many other
23 contractors, we're at wit's end.

24 We're a member of the AGC, we're a member of
25 the Long Island Contractors Association, and their

1 testimony, again, is much the same on that law.

2 Moving on to, you know, things that the State
3 is doing well to increase its economic engine:

4 They're doing design-build for the first time
5 through the accelerated program for the
6 Governor's Initiative, which we think is excellent.

7 We think some of the Wicks Law-type projects
8 may be better considered for design-build, maybe to
9 expedite cost-savings, cooperation amongst subs and
10 the trades.

11 Our experience in Wicks, particularly, we had
12 a project in Nassau County on a sewage-treatment
13 plant, [unintelligible] took 30 percent longer; and,
14 time is money.

15 And it was, also, you know, the change
16 condition and no negotiation between the trades was
17 just, I think, one of the -- you know, one of the
18 worst experiences we've ever had.

19 So, we don't see it as good.

20 We don't want to reduce competition, but we
21 think there's ways to create partnerships with GCs,
22 value engineering, and create more value for the
23 eventual owner, which often is the taxpayer.

24 Lastly, in New Jersey, versus New York, and
25 also Massachusetts, on the environmental side, they

1 have a licensed site remedial professional system,
2 which now is, I think, in its third year, where it's
3 a self-certification for cleanup.

4 So when we go to build a site that may be
5 contaminated, and there are many contaminated sites
6 throughout New York State, that the process is a
7 self-certification, which can help to accelerate
8 projects; again, particularly in more semi-urban,
9 urban, markets where there are a lot of legacy
10 sites that need to get redeveloped.

11 So, we think that's a worthwhile program to
12 pursue.

13 New Jersey has a lot of success with that.

14 The time and cost to effect a cleanup, and
15 coordinate it with a reconstruction, is greatly
16 reduced, and we think that's positive.

17 That's all I have.

18 Any questions of me?

19 SENATOR MARTINS: Thank you.

20 SENATOR GALLIVAN: Thank you.

21 MICHAEL POSILLICO: Thank you.

22 SENATOR GALLIVAN: Stephen LeFebvre,
23 Associated Builders and Contractors.

24 STEPHEN LEFEBVRE: I was out moving my car.

25 SENATOR GALLIVAN: Is it all set?

1 STEPHEN LEFEBVRE: I think someone is out
2 there with it, so, it will be taken care of.

3 I guess I didn't realize there was a
4 reserving downstairs. I didn't see the sign in
5 front.

6 SENATOR GALLIVAN: I might be next.

7 STEPHEN LEFEBVRE: Sorry?

8 SENATOR GALLIVAN: I might be next.

9 STEPHEN LEFEBVRE: Well, my name is
10 Steve Lefebvre, and I'm the president of the
11 Empire State Chapter of the Associated Builders and
12 Contractors.

13 And I want to thank you and members of the
14 Panel for the opportunity to represent ABC's
15 testimony, as you seek input to identify specific
16 regulations that can be repealed or modified to make
17 New York more business-friendly towards the
18 construction industry.

19 The Empire State Chapter of the
20 Associated Builders and Contractors is a trade
21 association, representing hundreds of New York State
22 contractors and industry-related firms which employ
23 thousands of New Yorkers.

24 ABC is founded on the merit-shop philosophy
25 which encourages the traditional American values of

1 free enterprise and open competition in the
2 construction sector.

3 We believe that government regulations should
4 be crafted to protect the system of open competition
5 by ensuring a fair and level playing field that is
6 competitive, and promotes safety and quality in
7 construction work.

8 In a perfect world, government regulation
9 would work to ensure construction is performed
10 safely, ethically, and competitively, regardless of
11 labor affiliation, for the benefit of the taxpayers
12 in the communities where contractors work and live.

13 The general feeling from our membership is
14 that there are a number of regulations in place, and
15 policies implemented by our state agencies, that
16 prohibit, or at least prove onerous, for the
17 construction industry to contend with.

18 And chief among those -- and I'll skip the
19 next five paragraphs -- is the Scaffold Law.

20 And the only thing I will -- you have it in
21 our written testimony.

22 The only thing I will add is a thank you for
23 to Senator Gallivan for introducing the legislation
24 in the Senate.

25 In terms of other specific regulations

1 affecting the construction industry, I'd like to
2 call your attention to an impediment that many
3 contractors face when complying with the State
4 Department of Labor's "annualization of benefits"
5 mandate.

6 Contractors working on public projects must
7 pay prevailing fringe supplements to a bona fide
8 benefit program.

9 Annualization forces the contractor to
10 calculate the total hours worked on both public and
11 private jobs, and must divide the actual amount
12 contributed by the total number of hours worked to
13 determine the hourly cash equivalent of
14 prevailing-wage fringe paid to an employee.

15 If this calculated hourly cash equivalent is
16 less than the posted prevailing-wage fringe
17 supplement rate, the employer is deemed to have
18 underpaid the required fringe supplements.

19 This is often the case because private work
20 hours are annualized into the fringe calculation.

21 The only way for a contractor to avoid
22 annualization is to pay the fringe benefit as a cash
23 supplement in the employee's paycheck.

24 There's no question that the total fringe
25 benefit must be paid.

1 It's the annualization process.

2 This growing practice of putting it in the
3 employee's paycheck eliminates the annualization on
4 private work, but exposes the employee to higher
5 income taxes, and the employer to higher payroll
6 taxes and other burdens, such as worker's comp
7 insurance which is based on payrolls.

8 ABC is strongly in support of annualization
9 reform.

10 We believe that creating greater consistency
11 between state law and the federal Davis-Bacon Act,
12 including adoption of the federal annualization
13 methodology, will go a long way towards removing an
14 impediment to business growth, and providing
15 employees with the benefits our prevailing-wage laws
16 were designed to encourage.

17 As you are aware, the State Senate passed
18 Senate Bill 3361, introduced by Senator DeFranciso,
19 which is a legislative solution to address the
20 problem.

21 And I would encourage you to push the
22 Assembly, on Assembly Bill 7800, for adoption of the
23 bill.

24 However, I would also suggest that persuasion
25 from the Legislature might help to encourage

1 State DOL to make these changes administratively.

2 Our written testimony submitted today carries
3 an example, comparing Davis-Bacon rules to those in
4 New York State.

5 A final regulation that ABC supports would be
6 the halt of the mandated use of project labor
7 agreements; and, instead, adopt a neutrality option,
8 as outlined in the Public Construction Savings Pilot
9 Act.

10 Senate 3484, Assembly 6523, sponsored by
11 Senator Ranzenhofer, and Assemblymember Schimminger.

12 Less than 30 percent of the construction
13 workforce in New York State is unionized.

14 This pilot legislation would only affect
15 construction projects initiated by state agencies
16 and public authorities as they relate to project
17 labor agreements.

18 As we know, a PLA is a pre-hire agreement
19 negotiated between a public owner and
20 building-trades unions, whereby, the contractor is
21 required to hire the vast majority of project
22 workers, usually about 85 percent, through union
23 hiring halls.

24 In exchange, unions agree not to strike, and
25 also agree to certain work-rule changes in an effort

1 to reduce costs.

2 PLAs are unfair to merit-shop or non-union
3 contractors because a PLA forces the contractor to
4 use a majority of union labor; thus, idling the vast
5 majority of the non-union contractor's employees.

6 This fact alone results in many open-shop
7 contractors refusing to bid on public projects,
8 resulting in a lower number of bidders, less
9 competition, and an estimated cost increase to a
10 project of 12 to 20 percent.

11 In addition, the purported savings from PLAs
12 are illusory.

13 Merit-shop employees do not strike, and are
14 not subject to conflicting and onerous work rules.

15 Such issues are frequently used to justify
16 PLAs, even though such comparisons with non-union
17 firms are irrelevant.

18 PLAs are a gift to organized labor.

19 Mistakenly, PLAs are often tied to the
20 payment of prevailing wage.

21 All contractors must pay prevailing wage on
22 any public project regardless of a PLA on the
23 project, or not.

24 Even worse, there's strong evidence that PLAs
25 do not save money for taxpayers, and the feasibility

1 studies which purport to identify such savings are
2 often little more than subjective opinion
3 masquerading as fact.

4 There have been instances, notably, in 2011
5 on State Department of Transportation's Exit 122
6 project, where the studies have been manipulated to
7 bring about a result desired by PLA proponents.

8 This Exit 122 project in Orange County is a
9 perfect case in point, as the lowest bidder on that
10 job, by \$4 1/2 million, was denied that job by DOT,
11 despite meeting all qualifications, because the
12 low-bid contractor refused to utilize a PLA.

13 The matter is still the subject of litigation
14 which has delayed this important infrastructure
15 improvement.

16 The Public Construction Pilot Act seeks to
17 avoid these disputes by simply allowing a contractor
18 to enter a responsive bid regardless of whether he
19 agrees to utilize a PLA.

20 PLAs would be completely optional to the
21 contractor and the lowest responsive bidder would be
22 awarded the job.

23 The bill also will sunset after five years,
24 to allow a thorough review of the effectiveness of
25 the provision.

1 Lastly, the legislation would only impact
2 construction contracts for buildings and
3 transportation projects that are entered into by
4 state agencies and authorities.

5 This commonsense, simple approach will go far
6 in helping put more New York construction employees
7 back to work, and will measure the real impact to
8 the taxpayers in New York.

9 In conclusion:

10 Regulatory changes I've provided for your
11 consideration seek to simply ensure a fair and
12 competitive field that would promote safety,
13 quality, and competitiveness, resulting in job
14 growth.

15 Your adoption of these proposals would do
16 great justice to all New York workers in the
17 construction industry regardless of labor
18 affiliation.

19 In the interest of time, our submitted
20 testimony also contains some positions on:

21 A dedicated infrastructure fund, not useable
22 for General Fund obligations;

23 A study on proposed elimination of the
24 highway use tax;

25 And tax reforms for LLC and S corps which

1 apply to a vast majority of construction companies.

2 I thank you for your time this afternoon, and
3 I'm happy to answer any questions.

4 SENATOR MARTINS: Thank you for your
5 testimony.

6 Let's -- I noted here, less than 30 percent
7 of the construction workforce in New York State is
8 unionized.

9 Can you break that down, or do you have the
10 ability to break that down, between the construction
11 workforce in Upstate New York as opposed to the
12 construction workforce in New York City and in the
13 metropolitan area?

14 STEPHEN LEFEBVRE: In the entire state, the
15 actual number is 24.8 percent.

16 Nationally, it's 11.3 percent.

17 But, New York City and Long Island have the
18 heaviest component, which is why I used the term
19 "less than 30 percent."

20 By metropolitan statistics, it is right just
21 about on 30 percent downstate versus the 24 upstate.

22 SENATOR MARTINS: Would you consider, as part
23 of your suggestion, that there be a -- some form of
24 an apprenticeship program associated with the
25 trades?

1 I think part of what we're discussing today
2 is a realization and a recognition that it is a
3 rather unsafe place to work, traditionally.

4 There are things that we do in order to
5 combat and to impose some safety requirements on our
6 work sites.

7 The idea of bringing someone in who doesn't
8 have the requisite training concerns -- certainly,
9 concerns me.

10 Would you include, as part of your
11 suggestion, a requirement that the workforce also
12 have, besides a prevailing-wage requirement, which
13 is merely paying someone a wage, but also a
14 requirement that that person who is hired has the
15 requisite competence and training to be able to
16 conduct themselves on a work site?

17 STEPHEN LEFEBVRE: In project labor
18 agreements, safety is always one of the high points
19 stressed, that the unions are safer than the
20 non-union shops.

21 ABC maintains about -- we have five regional
22 offices with training centers.

23 We support training.

24 We run education classes.

25 We run safety training.

1 We run management classes.

2 We're approved by the State Department of Ed
3 to run related instruction for apprentice programs,
4 and a large majority of our members already have
5 apprentice programs.

6 For our smaller contracts, maintaining an
7 apprentice program is a difficulty, because it
8 forces, not the training --

9 And we have those who are in some of our
10 training programs as craft trainees because they're
11 not registered apprentices, but they're in training
12 programs.

13 -- but for a small contractor who has to take
14 on the task of applying the DOL, and go through a
15 process that may take him a year to two years to get
16 an approved program; then has to put an apprentice
17 on, to maintain his program; move that apprentice
18 through, and let's say it's a laborer, it will take
19 two years to move them through; has to add another
20 laborer, in order to maintain his program with the
21 State; it isn't the training that's the issue. It's
22 continually adding employees, when the contractor
23 may not have the ability to sustain adding an
24 employee, continually, to support the apprentice
25 program.

1 We support training, we support
2 apprenticeship as well, for the right-sized
3 companies.

4 But for small contractors, and here on
5 Long Island, I mean, if you don't have an apprentice
6 program, it's very difficult to build.

7 SENATOR MARTINS: I will tell you that,
8 frankly, here on Long Island, and in other areas as
9 well, there is a tendency among some of the
10 medium-sized and smaller contractors, not the larger
11 contractors, because the larger contractors,
12 certainly, we have examples upstate and downstate
13 where they do have training programs, but I can
14 assure you that, as sure as I'm sitting here today,
15 and if you and I were to leave and go to specific
16 areas, we could see, at certain times of the day,
17 trucks pull up, people hopping into trucks, and off
18 they go to work in construction on construction
19 sites, building public-works projects, building
20 large- and medium-sized projects.

21 And that person who is jumping on the back of
22 a truck or into a truck is not someone who has been
23 trained; is not someone who necessarily has the
24 requisite training to protect themselves.

25 And, unless we, from a policy standpoint,

1 take the position from a state policy standpoint, as
2 to how we're going to protect that person from the
3 realities and economics of finding work, but at the
4 same time, keeping them safe, I think we're doing
5 ourselves a disadvantage.

6 There is a line there, and I think we have to
7 work towards that as well.

8 STEPHEN LEFEBVRE: And we'd be happy to work
9 towards that, because we do believe in training and
10 safety and a safe workplace.

11 SENATOR MARTINS: Thanks.

12 SENATOR GALLIVAN: One thing.

13 I pronounced your name wrong.

14 I'm sorry.

15 STEPHEN LEFEBVRE: It's okay.

16 You got closer than most people did.

17 Thank you very much.

18 SENATOR GALLIVAN: You're welcome.

19 Thank you.

20 Is Mark Hamer [ph.] here?

21 Scott Hobson, Lawsuit Alliance of New York.

22 SCOTT HOBSON: Senators, thank you for the
23 opportunity to address you today.

24 I'll keep this relatively short and to the
25 point.

1 I think most of the speakers before me have
2 addressed in great detail much of what I had planned
3 to discuss today.

4 So, just by way of background:

5 The Lawsuit Reform Alliance of New York is a
6 nonpartisan, nonprofit association of businesses,
7 professionals, doctors, growers, membership
8 organizations, and taxpayers dedicated to reform of
9 the legal system in order to foster a better
10 business climate, promote job growth, and address a
11 growing cost of lawsuit abuse.

12 Our members represent a diverse cross-section
13 of the state's economic base, and employ thousands
14 of New Yorkers statewide.

15 So, the regulation I'm here to discuss today
16 is, of course, the Scaffold Law.

17 We've heard a lot today about the impacts of
18 the Scaffold Law, particularly on taxpayers and on
19 the construction industry.

20 And I'd like to address, Senator Martins,
21 something you addressed earlier regarding safety.

22 In our experience, and what we've seen from
23 the research, the impact of the Scaffold Law is
24 not -- in its current form, it is not, empirically,
25 a driver of safety in workplaces.

1 As I think Walter and some others mentioned
2 earlier today, the experience in Illinois,
3 historically, after they repealed their version of
4 the Scaffold Law, was actually an improvement in
5 workplace safety and decrease in workplace
6 fatalities.

7 I'd just like to point out that
8 Albany Law School actually undertook their own study
9 of the Scaffold Law and its impacts relative to
10 safety.

11 And they concluded that the Scaffold Law, in
12 fact, was not a primary driver of workplace safety,
13 and that it was improved training methods and
14 increased awareness of workplace issues that was
15 driving a national trend in increasing safety.

16 Also, I'd just like to highlight an editorial
17 recently authored by the "Buffalo News," in which
18 they actually expressed strong support for,
19 Senator Gallivan, your proposal to reform the
20 Scaffold Law.

21 And they noted in their own independent
22 journalistic study that they were not able to find
23 any evidence, anywhere, that would link the
24 Scaffold Law to increased workplace safety.

25 So I think it's important to note that, as

1 we're talking about, you know, the significant
2 impacts that the law is having on the construction
3 industry and on taxpayers, that I think reform to
4 the law could be achieved without any impact on
5 workplace safety, any negative impact.

6 So what we're essentially looking at is a net
7 gain in -- excuse me, in both areas.

8 The other thing I'd like to address,
9 something that hasn't been touched on, or at least
10 slightly, is the reason, or at least a significant
11 reason, why the Scaffold Law in recent years,
12 particularly the past three years -- two to
13 three years, has driven such a dramatic change in
14 the insurance market.

15 And I think, from what we've heard from our
16 members in the industry, that is significantly being
17 driven by a case in 2009, which is, *Runner vs. the*
18 *New York State Stock Exchange*, which is a case that
19 was decided by the New York Court of Appeals.

20 And, essentially, what the Court determined
21 in that case, was that the Scaffold Law should be
22 interpreted to apply to all injuries that were a
23 product of the application of gravity rather than
24 elevation.

25 And that perpetuated a significant increase

1 in the scope of the law, and a corresponding
2 increase in the number of lawsuits.

3 We are seeing that now borne out, in the --
4 you know, as far as carriers leaving the market,
5 increased insurance premiums, which are a reflection
6 of increased insurance costs, and, certain coverage
7 exclusions.

8 I'd like to address --

9 Again, much of my testimony has already been
10 covered earlier, so, that's great.

11 -- public defendants and taxpayers.

12 In 2012, 16 of the 30 largest civil
13 settlements were a result of the Scaffold Law.

14 So, it is a tremendous -- it's a very
15 significant source of lawsuits among all of the
16 civil statutes in New York.

17 And of those 16 settlements, 25 percent were
18 public defendants; so, that's public authorities.

19 In one case was Gem -- or, I'm sorry,
20 Union -- Uniondale Union School District, which is
21 right near here.

22 So there's a -- in addition to the cost of
23 public construction, there's a significant direct
24 cost on taxpayers as well, when local governments
25 and public authorities are sued under the statute.

1 That's about all I've got.

2 Senator Gallivan, I'd like to thank you for
3 your continued leadership on this issue, and your
4 support for reform.

5 We're very supportive of it.

6 SENATOR GALLIVAN: Thanks, Scott.

7 SENATOR MARTINS: Do you have a cite on that
8 Runner case?

9 SCOTT HOBSON: Yeah, I can send that to you.
10 I think -- let me see if it's cited in here.

11 SENATOR MARTINS: I'll get it.

12 SCOTT HOBSON: Yeah, I can e-mail that to
13 your office.

14 Unfortunately, I don't have it on my
15 testimony.

16 SENATOR MARTINS: Thank you.

17 SENATOR GALLIVAN: Thanks, Scott.

18 We do have your written testimony that's in
19 more detail.

20 Thank you.

21 SCOTT HOBSON: Thank you very much.

22 SENATOR GALLIVAN: Kevin Schwage.

23 Did I pronounce that correctly?

24 KEVIN SCHWAGE: Yes.

25 SENATOR GALLIVAN: Excellent.

1 When you're ready.

2 KEVIN SCHWAGE: Good afternoon, gentlemen.

3 How are you?

4 SENATOR GALLIVAN: Good afternoon.

5 KEVIN SCHWAGE: Thank you for letting me talk
6 to you.

7 SENATOR GALLIVAN: Sure thing.

8 KEVIN SCHWAGE: I've never done this before,
9 so if I'm a little rough around the edges.

10 SENATOR GALLIVAN: Don't worry about it.

11 SENATOR MARTINS: You're doing fine.

12 Better than most.

13 KEVIN SCHWAGE: I started as an electrician
14 when I was 16 years old.

15 I went into the Coast Guard.

16 I was an electrician in the Coast Guard for
17 five years.

18 When I got discharged, I went through
19 Local 25's apprenticeship program.

20 I got out.

21 I worked as an apprentice, a journeyman, a
22 foreman.

23 I got my Suffolk County master electrician's
24 license in 1985.

25 I got a whole bunch of the Nassau County ones

1 following that.

2 That's my background.

3 A couple of things:

4 I'm one of the small contractors that
5 everybody was talking about.

6 I'm it; I'm a one-man shop.

7 I bid the work, do the work, take out the
8 garbage, do the whole deal.

9 All right?

10 So, one thing that the fellows from the
11 insurance industry were talking about, the
12 State Fund, man, bad news.

13 Bad news.

14 They've come a long way, but not far enough.

15 The whole thing about -- and I got caught up
16 in this because I had them, tried to get rid of
17 them.

18 I actually finally did, and then went back to
19 them.

20 I have never, in my entire life, been exposed
21 to something where have you to ask permission to
22 cancel.

23 I couldn't believe it.

24 "Oh, no, you still have insurance."

25 They sent me a bill, and then all kinds of

1 legal stuff.

2 And I'm, like, What? Are you kidding me?

3 "Oh, no, we still cover you."

4 I said, "I told you guys that I didn't want
5 you."

6 "Oh, no, you have to ask our permission to
7 cancel."

8 You know, that, not good.

9 What I guess, really, the most important
10 thing that took me away from what I was doing, and
11 everything, and I want to again thank you, is
12 I really hope you guys put your full support behind
13 the bill by Senator Zeldin.

14 I believe it's 5132-2013, that Charlie spoke
15 about, as far as establishing the board.

16 Okay?

17 Suffolk County is headed in a very, very
18 wrong direction when it comes to licensing.

19 They got it right the first time with the
20 Suffolk County License Law.

21 I believe it was 1972, one county, one
22 license.

23 That's great.

24 In 1985, when I got it, I was able to work,
25 unimpeded, in all 10 towns.

1 I also possess a Connecticut state license,
2 E1 unlimited.

3 I can work in the entire state of
4 Connecticut, town to town, city, it doesn't matter.

5 I can go wherever I please, without anything.

6 In 2006, the Town of South Hampton decided,
7 I don't know if it was as much revenue as it was to
8 massage the ego of certain officials, that they were
9 going to have this registration thing.

10 And I was told by the certain official, when
11 I had a meeting with the town supervisor and Charlie
12 and a few other guys, "Oh, it's not a license, it's
13 a registration."

14 Well, what the hell is it?

15 If I can't work there, you know, it's not --
16 it's not nothing.

17 It's extortion, is what it is.

18 I show them a copy of my master
19 electrician -- I got to take time out of my day,
20 I got to go get this stupid paper notarized.

21 Send them paper copies of all my truck
22 registrations so that their super-sacred sticker can
23 go on the side of my truck exactly where they tell
24 me to put it.

25 And then, you know, I got to -- and then

1 I got to deal with this nonsense?

2 And then I know, for a fact, because when
3 this thing first came around, the building
4 department was in a little bit of turmoil.

5 It was taking up to a month to get a rough
6 inspection, a rough electrical inspection, from the
7 town inspector.

8 Now, you try and tell the GC, Hey, man, you
9 got to wait a month.

10 Nobody, they were deathly afraid of this guy,
11 because he was using this thing as -- and, believe
12 me, I'm not --

13 I guess this is my own perception, I'm not
14 accusing him.

15 You know how it goes, I guess.

16 -- but, these guys were afraid of this,
17 because this guy was holding this (indicating), you
18 know.

19 And then the other thing is, I'm a licensed
20 master electrician.

21 I'm very proud of that.

22 I'm very proud of the fact that I'm a
23 Local 25 electrician.

24 And, now, let's just say that somebody has a
25 complaint about me.

1 Well, like under Mr. Gardner's
2 Consumer Affairs, I went and I was judged by the
3 Suffolk County Electrical License Board, by
4 gentlemen who were electricians, and they
5 understood.

6 And if I was a real screw-up, well, the boot
7 I got.

8 If not, they understood.

9 If I go to South Hampton in front of this
10 rinky-dink license board they got, I got to wait in
11 line between plumbers, carpenters, and taxi drivers,
12 and then explain my thing, and hope that a bunch of
13 carpenters can --

14 You know, it's -- it's, just, it's got to go.

15 I'm sorry guys if I'm yelling at you, but it
16 just really upsets me, greatly.

17 And one other thing that, along those lines.
18 Section 137 of the town law empowers building
19 inspectors or town clerks to issue home-improvement
20 licenses.

21 I know it really doesn't affect me directly,
22 but I believe building inspectors should not be
23 allowed to issue these licenses.

24 It should rest solely with the town clerk's
25 office, because what happens is, number one, if you

1 guys want to streamline government, the town clerk
2 is the issuer of all licenses, keeper of records,
3 and stuff like that.

4 That's where you go.

5 Number two, it does provide a little bit of
6 checks and balances, where, if the chief building
7 inspector doesn't like you, you know, This guy,
8 well, maybe we'll get you a license, maybe not;
9 threaten you, all that kind of stuff.

10 So that's pretty much it, guys.

11 I really thank you, and sorry if I yelled at
12 you.

13 I get all wound up, you know.

14 SENATOR GALLIVAN: That was fine.

15 My only question is more just out of
16 curiosity than anything else.

17 In Nassau County, how many licenses do you
18 have?

19 KEVIN SCHWAGE: I had have three.

20 I had five.

21 I let the Freeport one go.

22 And, I forgot the other one.

23 But I have Oyster -- well, yeah, see, now
24 here's -- I have Oyster Bay, Hempstead, and
25 North Hempstead.

1 And, also, because I'm a Suffolk -- well,
2 when I went to get the Oyster Bay one, that was a
3 bit of an-eye opener, because I brought copies of
4 all the stuff they require, and I was told, Oh, you
5 know, we don't need to see your Suffolk County
6 license? We don't recognize that.

7 And I was like, you know, it's the next
8 county over.

9 It's not like I brought them something from
10 Mars, or something.

11 You know?

12 [Laughter.]

13 KEVIN SCHWAGE: And then also because I'm--
14 now, I understand why the Nassau system is so
15 vulcanized, because they don't have a county
16 license, so you can see where this came from; as
17 opposed to Suffolk, where we've got the license, and
18 now it's going backwards.

19 But to get back to the point:

20 As a Suffolk County resident, I had to take
21 and treat each application for each license as
22 though I was -- I'd never been licensed by any other
23 jurisdiction before.

24 And that all is the town's own --

25 SENATOR GALLIVAN: So you have three

1 licenses.

2 KEVIN SCHWAGE: So right now, I possess --

3 SENATOR GALLIVAN: What does it cost you,
4 collectively?

5 KEVIN SCHWAGE: Approximately --
6 approximately \$400. And that's over a two-year
7 span.

8 All right?

9 And just a little quick math:

10 If every town signed on to South Hampton's
11 shenanigans, that would be \$1,000 a year for me,
12 just to walk out the door to purchase -- to purchase
13 the right to work -- to purchase the right to pursue
14 an occupation that I am licensed in now by the
15 County of Suffolk.

16 And this registration thing, there is no --
17 you send them a copy of your Suffolk County license.

18 There's no practical.

19 The closest thing they come to a written
20 exam, is to be able to write "The Town of
21 South Hampton" and "75" on a check.

22 There's your written exam.

23 Guaranteed, you've purchased the right to
24 work.

25 You're done.

1 [Laughter.]

2 KEVIN SCHWAGE: And you don't -- you know,
3 New York is to try and get back to where it was,
4 this is a pretty good place to start.

5 And there's a lot, a lot of guys, one- and
6 two-man shops like myself that feel this way.

7 SENATOR MARTINS: The three licenses you have
8 in Nassau County, are there reciprocity between the
9 three towns?

10 Because the three towns are, essentially,
11 Nassau County.

12 They only have three towns.

13 KEVIN SCHWAGE: Yes, sir.

14 If I was a Nassau County resident, there
15 would be reciprocity.

16 I would be allowed to show -- as a matter of
17 fact, in the renewals they state, you send a copy of
18 your hometown license to the other -- you know, to
19 the town that you're renewing, and that's your
20 reciprocity.

21 But as a Suffolk resident, no, it's --
22 they're all treated as three individual entities.

23 SENATOR MARTINS: So you had to apply in each
24 one?

25 Did have you to take an exam in each one of

1 those three towns in order to qualify for that
2 license?

3 KEVIN SCHWAGE: Yes, sir, I did.

4 I had to take a written and a practical exam
5 in Oyster Bay, in North Hempstead, and Hempstead.

6 The Freeport license, all they wanted was a
7 copy of my Hempstead license, and they were glad to
8 issue that, which is, you know, not unreasonable.

9 And, again, I can see where that's coming
10 from, because of the lack of a county license.

11 The South Hampton nonsense is just
12 unacceptable, because, you know, like I said, you're
13 gonna look like -- you're gonna have so many
14 stickers on the back of your truck you won't be able
15 to see out the window, for God's sake.

16 [Laughter.]

17 SENATOR MARTINS: And when you talk about
18 these three towns, I think it's important that we
19 contextualize that.

20 The town of Hempstead has 700,000 residents,
21 600,000 residents.

22 The town of North Hempstead has 240,000.

23 The town of Oyster Bay has 350,000 residents.

24 The village of Freeport has 50,000 residents.

25 You know, these are large municipalities.

1 KEVIN SCHWAGE: Oh, absolutely.

2 SENATOR MARTINS: They have the ability.

3 We're not dealing with any of the
4 municipalities that are smaller, and, perhaps, there
5 may be some redundancy there.

6 The ones you have, happen to be the ones
7 where, either you've had work or you intend to work.

8 KEVIN SCHWAGE: Right.

9 The town of South Hampton has, I think,
10 I don't know, 40,000 residents.

11 What does the village of Mastic Beach have?
12 92 people?

13 [Laughter.]

14 KEVIN SCHWAGE: And, you know, I got to get
15 that, too.

16 You know I mean, now here's a village.

17 You know, you're on this side of the street,
18 you can work; you're on that side of the street, you
19 can't?

20 It's retarded.

21 SENATOR MARTINS: So, I do appreciate it.

22 And, you know, I won't speak for my
23 colleagues, but I'm sure I will, you gave great
24 testimony.

25 Thank you.

1 KEVIN SCHWAGE: Well, thank you, gentlemen.
2 And I sure do appreciate your time.
3 Take care.

4 SENATOR GALLIVAN: Did we miss anybody that
5 was supposed to be testifying?

6 SENATOR BOYLE: In closing, I'd like to thank
7 Chairman Gallivan for holding this hearing.

8 And, Senator Valesky as well.

9 It was ironic that, during the hearing,
10 "Forbes Magazine" came out with their annual ranking
11 of business climates, and New York ranked Number 21,
12 in large part, because of the regulations we have in
13 this state.

14 I want to see legislation coming out of this,
15 through the leadership of Senator Gallivan, to do
16 away with a lot of the overregulation in this state,
17 and next year, maybe we'll be closer to Number 1 in
18 New York.

19 Thank you, Chairman.

20 SENATOR GALLIVAN: Thanks, Phil.

21 I'd like to thank everybody who participated
22 today, and the members of the local delegation here
23 for helping to put this on.

24 We anticipate, as I mentioned at the
25 beginning, a report, mid to late November, that will

1 form a basis of part of our agenda as we start the
2 next legislative session.

3 And, you should be able to find it online
4 right at the Senate website, which is real easy:
5 nysenate.gov.

6 And then you can just look for any of us, and
7 click on one of our links, and you'll be able to get
8 to it.

9 We appreciate your testimony.

10 If you think of something later on, that you
11 didn't think of today, an e-mail address is on the
12 table right on your way out. You can grab that.

13 That will conclude the hearing today.

14 Thank you.

15 (Whereupon, at approximately 3:34 p.m.,
16 the public forum on manufacturing regulatory
17 reform held before the New York State Senate
18 Majority Coalition concluded, and adjourned.)

19 ---oOo---

20

21

22

1 BEFORE THE NEW YORK STATE SENATE MAJORITY COALITION

2 PUBLIC FORUM/TOWN HALL

3 HOSPITALITY/TOURISM REGULATORY REFORM - TO LEARN FROM
4 BUSINESSES AND INDUSTRY EXPERTS WHICH REGULATIONS
5 ARE THE LEAST USEFUL, LEAST COST-EFFECTIVE, AND,
6 THEREFORE, SHOULD BE ELIMINATED

7
8 Quad Graphics
9 1 Marsel Drive Auditorium - 1st Floor
Saratoga Springs, NY 12886

10 October 2, 2013
11 10:00 a.m. to 12:00 p.m.

12 SPONSORS PRESIDING:

13 Senator Patrick M. Gallivan
14 Deputy Conference Leader for Economic Development

15 Senator Kathleen A. Marchione
16 Chair of the Administrative Regulations Review
Commission

17 Senator David J. Valesky
18 Chair of the Senate Committee on Commerce,
Economic Development, and Small Business

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1 SENATOR MARCIONE: To those who have traveled
2 to be with us at today's forum, I want to say thank
3 you, and proudly welcome you to Saratoga County.

4 To our speakers, we are truly honored that
5 you all are here taking part in this important
6 forum, as we are likewise thankful for those
7 watching online, attending in person, and covering
8 this forum.

9 Before we go any further, I want to offer my
10 personal thanks to our gracious and wonderful host,
11 Quad Graphics, which has generously provided us this
12 wonderful auditorium as our venue for today's forum.

13 I'd like to let you know a little bit about
14 Quad Graphics.

15 They are a leading global provider of print
16 and multichannel solution for consumer magazines,
17 special-interest publications, catalogs, retail
18 inserts and circulars, direct mail, books,
19 directories, and commercial and specialty products,
20 with 50-plus print-production facilities on three
21 continents.

22 I want to recognize and thank Quad Graphics'
23 plant director, Dan Frankowski, for all of his
24 guidance, professionalism, and assistance with
25 today's forum.

1 Thank you for everything, Dan, and thank you
2 to everyone at Quad Graphics.

3 I'm Senator Kathy Marchione, and I represent
4 the 43rd Senate District which includes parts of
5 Saratoga, Rensselaer, Washington, and all of
6 Columbia County.

7 It's an honor for me to chair today's forum.

8 In addition to representing the 43rd Senate
9 District, I also chair the Senate's Administrative
10 Regulations Review Commission, known as "ARC."

11 ARC is a bipartisan joint legislative
12 commission comprised of Senate and Assembly members
13 that reviews state rules and regulations, and keeps
14 its eye on the 107 state agencies that issue
15 approximately 300 regulations every year.

16 All of those rules and regulations amount to
17 an incredible 22 miles of state-government red tape,
18 and truly pose a massive financial burden on our
19 economy, our localities, and our taxpayers; and,
20 truly, that's why we're here today.

21 Our forum is part of a historic statewide
22 effort by the Senate Majority Coalition to identify,
23 and then revise, a thousand rules, regulations, and
24 red tape, with our eye at cutting many of those.

25 This effort is being led by my colleagues

1 Senator Pat Gallivan and Senator Dave Valesky.

2 Senator Pat Gallivan chairs the Crime
3 Victims, Crime, and Correction Committee, and is
4 also the Deputy Leader of the Republican Conference
5 for Economic Development.

6 Senator David Valesky chairs the Commerce,
7 Economic Development, and Small Businesses
8 Committee.

9 We have already held public forums in
10 Buffalo, Watertown, Syracuse, Mineola, and now today
11 here in Saratoga County.

12 We have listened to the feedback, specific
13 feedback, about what state government can do to
14 start [sic] hurting and start helping businesses,
15 communities, and taxpayers, by delivering real
16 regulatory relief.

17 We will take what we've learned at these
18 hearings and assemble a comprehensive list of rules
19 and red tape that we feel must be revised or cut.

20 We will submit some of those to the Governor,
21 and create legislation to bring before our
22 colleagues.

23 Today we have an incredible lineup of
24 speakers, business owners and leaders, recognized
25 and respected voices always advocating for a

1 stronger economy, more jobs, and greater prosperity
2 for all New Yorkers.

3 This forum today will focus on how rules and
4 regulations impact New York's tourism and
5 hospitality sectors.

6 When I speak of these sectors, I refer to
7 hotels, resorts, conference centers, country inns,
8 bed & breakfasts, historical sites, chamber of
9 commerces, colleges, universities, and other
10 resources that make New York such a great place to
11 live, and certainly visit.

12 It's almost impossible to overstate the
13 importance of the tourism/hospitality sectors to
14 New York's economy, and more particularly, to our
15 Capital Region.

16 Tourism is New York's fifth largest
17 employment sector.

18 Tourism supports nearly 700,000 jobs
19 statewide, and the industry generates \$16.6 billion
20 in wages in the year 2011.

21 Tourism and hospitality are
22 multi-billion-dollar industries in the
23 Albany-Saratoga regions, and 12 percent of this
24 region's employment is sustained by visitors.

25 But, we know that tourism and hospitality

1 industries are not immune to local, state, and
2 federal regulations, and many regulatory factors
3 decide whether or not tourism or hospitality
4 businesses will be successful.

5 Without question, New York's rules,
6 regulations, and red tape have a direct and
7 significant impact on the tourism and hospitality
8 sectors, and that is the reason why we want to hear
9 from our speakers today.

10 At this time, I would ask my colleagues for
11 their opening remarks.

12 SENATOR GALLIVAN: Thanks, Senator.

13 Good morning, everybody, and thank you for
14 being here.

15 A recent U.S. Chamber of Commerce report
16 identified New York State as having the worst
17 business climate in the nation: 50th out of 50.

18 And it's no secret what leads to that.

19 We hear it all the time, I'm sure you hear it
20 all the time: taxes and regulations; the high cost
21 of doing business in this state.

22 So we do have -- we are trying to address
23 that.

24 Our colleagues are conducting a series of
25 similar hearings across the state on tax reform,

1 looking to present a package as we move into next
2 year's session.

3 And as Senator Marchione mentioned, we are
4 doing, likewise, conducting these industry-specific
5 hearings on regulatory reform; the idea being,
6 looking to identify those useless regulations, the
7 duplicative regulations, the regulations where the
8 costs greatly exceeds the benefit, the ones that are
9 outdated; the ones that contribute to keeping
10 businesses from coming here, that keep businesses
11 from expanding.

12 And we've learned a lot as we've conducted
13 our hearings so far, and we're anxious to learn
14 more.

15 And our goal, of course, is to identify a
16 minimum of 1,000 regulations, which is just a start,
17 to get rid of.

18 And you may think 1,000 is a lot, but when
19 you put it in context of the 22 miles of regulations
20 that we have, over 140,000 pages of regulations in
21 the state, it's hard to count them all, but if you
22 estimate them out, a reasonable estimate is around
23 750,000 -- three-quarters of a million --
24 regulations that people have to contend with.

25 And we want to do something about it.

1 And so that's why we're here today, and we're
2 very grateful that you're willing to share your
3 stories and talk about your industry, and help us
4 dig down a little bit deeper to identify the things
5 that are impediments for you; and, likewise, the
6 people in the business of manufacturing, and
7 hospital, medical -- medical/hospital, high tech,
8 some of these other areas that we're taking on.

9 So we look forward to the testimony, and are
10 grateful that you are here.

11 And, hopefully, in the end, we'll be able to
12 do something positive about this.

13 SENATOR MARCIONE: Thank you.

14 Senator Valesky.

15 SENATOR VALESKY: Thank you.

16 Senator Marchione, Senator Gallivan, it's
17 nice to be with both of you again.

18 Senator Marchione, I want thank you for
19 hosting this fifth hearing in our series.

20 Just a couple of quick points, and we'll get
21 right to it.

22 I think it's worth noting, on this second day
23 of a federal government shutdown, what this is
24 showing here in New York State is, in fact, that
25 we're doing the opposite of what is happening in

1 Washington, where it seems that nothing can get
2 resolved, and Democrats and Republicans, for
3 whatever reason, can't seem to work together and do
4 the people's business.

5 The Senate Majority Coalition is showing once
6 again that, in fact, we can work together and
7 address major issues that are of concern to the
8 people of New York State.

9 So I'm happy to continue to participate in
10 these hearings, and I'm confident, certainly based
11 on the first four that we've conducted, that we will
12 have more than enough information and data and
13 suggestions to prepare a very comprehensive report
14 later this year, and move forward as we head into
15 the 2014 legislative session.

16 Just a quick bit of housekeeping before
17 Senator Marchione calls up our first person to
18 testify.

19 If you did bring written testimony, we would
20 ask that you share that with us before you make your
21 presentation.

22 Don't feel that have you to read your
23 testimony, but we would also ask you to be as
24 specific as possible, as it relates to the tourism
25 and hospitality industry, as to those regulations

1 that are impeding your progress and not allowing you
2 to be as successful as we all want you to be.

3 So with that, Senator Marchione, I think
4 we're all set to start.

5 SENATOR MARCIONE: Thank you very much.

6 Our first speaker this morning is
7 Todd Shimkus.

8 He is the president of the Saratoga County
9 Chamber of Commerce.

10 And just a little about the chamber as he's
11 making his way forward:

12 The Saratoga County Chamber of Commerce has
13 2700-plus members who employ more than
14 67,000 people, predominantly in Saratoga County.

15 The Chamber provides a wide range of member
16 services, including but not limited to:

17 Leadership Saratoga, countywide tourism
18 promotion services, health insurance, the Energy
19 Alliance program, free small-business counseling,
20 and the best networking events in the
21 Capital Region.

22 The Chamber's mission is to initiate and
23 provide programs and services which will enhance
24 members' ability to successfully conduct their
25 business, and to enhance and promote a healthy

1 economy, making Saratoga County an ideal place to
2 work, live, and visit.

3 Thank you for being here.

4 TODD SHIMKUS: I'm going to have you
5 introduce me everywhere.

6 That's great.

7 Thank you, Senator.

8 And thank you, all of you, for the
9 opportunity.

10 And I want to just quickly touch on the
11 chamber's role in tourism.

12 We have a great partnership here in
13 Saratoga County between a number of different
14 organizations.

15 And I know that Mark Baker from the
16 City Center is here.

17 Todd Garofano from the Saratoga Convention
18 and Tourism Bureau is here as well.

19 And I believe Todd is testifying later.

20 And Saratoga County itself is also a partner
21 with us, as is the City, and we all collectively
22 work together to make sure we can drive tourism and
23 visits here.

24 The chamber's role is predominantly around
25 working with Saratoga County to market

1 Saratoga County as a great place to visit.

2 So we work with the transient visitors that
3 come here, and market predominantly in the
4 New York City, New Jersey, Connecticut, Baltimore,
5 Philadelphia area, to try to get those folks to come
6 up here year-round.

7 So we do -- we have a campaign every year,
8 about \$500,000 total, some county funds through the
9 occupancy tax, some matching funds from
10 private-sector organizations, and a minimal amount
11 from "I Love NY."

12 It used to be a lot more, now it's a lot
13 less; and so, certainly, that's an item.

14 So let me give you the quick state of the
15 Saratoga County tourism industry.

16 It's strong.

17 It's, in fact, very strong.

18 All have you got to do is drive around and
19 you'll see.

20 Hotel occupancy is on the rise.

21 Revenue per available room, which is the key
22 benchmark that we like to follow, is on the rise.

23 Occupancy-tax collections in Saratoga County,
24 in 2012, were at a record high, so last year was a
25 good year as well.

1 A factor to note in these trends, is that the
2 tourism sector is not separated from all the other
3 sectors.

4 So, our tech sector, which has certainly
5 grown in the last two to three years, again, led by
6 global foundries, the hotels are impacted by that as
7 well, as are the restaurants.

8 We have a rising demand for commercial rooms,
9 or, rooms that are rented on a commercial basis.

10 So, it's short-term stays for employees
11 relocating to our area;

12 It's folks that are doing work with these
13 firms that are on sales calls;

14 And it's other companies that are just coming
15 for visits, and to kick the tires and see if
16 Saratoga is a good place for them to locate.

17 That's all driving our book of business at
18 hotels, up.

19 There are at least 10 new hotels -- let me
20 say that again -- 10 new hotels that are either
21 being built, proposed, or under consideration here
22 in Saratoga County.

23 That shows that investments are following
24 increased demand, and we're certainly happy to have
25 that.

1 In fact, I think if you were to ask local
2 hotels and restaurants what's their biggest concern
3 right now, it's the increase in competition that
4 they're getting from other restaurants and other
5 hotels that are expanding and locating here.

6 Besides the hotels which put heads-and-beds,
7 the other thing that drives our local economy in the
8 tourism sector, is that we have a predominant number
9 of locally owned restaurants and retailers that are
10 in our downtowns and village.

11 These are folks that are truly small
12 businesses.

13 They don't have HR departments, they don't
14 have legal departments, they don't have big
15 marketing budgets, so they really rely on the
16 County, the chamber, the convention bureau, the city
17 center, and others to help them, and the State as
18 well.

19 So the challenges, as far as I see them, with
20 respect to regulations and cost:

21 First, if you talk to retailers on Broadway
22 or in our villages, they are consistently concerned
23 with the competition of online stores.

24 Now, while fair taxation of online sales
25 might be a national issue, I'd suggest that the

1 Legislature remember this competitive disadvantage
2 that our local businesses are under when you
3 consider other bills that might increase the cost of
4 doing business, because we're already fighting an
5 uphill battle.

6 So, for instance, increasing the minimum wage
7 is an issue for many tourism businesses.

8 Unemployment insurance taxes have been on the
9 rise, and that's been an issue.

10 Without an HR department, the burden of
11 complying with ObamaCare, in determining how many
12 hours their employees can work or what penalties
13 they might incur, or finding the time to understand
14 how to use the exchanges, provided they work soon,
15 to select a plan is a real challenge.

16 I'll make this observation, because we have a
17 health-insurance program at the chamber.

18 We have about 800 families that rely on us
19 for health insurance.

20 Right now, even though we do all of the
21 registration for those folks online, the most
22 popular document that we have is in paper, and it
23 describes the different plans and the different
24 costs.

25 So while New York is implementing these

1 exchanges, they're doing it exclusively online.

2 What people really want to be able to do, is
3 to know what those plans are.

4 So while we struggle to get the online system
5 to work, I don't understand why we can't just put a
6 PDF of these different plans online so that people
7 can take a look at that.

8 Or, share that with chambers and brokers and
9 folks at the local level, the navigators, so that we
10 have something to hand people.

11 From the chamber, it is the most popular
12 thing that we hand out every year.

13 It doesn't give them all the details, but it
14 gives them a benchmark, an idea, a way to compare.

15 They don't need all of the details and all of
16 the -- they can get those answers from other folks,
17 they don't need to find all of that immediately, but
18 they need to know what benefits and what rates are,
19 and what plans are being offered.

20 So, while we may want to eventually get
21 everybody to an online portal, sometimes being
22 really simple is a way of being more helpful,
23 particularly to those small businesses that are
24 trying to do right by their employees in providing
25 health insurance.

1 We're lucky in Saratoga that developers are
2 taking the risk to build buildings, whether they
3 house restaurants or hotels or retail, and we're
4 seeing that again throughout our community.

5 However, the state's new environmental
6 assessment form is going to lead to more costs.

7 I've talked to, not the developers, but the
8 folks that do the planning, that do the engineering,
9 for some of these hotel projects, some of these
10 restaurant projects; and, so, they tell me, that
11 even the short form that's used for the SEQRA
12 process is going to be longer than it was before.

13 So, we're adding burdens through this new
14 environmental assessment form, both on the folks
15 that have to do that work for the developers, it
16 adds costs.

17 The other problem with this, is that it also
18 requires the local boards that have to review this,
19 to review more data, to look at more information,
20 and to themselves have to hire other people, take
21 more time, to make sure that the data is accurate
22 and independently verified, and all of that.

23 So, if there's anything you can do about the
24 new environmental assessment forms and simplifying
25 that process, that would be helpful to those

1 businesses that do want to invest here.

2 The Saratoga Race Course has a \$200 million
3 economic impact on this region every year; that's
4 from Columbia County, up through Warren and
5 Washington county, and everywhere in between.

6 While the new NYRA Board appears to be
7 functioning well, one of their tasks is to make sure
8 that this is a temporary state-takeover, and that we
9 eventually transition become back to NYRA operating
10 as a private entity.

11 So, we want to make sure that we ask that you
12 support the new NYRA Board as they develop plans for
13 this transition, because we really do believe that
14 that's important.

15 I'm not going to go into detail as the --
16 honestly, the issues are fairly minor, but I can
17 tell you that the State's oversight of the
18 Saratoga Race Course has caused some challenges to
19 those local organizations that host, or want to
20 host, events at the race course.

21 Again, it's not a huge issue, but we see the
22 impact.

23 And, anytime you have the State's involvement
24 in something, there is added bureaucracy, there are
25 added approvals, there are things you can't do any

1 longer.

2 And we're seeing that, unfortunately.

3 This community embraces the race course
4 perhaps like no other in the world.

5 We think that's one of the things that makes
6 it special.

7 So it is disheartening when have you to run
8 through a little more red tape to be able to do some
9 of the things that you've been able to do,
10 literally, for decades, in some instances.

11 More than 10 years ago, our community started
12 advocating for a VLT at Aqueduct.

13 I think that's important to understand.

14 We understood 10 years ago -- more than
15 10 years ago, that a percentage of those proceeds
16 from that facility going to support the
17 thoroughbred-racing industry in all three NYRA
18 tracks was important.

19 The success of this idea is now readily
20 apparent, as capital improvements are being made,
21 the operations are being modernized, purses have
22 increased, more breeding is being done throughout
23 New York State, and the racing continues to attract
24 a worldwide audience.

25 This investment of these VLT funds in our

1 thoroughbred-racing industry was well-thought-out
2 and well-planned.

3 Senator Eric Adams, in particular, we owe a
4 debt of gratitude to him, a couple years ago, for
5 making sure, that after 10 years, that that
6 happened.

7 This support must be continued over the
8 long term, and any governmental effort to alter or
9 change these rules, regulations, or contracts is
10 certainly problematic for us here in the
11 Capital Region.

12 Depending on what the voters decide in
13 November, we'll have additional new regulations to
14 consider with respect to casinos here in
15 New York State.

16 Either way, up or down, there are provisions
17 of the new law that, depending on how they are
18 implemented by New York State, could have positive
19 or negative consequences locally.

20 So I would ask, as strongly as possible, that
21 as the State implements the new law, regardless of
22 the outcome, either way, that you be sure to, first,
23 do no harm here in Saratoga County and the
24 Capital Region, to the racing industry, the
25 thoroughbred-racing industry, as well as to the

1 harness-racing industry.

2 And I'll give you one for instance.

3 If the casino bill were not to pass, there
4 are provisions in the law that would allow VLT
5 parlors all over the state of New York.

6 In an article that I have somewhere here,
7 that was done in the "Daily Gazette" by one of the
8 fine reporters that we have in the audience out
9 here, back a number of months ago,
10 Assemblyman Pretlow and Senator Bonacic are quoted
11 as calling this provision "the stick behind the
12 carrot."

13 The goal of the provision, as they described
14 in the article, was to make sure that the racinos
15 support the plan.

16 The challenge for us, is that this "stick,"
17 if it's implemented, could harm, both, the
18 thoroughbred-racing industry, if the VLT at
19 Aqueduct, if their revenues are harmed, and it could
20 harm the harness-racing track as well if the
21 Saratoga Casino and Raceways' VLT is harmed by all
22 of this new competition.

23 If casinos are approved, on the other hand,
24 there are other regulatory provisions that will need
25 to be implemented to ensure the long-term

1 sustainability of the thoroughbred and harness
2 racing here in the Capital Region, too.

3 And we just ask that the regulators take into
4 consideration doing no harm here in Saratoga, and
5 working with us to make sure that it has a positive
6 impact either way.

7 Two final items, and one is, you know, this
8 is one of those, I think it's a simple change, and
9 it's just proven to be unbelievably elusive for
10 years.

11 There's actually some organizations that have
12 been working for 20-plus years on this.

13 We need New York State DOT and Amtrak to
14 allow bikes on trains.

15 Whatever you have to do to get the
16 regulations, the rules, eliminated to make that
17 happen, do it.

18 We tested a model earlier this year, where we
19 put them on cafe cars.

20 I realize it wasn't perfect, but it worked.

21 I recently attended a meeting with DOT and
22 Amtrak officials on this very issue.

23 And if Senator Little were here, there was a
24 representative from the Senator's office.

25 Honestly, the DOT and Amtrak, they're so

1 focused on making sure they do this in an ideal
2 fashion, and the ideal fashion is probably going to
3 cost too much to get it done.

4 We just got to find a way to do this.

5 The cafe cars worked.

6 And, we have 10 million people in
7 New York City and Montreal that would love to get on
8 a bike, on a train with their bike, and come up to
9 the upstate; whether it's to Saratoga or to Syracuse
10 or to the Adirondacks, and they can't right now.

11 We've got to make that happen.

12 It shouldn't be this difficult.

13 We shouldn't have to wait for "the ideal."

14 So whatever you can do to get DOT to be less
15 restrictive, to be more of a partner, and whatever
16 you can do to get Amtrak to also figure out how to
17 make this happen, we would love to start this
18 service by next spring.

19 We've been talking about it for decades.

20 It's time to get it rolling by next spring.

21 It's great for green tourism.

22 It's great for everybody.

23 Public sector, public local communities here,
24 and I'm sure in all of your districts, have spent
25 tens of millions of dollars creating hiking and

1 biking trails that these people could use, and our
2 local villages and towns and retailers and
3 restaurants would benefit.

4 We got to make that happen.

5 And I'll end with, Exit 3, or new Exit 4, and
6 I-87, to the Albany International Airport is also
7 crucial.

8 While I know funding is certainly an issue
9 for any project of that size, I can only imagine
10 that it's easier if we get all of the state and
11 local and county folks together in support of a
12 plan.

13 So whatever you can do to get all of the
14 state agencies that would be involved in that,
15 whether it's DEC, DOT, whoever else might have to
16 participate, to the page, to make this happen.

17 We need to be a team going to the federal
18 government trying to get the money that we need to
19 build that connector.

20 That connector will make sure that our tech
21 sector thrives, in terms of using the airport, to
22 get around the country, and around the world.

23 It will also help us to attract tourists if
24 it's easier for them to get off a plane in Albany
25 and to get to Saratoga or to get to Albany or any of

1 the locations along I-87.

2 So, I also believe that should be a priority
3 for regulators and the State, to make sure that
4 it -- it just happens.

5 So thank you again for the opportunity, and
6 I'd certainly answer any questions if you had any.

7 SENATOR MARCIONE: Thank you, Todd.

8 Thank you for your testimony.

9 That was very eye-opening.

10 Senator.

11 SENATOR GALLIVAN: Just one question, that
12 you may not be able to answer, but, the new
13 environmental assessment forms, we were on
14 Long Island last week with the construction
15 industry, and they brought that up.

16 TODD SHIMKUS: Uh-huh.

17 SENATOR GALLIVAN: Do you have any examples
18 of the specific questions that are problematic?

19 They started, of course, you had a form.

20 Now they've added additional information.

21 TODD SHIMKUS: Right.

22 SENATOR GALLIVAN: And, in general, they
23 complained of that without being specific.

24 TODD SHIMKUS: I've definitely got a
25 number -- I had a number of specifics from the

1 engineers.

2 I didn't bring them with me.

3 A couple that I remember, off the top of my
4 head --

5 SENATOR GALLIVAN: Could you forward them to
6 us?

7 TODD SHIMKUS: Sure, I can.

8 -- but around sound issues and light issues.

9 You know, I know it came up at a hearing.

10 I'm on the comprehensive planning committee
11 here in the city.

12 We're looking at the comp plan, and the issue
13 of light pollution came up at a public hearing.

14 So, the forms include some issues related to
15 light pollution.

16 They include sound-attenuation issues that
17 you might have to deal with, so you're not harming a
18 neighborhood -- a neighbor next door.

19 And, again, those are complicated issues that
20 require engineers, and money by developers to be
21 spent, to figure all those out.

22 SENATOR GALLIVAN: And, also, in talking with
23 your members, again, down on the Island, and some of
24 the people that testified, they complained of things
25 being very subjective, and having no seemingly, you

1 know, relevance to the particular project.

2 TODD SHIMKUS: That's why I brought up --

3 SENATOR GALLIVAN: Has that been articulated
4 to you?

5 TODD SHIMKUS: Absolutely.

6 That's why I brought up sound and light.

7 So, the lights in Saratoga Springs, to me,
8 when you see them at night, that tells you that the
9 economy is doing well, that there's something going
10 on.

11 But to some other residents, subjectively,
12 it's pollution.

13 The same with sound.

14 SENATOR GALLIVAN: Yeah, well, thanks.

15 So if you're able to forward additional
16 comments along those lines --

17 TODD SHIMKUS: Sure.

18 SENATOR GALLIVAN: -- that would be
19 appreciated.

20 Thanks.

21 SENATOR MARCIONE: Thank you.

22 Senator.

23 SENATOR VALESKY: Just two -- I wanted to
24 follow up on two of the points that you made.

25 First of all, I was not aware of the

1 "bikes on trains" issue.

2 Just so I'm clear:

3 Is Amtrak supportive of allowing that, and
4 DOT is not allowing them to do that?

5 Or -- I'm not exactly clear what the problem
6 is.

7 TODD SHIMKUS: That's a great question.

8 The problem is, that we have an older set of
9 trains that run through New York, and they don't
10 always stay in New York.

11 So, in states that have bought new trains,
12 they have included cargo space for bikes.

13 So we don't have that, so we have to retrofit
14 anywhere from, dozens, to hundreds, of cars,
15 depending how you do this.

16 So, I think DOT and Amtrak would like to make
17 this happen, but it's not a -- it's a cost -- it's a
18 costly issue.

19 The easiest one, the least expensive one, is
20 what they tested this past summer, and that's taking
21 out a couple of seats in the cafe cars and putting
22 bikes -- allowing bikes in there, so you can roll
23 them on, roll them in, lock them in, and you're
24 done.

25 It's not an ideal solution.

1 In Michigan, they're doing that right now,
2 temporarily, before they buy new cars.

3 So -- but this has been talked about for a
4 long, long time.

5 It's cost -- the other option is, you put an
6 extra cargo train on each of the runs.

7 Obviously, that's even more expensive.

8 So, you have no easy way, except for on the
9 cafe cars, but DOT and Amtrak do not see that as an
10 ideal fashion, so they'd rather wait, until they
11 either buy new cars, or can put baggage cars on.

12 In my meeting with them, they're not gonna
13 pay for new baggage cars, and they're not buying new
14 trains.

15 So, if we're going to wait for those two
16 solutions, we're going to be waiting till 20 years
17 from now.

18 SENATOR VALESKY: Okay, we'll have to look at
19 that issue.

20 And the other thing is, and I noticed,
21 I don't know whether you intentionally were very
22 careful in your comments about the casino amendment,
23 in terms of the implementation, whether voters
24 approve it or not.

25 I'm just curious whether the chamber actually

1 has a position on the amendment itself, and as --
2 one way or another.

3 TODD SHIMKUS: Sure.

4 We worked very closely with Senator Marchione
5 in the legislation, so there are clearly provisions
6 in there, if this passes, that are beneficial to the
7 local racing industry.

8 In fact, there were four things that we were
9 looking for in the legislation.

10 Three out of the four are in there.

11 The one that wasn't is, we would have loved
12 to have had the Saratoga Casino and Raceway as one
13 of the designated facilities, and then have the
14 provisions for working with the local municipality.

15 So -- but, it doesn't matter whether it
16 passes or not, there are provisions that will turn
17 into regulations and rules, and depending on how
18 those are done, we're trying to minimize the
19 potential impact here, or, to maximize the benefits.

20 SENATOR VALESKY: Right.

21 Whichever the case might be, right.

22 TODD SHIMKUS: Sure.

23 SENATOR VALESKY: Thank you, Todd.

24 Thanks very much.

25 SENATOR MARCIONE: Todd, I have just a

1 couple.

2 You mentioned that you have 800 businesses or
3 people on your health insurance.

4 You mentioned ObamaCare.

5 Can you tell me, or do you know at this
6 point, does ObamaCare negatively impact, positively
7 impact, or really not impact your health-insurance
8 program?

9 TODD SHIMKUS: We went online yesterday, like
10 millions of others apparently did, to try to get the
11 comparisons so that we could compare the exchange
12 programs to the off-exchange programs that we have.

13 And because we weren't able to get on there,
14 and that's why I said that simple PDF.

15 We don't need a lot of data, but we do need
16 to know rates and basic provisions within those
17 plans to compare to what we -- to compare with what
18 we have.

19 So, hard to say.

20 I think, you know, clearly, people are going
21 to benefit if they qualify for the tax credits or
22 the subsidies.

23 Those individuals, those businesses, that
24 fall into those categories are going to benefit
25 because, now, there's some kind of financial

1 assistance for those folks.

2 I'm not so sure, on the other hand.

3 And I'll use the chamber as an example.

4 We have 12 full-time employees.

5 We have been able to compare our current
6 plan, which is a non-exchange plan, to what the plan
7 would cost us next year.

8 And our rates, for our employees, are going
9 up between 8 and 12 percent.

10 SENATOR GALLIVAN: Okay.

11 Thank you very much.

12 Thank you for being here.

13 We appreciate you coming.

14 TODD SHIMKUS: Sure.

15 Thanks.

16 SENATOR GALLIVAN: Next we have
17 Todd Garofano.

18 He's the president of the Saratoga and
19 Tourism Bureau [sic].

20 He has over 25 years' experience in the
21 hospitality and tourism industry.

22 Prior to joining the Convention Bureau, Todd
23 was director of global sales with the
24 Carlson Hotels Worldwide, and Hospitality Sales
25 Force, both global hospitality companies, where he

1 marketed hotels from around the world to Fortune 200
2 companies based in the northeast United States.

3 He has spent five years as regional marketing
4 manager for Amtrak, covering New York State,
5 eastern Canada, and western Ohio.

6 And Todd got his start in the hotel industry
7 as a front-desk clerk at the Albany Hilton Hotel in
8 1988.

9 And, he's been with the Saratoga Convention
10 Bureau for 3 1/2 years.

11 Todd, thank you for being here.

12 TODD GAROFANO: Thanks very much.

13 Good morning.

14 And my son, who's a political science and
15 global-studies major at Hofstra University on
16 Long Island; he, and his poli-sci buddies, they're
17 watching on the live stream.

18 Good morning, Chris.

19 Hopefully I don't mess this up.

20 [Laughter.]

21 TODD GAROFANO: Good morning, everybody.

22 Senator Marchione, thank you very much for
23 hosting this.

24 And Senator Valesky, and Gallivan, thank you
25 very much for being here and hearing us as well.

1 I am here representing the
2 Saratoga Convention and Tourism Bureau, and our
3 457 member businesses.

4 Our members are predominantly made up of
5 businesses in the hospitality and tourism sector:
6 hotels, B&Bs, inns, restaurants, bars, attractions,
7 and service providers.

8 Our membership has actually risen by about
9 15 percent over the last 3 years, based on the
10 success that Todd laid out in his testimony earlier.

11 Todd did a great job in talking about numbers
12 and stats, so I won't go back into those.

13 But, I'll talk a little bit about the
14 Convention and Tourism Bureau, and what we do, and
15 the "I Love NY" program, in general.

16 The mission of the Convention and Tourism
17 Bureau really is to market and promote
18 Saratoga County as a global destination for groups
19 of any size and any occasion.

20 So whether it be a citywide convention at our
21 new expanded city center, and Mark Baker is here
22 representing the city center; certainly sports
23 tournaments, destination weddings, motor-coach
24 groups, you name it, it's really our mission and our
25 goal to market Saratoga and have those groups choose

1 Saratoga over other destinations; make sure they
2 have an incredible experience here, and then choose
3 Saratoga again in the future.

4 As you did hear from Todd, and as you'll hear
5 from other industry representatives today,
6 businesses face many obstacles at the state level
7 that, if corrected or adjusted, could certainly lead
8 to future growth and success.

9 So, I won't be repetitive and talk about some
10 of the issues that have already been mentioned, but
11 I would like to talk about the "I Love NY" program,
12 in general.

13 And I'll back up a little bit and talk about
14 Amtrak, and we certainly support that initiative for
15 bikes on trains as well.

16 Coming from Amtrak a few years back, we did
17 have bikes on the trains when I was there.

18 We had baggage cars on the Adirondack and
19 Ethan Allen lines that allowed us to do that, both
20 for individuals and for groups.

21 It was very effective; we did many groups on
22 the trains, with bikes, throughout the state.

23 So we would certainly like to see that come
24 back and be the success that it was, again.

25 So with the "I Love NY" program, much was

1 made about the \$60 million earlier this year in
2 tourism and marketing spent by the Governor, which
3 was great.

4 We would still like to see a predictable
5 multiyear state program in tourism marketing funded,
6 you know, each year, so we would have a consistent
7 plan.

8 If you remember, 30 million of that
9 \$60 million earlier this year was from
10 "Superstorm Sandy" relief.

11 So what does that mean for next year?

12 Are we looking at sixty million, or are we
13 looking at thirty?

14 We really don't know.

15 But if we had a sustainable multiyear plan,
16 we would be able to account for that, and then the
17 local tourism organizations, like ourselves, would
18 be able to piggyback on those plans with their own
19 marketing dollars and really optimize that spend.

20 We're certainly supportive and appreciative
21 of the 3.8 million in matching funds to the tourism
22 regions, and the 2.5 that went directly to market
23 the "I Love NY" grant.

24 We'd love to see that continue, but we'd love
25 to see that grow as well, going into the future.

1 The competitive-tourism marketing fund, this
2 was a new initiative this year, announced by the
3 Governor.

4 This was a \$5 million competitive fund, where
5 tourism organizations from around the state would
6 compete for those additional dollars, much like the
7 economic-development councils -- the Regional
8 Economic Development Councils throughout the state
9 as well.

10 The issue here is that, within our industry,
11 our organizations tend to be more collaborative than
12 competitive.

13 We oftentimes will work with other regions
14 and other counties around the state on programs that
15 market multi-regions and statewide initiatives.

16 So, really, to compete for those dollars
17 takes away from our ability to do that.

18 We would much rather see that money go back
19 to "I Love NY" and allow us to work together and do
20 that.

21 I'll give you an example.

22 Earlier this year we launched a program
23 called "Meet in New York."

24 And this was an initiative launched by our
25 15-member New York State DMO organization

1 (destination marketing organization) associations.

2 It's basically made up of other CVBs and
3 tourism organizations around the state.

4 We partnered with Empire State Development to
5 create this program, and what we did, we launched an
6 initial event, where we targeted meeting planners in
7 and around the Albany and Capital Region area, to
8 come to an event so that we could showcase our
9 meetings facilities from around the state to them.

10 It really -- we launched with that, it was a
11 great success.

12 The turnout was incredible.

13 Empire State Development was a great partner
14 in that, and we certainly appreciate that.

15 That program has continued to evolve and grow
16 now in the form of a three-year plan, where we're
17 now really identifying target markets.

18 We're targeting regional and national trade
19 shows that we can partner on, developing a
20 meeting-planner database, creating collateral and
21 marketing tools, and developing sales initiatives
22 around that program, and then, really, at the end of
23 it, "what are we going to measure success by?"

24 And Gavin Landry and the folks at "I Love NY"
25 have been great.

1 We certainly want to see that partnership
2 grow, but I think we can do that, not in a
3 competitive environment, but more collaborative.

4 So we feel that \$5 million really should go
5 back into helping us create those collaborative
6 programs statewide.

7 Speaking of the Regional Economic Development
8 Councils, certainly, we understand that those are
9 the mechanism for economic-development programs for
10 the foreseeable future.

11 They're here to stay, and that's great.

12 It's taken a couple of years for tourism
13 really to take hold in those forums, but they have.

14 As a result, here in the Capital Region, we
15 do have a tourism working group now in place, and
16 it's been very effective.

17 One of the things that we found, though, in
18 doing this, is that, while tourism certainly is big
19 business for the state, it's often smaller -- it's
20 made up of smaller businesses, nonprofit
21 associations, museums, attractions, that really have
22 difficulty in the process.

23 So once a CFA is completed and, you know,
24 they're awarded money, this is reimbursable money.

25 They have to come up with the funds up front,

1 and then be reimbursed for those efforts.

2 So it's very difficult for small
3 organizations to fully understand that, and then be
4 able to participate.

5 So as a result, and other regions around the
6 state have done this -- I know the Southern Tier and
7 the North Country have done this -- they've created
8 a revolving loan fund within the CFA process,
9 really, for those purposes themselves.

10 So what we would like to see, perhaps, is a
11 statewide program where that loan fund could happen
12 and those small organizations could participate.

13 So, really, that's what I have.

14 I appreciate the opportunity to be here this
15 morning and present to you.

16 I would be happy to answer any questions.

17 SENATOR GALLIVAN: The businesses you deal
18 with, specifically the ones that have to obtain some
19 form of a liquor license from the SLA, we hear often
20 of people in that industry complaining of antiquated
21 laws, many going back to prohibition.

22 Is that your experience?

23 And if so, are you able to cite anything
24 specific that's problematic?

25 TODD GAROFANO: We've actually heard

1 recently, really within the last year or so, that
2 it's gotten better.

3 As far as the timing of the process,
4 obtaining a liquor license, and so forth, the wait
5 time has certainly been -- has been decreased, so it
6 has been somewhat easier for new businesses to
7 obtain licenses.

8 You know, I think since the, you know, laws
9 were changed with opening times, and so forth,
10 I think that's improved as well.

11 But, by and large, we have not heard, as far
12 as our members go, you know, any of those concerns.

13 SENATOR GALLIVAN: Thank you.

14 TODD GAROFANO: You're welcome.

15 SENATOR VALESKY: Not a question, just a
16 comment, Todd.

17 As I'm sure you know, Senator Little chairs
18 the Senate Tourism Committee, and was hoping to be
19 here today.

20 Something came up, that she wasn't able to
21 make it.

22 But, many of your issues touch on topics, as
23 we enter into next year's budget process --

24 TODD GAROFANO: Right.

25 SENATOR VALESKY: -- so we'll be sure to

1 speak with her on your behalf.

2 And I would certainly encourage you to submit
3 directly to her your comments here today as well,
4 because I know she is focused -- has been focusing
5 significantly on those very issues.

6 TODD GAROFANO: Absolutely. thank you.

7 SENATOR VALESKY: Thank you.

8 SENATOR MARCIONE: Thank you so much for
9 being here.

10 TODD GAROFANO: Thank you.

11 SENATOR MARCIONE: Thank you.

12 Our next speaker is, if he's -- has arrived,
13 is Charles "Chick" Wilson, owner of the
14 Willard Mountain Ski Area.

15 Chick has been a professional in the
16 ski industry for over 50 years.

17 Willard Mountain is a full-service ski area
18 located in Greenwich, New York; has a full list of
19 services, such as a great lesson program,
20 accommodations, and any accommodations for your
21 special event.

22 Welcome.

23 CHARLES "CHICK" WILSON: Thank you very much.

24 Thanks for the opportunity to be here.

25 SENATOR MARCIONE: Sure, glad to have you.

1 CHARLES "CHICK" WILSON: I knew when I walked
2 in, I would be outgunned here today, so, everybody
3 will just have to bear with me.

4 I'm not a professional speaker or a --
5 I hate --

6 SENATOR MARCIONE: But you're a businessman.

7 CHARLES "CHICK" WILSON: -- I hate to follow
8 the gentleman who was just talking.

9 He seemed to be quite polished at it.

10 SENATOR MARCIONE: We're really glad you're
11 here.

12 Thank you.

13 CHARLES "CHICK" WILSON: Well, thank you.

14 We appreciate it.

15 And I apologize, and I'm a little
16 embarrassed, that I was a little bit late.

17 SENATOR VALESKY: It's okay, not a problem.

18 CHARLES "CHICK" WILSON: No matter what you
19 do with vehicles, you still have problems.

20 Perhaps what I'd like to do, is put -- and
21 this might be a little harder for me because
22 I didn't hear everybody talk yet, but I'd like to
23 put a little bit of a spin on the smaller business.

24 I intentionally did not wear a suit today.

25 Not all of us have degrees in business

1 management.

2 Some of us are just people that are
3 passionate about what we do, and we have found
4 ourselves able to make a living.

5 Having a business is something that we're
6 very, very passionate about.

7 But, sometimes, the regulatory end of the
8 things, the paperwork, the requirements, that are
9 required to fill out are -- are extremely difficult.

10 If I could give you an example:

11 About two months ago, we had a mandatory
12 business economic survey that had to be filled out.

13

14 I apologize; I'm not sure if that was a
15 federal mandate or a state mandate, but it was
16 mandated.

17 I could not fill that out.

18 I couldn't fill it out from my financial
19 statements.

20 I had to hire my accountants to fill the
21 thing out.

22 Now, there are going to be a lot of
23 businesses in this room that have the capability of
24 doing that in-house.

25 But there's a lot of -- there's a lot of

1 things that come along that are difficult and
2 untimely for small business to fill it out.

3 Worker's comp rules and regulations and
4 postings seem to never -- it's an ever-changing
5 ball.

6 And I know things -- I understand that things
7 change as we go through time, but it's becoming
8 harder and harder to keep up with the rules and the
9 postings and the requirements for worker's comp.

10 New York State Department of Labor rules,
11 records, and postings:

12 We no longer hire 14- and 15-year-olds.

13 Maybe we shouldn't be hiring 14- and
14 15-year-olds.

15 We used to have a junior instructor program
16 that accommodated a lot of people very well;
17 families, the students, everybody was happy with it.

18 The regulations are so stringent on hiring
19 14- and 15-years-old, that I just -- I just don't do
20 it anymore.

21 16- and 17-year-olds, I do hire some.

22 I hire as few as I can.

23 Willard employs 5 people in the summer, and
24 we go to 250 in the winter.

25 So these are all part-time -- part-time

1 people; some of them, this is their first job, and
2 they're high school kids, trying to learn what it's
3 like to have a job and the responsibilities of a
4 job.

5 The hours:

6 If we are one minute over the required hour
7 time, it can be up to a \$2,000 fine.

8 I'm not here saying that I'm asking for no
9 rules, or that any business would be asking for no
10 rules, as far as child-labor laws would be
11 concerned, but perhaps a little leniency, as far as,
12 you know, if it was -- if it was a 5 percent
13 leniency factor in a 20-hour week, that would mean
14 an employee could work one hour over their time
15 slot, and there wouldn't necessarily be a fine
16 associated to it.

17 Here, again, I'm not asking that the labor
18 laws be changed necessarily, but, boy, it would be a
19 blessing.

20 When we release a student, an instructor,
21 a ski instructor, and we are at max hours, and he is
22 walking to the time clock to punch out, and he runs
23 into a buddy and talks for 5 minutes, that can be a
24 \$2,000 conversation, to me.

25 Fortunately, it has not yet, but there are

1 stories out there where it has been.

2 Sales tax filings:

3 No more paper sales-tax filings.

4 I think this becomes an issue with big
5 business versus small business.

6 My secretary, if you call her that -- she's
7 her own boss, really, I don't seem to control her --
8 prefers to do it electronically.

9 When she is not there, I am forced to do it.

10 I cannot do it electronically.

11 At my age, I guess I'm just plain
12 computer-inept.

13 But she filed this summer, she filed one day
14 late, with a corporation that owed no taxes; in
15 other words, there was no income.

16 It was for, like, June, and there was no
17 income incurred, so there was no tax due.

18 And the penalty for being one day late was
19 \$1,000.

20 I understand that it can't be an open-ended
21 thing or we'd all be late, we'd all procrastinate
22 and would do things at the last minute, but, boy,
23 they seem to be pretty -- they seem to be pretty
24 strict to us small business people; that \$1,000
25 means something to us.

1 Just a short thing, for an example: tax
2 increase on alcohol.

3 Okay?

4 Nothing stays the same.

5 Prices go up.

6 My prices have had to go up.

7 But we received a notice a couple years ago
8 that the legislators had approved a sales-tax
9 increase on wholesale alcohol sales.

10 Understandable.

11 About three weeks later, we received a
12 notice, so that --

13 I'm sorry, let me back up a little bit.

14 -- so that all the sales of wholesale liquor
15 from alcohol, from there, forward, would have this
16 increased tax associated with it.

17 A couple weeks later, we received a notice
18 that we needed to go through our entire inventories,
19 and they gave us formulas for figuring out kegs and
20 bottles and cans -- I'm sorry, bottles of beer,
21 partial-full bottles of liquor.

22 And we had to formulate all the taxes due on
23 the alcohol that we had on premises.

24 I don't know why that has bothered me so
25 much, but it really has.

1 It just-- somebody had to do that.

2 In my case, I had to do it.

3 Just seems to be a lot more things that
4 I have to contend with.

5 It's very easy, I think, for somebody to say,
6 Wow, you know, there's some more money out there.

7 But, somebody has to do the work in order to
8 get that.

9 This is -- I'm remiss to say this, but if
10 I don't, my colleagues will hang me up by my thumbs.

11 There still is a very strong feeling that it
12 is the private-sector ski areas competing with the
13 state-run-and-operated ski areas.

14 It's an extremely unfair balance there.

15 The solution to that, there's no problem with
16 anybody in the state of New York, that I know of --
17 and I sit on the board of SANY, which is "Ski Areas
18 of New York" -- I don't think anybody minds the
19 State being in the business.

20 It's just, wow, when you can take a can of
21 Pepsi to a state-run ski area and get a \$15 lift
22 ticket, when little Willard Mountain is \$30, those
23 are hard things to compete with.

24 Very hard things to compete with.

25 So, in closing, I just would like to say,

1 yes, we kind of accept the fact that paperwork is
2 required by the state and federal governments.

3 We would like to see it be a little easier, a
4 little straightforward, and I think the State could
5 be a little bit more lenient on timelines and
6 penalties.

7 Thank you again for the opportunity to speak
8 with you.

9 Because I wasn't here and heard the other
10 people, I hope I covered some areas that weren't
11 addressed before, and didn't just repeat things.

12 SENATOR MARCIONE: Oh, no, no.

13 You absolutely have covered a lot of
14 different areas, and we appreciate your testimony.

15 If you wouldn't mind answering a few
16 questions?

17 Senator, do you have a few questions?

18 SENATOR VALESKY: Not really a question, but
19 it sounds like, given the examples that you've
20 cited, whether it be with the Tax Department or the
21 Department of Labor, that a little flexibility on
22 the part of state agencies would go a long way.

23 Is that a fair statement?

24 CHARLES "CHICK" WILSON: The fines are for --
25 we're all working.

1 We're just trying to make a living.

2 And in my case, my business is condensed down
3 so tight, that we're all working very hard.

4 I appreciate the fact that, like I mentioned
5 before, we procrastinate, and if you leave it too
6 open-ended, everybody will run to the deadline and
7 pass that.

8 But, anything that could be done to show some
9 leniency as far as the fines go, the timelines.

10 You know, taxes are due on the 15th.

11 If they show up the 16th, a letter is sent
12 out, saying, Wow, you know, you missed your tax
13 deadline.

14 This cannot continue to happen, or a fine
15 will be imposed on you.

16 But, I think I've missed my tax deadline
17 twice in 20 years.

18 It's pretty severe, in my opinion.

19 SENATOR VALESKY: Thank you, Mr. Wilson.

20 Thank you for being here.

21 SENATOR GALLIVAN: Thank you for being here,
22 first of all.

23 CHARLES "CHICK" WILSON: Thank you.

24 SENATOR GALLIVAN: And if our numbers are
25 right, there's 1.5 million of you across the state.

1 CHARLES "CHICK" WILSON: That's correct.

2 SENATOR GALLIVAN: And that represents
3 60 percent of our workforce.

4 CHARLES "CHICK" WILSON: Yeah.

5 SENATOR GALLIVAN: So there's more of you
6 than, I guess, than people out there with MBAs and
7 suits, and all that.

8 And that's really -- we're trying to help
9 everybody; the majority, of course, small
10 businesses.

11 But the question I have, and you didn't
12 testify about it, and I don't know if it affected
13 you, and I don't know if I have the proper
14 recollection, if this just had to do with the
15 Great Lakes Compact, or not, but, do you have any
16 new regulations put on you regarding water
17 withdrawal, from the DEC?

18 CHARLES "CHICK" WILSON: We have to report
19 water withdrawal.

20 My water-- this only applies to
21 Willard Mountain.

22 My water is all held in static storage.

23 It's in ponds, so I'm not drawing out of a
24 lake, I'm am not drawing out of anything.

25 But, I have to report, which was quite a

1 lengthy process the first time around.

2 Now that we've had to do it, now it's just
3 fill in the blanks from the year before.

4 SENATOR GALLIVAN: So something, then, that
5 you would deem reasonable, the annual reporting?

6 CHARLES "CHICK" WILSON: I would --

7 SENATOR GALLIVAN: Or would you deem it
8 reasonable?

9 CHARLES "CHICK" WILSON: I would deem it
10 reasonable, other than, I don't like what I think
11 they're collecting the data for.

12 In other words, I don't -- I hope they're not
13 going to charge us for using water that is returned.

14 My fear is, is that they're collecting this
15 data to apply some formularization for charging for
16 water withdrawal.

17 SENATOR GALLIVAN: So is that just your fear
18 now, or is there some indication that they're doing
19 that?

20 CHARLES "CHICK" WILSON: That's mine and the
21 association's fear.

22 It is not just me.

23 It's everybody across New York State that's
24 in the ski business; fear that that's why they're
25 collecting the data.

1 I hope I'm wrong there.

2 The extra cost is -- could be prohibitive.

3 SENATOR GALLIVAN: One other question,
4 unrelated to that --

5 CHARLES "CHICK" WILSON: Sure.

6 SENATOR GALLIVAN: -- in your industry, it
7 would strike me that there would be concern about
8 liability, and liability insurance.

9 Is there anything that the State does that
10 contributes to the high cost of liability insurance
11 for your industry; if you know?

12 CHARLES "CHICK" WILSON: Actually,
13 New York State has one of the best codes to help
14 define ski areas versus the skier or snowboarder.

15 There is a very specific set of rules,
16 Article 68, I believe it is, that defines what the
17 ski area is responsible for, and what the skier is
18 responsible for.

19 And New York State is one of the best states
20 to have that.

21 So, actually, liability-wise, New York State
22 is a good state to be involved.

23 SENATOR GALLIVAN: That's good to know.

24 We don't hear that a lot.

25 [Laughter.]

1 CHARLES "CHICK" WILSON: And I'm very happy
2 to be able to say that that's the case.

3 SENATOR GALLIVAN: It's good to hear.

4 CHARLES "CHICK" WILSON: You could give us,
5 tort reform would help.

6 SENATOR GALLIVAN: All right, thank you.

7 CHARLES "CHICK" WILSON: Thank you.

8 SENATOR MARCIONE: Mr. Wilson, thank you so
9 much for being here with us.

10 And let me tell you, that if I could take my
11 jacket off and sit in my sweater, I would do that as
12 well.

13 I have just one clarification, I want to
14 understand, you talked about a tax increase on
15 alcohol, and you had to go back and do an assessment
16 of what you had on hand.

17 Did this make you go retroactive?

18 CHARLES "CHICK" WILSON: Correct.

19 SENATOR MARCIONE: You didn't get
20 notification, and then were requested to have to
21 go -- so you weren't buying new, you had a stock
22 already on hand?

23 CHARLES "CHICK" WILSON: Correct.

24 SENATOR MARCIONE: So the new rule didn't go
25 forward, it went backward --

1 CHARLES "CHICK" WILSON: Correct.

2 SENATOR MARCIONE: -- and you had to pay on
3 what you already had on hand?

4 CHARLES "CHICK" WILSON: That is correct.

5 SENATOR MARCIONE: Wow.

6 CHARLES "CHICK" WILSON: Yep.

7 SENATOR MARCIONE: Yeah, that doesn't seem
8 appropriate either, does it?

9 CHARLES "CHICK" WILSON: Well, I just -- you
10 know, your -- the funds are going to be received as
11 you move forward, from that time on.

12 SENATOR MARCIONE: I see.

13 CHARLES "CHICK" WILSON: Wow, to have to go
14 back and do an inventory, I mean, it's -- you know,
15 there are places that have their inventory
16 electronically monitored, but not a
17 Willard Mountain-type ski area.

18 That had to be physically, you know, and
19 figuring out how much is in a keg was.

20 One that you can't see into, is hard.

21 SENATOR MARCIONE: Right.

22 Thank you so much.

23 We really appreciate your being here with us
24 today and providing us your insight.

25 It was very, very important to us.

1 Thank you.

2 CHARLES "CHICK" WILSON: Thank you.

3 SENATOR GALLIVAN: Thank you.

4 CHARLES "CHICK" WILSON: Once again,

5 I apologize for being late.

6 I feel bad about that.

7 SENATOR GALLIVAN: That's okay.

8 SENATOR MARCIONE: You don't have to.

9 CHARLES "CHICK" WILSON: Thanks again.

10 SENATOR MARCIONE: Next is Christine Hoffer.

11 She's a tourism administrator for

12 Washington County Tourism Association, and

13 proprietor of the Rice Mansion Inn.

14 Within Washington County lies 837 square

15 miles of astounding beauty and a wealth of

16 attractions, both natural and manmade.

17 Bounded on the east by the Green Mountains of

18 Vermont, the north by Lakes Champlain and

19 Lake George, the west by Saratoga Springs, and the

20 south by Capital District, Washington County is

21 situated in the heart of a region that offers

22 visitors a number of intriguing ways to discover,

23 play, connect, and rejuvenate.

24 Welcome.

25 CHRISTINE HOFFER: Thank you.

1 Thank you.

2 I'm actually going to speak primarily as the
3 proprietor of the Rice Mansion Inn, but I'd like to
4 step back and make some comments on what my
5 colleagues have already talked about with you, just
6 to add my two cents with regards to a couple of the
7 initiatives they've brought up to you.

8 The first is the bikes on Amtrak.

9 It's an initiative that I've worked very,
10 very hard on, because it will benefit my county
11 probably the most with regards to additional
12 visitors.

13 Just to articulate why it is important for
14 us, is that the two bookends of the Adirondack Line
15 are New York City and Montreal, both are huge
16 cycling communities, Montreal especially.

17 For Washington County, we host the largest
18 single-day bike race in the world, which is the
19 Tour of the Battenkill, with 3,000 racers.

20 And if you do the multiplier, there's
21 probably, you know, 20,000 people that come for that
22 two-day bike race in Washington County.

23 64 percent of those riders come from
24 New York City, and about 18 to 20 percent come from
25 Montreal.

1 So from the spectators' perspective, to be
2 able to bring their bike and take the train in to
3 our complementary communities of the
4 Capital District, they would certainly do that, and
5 then ride their bikes into the Tour of the
6 Battenkill and take advantage of a new ride called
7 the "Gran Fondo."

8 Currently, now, that's impossible.

9 So they have to, in turn, rent a car, if
10 that's available to them, and if they even drive,
11 which is another issue.

12 Bella Québec is one of the largest bike-tour
13 operators in the world.

14 They do 10 tours a year, from Montreal to
15 New York City, which means they ride their bike from
16 one city to the next.

17 They currently bus them.

18 Ideally, it would be great to put them on the
19 train so that those riders have the opportunity to
20 experience our communities along the
21 Adirondack Line, and that those communities have the
22 opportunity to showcase who they are and what they
23 are to those riders.

24 And on the bus, it's a little bit more
25 difficult to do that because you're just coming

1 straight down 87.

2 About 5 years ago they did the Grand Tour,
3 and they had 5,000 cyclists that started in
4 Glens Falls, and went back to Montreal.

5 And, again, trying to capture those riders to
6 come back, and according to Bella Québec, 84 percent
7 of those riders will come back to a community that
8 they visited during the Grand Tour.

9 In addition to that, you have the Tour of the
10 Catskills, the Tour of Syracuse.

11 We just had a bike race called "CRIT," and,
12 mountain biking in Saratoga.

13 So there's lots of opportunities for
14 cyclists, from a competitive standpoint, as well as
15 a leisure standpoint.

16 And it would be terrific to have those riders
17 be able to take advantage of the roads between the
18 Capital District and Warren County, especially into
19 Washington County.

20 And our roads are perfect for that.

21 So, just to add a little bit more with
22 regards to that.

23 And then, also, with the cars, there were
24 cars on there, and I think retrofitting what is
25 available would be easier than they think.

1 I just remember, recently, we had some
2 reserve train cars that we needed to dispose of in
3 the Capital area, and it would have been great to
4 have been able to retrofit a couple of those train
5 cars to accommodate bikes on there.

6 The other thing that I recently learned, it's
7 not just bikes, but golf clubs as well.

8 I had a friend that was trying to go to
9 New York City to go to play in a golf tournament,
10 and was denied.

11 Didn't make his golf tournament, embarrassed
12 his company, embarrassed himself, because he just
13 assumed he could take his bags -- his golf bag on
14 the train.

15 He was unable to do that out of the
16 Rensselaer train station.

17 The other one is the consolidated funding
18 application, and Todd's comments with the revolving
19 loan fund.

20 Our region did submit a grant for an
21 agritourism, which will touch a collaborative thing
22 for sure, which is the growers and producers of the
23 region, restaurants, and tourism.

24 If we receive this grant, it will be very
25 difficult for us, because we are seven tourism

1 agencies that will try, and will participate in
2 this.

3 Each one of us is responsible directly to our
4 counties.

5 So for me to go to my county and say, "Gosh,
6 we got this great grant, now I need another couple
7 hundred thousand dollars," is just not going to
8 happen.

9 So what that would force us to do,
10 potentially, is get a bridge loan, or some type of a
11 loan, in order to make this grant a reality.

12 In our application, we did ask that they
13 consider to create a revolving fund for
14 organizations like ours, so that it's reimbursable.

15 So, if we get a third of it, then we spend to
16 that third, based on our timeline, and so on, so
17 that the State is not out any money, and we move
18 forward with our project.

19 So, a couple things briefly with that.

20 So switching gears, and going to the
21 Rice Mansion Inn:

22 So, I am the small kid on the block.

23 And you're going to hear from a couple of the
24 other hotels here.

25 And just to give preface, that I wasn't the

1 person that thought, Gosh, I'm want to own a bed &
2 breakfast; that's going to be super cool, and I love
3 talking to people, and all that kind of stuff.

4 Prior to moving to this region, I was the
5 director of sales and catering for a
6 Double-Tree Hotel, and, we did just over a
7 million dollars in food revenue, with 2 banquet
8 rooms, 237 guest rooms.

9 And prior to that, I worked for
10 Alaska Airlines in sales and marketing.

11 So, I know both ends of the spectrum as far
12 as travel goes.

13 And then upon moving here, I helped open the
14 Cambridge Hotel, which is now defunct, but was fully
15 entrenched in the marketplace.

16 So, in my mind, I thought I knew what I was
17 doing.

18 "In my mind."

19 So my husband, Jeff, and I purchased the
20 Rice Mansion Inn, which is a neoclassical, colonial
21 revival mansion, with an adjacent carriage house, in
22 the village of Cambridge, which is 45 minutes
23 directly east of here, on Route 29, which turns into
24 Route 372.

25 Giving you directions, because you want to

1 come and visit.

2 [Laughter.]

3 CHRISTINE HOFFER: We bought this in 2004 for
4 \$350,000.

5 The building -- the main building, which is
6 the mansion, is 7500 square feet, and just over
7 5,000 square feet of that was not habitable.

8 The carriage house, which was behind it -- or
9 is behind, is 4500 square feet, and was an operating
10 inn when we purchased it, with 8 guest rooms within
11 that.

12 After we purchased it, we renovated the
13 second and the third floor; the second floor for
14 guests, where we have four guestrooms, and then the
15 third floor for our own residence, because, as a
16 three-story wood structure, we cannot have guests on
17 the third floor, which is a code issue, which we'll
18 talk about.

19 The mansion was built by Jerome Rice, who was
20 the second largest seed producer in the
21 United States.

22 It's a very significant historic structure,
23 and Jerome's story is very, very significant to the
24 development of southern Washington County
25 specifically, with the distribution of goods,

1 employing farmers year-round.

2 So, they would grow the seeds for him in the
3 winter -- in the summertime.

4 And in the spring, and in the wintertime,
5 they'd work for him, thrashing.

6 So it allowed for Cambridge to become a
7 vibrant, beautiful community back in the day.

8 So, red tape and regulations:

9 We'll start out, day one, that we bought it,
10 the Health Department immediately came in and said
11 that the carriage house was on a well.

12 Again, remember, this is an existing
13 business.

14 All we did was buy the business and change
15 the name and new ownership.

16 We had to hook up the carriage house to
17 village water, at a cost of \$5,000 to us.

18 If we chose not to do that, the
19 Health Department could, in turn, force us to do a
20 Phase 5 environmental, which would be at a cost of
21 about \$15,000, and then they could still choose to
22 make us hook up to village water.

23 The village is not -- the village does not
24 own its own water system.

25 It's is privately held, and I believe we're

1 on our fourth owner now.

2 We pay \$130 per month for the luxury of
3 having water, and then we also pay for the water
4 itself.

5 And we need water, obviously.

6 And, that was in May of 2004.

7 In July of 2007, our building participated in
8 a grant program through Main Street, and received a
9 grant to renovate a piece of the building, that we
10 would open up and add additional retail
11 opportunities, and allow for the main building to
12 become ADA-compliant.

13 I wish I had brought the stack of paperwork
14 because, I'm not kidding you, it's this big
15 (indicating), but, we were denied our application by
16 the local code-enforcement officer, and we had to go
17 to the State for a variance.

18 We went to the State for a variance, and we
19 received that variance, but the local
20 code-enforcement officer chose not to allow for it,
21 for a variety of reasons:

22 Some personal.

23 Some is that, within the code enforcement,
24 there's a section called "Amendment K," which is
25 specific for historic preservation.

1 And that gives leniency to the
2 code-enforcement officer to allow for buildings,
3 such as mine, to be multipurpose, and to be used.

4 What it truly came down to, was that our
5 certificate of occupancy did not make it into the
6 file.

7 So rather than tell us, as individuals,
8 "You don't have a certificate of occupancy," we
9 could have produced the signed, stamped document
10 that they were missing and remedied the situation a
11 little bit earlier.

12 So long story short:

13 We asked for a new code-enforcement officer
14 that would be willing to work with us, and we did
15 receive that, and we received the ability to do what
16 we wanted to do, which was open up a new door -- it
17 was an original door -- but opening that up for
18 guests to come in through that door which had an
19 ADA-compliant ramp on it.

20 Our goal was to open a restaurant within
21 that, but we learned, that because we are a
22 three-story wood structure, we'd have to put a
23 sprinkler system throughout the entire building.

24 Remember, it's 7,500 square feet.

25 We would only use about 2,000 square feet for

1 guests to dine in.

2 This was in 2007.

3 At that time, the sprinkler-system costs
4 would have been no less than \$300,000.

5 We would not have been able to do that
6 because there was not enough water pressure in the
7 village of Cambridge -- go back to the water
8 system -- in order to allow for the sprinkler system
9 to cover the whole building with enough pressure to
10 make it work.

11 So then, in turn, we would have had to put in
12 a dry system, which would have made the cost of the
13 sprinkler system that much more expensive.

14 So we said, "Thank you for our certification
15 of occupancy."

16 We have a great little gift shop now, and
17 we're ADA-compliant within the Rice Mansion.

18 The entire village of Cambridge is on a
19 septic system, as many communities in
20 Washington County are.

21 Going back to wanting to open up a place for
22 people to eat, we came to an agreement with the
23 Health Department and with code enforcement that,
24 possibly, we could offer coffee and danish, or
25 something like that, but, we had to prove our septic

1 system.

2 The septic system was put in the 1990s by the
3 Department of -- by the DEC and the
4 Health Department, because buildings, such as the
5 building that we didn't own at the time, were
6 flowing into the alco [ph.].

7 The water system and the septic system dates
8 back to the 1800s, so this building was still on
9 that type of a system.

10 So the DEC came in in the '90s and this
11 building was put on a new septic system.

12 There are no drawings available to us.

13 They're not on file DEC.

14 They're not on file with the
15 Health Department.

16 They're not on file with the company that
17 produced and installed the septic system.

18 And, so, in order for us to serve coffee to
19 the public, we would have had to have done two
20 things:

21 One is, prove the septic system that we have,
22 which would cost us no less than \$35,000, or, put in
23 a new septic system.

24 And our desire to do this was because a
25 business in Cambridge had closed, and it was sort of

1 that gathering spot where everybody gathered in the
2 morning, had their coffee, you know, made it that
3 destination where people came together and had
4 conversations.

5 So needless to say, we didn't really have
6 eighty-five to a hundred thousand dollars to put in
7 a new septic system, because as soon as we touch our
8 septic system, we then have to comply by different
9 regulations.

10 And because we have two buildings, the
11 regulations would have required us to put in a very
12 extensive system, based on the square footage of the
13 buildings, not the flow, even though we did prove
14 our flow through a course of documentation that we
15 had to give.

16 The building was allowed to host, and is
17 allowed to host, events, so if you wanted to have a
18 wedding or reunion, or something like that, we could
19 do things like that.

20 So we applied for and received temporary beer
21 and wine licenses.

22 We were advised by the Liquor Authority that
23 we should apply for a permanent license, because we
24 were applying for so many temporary ones, and the
25 laws have changed, and now a singular Rice Mansion

1 Inn can only apply for and receive four temporary
2 beer and wine licenses annually.

3 So after two years, and a lot of intervention
4 with Senator Little and Assemblyman Tony Jordan, we
5 were told that we do not qualify for any of the
6 280-plus liquor licenses that are available in the
7 New York State, and that we should pull our
8 application because, if we did not, we would be
9 denied, and if, in the future, we ever wanted to
10 have a beer and wine or a full liquor license, that
11 would be a black mark on our record as a denial.

12 So there would be questions asked about why
13 you were denied; not really why you were denied.

14 And that is because New York State does not
15 have a liquor license that applies to my building.

16 And what that is, is we are two buildings, we
17 can't have a restaurant, so it's all these things
18 coming together to not allow for us to grow our
19 business.

20 In 2009 -- October of 2009, we had our annual
21 health-department inspection.

22 Because we do serve a full breakfast, we pay
23 an additional \$75 annually to serve eggs and meat.

24 During that inspection, the new enforcement
25 officer focused on fire separation rather than

1 sanitation.

2 So after a four-hour inspection in our
3 buildings, we had four pages of violations.

4 Those violations were all based on fire
5 separation, and their code book was dated from 1979,
6 so the Health Department was enforcing
7 fire-separation laws that were not accurate or valid
8 during that time.

9 So, another year of fighting with a state
10 department in order to just simply run our business,
11 having to have Senator Little and, again,
12 Assemblyman Tony Jordan, interface on our behalf,
13 and actually brought together a mediation between
14 the Rice Mansion Inn and the Health Department so
15 that we could move forward with our business.

16 We were issued a cease-and-desist order with
17 our building, which I ignored.

18 Then after all of that, in December of 2009,
19 the Health Department, now, no longer enforces fire
20 separation.

21 It has nothing to do with us, that was
22 already coming down the pipe, and for whatever
23 reason, the Health Department was focusing on that.

24 And there is much more with regards to that
25 in the Lake George area, with other bed & breakfasts

1 or inns, on a smaller scale.

2 There is a place in Lake George that did do
3 what the Health Department asked them to do, an
4 expensive well, over \$250,000, and then what they
5 did was -- is probably not considered compliant by
6 today's standards with what they actually did do.

7 So, again, I'm a really small business.

8 These are the agencies that I have to
9 interface with.

10 I'm fortunate, because of who I am and what
11 I do, that I know the right people to call.

12 If you were not the right person, you would
13 have closed your doors a long, long time ago.

14 So the next thing is taxes:

15 Because Washington County's rural and
16 agriculture, and we are the foothills of the
17 Adirondacks, a significant percentage of our state
18 is not-for-profit, either state land, a church, a
19 school, etc.

20 My building today, the taxes on my property
21 are \$18,000.

22 Yesterday I wrote a check for \$9,880 for my
23 school taxes.

24 I'm a family of four.

25 And with that, again, we bought the building

1 for three hundred and fifty.

2 It was assessed at two thirty-seven when we
3 bought it.

4 Today our fair-market value is \$702,000, with
5 a 64 percent equalization rate.

6 And -- excuse me.

7 Our full market value is seven-oh-two.

8 Our assessed value was four thirty-five, but
9 if do you the math, it's seven-oh-two.

10 This is concerning for a lot of different
11 reasons; and, primarily, just because, straight-up,
12 we can't afford it.

13 I mean, it's just, you know, silly that, you
14 know, a building in Cambridge, New York, pays more
15 taxes than a similar building in downtown Saratoga.

16 I do understand the reasons for that, with
17 the lack of infrastructure within Washington County,
18 and the businesses and the taxes that a community
19 would collect.

20 But, in order to keep Washington County what
21 it is, which is a beautiful aggregant economy, there
22 has to be a way to make things work for businesses,
23 like mine, to be able to survive and prosper.

24 The taxes, as it relates to our school, and
25 what's called the "combined wealth ratio," and this

1 is important for tourism, because in order for a
2 business like mine to survive, we have to be able to
3 afford it.

4 And a 9,000 or 10,000 dollar tax bill for our
5 school is just not going to work.

6 So the combined wealth ratio, which is how
7 our schools receive State aid, is a combination of
8 your property value and your personal income.

9 So the property value for the
10 Cambridge School District, in 2004, was 292 million.

11 Today it's 577 million, which is an increase
12 of 98 percent.

13 The average income for the person has gone up
14 13 percent, so the two just don't match.

15 So we're being -- our State aid is based on
16 property value, not on what the people actually make
17 within the community.

18 The student population in 2005 was
19 1,092 students.

20 It's 885 students.

21 So like many rural school districts, our
22 population is decreasing, but our taxes are
23 increasing, and our State aid is decreasing.

24 So, we're not able to offer services to our
25 children.

1 And how that impacts tourism-based
2 businesses, is people want to travel to and visit
3 places that are vibrant and exciting.

4 And Washington County is certainly vibrant
5 and it's certainly exciting, and -- but at the same
6 time, we can't grow and we can't offer the services
7 that the tourism individual is going to want.

8 They want a nice place to stay.

9 They want a place to shop.

10 They want a place to eat.

11 And when you don't have the population to run
12 those businesses, because they are going to be
13 individuals, they're not going to be box stores or
14 chain restaurants, it's impossible for them to do
15 that, because it's just cost-prohibitive, across the
16 board, in order to do that, because of the taxes
17 associated on our properties and our school taxes.

18 Senator Little and Assemblyman Jordan worked
19 together to put together a bill which is currently
20 on the floor.

21 It's Senate Bill 07616, and it's been there
22 for about a year, and it's specific to our school
23 district to address this issue.

24 It has come back to us, as the residents and
25 taxpayers, that we need to call the

1 Education Committee and hound them in order to
2 listen to this bill, to get it pushed forward and
3 voted on.

4 And I, quite honestly, think that's absurd
5 that my Senator and my Assemblyman worked hard on
6 our behalf, and that, now, as a population, we're
7 asked to call and hound the Committee Chair for
8 Education, to get this bill looked at and thought
9 about for our community, so that, not only can our
10 community grow, but our students have the
11 opportunity to continue to play sports and
12 participate in extracurricular activities.

13 In looking at small Main Street, New York
14 State, and communities, like, the village of
15 Cambridge, the village of Greenwich, the village of
16 Whitehall, the village of Salem, it's very difficult
17 for us to grow.

18 And if we can't grow and prosper, in my
19 opinion, New York State is losing its sense of
20 place.

21 We have great stories, we have great
22 buildings, and we have great people, but those are
23 all being diminished, because we don't have the
24 ability to grow, because we are not a global
25 foundries, which I agree, is very, very important to

1 our community as a whole, but it does not help us.

2 The funds that are available through grant
3 programs are not really available to for-profit
4 businesses.

5 So I received a \$12,000 New York Main Street
6 grant as a for-profit business.

7 Had I taken my building and turned it into
8 low- to moderate-income housing, then I would have
9 received more money; or, if I turned my building
10 into a not-for-profit, I would have received more
11 money.

12 So looking at the historic structures and the
13 significance and importance of them to our unique
14 and authentic story, which is New York State,
15 I honestly think that, when you look at these grant
16 programs, there needs to be opportunities for truly
17 historic buildings, such as the Rice Mansion Inn,
18 and the Cambridge Hotel, which has now been closed
19 for two years, and, for a lot of -- a lot of
20 reasons, cost of doing business, and a lot -- lots
21 of things.

22 But the taxes on that building are \$47,000,
23 and it's for sale for \$250,000, and nobody wants to
24 buy it.

25 So there's reasons for that, and a lot of it

1 is the taxes, and the issues associated with a
2 historic building.

3 The document that I provided here, and
4 there's a listing of the taxes.

5 The other thing I want to point out is that,
6 within the Main Street Washington County, the
7 village of Cambridge, and the town of White Creek,
8 while other communities, this is one building; this
9 is our whole street.

10 So we have just over 100,000 square feet of
11 commercial real estate for sale or for rent.

12 That does not include the Cambridge Hotel,
13 and that does not include the Mary McClellan
14 Hospital that closed many, many years ago.

15 And, it's difficult for us to sell those
16 buildings because of the regulations and
17 restrictions put on us by the State, through code
18 enforcement, through the Health Department, and just
19 the lack of infrastructure that we have in our small
20 rural communities in order to grow, specific to
21 septic systems and water.

22 In that Main Street, which is, you can walk
23 there in about -- walk our Main Street in about
24 10 minutes, there are 5 significant historic
25 structures that are foreclosed on and currently

1 vacant, one of them being the Cambridge Hotel.

2 And, again, the reason that they are is
3 multi-reasons, but the biggest is that it's just
4 cost-prohibitive to buy a historic structure, make
5 it code-compliant, and then try and open it as a
6 business and run it effectively.

7 Thank you.

8 SENATOR MARCIONE: Thank you.

9 Questions?

10 Comments?

11 SENATOR GALLIVAN: Wow.

12 CHRISTINE HOFFER: I was going to bring some
13 tissue, but --

14 SENATOR GALLIVAN: I do appreciate your
15 testimony, and I think we do get the picture.

16 And you described, really, why we have
17 started this venture.

18 CHRISTINE HOFFER: Thank you.

19 SENATOR GALLIVAN: But I don't have any
20 specific questions, thank you.

21 CHRISTINE HOFFER: Thank you very much for
22 taking the time to listen to us.

23 And as the tourism person for
24 Washington County, we are a collaborative group with
25 our Capital-Saratoga Region.

1 And going back, just real quickly, to the
2 consolidated funding applications, it's a
3 collaborative-competitive grant.

4 And, in my opinion, those two words should
5 not be in the same sentence.

6 We are collaborative, and we do a lot of
7 things together.

8 We don't want to compete with our other
9 counties in the state.

10 We want to work together and make
11 New York State "the" destination of choice for
12 travelers outside of and within New York.

13 Thank you.

14 SENATOR MARCIONE: Thanks so very much.

15 Thank you.

16 Our next speaker is John Lemery.

17 He's an attorney who represents -- his firm
18 represents Howe Caverns.

19 Howe Caverns is the largest show cave in the
20 northeast, and is New York's second most-visited
21 natural attraction.

22 Howe Caverns is a living limestone cave
23 curved by an underground river over the course of
24 millions of years.

25 The cave was discovered in 1842 by

1 Lester Howe, for whom it is named.

2 Welcome.

3 JOHN LEMERY: Good morning.

4 I'm tired out after that.

5 [Laughter.]

6 JOHN LEMERY: My name is John Lemery.

7 I'm here on behalf of Howe Caverns.

8 I appreciate, on behalf of the company, the
9 ability to speak to you today about issues affecting
10 that property, and issues that affect the theme-park
11 industry.

12 I have a background in the theme-park
13 industry as an economic-development lawyer
14 representing Six Flags for about 25 years, and
15 Charlie Wood, who owned the Great Escape before
16 that.

17 So, that's sort of what led me to
18 Howe Caverns.

19 My very good friend Emil Galasso asked me to
20 come over and help him.

21 He has been trying, since he and his family
22 purchased Howe Caverns in 2007, to make it more of a
23 destination place for folks than just an
24 hour-and-a-half cave tour.

25 And what we found, when we started, was that

1 people would come over to Howe Caverns and they
2 would visit the cave.

3 And, often, we'd get questions:

4 Well, what is there to do now here?

5 Is there anything else to do?

6 And there really wasn't, and we would try to
7 encourage them to go see Cooperstown, and some of
8 the other opportunities in that beautiful area.

9 So, the Galasso family decided to invest
10 their own money in trying to add some things to
11 Howe Caverns, which would, over time, create a
12 destination.

13 And they created a very large, I'll call it a
14 "jungle gym," which is a big ropes course for
15 children, and four zip lines, and a bungee-jumping
16 attraction, and a rock wall, and rebuilt the
17 building for the gem-stone mining, and that kind of
18 thing.

19 So it's gone very well and it's worked well.

20 We've had to put up with "Hurricane Irene"
21 and all of the trauma that that caused to the
22 county, but things have moved along.

23 I'm going to tell you a tale this morning
24 about some balls, some OGO balls, that we acquired
25 in New York -- or, rather, at Orlando at the

1 International Association of Amusement Park
2 Attractions, and it has to do with the Department of
3 Labor, and some things I think maybe the
4 Department of Labor should look at in terms of the
5 theme-park industry and attractions like
6 Howe Caverns.

7 The Department of Labor is charged with
8 permitting amusement-park rides and amusement-park
9 things that affect where people ride them.

10 And it's interesting, because the regulations
11 that the department works by are all over the place.

12 We acquired these -- these are big
13 12-foot-in-diameter rubber balls, inflatable balls,
14 that people get in and ride.

15 And we created -- they ride on a track much
16 like a half pipe, down a hill.

17 They're inside.

18 There's water in them, so the kids get in
19 them and they roll around inside the ball, and we
20 have about a 90-second ride at Howe Caverns.

21 There were no OGO balls in New York State
22 before we acquired this particular attraction.

23 And after we acquired it, we talked with the
24 person responsible out in Buffalo for permitting
25 this attraction.

1 She had no idea what we had, and didn't know
2 how to deal with it, so we asked her, Well, the best
3 way to look at this is to go online, look at the
4 YouTube -- look at YouTube with regard to these
5 things.

6 And she said, "I can't do that.

7 I'm not allowed to go on YouTube during the
8 day."

9 So we said, "Well, is it possible you
10 could -- tonight you could look at this, and see
11 whether or not you would be willing to permit these
12 balls to be used at Howe Caverns?"

13 In the meantime, we had acquired them, and
14 they were arriving at Howe Caverns to use.

15 So, she got back to me, and she said, "Well,
16 we might be able to permit that ride for one person.

17 We certainly are not going to look at it for
18 more than one."

19 It won't work for one person.

20 It wouldn't make economic sense.

21 And we tried to say, Well, you need to really
22 have more than one person in these attractions to
23 make them economically work.

24 And I tried to -- I tried to -- I said to
25 her, well -- she said, "Well, kids are going to be

1 bouncing around in there and they could be hurt.

2 And, you have water in there and a child
3 could drown, or a child could get asphyxiated with
4 the air in there."

5 And I said, "Well, ma'am, they're 90 seconds
6 in this ball, and there's about 20 gallons of water
7 in the bottom of the ball."

8 So she said, "Well, we might be able to look
9 at one person."

10 So I said, "Well, let me ask you a question;
11 do you manage, or do you regulate, you know, in
12 county fairs, and you have these big structures that
13 kids in get in and jump around in, you know, the big
14 balloon structures, and things?"

15 She said, "No, we don't regulate that."

16 I said, "So if a county fair, or a
17 municipality has a fair like that, you don't go in
18 and look at the attraction and monitor that?

19 Because it seems to me that children could be
20 much more susceptible to getting banged around in
21 one of those things than they would in what I'm
22 talking about."

23 "No, we don't monitor that."

24 So then I, said, "Well, at the Great Escape
25 at the hotel water park up there, they have what is

1 called a 'flow rider.' And the flow rider, the kids
2 get in the top of the flow rider, and it's a wall of
3 water, and they're on the water, on a board, and
4 they fall off that and the board could hit them in
5 the head or whatever."

6 And she said, "No, that's not in our
7 jurisdiction, either."

8 So I think one of the problems with the
9 Department of Labor is a consistency, at least to
10 me, in, you know, what are you going to regulate,
11 and what aren't you going to regulate?

12 So having said that, she said, "Well, I'll
13 have to look at this attraction and see whether it
14 would make sense or not."

15 We said, "That's fine."

16 So they sent down three representatives from
17 the Department of Labor to look at what we had done
18 after we had built the -- we built the path.

19 And we were convinced that we could get up to
20 three people approved, because it looked to us like
21 it wouldn't be a problem.

22 Well, they came down there in the fall of
23 last year, and the three fellas who were there said:

24 All right, there are four things you need to
25 do for us to approve it for three people.

1 And they gave us a list of four things that
2 we needed to do, and they said:

3 We'll be back in the spring and we'll give
4 you the permit.

5 And we said, "That's great, thank you."

6 In the meantime, we had gotten the facility
7 insured.

8 We had no trouble with our insurance company,
9 and the carrier's willingness to insure this
10 attraction.

11 So they came back in the spring.

12 And during the entire spring -- during the
13 months leading up to the spring, our operation
14 manager was attempting to get in touch with the
15 Department of Labor, to have them start to look at
16 some of more of the issues relating to the
17 OGO balls, and we couldn't get anybody on the phone.

18 The person who was responsible had some sort
19 of an injury that spring, and he wasn't there, and
20 they had nobody else who would be willing to talk to
21 us.

22 So we went through the entire period with
23 nobody responding to us from the Department of
24 Labor.

25 In the meantime, we had an event.

1 We had an event scheduled for June 8th, which
2 was going to be the opening of this attraction, and
3 we had -- we were going to have the press there and
4 our local Assembly person and State Senator, and
5 others there, to cut the ribbon, if you will, and
6 get this thing started.

7 It wasn't till -- this was on a Saturday.

8 It wasn't until Friday, after many, many
9 calls and very frustrating situations, that the
10 Department of Labor sent a person down.

11 He looked at what we had accomplished, again,
12 at their request, and at the end of it, he said,
13 "Well, I'm not going to give you your permit to
14 operate until you get me a letter from your engineer
15 telling me how much water you're putting in each
16 ball."

17 And we said, "Where's this coming from?"

18 So what was going on here, they were making
19 up rules on the fly.

20 This guy was making up rules as he went.

21 "Well, I think the parking lot needs to be
22 changed.

23 You need to put barriers up along the fence."

24 The purpose of the fence was to keep the
25 children and the people in a particular line and

1 away from the traffic.

2 And we said, "Well, what kind of a barrier?

3 What are you talking about?"

4 "Well, we don't want cars to run into the
5 fence."

6 Well, we said, "They're not going to run" --
7 "they're not" -- "the parking lot isn't anywhere
8 near the fence."

9 So, we finally got him through that, and then
10 he said, "I'm not going to approve this until we get
11 something from your engineer."

12 Our operations manager got him on the phone,
13 with our engineer who had designed much of the
14 track, and who had worked very diligently on working
15 out the weight issues with the balls, because they
16 require some weight in order to be able to roll
17 freely, which is the water weight.

18 So our engineer said:

19 Well, I -- he was doing something else, we
20 had no idea, and we were opening the next day.

21 And he said, "Well, okay."

22 Our engineer said, "I will get this over to
23 you as soon as I can.

24 How long will you be there?"

25 The person from the Department of Labor said,

1 "I'm leaving in 20 minutes.

2 I won't be back."

3 And we said, "Well, we're opening tomorrow.

4 We have to have the permit."

5 He said, "Well, I'm not going to be here.

6 I have two other stops to make."

7 We finally got the engineer's report, which
8 was fairly lengthy and detailed and appropriate for
9 an engineer.

10 He's not just going to sign some report, you
11 know, that is not thought out and responsible.

12 So he finally got there about five.

13 The representative from the Department of
14 Labor was long gone.

15 I got back to the person in Buffalo and said,
16 "You got to help us here.

17 We have a big opening tomorrow."

18 And she said, "Well, no, we can't do that.

19 He doesn't work after five, and I'm not doing
20 anything either, so there's nothing we can do about
21 it."

22 And we said, "Well, we're opening tomorrow."

23 So I said, "Well, we're opening anyway."

24 So she said, "Well, you're going to end up
25 with a \$4,000-a-day" -- "a-day-per fine if you open

1 this attraction."

2 And I said, "Well, okay, if that's what we
3 have to do, we don't have a choice.

4 We cannot not open with all these people
5 lined up to come here, and all the money that this
6 company has spent to do it, and your man doesn't
7 show up until the day before, after many, many
8 requests, and then imposes a new regulation on us
9 that we can't possibly meet, and then goes home."

10 So, we opened.

11 And shortly after that, I got a letter from
12 the Department of Labor that we were going to be
13 paying a \$4,000-a-day fine.

14 We told them that we weren't going to do
15 that.

16 We were simply not going to pay the fine, and
17 they could do what they had to do, but, it wasn't
18 happening.

19 So, that's the issue.

20 To me, the Department of Labor issues are as
21 follows, based on my experience:

22 They're -- in the spring of the year, the
23 theme-park industry, and places like Howe Caverns,
24 need to have enough people at the Department of
25 Labor, so that the department is responsible, and

1 can get out and look at these attractions and --
2 that are subject to regulation, and get them
3 approved, or note the deficiencies and come back, so
4 that the owners of these attractions can get them up
5 and operating in a timely way, because these seasons
6 are usually Memorial Day through Labor Day.

7 Maybe you get a little bit of the shoulder
8 seasons each way, but not much.

9 And, so, they need more people.

10 And they need -- if they give you a set -- if
11 the Department of Labor gives you a set of criteria
12 which you must meet to get your attraction open,
13 then that has to be it.

14 They can't come along later, after a company
15 has spent money complying, and then making
16 regulations up on the fly.

17 That's unfair, and inappropriate.

18 So, my two comments are:

19 It has to be staffed properly in the spring
20 when people are trying to get their attractions
21 open;

22 And they should have consistent rules which
23 apply to the Department of Labor, particularly in
24 this area.

25 So, hopefully you'll address that at some

1 point.

2 SENATOR MARCIONE: Okay.

3 Thank you, John.

4 JOHN LEMERY: Okay?

5 SENATOR MARCIONE: We appreciate it very
6 much.

7 SENATOR VALESKY: Thank you.

8 SENATOR MARCIONE: Thank you.

9 JOHN LEMERY: You're welcome.

10 SENATOR MARCIONE: We appreciate it.
11 We're falling a little bit behind our
12 time frame.

13 We had hoped about 15 minutes a presenter.

14 We're getting a little bit behind, but I have
15 two presenters who want to join together -- in fact
16 there are three, and that will be:

17 Michael Hoffman, who is the president of
18 Turf Hotels;

19 Also, Jan Chesterton, who is the president of
20 the New York State Hospitality Association;

21 And, Cynthia Hollowood, who is the general
22 manager of the Holiday Inn in Saratoga Springs.

23 So, welcome to all of you.

24 JAN CHESTERTON: Great, thank you, and good
25 morning.

1 I want to start by thanking Senators Valesky,
2 Gallivan, and Marchione for this opportunity to
3 discuss rules and regulations and mandates that
4 affect the tourism industry in New York State.

5 As mentioned, I'm Jan Chesterton, president
6 of the New York State Hospitality and Tourism
7 Association, called "NYSH&TA," and I also serve as
8 the administrator of the Tourism Industry Coalition
9 of New York State.

10 With me today I have, Cindy Hollowood,
11 currently, general manager of the Holiday Inn in
12 Saratoga Springs, and currently serves as the
13 chairman of the board of our association;

14 And, also, Michael Hoffman,
15 hotel owner/operator and president of Turf Hotels in
16 Latham.

17 The New York State Hospitality and Tourism
18 Association is the oldest association -- lodging
19 association in the country, founded right here in
20 Saratoga Springs in 1887.

21 We have nearly 1400 members, representing
22 hotels, motels, bed & breakfasts, and currently
23 represent about 70 percent of the room inventory in
24 New York State.

25 As you've heard from some of our members, and

1 also members of the tourism and industry
2 professionals, this industry faces numerous
3 regulations and mandates that are real obstacles to
4 doing business in New York.

5 I'll touch on just a few of the broad
6 concerns, and then defer to the real operators to
7 speak more specifically based on their day-to-day
8 experiences.

9 First of all, Wage Theft Prevention
10 Notification:

11 NYSH&TA applauds the Senate for its annual
12 passage of lifting the notification requirements
13 related to the Wage Theft Protection Act.

14 The notification requirement is tedious,
15 time-consuming, and a waste of business resources,
16 and provides nothing to a company's ability to run a
17 successful business.

18 We feel that it's redundant and unnecessary,
19 and by eliminating it, you are doing nothing to
20 jeopardize the employees' production.

21 We will continue to support the Senate, as
22 well as urge the Assembly to act, to make businesses
23 become more efficient in their allocations of their
24 rare resources.

25 Communication with various state agencies,

1 which you've heard prior to this, representing a
2 wide range of members within the hospitality and
3 tourism industry, our businesses come in contact
4 with many different state agencies.

5 This industry, like most in the state, are
6 responsible to report, request, and apply for a
7 variety of things: permits, safety measures,
8 inspections, licenses, tax information, and so on.

9 Not all state agencies are user-friendly and
10 updated with their access with their online forms,
11 and, oftentimes, it causes confusion and delays, and
12 sometimes it just makes it plain harder.

13 For an example:

14 Tax and Finance quarterly sales-tax reports
15 are often changed, and then, many times, the new
16 systems don't function accurately, and then it
17 becomes difficult to get assistance from the
18 department, either by phone or online, just to find
19 a workaround so that the reporting can be done.

20 Many times, the solution is to send their
21 schedule by regular mail, to back up what they've
22 already done online, which, again, is not very
23 efficient.

24 The trouble -- this double work could be
25 avoided and is totally unnecessary.

1 If there was a system in place for handling
2 these questions, and was made available -- the
3 answers and the operation of these new systems were
4 made available in advance to the businesses that are
5 required to report.

6 Another example that has been difficult for
7 our businesses, is the ability to advertise their
8 businesses in areas of high regulations, such as the
9 Adirondacks and Long Island.

10 While we take great pride in promoting and
11 marketing the state and its attractions, it's often
12 impossible to obtain signage to advertise along our
13 main highways due to the strict regulations to
14 obtain the necessary permissions, particularly
15 Interstate 87 North and Long Island.

16 And, lastly, a comment on business taxes and
17 associated costs:

18 As an industry, we are appreciative of the
19 recent efforts by the State to make New York open
20 for business; however, New York State business tax
21 levels are still the most difficult and highest and
22 uncompetitive with other states.

23 Worker's compensation and
24 unemployment-insurance costs are a major concern
25 with our industry, and we pledge, as an association,

1 to work with the State to reform these programs,
2 some that are already under way.

3 I will echo the gentleman that spoke on
4 behalf of Howe Caverns, and the need for -- we also
5 represent the amusement-park and attraction industry
6 in New York as well, and Howe Caverns is our member.

7 And we echo the need for increased staffing
8 prior to the summer season.

9 Again, New York State is very much a
10 summer-tourism region, not to speak poorly of the
11 ski seasons, but, ramping up that State help from
12 the Department of Labor and their staffing is --
13 certainly would be beneficial.

14 So while this is not an exhaustive list of
15 our regulatory burdens and mandates that the
16 industry faces, it is a snapshot and a pulse of our
17 membership on the areas that they need help with.

18 As you move forward to finding ways to lift
19 restrictions, I offer our assistance, our
20 association and our members, to help provide
21 additional examples for specific issues that are
22 facing the industry.

23 So thank you once again for the invitation,
24 and I'd like to offer Cindy Hollowood, our chairman
25 of the board, for more specific comments, and then

1 Mr. Hoffman as well.

2 SENATOR MARCIONE: Thank you.

3 CYNTHIA HOLLOWOOD: Thank you.

4 Some of the comments that I'm going to share
5 with you today come from consumers, guests of my
6 hotel, my associates around the state, particularly
7 Upstate New York, and what we're seeing, as far as
8 the transient tourism environment, and concerns we
9 have, you know, certainly through our state
10 association, but also as operators.

11 The taxes themselves on gasoline, many times,
12 across the summer, over the front desk, I've heard
13 out-of-state people comment about the price of our
14 gas as compared to our neighboring states, because
15 of the additional taxes that we have on a per-gallon
16 basis.

17 As a hotel that is continually evolving and
18 trying to update to stay competitive with all the
19 growth we have coming into our county, the last time
20 that I did an addition on the hotel, and I'm
21 preparing to do another one of commercial space,
22 several times, because we are in a very restrictive
23 historic district, we need building-code
24 interpretations, and those interpretations from the
25 Department of State can be -- can take a long period

1 of time.

2 As you know, there's only certain times of
3 year that we're able to do building in
4 Upstate New York, because of the weather, and
5 because of my busy season.

6 And sometimes, if we're not timely, we will
7 miss a whole building cycle because we can't get
8 that interpretation.

9 I've heard -- I have not had a personal
10 experience in recent years.

11 Going back a number of years, it took 8 to 12
12 weeks.

13 And I've heard others around the state tell
14 me that it takes a minimum of 4 to 8 weeks.

15 Tourism themselves, I know you've heard
16 before about the funding stream, and the revolving
17 loan fund.

18 We seem -- our tourism, while there is some
19 attention being paid to it now, continues to be
20 behind the eight ball.

21 Promotions are always late coming,
22 publications are always late coming.

23 The summer programming, you know, didn't hit
24 till the middle of June when travel plans were
25 already made.

1 Just not -- not this past weekend, but the
2 weekend before, I spent 27 hours in the car over the
3 course of 3 days.

4 I visited six states, and I went in
5 two different directions, south first, and then over
6 to Rhode Island.

7 And, the only state that I found
8 rest-areas/stops closed was our great state of
9 New York.

10 Every other state had every rest area
11 closed [sic], and they were all busy.

12 I know that, back a year ago or so, after a
13 fight, our two gateway rest areas were open, and
14 this followed, at one point they were closed.

15 They said it cost \$800,000 to keep those two,
16 the one in the Binghamton area and the one in North
17 Country.

18 So those -- I did notice when I traveled this
19 past time, that the Binghamton-area one was open,
20 but up along the 88 Corridor and I-90, in rural
21 Rensselaer County, that one remains closed.

22 And it's not very welcoming for people coming
23 in from another state, that they don't have a
24 comfort station.

25 The New York State Department of

1 Transportation, the exit signs, the directional
2 signs that advertise gas, attractions, and lodging,
3 they're very poorly maintained and they are not
4 updated.

5 There's often closed businesses listed on
6 them.

7 A lot of them need to be replaced or
8 repainted.

9 And, also, the Department of Transportation
10 does not bill properly.

11 Sometimes I'll get three years worth of bills
12 for them, because they forgot to bill the first
13 two years.

14 And, certainly, as a revenue stream that you
15 should be taking advantage of.

16 One other item relevant to our region:

17 The NYRA capital projects, which are supposed
18 to be the monies that are -- that our racing is
19 going to benefit from, the distribution of the VLT
20 funding.

21 Today's consumer, when they go to the
22 historic Saratoga Race Course looking -- look for
23 things that they see in other venues, there's an
24 extensive 27-item capital project that they hope to
25 do at historic Saratoga Race Course as a result of

1 the funding from the VLTs.

2 I understand all that money is now put on
3 hold.

4 I don't know the reasoning for it, but,
5 certainly, today's fans are looking for things like
6 luxury boxes and sports bars.

7 And those are part of the things that they
8 hope to replace, certainly, in a very planned and
9 historic nature.

10 But because the funding is put on hold, we
11 understand there will be no capital improvements of
12 such, that will generate more revenue, not just for
13 our community and for racing, but also for the state
14 of New York.

15 That it's put on hold for 2014, and I really
16 don't know what the reason for that is.

17 And, certainly, funding for the arts is very
18 important to our community, and they need to stay
19 competitive.

20 Our Saratoga Performing Arts Center and
21 Proctor's Theaters are finding that, with other
22 options out there, that they're not getting the
23 funding and the support that they need from the
24 State of New York.

25 Thank you.

1 SENATOR MARCIONE: Thanks, Cindy.

2 Mike.

3 MICHAEL HOFFMAN: Thank you, Senator, for
4 giving me this opportunity.

5 And, you know, my name is Mike Hoffman.
6 I live in Saratoga Springs, but we have two hotels
7 in the -- one in the town of Colonie, one in the
8 town of Guilderland, one here in Saratoga Springs,
9 and one in Lake George.

10 So, you know, we build hotels within 30 miles
11 of where we live.

12 We're a hands-on operator, and we just don't
13 get too far away, because we're just not one of
14 those companies.

15 And I've got a lot of friends that have
16 hotels in nine or ten different states, but, that's
17 just not the way we do.

18 We try to build really fine hotels, we try
19 and build high quality, and it's worked pretty good
20 for us.

21 But, I thought before I got into some of the
22 things, I'd answer some of the -- you know, there's
23 been some tremendous presentations going on, and
24 they're all right.

25 I mean, the problem is, they're all right.

1 Liquor license, I do think it's getting
2 better.

3 You know, I have a project in Colonie, that
4 we expect to get a building permit this week or next
5 week.

6 I've been working on it for 18 months.

7 So, soon, I will be trying to get a liquor
8 license.

9 But in my life, I've had eight liquor
10 licenses, and I will tell you, every time I've had
11 to go get fingerprinted.

12 I can't understand why I got to have a new
13 fingerprint sheet every time I do it.

14 And then they always ask you where the
15 money's coming from.

16 I mean, I think it's back to the mob days.

17 They think I'm into prostitution or drugs or
18 something else, but it's -- you know, we've earned
19 it.

20 We've worked hard, and we've earned it as a
21 family.

22 I have read that it's gotten better, but
23 I will be able to answer pretty accurately down the
24 road.

25 The SEQRA form, it's gotten crazy.

1 It's not -- our -- we've spent on our
2 3.97 acre in Colonie, \$111,000 so far in
3 engineering.

4 It's really filling out that SEQRA form.

5 And it's -- you know, they're in
6 hard-to-develop sites, and I'm not complaining, but
7 it's just too much.

8 And, you know, I sit back and say that I'm a
9 hotel person.

10 That's really what I am.

11 And -- but I'm sitting here with Jan, I said,
12 "I used to be in the hotel business.

13 Now I go to meetings."

14 And we go to meetings, and then we develop a
15 project.

16 You know, we, generally, my little company,
17 Turf Hotels, does a hotel project about every
18 five years.

19 So, I'm not a developer.

20 So, I think if you're a developer, you just
21 get caught -- you know, you just go through the
22 process.

23 You wake up in the morning, you're a
24 developer and you do it full-time.

25 I'm one of those guys that jumps into the

1 development business every five years, so I see it a
2 little differently.

3 And I can tell you, all it's done is, it
4 takes longer and it costs more, and that is just as
5 a fact as long as the day is long.

6 I was -- now, before I get into my comments
7 here, I got a few more.

8 You know, I heard Todd say, you know -- you
9 know, what we really need is "I Love NY" to have a
10 consistent program so you know what kind of dollars
11 you are going to have.

12 In my 35 or 38 years of doing this, we've had
13 \$22-million-dollar "I Love New York" budgets, we've
14 had \$3-million-dollar "I Love NY" budgets.

15 You never know what it is until you get it.

16 And, can you imagine, if you were trying to
17 run a business and you didn't have any idea what
18 your funding was going to be next year?

19 Can you imagine, if it's two months before
20 the end of the year, and you say, I wonder if
21 I ought to try and do this, or if they're going to
22 slash my funding and I'll be hanging out there?

23 I mean, you can't keep great talent, you
24 can't retain talent, you can't get talent; and, yet,
25 when tragic, you know, 911 happened, one of the

1 great things New York State did, is it got
2 \$40 million ponied together from the Port Authority
3 and "I Love NY," and they advertised and said
4 New York is the place to come to.

5 You know, we've had this horrible thing, but
6 come to New York.

7 And New York recovered from 911 quicker than
8 anybody else.

9 So when there was real trouble, they leaned
10 on advertising and talent, and then, all of a
11 sudden, that kind of came back and the money goes
12 away.

13 It's -- you know, I just really don't
14 understand why we can't have a -- somehow, a
15 consistent budget to advertise "I Love NY," and --
16 because everybody knows it works.

17 We know that tourism is the fifth largest
18 business in the state.

19 We know there's 700,000-plus people that work
20 in the tourism business; yet, we -- you know, it's
21 like 5 or 6 million bucks this year.

22 I mean, not that 5 or 6 million bucks isn't a
23 lot of money, but to advertise New York around the
24 world, it's nothing.

25 Nothing.

1 Anyway, one of my pet peeves is, you know,
2 when I go to planning boards and I go to meetings,
3 is I say, "I want to build a hotel."

4 And they say: Oh, you're going to hire those
5 kind of people.

6 You know, because the hotel business,
7 generally, is a low-pay industry.

8 And there's a lot of truth in that.

9 You know, we don't pay minimum wage, but we
10 pay a little over minimum wage.

11 And as minimum wage goes up, our wages go up
12 a little bit; and that's all right.

13 But I want you to understand our business a
14 little bit.

15 In a typical hotel that we run, we have 35 or
16 40 employees.

17 There will be a general manager making
18 somewhere between seventy-five and a
19 hundred thousand dollars.

20 Not a bad wage.

21 There will be somebody running the front
22 desk.

23 You know, a front-desk manager.

24 There will be a housekeeper, a housekeeping
25 manager, a sales manager, a maintenance manager; and

1 they're all making forty, plus or minus, thousand
2 dollars.

3 And then the rest of the staff often is not
4 overly paid.

5 I'll be the first to tell you.

6 I wish could I pay them more, but if we're
7 the only ones that change, all we'll do is put
8 ourselves out of business.

9 But my point is, we often take people that
10 have no skills.

11 They're on social services.

12 To be a success in the hotel business, you
13 need to work hard and you need to be honest.

14 If you come in with a personality and be
15 honest, you got a future.

16 My GM at our Homewood Suites on Wolf Road has
17 worked for me for 32 or '3 years.

18 I hired him as a banquet bus boy.

19 He makes \$100,000 a year.

20 Our Homewood is ranked Number 6 in the
21 country, out of three hundred and twenty-five or
22 thirty.

23 I can go on and on about stories about this.

24 We had a dishwasher that we made our
25 purchasing agent.

1 He was honest.
2 He worked hard.
3 He kept the dishwasher clean.
4 He wanted to advance.
5 And we had a purchasing position.
6 And as we got a few more hotels, when he
7 left, he was doing the purchasing for five hotels.
8 I remember he was from Turkey.
9 He said to me, "I don't think I can do it.
10 My English isn't too good."
11 And I said, "Canon [ph.], they will learn
12 Turkish."
13 Believe me when I tell you, it worked.
14 He bought, he fought for good prices.
15 We paid our bills.
16 He developed.
17 But there's all kinds of them.
18 We've all got those stories.
19 They just go on and on and on, because, while
20 it's nice to be educated, and it's nice to go to
21 hotel school, and I watch these young kids come out
22 and get -- that have that luxury of that education,
23 if you want to work hard in our business, and you
24 don't look at your watch 100 percent and say, "It's
25 5:00, I got to go home," there's a great future in

1 it.

2 I mean for me, it's been a great business.

3 I didn't go to hotel school, but I've sure
4 worked hard.

5 And I think, as the minimum wage goes up, and
6 I'm not really even advocating this, I'm just
7 telling you a story, that we used to hire a bunch of
8 young kids.

9 And I was thinking about Willard Mountain.

10 And if you're in -- you know, that's exactly
11 right, if you're an hour late -- or not an hour
12 late, but a minute late, you can get a
13 couple-thousand-dollar fine.

14 But that's what they do to you.

15 The minute there's a mistake, I mean, you
16 know, we're in this business, and sometimes it gets
17 busy, and, you know, you say, Well, geez, can you
18 stay another 20 minutes?

19 Well, now you -- you know you're giving poor
20 service, because you're sending your staff home so
21 you can have -- so you don't get a \$2,000 fine.

22 And it's a hard -- all these businesses are
23 hard.

24 You don't have to make it.

25 Many of them don't.

1 And we work really hard to try and, you know,
2 to take care of and to run our businesses.

3 And I think, honestly -- general comment,
4 probably get me in trouble -- but, the work ethic
5 isn't as good as it used to be.

6 When you've been around as long as -- we used
7 to hire people and everybody worked hard.

8 Today it's all different.

9 So -- and I think these young kids, often
10 their first job they get is when they come out of
11 college.

12 They have no clue on how to work.

13 They don't know what the bosses expect.

14 They don't know how to dress.

15 They don't know any of that stuff.

16 And to be honest with you, our industry does
17 a lot of that.

18 And, one by one, that's kind of going away,
19 and it's a shame.

20 And, you know, people should have pride in
21 what they do.

22 Anyway, I, uhm -- it angers me when I hear
23 we're creating "those jobs," because I think the
24 jobs we create are great, and we got a great team of
25 employees, and they work really hard together and we

1 cover the business; it's 24 hours a day, it's 7 days
2 a week, and, it works pretty well.

3 I'd also want to talk a second just about the
4 Department of Labor.

5 You know, about -- in 2010, the Department of
6 Labor came out with a new hospitality wage order,
7 and that took a couple years to get.

8 I mean, in the -- Dan Murphy, Jan's
9 predecessor, was on the group that worked on that
10 wage order.

11 And I don't exactly remember, but there was
12 two union representatives from New York City.

13 There was a group of six that were trying to
14 put this thing together.

15 There were two union reps out of
16 New York City.

17 There were two people from the Department of
18 Labor -- New York State Department of Labor.

19 There was Dan Murphy, and I don't remember
20 who the --

21 JAN CHESTERTON: And somebody from the
22 Restaurant Association.

23 MICHAEL HOFFMAN: -- and somebody from the
24 Restaurant Association.

25 And they worked hard, and they got it

1 together, and they came out with the wage order,
2 which was different.

3 And then we had seminars, and you would go to
4 seminars and you would learn how to -- you know,
5 with the new changes, so you would be in compliance
6 with the law.

7 And some people, me being one, got an audit
8 from the federal Department of Labor.

9 It came out of the blue.

10 And to be honest, there hadn't been many
11 audits in the area from the federal Department of
12 Labor.

13 So when they came in, they looked at all our
14 stuff, and they said, "You're not doing this right."

15 And I said, "Oh, yes, we are."

16 And, I mean, my control was really very good
17 at this, and I said, "No, no, we are.

18 You can see it right here, this is the law.

19 This is the new wage order.

20 We're exactly right."

21 \$14,000 later, we were wrong.

22 So I went to an attorney and said, "This kind
23 of stinks."

24 And the \$14,000, by the way, went to
25 employees.

1 It wasn't a fine; it went to employees.

2 And the federal Department of Labor had a
3 different reaction -- or, an interpretation than the
4 way New York State wage order.

5 So, great, let the employees have it if we're
6 wrong, but never do we do something wrong on
7 purpose.

8 And if we were wrong -- but -- so, anyway,
9 I have this audit from the federal Department of
10 Labor.

11 And, so, I talked to an attorney about it,
12 and he said, "Yeah, I think I can win for you, but
13 it's going to cost you more to win than 14 grand."

14 So you just pay it, and you move on.

15 And, you know, that's wrong.

16 You know, I run my whole life about fairness,
17 and those with the power aren't always fair.

18 And I listen to these stories that I hear out
19 there, and I just know they're true.

20 I mean, the sad part is, they're true.

21 One other incident that I'll just tell you
22 about that drives me crazy.

23 Pools in New York State, if -- you know, it's
24 almost impossible to have lifeguards.

25 Most every hotel in New York State has a

1 pool -- or many.

2 I don't want to say most all.

3 The way you get around it, is you have a pool
4 that's not 5-feet deep.

5 If your pool is under 5-feet deep, there's no
6 lifeguard required.

7 You have a sign that says "No lifeguard, swim
8 at your own risk."

9 When you check in, we say "There's no
10 lifeguard."

11 We say, "If you're gonna have a child in
12 there, they got to be accompanied by an adult."

13 I mean, there's all kinds of rules.

14 When you check in, on your keep tag in the
15 pocket are the rules.

16 And -- but, recently, and this kills me, by
17 the way, I have a hotel where there was a group of
18 people, you know, several adults in there, talking,
19 while their kids were swimming.

20 One of them was a 9-year-old boy that didn't
21 know how to swim.

22 We didn't know that, but the parents did.

23 And the kid went underwater.

24 And when we figured out there was trouble, we
25 yanked him out, we called 911.

1 The Colonie police were right on the street,
2 they were there in seconds.

3 Our maintenance person knew CPR, so we gave
4 him CPR.

5 When we did all the right stuff, water came
6 out of the nostrils.

7 We felt pretty good about ourselves thinking
8 that we saved a life.

9 And -- and, uhm -- so, anyway, the -- and
10 then the emergency med people came, the cops came;
11 they took over the CPR, and they took the kid to the
12 hospital.

13 And that was on a Saturday night, and he died
14 six days later.

15 And -- so what you get is, you know -- so
16 there's been a report from the police department:
17 absolutely no negligence on the hotel.

18 There's been a report from the
19 Health Department: no negligence on the hotel.

20 And believe me, when we have anything
21 horrific -- and we think this is the best hotel in
22 Albany County, by the way -- but, when anything
23 happens in our hotels, we have a meeting, and we sit
24 back with our team and say:

25 What could we do better?"

1 How can this happen?

2 What do we gotta do?

3 And the only answer we can come up with is to
4 close the pools, because we didn't do anything
5 wrong.

6 We checked the family in.

7 It's a -- just -- it's what you call a
8 horrible, tragic accident.

9 I mean, it's as bad as it gets.

10 It makes me -- I could throw up when I think
11 about this.

12 It's the worst thing that could ever happen
13 to us, and I understand what it's about when you
14 lose a child, so, I, uh -- I understand that very
15 much.

16 And so what do we get from the
17 Health Department?

18 A fine, because we didn't notify them in
19 24 hours.

20 And I went to the hearing and protested it.

21 I said, you know, I don't really care about
22 the thousand dollars.

23 I care that we're being -- that's not the
24 answer.

25 It just angers me.

1 It's pouring salt on a wound.

2 I said, "To be honest with you, it was in the
3 front page of the newspaper the next morning, so you
4 really were notified."

5 And they said, "You're right, I saw it in the
6 newspaper."

7 So, you know, to be honest with you, our
8 hotels know you're supposed to notify.

9 If you have an incident, you're supposed to
10 notify the Health Department in 24 hours.

11 My problem is, my GM was on vacation.

12 My assistant GM, who's been with us for
13 seven years, and a terrific person, just, she didn't
14 know.

15 Our fault we didn't train.

16 I'll take the blame.

17 But that's what they do to do you; the minute
18 you make a mistake, they fine you.

19 You're never -- you're never, "It's okay."

20 It's never, "Next time."

21 It's the minute you do anything, out comes
22 the fine, and you pay your fine.

23 I, mean, I protested it.

24 I'm not sure where it's gonna go.

25 I think I had their attention.

1 I don't know what they're going to do.

2 They were gonna go back and talk to their
3 boss.

4 But if I could bring this young kid back, I'd
5 pay 100 times that.

6 But it doesn't solve nothing.

7 It just makes me angry with New York State.

8 And -- anyway, I, uh -- our industry, you
9 know, it's a great industry, but we take logical
10 business chances.

11 We put our thoughts together, we put our hard
12 work together, we put our money in, and then you
13 work your butt off, and you hope it works.

14 And there's no guarantees.

15 And all of these things that I've heard that
16 take people's time away from their business.

17 Inventorying; figuring out how much beer is
18 in a half a keg, and in a keg, and that's like the
19 stupidest thing I ever heard.

20 And we waste so much of our time doing stuff
21 that just takes away our day, and takes away what we
22 do to try and make a living.

23 And in some cases, people fail over this
24 nonsense, and it's a shame.

25 So I applaud you for trying to get rid of it,

1 or some of this nonsense.

2 There's a lot out there.

3 A thousand regulations does seem like a lot
4 to get rid of, but now that I've heard you, maybe
5 it's not just -- but it's just a start.

6 And, you know, honestly, in whatever and
7 which way we can help, we would be proud to.

8 SENATOR MARCIONE: Thank you, Mike.

9 Thank you Jan and Cynthia.

10 We appreciate it.

11 We do have some questions.

12 Senator.

13 SENATOR GALLIVAN: Yeah, thank you all for
14 your testimony.

15 Mr. Hoffman, going back to the hospitality
16 wage order, there are a couple of questions.

17 First, the federal audit, did the federal
18 government say -- I mean, was New York State's
19 regulation in conflict with the federal regulation?

20 MICHAEL HOFFMAN: Yes.

21 And then, you know, you always go to the
22 strictest, if there's conflicting municipalities or
23 codes or -- you always go to the strictest rule.

24 And, you know, to be honest, in our case, and
25 I dare say in most every case here, that I'd never

1 had a federal audit.

2 And so when they came, and then they pulled
3 out stuff -- we went to the -- you know, I have --
4 we went to the -- as a matter of fact, I said to
5 you, you know, I was chairman of NYSH&TA at the time
6 we were doing some of these seminars, and because it
7 just came out, and we had New York Department of
8 Labor up on stage, on the panel, so we could -- and
9 once this happened, we started -- we were trying to
10 get the department, and we needed the federal
11 Department of Labor to also be there, because you'd
12 get them into some conflicting things.

13 I wrote a question two years ago -- and I say
14 this:

15 You can't argue too much with the
16 Department of Labor.

17 I mean, they come back at you.

18 So I wrote some questions, and went out
19 there, and I chased them a little bit, and then
20 I finally just said, "Mike, leave it alone."

21 All I'm gonna do is get myself in trouble,
22 and --

23 SENATOR GALLIVAN: Does this have to do with
24 the service charge, gratuity; that language?

25 MICHAEL HOFFMAN: It has to do with

1 discretionary and non-discretionary wages.

2 It's an offshoot of what you're talking
3 about, service charge and gratuity.

4 There was no issue there.

5 The -- it just became an offshoot of that,
6 and I can really get my controller, I mean, before
7 I say something incorrectly.

8 It was an offshoot of that.

9 SENATOR GALLIVAN: I was more interested in,
10 if the state's new wage order being in conflict with
11 federal.

12 MICHAEL HOFFMAN: Still is.

13 I mean, to be honest, I read -- you know,
14 I'll be reading the newspapers, and I'll see
15 somewheres in the newspaper, that some restaurant or
16 some hotels are having the same issue that we did.

17 We changed to be in compliance with the
18 Department of Labor, which we think -- and it has to
19 do with overtime, which we think gives us a
20 competitive disadvantage in this arena.

21 But to be honest, if you don't have
22 overtime -- all of my problems kicked in, if you had
23 overtime, and how overtime was calculated.

24 And the easy way to prevent that is not to
25 have overtime.

1 We have a hotel in Lake George, New York.

2 You know, our season is the summer season.

3 Come August 15th, the college kids all go
4 back to school, and sometimes we have overtime.

5 And to be honest, the employees love the
6 overtime.

7 And I'm kind of the one who says, "Make hay
8 when the sun shines."

9 So, you know, the opportunity's not always
10 there, and, certainly, in Lake George, the door
11 closes.

12 But it's how to calculate the wage, and the
13 New York State and federal are conflicting.

14 SENATOR GALLIVAN: So then you talked about,
15 you learned about the change in the wage order from
16 seminars that the state association put on.

17 If you were not part of the state
18 association, how would you find out about the
19 change?

20 Or would you find out about the change?

21 MICHAEL HOFFMAN: Well, I mean, that's really
22 the problem, because you go to these New York State
23 Hospitality and Tourism, and 70 percent of the
24 hotels in New York State, we got are our members, or
25 75 percent.

1 And -- but if you're not, you know, you're
2 always preaching to the choir.

3 Those that are not part of the organization
4 or association, or those that didn't go to the
5 seminar, it's almost impossible to find out.

6 And that's the problem for small business.

7 You know, we're not big business, but we're
8 bigger than some of the small business.

9 And, small business, you're doing it all
10 yourself.

11 You can't leave your store, you can't leave
12 your hotel, you got a business to run.

13 SENATOR GALLIVAN: So if the State makes a
14 change on anything, say you have to have a license
15 for something, then the State knows that you're
16 operating in that business, and say the regulatory
17 agency changes some regulation, do they notify the
18 licensees of the change, or are you left to find out
19 for yourself?

20 CYNTHIA HOLLOWOOD: I think --

21 SENATOR GALLIVAN: No, again, if you're not
22 part of the association --

23 CYNTHIA HOLLOWOOD: -- they do send you
24 notice --

25 SENATOR GALLIVAN: -- I understand the

1 benefit of the association.

2 CYNTHIA HOLLOWOOD: -- they do send you
3 notice.

4 If you -- like, if you have a liquor-license
5 change, or whatever, there used to be a formal
6 written notification.

7 There may be something similar -- you know,
8 smaller now, or just an e-mail, say, you know, Click
9 on here, because, you know, there's regulatory --

10 And then there's proposed changes that we
11 usually get notification of, and then they get
12 delayed --

13 SENATOR GALLIVAN: As a business --

14 CYNTHIA HOLLOWOOD: As a business.

15 SENATOR GALLIVAN: -- or as part of the
16 association?

17 CYNTHIA HOLLOWOOD: As part a business.

18 I'm talking about, as an individual business.

19 So, I would say, yes, that that does happen,
20 but I think it's happening in different forms.

21 It used to be just a flyer across your desk.

22 Now it's probably, in many instances,
23 electronic form.

24 I can't think of one, off the top of my head,
25 but I would say, yes, because, before -- I mean --

1 SENATOR GALLIVAN: Of course, if you weren't
2 notified, you wouldn't know.

3 CYNTHIA HOLLOWOOD: Right, right.

4 SENATOR GALLIVAN: Okay.

5 CYNTHIA HOLLOWOOD: I've run the hotel for
6 32 years, and I've been involved with the
7 association for about 15, so, prior to that 10,
8 I'm -- we've always been members.

9 But, sometimes the information does comes
10 from the State.

11 As a matter of fact, my husband runs a
12 not-for-profit, and they do fulfillment of
13 notifications like that.

14 Mailing fulfillments, you know, out to the
15 general public, and to --

16 SENATOR GALLIVAN: All right, so if any of
17 you can recall, going back to your individual
18 businesses or your member businesses, not what the
19 association did; so, the wage-order change, that had
20 to do with the language on the contracts regarding
21 the service charge -- what's a service charge and
22 what's a gratuity, were you notified -- do you
23 recall being notified of that, as an individual
24 business --

25 CYNTHIA HOLLOWOOD: There were lots of

1 notifications through the Restaurant Association,
2 through Hospitality and Tourism, through our chamber
3 of commerce.

4 There were --

5 SENATOR GALLIVAN: But from the State, do you
6 recall --

7 CYNTHIA HOLLOWOOD: -- but whether or not the
8 State of New York, I don't, off the top of my head,
9 recall that.

10 But, again, being involved in -- the business
11 council was involved in it.

12 We had -- I testified at a hearing about
13 that, for the business council, so, it's hard for me
14 to remember whether it was --

15 JAN CHESTERTON: It was a massive publication
16 that came out, because it wasn't just
17 specifically --

18 SENATOR GALLIVAN: Oh, it was part of
19 something --

20 JAN CHESTERTON: -- yeah, it was part of a
21 whole, how everything, because it had taken the
22 restaurant and hotel, and combined it into one,
23 which kind of blended a lot of different elements to
24 create an entirely new hospitality wage order, which
25 we're anticipating will be done again with the new

1 increase in minimum wage, because the carve-out for
2 the tip wage or the cash wage within the
3 minimum-wage legislation needs to go back and be
4 readdressed again.

5 So we're certainly hopeful that we have the
6 support of getting our association, which represents
7 the restaurant and hotel industry, at the table
8 again, to be part of the logical voice at the table,
9 in terms of how this will affect the industry.

10 SENATOR GALLIVAN: All right, thank you.

11 SENATOR MARCIONE: Thank you.

12 Thank you so much.

13 We appreciate you being here, and thank you
14 for your testimony.

15 Next we have Mark Eagan, who is the president
16 of the Albany-Colonie Regional Chamber of Commerce.

17 Welcome, Mark.

18 Nice to see you.

19 MARK EAGAN: Thank you; same here.

20 And, is that on?

21 And good afternoon to all of you, and thank
22 you for taking the time today.

23 And I'm sure your stomachs are probably
24 starting to grumble at this point.

25 So -- and I think, as being one of the --

1 sort of the cleanup speakers, I could probably say a
2 lot of ditto, ditto, ditto.

3 So, really, on some of the issues, I'll touch
4 on the issue, but not describe the issue, because
5 others have done it, and I don't want to be
6 repetitive if I don't need to be.

7 And I think some of my comments are going to
8 not just be about regulation, but, really, some
9 things that I think what the State is doing well,
10 and maybe some places I think the State can be doing
11 better, as it relates to hospitality and tourism.

12 And as you folks know, hospitality and
13 tourism, it's about jobs, it's about tax revenue,
14 and it's about people having fun, and how do all
15 those things blend together.

16 I guess on some areas, on a positive side,
17 that as the State has looked at economic-development
18 strategies, a couple years ago, it rolled out the
19 regional councils, that it's nice to see that, now,
20 hospitality and tourism are part of that mix.

21 Because at the beginning, it was sort of a
22 little bit of an afterthought, and I can speak for
23 even the Capital Region Council, they even now have
24 a subcommittee on hospitality and tourism, so we
25 really see that as a good sign.

1 I think it was -- I think Christine had
2 mentioned it earlier, I think sometimes the State
3 looks and says that the tourist -- tourism districts
4 don't work well together.

5 I mean, how do we get them to work well
6 together?

7 How to get them to compete with each other?

8 Well, just that statement alone competes with
9 each other.

10 And I think that the truth is, most of our
11 regions are, tourism organizations within the
12 greater region really work well together.

13 So you're not just talking about those in the
14 Capital-Saratoga Region as a tourism district, but
15 down in the Hudson Valley, because I think we
16 realize, for visitors, there are no town or there's
17 is no county lines; it's where is the experience
18 that they want to have?

19 So I think that's another good thing.

20 But a note from that, as it relates to the
21 Regional Economic Development Councils, that,
22 oftentimes, what the State describes as "a region,"
23 for this group, it's this region; for this group,
24 it's another region.

25 So in that case alone, what they consider

1 tourism districts, and what they consider the
2 district for the regional councils, are different.

3 So I think, going forward, the more that all
4 of those, and even with different state departments,
5 can align, I think the better for all those looking
6 to serve.

7 I know there was discussion earlier about
8 "I Love NY."

9 It's obviously very important.

10 It's been underfunded for years.

11 If -- and that's the case where, you know,
12 every study has been done: the amount of money you
13 spend, a lot more comes back.

14 And we also know that the grant program,
15 particularly for a lot of our smaller counties, that
16 grant program is critical.

17 And so, we support that, and we support
18 increased funding for that.

19 The guidelines for those grants, I don't
20 believe have been updated for a long period of time.

21 And if you look a lot of our tourism
22 organizations and how they do marketing today, you
23 know, there's a lot of online, there's a lot of
24 social media, and I think it's just barely touched
25 on.

1 So, it might be time to dust off those
2 guidelines and say, How can we really have New York
3 and our local communities compete with what we have
4 for marketing-communication tools today?

5 A couple other things that I'll just touch on
6 quickly, because I think other speakers have
7 mentioned:

8 We are also strong advocates, our
9 organization, for bikes on the Amtrak trains.

10 You know, I think that my colleague earlier
11 spoke about the support for direct access off of
12 Exit 4, off of the Northway.

13 I know some of you are not right in the
14 immediate Capital Region, but the
15 Albany International Airport is obviously so
16 important for us for economic growth; yes, for our
17 leisure travelers, but also for our corporate
18 business.

19 And there's very few airports in the country
20 that don't have direct access from a highway to an
21 airport, and, unfortunately, we're one of those, and
22 that does relate to tourism.

23 The other piece, that I had a meeting prior,
24 so I wasn't here at the beginning, so I'm not sure
25 if it was discussed, but I would like to mention it:

1 As we're going through the questions on the
2 ballot this fall, and one of them will be tied to
3 casinos.

4 And, you know, often -- you know, part of the
5 reason the State looks to casinos, is because it
6 will drive revenue for the state.

7 And some can look and say, How does casinos
8 also serve as part of, maybe, your tourism product
9 in the community?

10 And we think it can be.

11 But the other piece that I wanted to mention
12 is, that when we look within our local community,
13 and we look at arts and culture, and the importance
14 of arts and culture as it relates to our citizens,
15 most importantly, but, also, as one of the products
16 for our tourists; that within the Capital Region,
17 all of our primary arts and cultural offerings are
18 presented by our non-profits.

19 Whether it's SPAC, whether it's the
20 Glens Falls Civic Center, whether it's Palace,
21 whether it's Proctor's, whether it's the Times Union
22 Center in downtown Albany, whether it's the
23 Troy Music Hall, the concern we have with casinos,
24 going forward, is not the casinos, but casinos that
25 have performance venues.

1 Because what's going to happen is, those
2 performance venues can have a competitive advantage
3 over all of our local organizations that I spoke of.

4 Because of casino revenues, they can
5 subsidize all the acts, which means they can pay the
6 performers more, or they can charge less for
7 tickets, and I think that that can undermine the
8 community-based organizations that really add to the
9 quality of life and provide arts and culture in our
10 community.

11 So while this forum today is to talk about
12 what regulations should be done away with, this is a
13 case where I would encourage you to look, because
14 for all of those other communities across our state,
15 the same issue applies, and this might be some
16 regulation that's necessary.

17 Or when the RF- -- if it goes through, and
18 it's supported by the voters of New York, as the
19 RFPs are issued, is how do we weigh that in, and,
20 you know, should there be performance venues?

21 If so, what size should they be?

22 How should they be regulated so local
23 communities and local arts organizations don't
24 suffer?

25 The other -- again, and I'll touch on them

1 quickly because others did, so I won't get into the
2 detail, but the wage theft prevention is a big
3 issue, not just for tourism-related businesses, but
4 all businesses.

5 The whole issue about prevailing wage
6 mandates; Scaffold Law; these issues that have been
7 talked about for years directly impact the cost of
8 doing business in New York, and, really, in many
9 cases, just create unnecessary costs and are a waste
10 of time.

11 I commend you folks for hosting this forum
12 today, and the key is, what can happen after this?

13 And if there's ways that we can be helpful,
14 we want to.

15 You're probably aware, at the same time, that
16 there were a meeting in this room; the Governor is
17 announcing a tax relief commission.

18 A couple years ago, I know I was asked to
19 testify at a mandate-relief commission, but to my
20 knowledge, I've seen very little has come out of
21 that commission.

22 I hope things will come out of that
23 commission.

24 I hope things will come out of this
25 tax-relief commission, and I hope some meaningful

1 progress can come out of the input that you receive
2 today.

3 So, thanks for the opportunity to be here.

4 SENATOR MARCIONE: Well, thank you so much.

5 We appreciate it.

6 Thank you.

7 SENATOR VALESKY: Thank you, Mark.

8 No, I don't have anything.

9 SENATOR MARCIONE: Our last speaker is
10 Scott Wexler.

11 He's the executive director of the Empire
12 State Restaurant and Tavern Association.

13 Mr. Wexler, thank you for being so patient.

14 We look forward to hearing from you.

15 SCOTT WEXLER: Thank you, Senator Marchione,
16 Senators Gallivan and Valesky, the last speaker.

17 So if -- and I'm representing another segment
18 of the hospitality industry, so we want to be
19 sensitive to your desire to enjoy hospitality in the
20 Saratoga Region.

21 As the Senator said in the introduction,
22 I represent the Empire State Restaurant and Tavern
23 Association.

24 Our membership includes a broad variety of
25 businesses across the full spectrum in the

1 hospitality industry and all parts of the state.

2 Almost all of our members are single-store
3 operators. We used to call them "mom-and-pop"
4 operators back in the day, but they're local owners
5 who live, work, and reinvest in their community.

6 Frankly, earlier this morning, when I was
7 listening to Mr. Wilson from Willard Mountain,
8 that's who I represent with the Tavern Association.

9 They're hard-working, they're passionate
10 about their business, and they're experts at
11 something other than complying with government laws,
12 rules, and regulations.

13 And I think a tenor or the tone for this
14 whole session I've heard today, is the disconnect
15 between the people who make the regulations, enforce
16 the regulations, and attempt, frankly, usually in a
17 good-natured, earnest effort, to explain the
18 regulations to the people that have to live with
19 them.

20 It's not about not engaging us.

21 Our associations and representatives are
22 usually at the table.

23 Unfortunately, we're not on the telephone
24 when Mr. Wilson calls us, they're talking to
25 someone, and it's not about education.

1 I mean, it's not about education.

2 There are members in our industry that have a
3 high degree of education or a very low degree of
4 education.

5 It really is about perspective and about
6 understanding.

7 I know that the three of you sitting here
8 today get that because of the work that you've been
9 doing.

10 So -- and while I am here today to talk about
11 future efforts, I do want to begin by thanking you
12 for the work you've done already, with your partners
13 in state government, to benefit the industry.

14 Holding the line on state taxes; enacting the
15 property-tax cap, which has helped control the
16 growth of local taxes, property taxes, which, as you
17 heard during the forum today, a significant
18 cost-driver for small businesses; and keeping
19 economic development and job creation at the top of
20 your priority list is really quite important, and we
21 can't emphasize that enough.

22 So thank you for the work you've done.

23 I'm glad you're not tired or resting on your
24 laurels, because, as you've heard, and as you will
25 continue to hear, there's a lot more to be done.

1 From our members' perspective, the single
2 thing that we pay most attention to is the state's
3 alcoholic-beverage control laws and the State Liquor
4 Authority.

5 These rules, Senator Gallivan noted earlier,
6 they're antiquated.

7 The State had a commission to study the
8 rules, and they recommended that the State develop a
9 more reasoned, thoughtful, and coherent policy for
10 regulating alcohol beverages.

11 This process has begun.

12 The Legislature enacted laws.

13 Senator Little was the co-sponsor of a bill,
14 to allow for more flexibility in issuing temporary
15 permits.

16 And, also, Senator Marcellino carried the
17 bill, to give the Liquor Authority more regulatory
18 flexibility, so they could help make some of these
19 problems go away.

20 I'm pleased to say that there's been real
21 progress.

22 Not too many years ago, it took six to
23 nine months to get a liquor license in
24 New York State.

25 Today, that backlog is practically eliminated

1 upstate, and it is substantially reduced downstate.

2 So that's real promise.

3 And the Liquor Authority, the chairman and
4 his staff have really gone a long way to attempt to
5 use the new authority they've been given in a
6 thoughtful way.

7 Unfortunately, in our business, most of the
8 issues that the SLA has, or we have with the SLA,
9 not all of them, but most of them stem from the
10 statute.

11 And, so, we really have to appeal to you in
12 the Legislature to change the law, either to give us
13 the change we need or to give the Liquor Authority
14 the flexibility.

15 Senator Gallivan, as you well know, you
16 started down this path earlier this year;

17 Some of the bills came out of
18 Senator Valesky's Committee;

19 And, Senator Marchione, you were supportive
20 of all of them;

21 So you all deserve credit for the work that
22 has been started.

23 Already this year, Senate 352, which is now
24 Chapter 224 of the laws of 2013, eliminates the
25 violation for having fruit flies in

1 alcoholic-beverage containers, and it requires that,
2 in order for a violation for contaminated liquor or
3 adulterated liquor, there has to be an intentional
4 act.

5 So you want to understand this: the law said
6 you can't contaminate or adulterate your liquor.

7 The idea was not to water-down the booze or
8 to pass off a low-quality product for a high-quality
9 product.

10 But that regulatory mindset found a way to
11 take what was essentially a health-code violation
12 and make it a fee-and fine-generating issue for the
13 Liquor Authority.

14 Our members used to suffer fines of \$1,000 or
15 more, and they used to hear SLA investigators talk
16 about the bounty of \$100 per fruit fly in the fine,
17 not to the investigator, but that the agency would
18 collect.

19 Now, the current leadership at the authority
20 stopped targeting fruit-fly violations several years
21 ago, but investigators were still required to cite
22 the violations when discovered.

23 This change now means that the business
24 owners won't be subject to those costly fines. The
25 bottles will be thrown out, and locations that are,

1 in fact, health concerns will be referred to the
2 appropriate health authority, who, frankly, should
3 be paying close attention to those businesses as
4 well.

5 Senator Gallivan has introduced a series of
6 other bills to address some of the antiquated
7 provisions.

8 I just want to mention four of them very
9 briefly:

10 Senate 351 extends the hours of sales for
11 alcoholic beverages on Sunday mornings and on
12 Christmas.

13 We would love to be able to be able to serve
14 you a mimosa or a Bloody Mary at 10:00 in the
15 morning on a Sunday, but it's against the law in
16 New York State.

17 Senate 353 clarifies the enforcement of the
18 health code is the province of the state and local
19 health departments, and not the SLA investigators.

20 Senator Valesky may remember when one of the
21 local health departments in his area regularly
22 referred smoking violations to the Liquor Authority,
23 because the fine for violating the Clean Indoor Air
24 Act was less than the fine the Liquor Authority
25 would impose on the bar.

1 Senate 356 allows liquor stores to jointly or
2 cooperatively purchase alcoholic beverages, to make
3 larger purchases; and, therefore, be able to save
4 money on the cost, lowering their cost of doing
5 business.

6 And, Senate 1440 permits liquor stores to
7 sell alcoholic beverages to restaurants and bars,
8 and vice versa.

9 Another priority bill for the association is
10 Assembly 1370 by Assemblymember Cahill.

11 This bill provides similar joint or
12 cooperative purchasing privileges for on-premise
13 licensees to those in Senator Gallivan's Bill 356.

14 Providing our members with the ability to buy
15 smarter, as allowed by Senate 1440 and
16 Assembly 1370, is our top legislative priority.

17 Small restaurants and taverns are subject to
18 pricing disadvantages under the current system.

19 You might be surprised to find that it's not
20 uncommon to go to a liquor store and find the shelf
21 price, the retail price, for a bottle of alcoholic
22 beverages, spirits, to be lower in the liquor store
23 than the bar or restaurant can purchase from their
24 wholesaler.

25 Now, I won't take the time at this forum to

1 go into the long history of the ABC practices, but
2 the two bills that I've mentioned -- in fact, to
3 Senator Valesky, there's a joint constituent that we
4 have, that actually keeps track on his laptop of the
5 prices that he has to pay for the beverages that he
6 buys from his wholesaler where there is no
7 competition, and what he can buy at his liquor
8 store.

9 It is astounding how much you could do to
10 help these businesses cope with the other high costs
11 of doing business, just by amending those statutes.

12 We also believe legislation should be enacted
13 to give the Liquor Authority discretion to issue
14 liquor licenses, when they're within 200 feet of a
15 school or place of worship.

16 I do not mean here, when a church or a
17 synagogue or a school is opposed to such a location,
18 but, the Liquor Authority has no jurisdiction, they
19 have no discretion.

20 And under the interpretation of the law, if
21 the building fits the definition, a business can't
22 open.

23 As we speak, the City of Beacon is fighting
24 to get licensed a local establishment, a very
25 prominent establishment, because the building near

1 it falls into this interpretation, although, it's
2 not zoned as a place of worship, it's not viewed as
3 a place of worship by the city.

4 And I will say, the Liquor Authority isn't
5 doing anything wrong here; it is just the statute.

6 And so we urge you to consider that; and,
7 again, particularly when the local government and
8 the local community thinks it's favorable.

9 I'm by no means suggesting we try to run over
10 local input.

11 We also would look forward to legislation to
12 allow pools in bars and restaurants.

13 Not the kinds of pools my friend Mike Hoffman
14 was talking about, but the kind of wagering activity
15 where no money is taken.

16 Every Sunday, thousands -- hundreds of
17 thousands of people participate in these kinds of
18 activities.

19 The NCAA March Madness basketball, I dare say
20 I've seen pools in many locations that you or
21 I might frequent.

22 But if you have such a pool -- and they're
23 illegal, by the way, in all of those locations.

24 They're, technically, illegal, but local law
25 enforcement doesn't object to those, doesn't enforce

1 those. They focus on serious gambling.

2 And we'd like you -- I think that would be
3 helpful legislation.

4 I've talked about statutes.

5 That's not to say that there aren't
6 regulatory or administrative actions that impact our
7 members.

8 In spite of many improvements, there are
9 several at the Liquor Authority I'd like to cite.

10 The first is compliance, and I think this
11 goes across all agencies.

12 Earlier speakers talked Labor Department, the
13 Health Department.

14 Compliance programs are really more like
15 discipline programs or punishment programs.

16 They seem to exist to collect fines and
17 penalties.

18 Mr. Wilson mentioned he's afraid to be
19 five -- an employee being five minutes late clocking
20 out, because he would get a \$2,000 fine.

21 I have a member who got a \$1500 fine from the
22 Liquor Authority, because he was seven minutes
23 late -- one of his employees was seven minutes late,
24 clearing a partially consumed container of alcoholic
25 beverages off the premises.

1 So, there's just doesn't seem to be any --
2 the rule -- the compliance programs don't seem to be
3 about helping folks understand the rules and to gain
4 compliance, the way, maybe -- I know I try to parent
5 with my children, yes, I punish them, but I try to
6 make them teachable moments, so in the future,
7 they'll behave more like the way I'd like them to.

8 Unfortunately, nearly 30 years representing
9 these small-business folks, what it does is, make
10 them angry at government, as you heard several of
11 your of the prior speakers, and it makes them think
12 about whether they should comply with any rules,
13 because the penalty is so severe, they may as well
14 be like some of the real nasty competitors who don't
15 follow the rules.

16 Another area with the Liquor Authority, lots
17 of great changes.

18 One change that's not so great is method of
19 operation.

20 Anytime an owner seeks to make a change in
21 how they run their business, it requires the prior
22 approval of the State Liquor Authority.

23 This, to me, is a classic overreach.

24 Clearly, if you submit plans to the
25 Liquor Authority and you say you're going to operate

1 a restaurant, and you're going to serve food from
2 11 a.m. to 9 p.m., and you deviate from that plan
3 and start becoming more like a bar or a nightclub,
4 that, to me, is clearly a case where we all would
5 want the Liquor Authority to have to review that
6 plan in advance and make sure it's suitable.

7 But just because some changes require prior
8 approval, I don't think all changes should require
9 prior approval.

10 We actually had a member given a warning for
11 being closed one night, when his filing with the
12 Liquor Authority said he was open.

13 The investigator apparently was there for
14 some other reason, to investigate some complaint,
15 and was annoyed, as we hear the story, that the
16 business -- he made the trip and the business wasn't
17 open.

18 And they got a formal letter of warning for
19 not being in compliance with their filed method of
20 operation.

21 It turned out that being open past 7:00 at
22 night in that particular location didn't seem
23 profitable to that business owner.

24 And, no, the Liquor Authority didn't send
25 notices out to the businesses telling them about

1 that.

2 In fact, I find that to be a fairly typical
3 case; again, across all agencies.

4 It is highly unusual that the business owners
5 get notifications.

6 One notable example that does come to mind is
7 the Tax Department.

8 When the Tax Department told Mr. Wilson about
9 the floor tax, he did get a notice from them,
10 because they -- you know, they did take the trouble
11 to let him know that he had to go count his
12 inventory so that the State could capture all of the
13 increased taxes that they deserved.

14 Third issue I want to touch on, in terms of
15 regulations with the SLA, is catering permits.

16 If one of our members is invited to cater an
17 event off site, a private party, you need to get
18 approval from the Liquor Authority 15 days in
19 advance of that event.

20 I want to be clear:

21 The authority staff has been flexible when
22 they can, but the judgment about whether to grant
23 that license within the 15 days is a judgment call
24 by each individual staff person at the
25 Liquor Authority, based on their understanding of

1 the facts in the situation.

2 So, for example, if Mr. Valesky only called
3 me last night, to book the party, one person at the
4 Liquor Authority may consider that to be timely
5 notice from the business owner and appropriate that
6 I filed so quickly.

7 Another person might think that I should have
8 told Mr. Valesky he can't have that party, and he
9 should go to a liquor store, buy the liquor, and
10 serve it himself.

11 So, again, most of these rules that we talk
12 about, they make sense in the abstract.

13 They're reasonable when you view them from
14 the offices or a conference room of the regulators,
15 and, in some cases, the legislators that have
16 sponsored and advanced the legislation.

17 Now, there are a number of other regulatory
18 and administrative issues of concern to our members,
19 but since they impact the broader areas, I'm going
20 to testify, you're going to get to see my smiling
21 face next Monday at the hearing in the Hudson Valley
22 on small-business owners.

23 And, there, I'll be talking about sales-tax
24 compliance;

25 The Labor Department's treatment of musicians

1 as employers, even though they might actually be
2 independent contractors;

3 And the overly broad definition of
4 security guards that has turned every bouncer at a
5 bar, and almost turned every server, into a licensed
6 security guard.

7 So I look forward to continuing the dialogue
8 with you next week.

9 And, again, thank you so much for your
10 invitation, and for your patience listening to all
11 of us this morning, and now this afternoon.

12 SENATOR MARCIONE: Thank you so much.

13 Your test testimony was really very good.

14 Any questions?

15 SENATOR GALLIVAN: I do have one.

16 Thanks, Scott, for being here.

17 And, also, I mean, you made mentioned some of
18 these laws.

19 We appreciate your help as we were doing the
20 research and putting them together.

21 But one question, and it has to do, you gave
22 the example of, one of your members could go to a
23 liquor store -- often go to a liquor store and buy a
24 bottle of vodka for lower cost than he can get from
25 the wholesaler.

1 Are the same wholesalers selling to the bar
2 owners and the liquor stores?

3 SCOTT WEXLER: Yes.

4 Let me -- for the record, I didn't speak
5 about any specific bar owner --

6 SENATOR GALLIVAN: No, I understand --

7 SCOTT WEXLER: -- [unintelligible], because
8 that's against the law.

9 SENATOR GALLIVAN: Got you.

10 And I said, "vodka." I know you didn't.

11 But, for example --

12 SCOTT WEXLER: It happens to be my drink of
13 preference, but that's not significant.

14 Yes, and the beer industry and the wine
15 industry are different than the spirits industry in
16 New York.

17 And I will try not to give you an extended
18 primer, but, in the beer industry, although we
19 principally have two major brewers in the country
20 now, or serving in the country, and that's
21 Anheiser-Busch and MillerCoors, there are -- and
22 we've gone from 150 beer wholesalers in the state,
23 to about 40.

24 There are still 40 beer wholesalers, and
25 although they all sell the same products, if I can

1 make a better deal with the wholesaler in your
2 district than the wholesaler in my area, which may
3 be Senator Valesky's district, I'm allowed, by law,
4 to go to those wholesalers and buy that product.

5 Doesn't happen very often.

6 There's also a third -- another thing called
7 "Class C" beer wholesalers.

8 We think of them as beverage distributors or
9 beverage centers.

10 A lot of these locations are actually dually
11 licensed as wholesalers and retailers;

12 And particularly in metropolitan New York,
13 this is a very active part of the business.

14 It helps keep mainline wholesalers honest,
15 both in terms of pricing and service.

16 It's much different -- and, in wine, you
17 probably have 100 different wine wholesalers, all
18 having a little niche of the wine industry.

19 In New York we have two liquor wholesalers,
20 and they don't cross the lines with the products
21 they sell.

22 If I want to buy -- if the liquor store or a
23 bar wants to buy a bottle of Ketel One vodka, there
24 is one wholesaler who they can buy it from.

25 And the same -- so there's -- there is no

1 competition.

2 And, in fact, Senator, the logic that we
3 thought that was behind your bill that we helped
4 work on, is that, it, frankly, just follows what's
5 been happening in our wholesale system.

6 The wholesale -- we no longer have sales
7 people in the wholesale liquor industry.

8 We have order-takers.

9 They no longer come to visit our bars and
10 restaurants to talk about the products.

11 They now mail you a promotion or e-mail you a
12 promotion, and then you call it in.

13 That's not the case on the liquor store; that
14 has to do with the market.

15 So they come to our places -- God forbid if
16 you're in Senator Little's district in the
17 Adirondacks, you know, in the North Country -- they
18 come there once every week or two weeks.

19 So if you run out of a bottle -- if you run
20 out of Ketel One, your choices are, to ignore the
21 law and go to the liquor store to buy it, or to wait
22 two weeks.

23 So the thought is behind your bill, and,
24 also, if you merged your liquor-store bill with
25 Assemblymember Cahill's bill for cooperative buying

1 for on-premise locations, you allow the small liquor
2 stores who are struggling to compete against the big
3 warehouse liquor stores to have a way (a) to reduce
4 their costs, and also to open up a market.

5 And then you give our folks an opportunity to
6 reduce their costs, and it's not -- it's not,
7 arguably, hurting.

8 Might there be some marginal impact on these
9 big liquor wholesalers?

10 Two liquor wholesalers in New York State.
11 They are Number 1 and Number 3 in the country, in
12 terms of the liquor wholesalers.

13 They're great people, they do great business.

14 We think this is a fair way to help them and
15 help the business owners.

16 I'm sorry, but the liquor law is so obtuse
17 and antiquated, sometimes it requires a lecture to
18 give you a short answer.

19 [Laughter.]

20 SENATOR GALLIVAN: So the answer is "yes."

21 Got it.

22 Thank you.

23 I'm good.

24 Thanks, Scott.

25 SENATOR VALESKY: Just one issue, Scott.

1 First of all, thank you very much for your
2 outstanding testimony.

3 And now that we know you're gonna visit us
4 again on Monday, perhaps, as we assemble the list,
5 we'll find you somewhere other than near the end;
6 okay?

7 We'll endeavor to make sure that you're much
8 closer to the top of the list on Monday.

9 I just have one question, and you didn't
10 touch on at all, but I did want to visit it, just
11 briefly, primarily, because I and a number of my
12 colleagues, as you know, have spent a great deal of
13 time in recent years, and legislative effort, in
14 terms of promoting local products, and, in
15 particular, in regard to your members and this
16 industry, the New York Wine industry, the
17 craft-brewery industry, and now I have a bill that
18 is waiting to go to the Governor's Office regarding
19 cidery, and the cidery legislation.

20 So I'm just curious, from your -- from the
21 perspective of your members, has the work that we
22 have been doing, have you seen an impact in terms of
23 what we are doing in these areas, in terms of the
24 products that your members are selling?

25 SCOTT WEXLER: There's no question -- there's

1 no question about it, Senator, that that work is
2 well worthwhile, and we're seeing the impact.

3 From a customer base, there's a tremendous
4 interest in locally grown, locally produced.

5 And it's fine, whether it comes from the
6 farmer's market or from the grocery store or from
7 your wholesale supplier.

8 We have a lot of work to do in terms of
9 education of the industry owners, and if -- and our
10 suppliers, to get it more into the supply chain, but
11 it's very worthwhile.

12 And, by the way, we see it, also, if those
13 businesses are more successful, then we have more
14 customers who are able to spend the money.

15 And that's, I think, a theme that runs
16 through this entire forum today, but the hospitality
17 and tourism industry really benefits, all of the
18 things you and your partners in government have done
19 to reduce the cost or make things easier to do
20 business, because when people have more money in the
21 pocket, they love to spend it, and they spend it in
22 our places.

23 So we have more work to be done.

24 And again, particularly, I'm -- tomorrow --
25 tomorrow afternoon, Governor Cuomo is hosting an

1 Oktoberfest, a "Taste New York Oktoberfest," down at
2 Brooklyn Brewery.

3 Of course, that could have been held up in
4 your district, Senator Valesky.

5 It's the only criticism I have of the event.

6 [Laughter.]

7 SCOTT WEXLER: But events like that, and the
8 ones that you are all doing in your own districts,
9 are really more of what we need so we get these
10 folks, the reporters here, to cover them, so the
11 community knows it and we gain the awareness.

12 SENATOR VALESKY: Okay, thank you, Scott.

13 SCOTT WEXLER: Thank you.

14 SENATOR MARCIONE: Thank you, Mr. Wexler.

15 We appreciate you being here.

16 Again, I'd like to thank Quad Graphics for
17 hosting us today.

18 Thank you, Dan, so much.

19 And thank every single one of you who took
20 your time out of your schedules to be with us.

21 The insights you shared today will be a key
22 part of our efforts to deliver real regulatory
23 relief for a less costly, more affordable New York;
24 one with more jobs and opportunities for everyone;
25 just what we heard from you today.

1 Thank you very much.

2 (Whereupon, at approximately 12:48 p.m.,
3 the public forum on Hospitality/Tourism Regulatory
4 Reform held before the New York State Senate
5 Majority Coalition concluded, and adjourned.)

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1 BEFORE THE NEW YORK STATE SENATE MAJORITY COALITION

2 PUBLIC FORUM/TOWN HALL

3 SMALL BUSINESS REGULATORY REFORM - TO LEARN FROM
4 BUSINESSES AND INDUSTRY EXPERTS WHICH REGULATIONS
5 ARE THE LEAST USEFUL, LEAST COST-EFFECTIVE, AND,
6 THEREFORE, SHOULD BE ELIMINATED

7
8 Nanuet Public Library,
9 149 Church Street
10 2nd Floor Community Room
11 Nanuet, NY 10954

12
13 October 7, 2013
14 1:00 p.m. to 3:00 p.m.

15 SPONSORS PRESIDING:

16 Senator David Carlucci

17 Senator Patrick M. Gallivan
18 Deputy Conference Leader for Economic Development

19 Senator Kathleen A. Marchione
20 Chair of the Administrative Regulations Review
21 Commission

22 Senator David J. Valesky
23 Chair of the Senate Committee on Commerce,
24 Economic Development, and Small Business

25 CO-SPONSOR PRESIDING:

William J. Larkin, Jr.

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1 SENATOR CARLUCCI: Good morning.

2 I'm Senator David Carlucci, and I want to
3 welcome everyone to our hearing today; a very
4 important issue on the regulations in
5 New York State.

6 We want to thank the Nanuet Library for
7 hosting us today.

8 And gathered with me here today on this
9 bipartisan task force, I have senators from around
10 the state that have been traveling around the state,
11 having these types of hearings, to talk about these
12 important issues.

13 Usually regulations don't come to the
14 forefront, in terms of the debates on the Senate
15 floor or what we read about in the newspapers, but
16 we know how important it is.

17 If we're going to move New York's state
18 economy move forward, if we're going to make sure we
19 have the best quality of life for the people that
20 live here in New York State, then we have to make
21 sure that the regulations are in compliance and up
22 to speed with the times that we live in today.

23 So with new technology, with the different
24 culture that we're living in today, we've got to
25 make sure that the regulations are up to speed.

1 So we look forward to hearing from a diverse
2 group of people representing different industries
3 today, to talk about, really, how it affects small
4 business particularly.

5 This is one of many hearings that has been
6 done, but the focus today is on small business; the
7 backbone of New York State's economy.

8 So with me today are my esteemed colleagues
9 from around the state.

10 Senator Marchione -- and I'll have everybody
11 introduce themselves, and then we'll move forward --
12 so, Senator Marchione.

13 SENATOR MARCHIONE: Thank you.

14 I represent the 43rd Senate District, which
15 comprises parts of Saratoga, Rensselaer, Washington
16 counties, and all of Columbia County.

17 In addition to being the senator from the
18 43rd District, I serve as the Chair of the
19 Senate's ARC Committee (the Administration
20 Regulation Review Committee).

21 And one of the things, of course, that we
22 have been looking at, and one of the last pieces of
23 legislation that I put forward, was to remove
24 1,000 rules and regulations.

25 SENATOR CARLUCCI: Great, thank you,

1 Senator Marchione.

2 And we also have with us from the western
3 part of the state, Senator Gallivan.

4 Senator Gallivan.

5 SENATOR GALLIVAN: Thank you, Senator.

6 Good afternoon, everybody. We appreciate
7 very much that you're here today.

8 I am our Deputy Conference Leader for
9 Economic Development.

10 And the team of -- the four of us up here
11 have been tasked with identifying over
12 1,000 regulations, to call for their elimination.

13 To give you an idea of how that fits, it
14 sounds like a lot, but there are over 140,000 pages
15 of regulations in New York State.

16 And we look at the problems of things that
17 you talk about from time to time; small businesses
18 and the impediments that they're facing.

19 A recent U.S. Chamber of Commerce report
20 ranked New York State 50th out of 50 states, as
21 far as its business environment goes, and we always
22 hear about taxes and regulations as those
23 impediments.

24 So, we embarked on a series, 10 hearings
25 altogether, industry-specific hearings, to try to

1 drill down and, ultimately, identify regulations
2 that we can eliminate: the most costly ones, the
3 least-effective ones, the ones that make no sense,
4 the ones where the costs greatly exceeds the
5 benefit.

6 And we couldn't do it without your help, so
7 we appreciate you being here.

8 We'll ultimately publish a report on the
9 Senate website. It will be available for everybody,
10 hopefully, by the end of November, and this will
11 become part of our agenda as we move forward to help
12 advance economic development in the state.

13 Thank you.

14 SENATOR CARLUCCI: Great, thank you,
15 Senator Gallivan.

16 And we also have with us, all the way from
17 Syracuse, Senator David Valesky.

18 SENATOR VALESKY: Thank you,
19 Senator Carlucci.

20 I represent the 53rd District: all of
21 Madison County, parts of Oneida and
22 Onondaga counties as well, and as Senator Carlucci
23 indicated, that means most of the city of Syracuse.

24 I'm very happy to be here.

25 I'm also the Chairman of the Senate

1 Standing Committee on Commerce, Small Business, and
2 Economic Development, and I'm participating in those
3 hearings, certainly, in that capacity as well.

4 I just want to mention, as I did last week in
5 our hearing in Saratoga, what you're seeing here
6 today really stands in stark contrast to what we're
7 seeing in Washington.

8 You've got three Republicans and two
9 Democrats here who are working together in a
10 bipartisan fashion to get the business of the people
11 done.

12 So, very pleased to be able to participate in
13 this very important set of hearings.

14 And as Senator Gallivan said, we'll be having
15 a whole series of recommendations following the
16 conclusion of this series of public hearings.

17 Thank you.

18 SENATOR CARLUCCI: Great, thank you,
19 Senator Valesky.

20 And with us, Senator Bill Larkin.

21 SENATOR LARKIN: Good morning, and thank you.

22 Sorry I'm a little late, but in case you're
23 interested, it's pouring out there.

24 [Laughter.]

25 SENATOR LARKIN: Scott, when you go all the

1 back to Albany, be careful.

2 You know, this is very important.

3 And, you know, as David just said a minute
4 ago, I think it was David, I can't see without these
5 new glasses, we're trying to do this in a good,
6 sound bipartisan manner.

7 There are two Democrats, there are three
8 Republicans.

9 The last time we had a meeting, there were
10 three Democrats and two Republicans.

11 We're not looking for -- [inaudible].

12 We're looking for solutions.

13 We cannot have solutions without your
14 participation.

15 You know, it's easy to say cut taxes, do
16 this, but, my motto has always been, as a former
17 army officer, "You got to find solutions before you
18 go into the battle, or somebody's gonna get hurt."

19 So, we need your help.

20 Tell us, don't be embarrassed.

21 You know, someone says, I'd really like to
22 tell them, but, I don't want to be embarrassed.

23 Who's going to be embarrassed if you don't
24 ask us? "You"; because what you have to say may be
25 part of that circle that can be filled in.

1 Thank you very much.

2 SENATOR CARLUCCI: Great, thank you,
3 Senator Larkin.

4 And also with us, we have the supervisor of
5 the town of Clarkstown, Alex Gromack, our host town
6 today.

7 Thank you for being here.

8 And as was said, this is in direct contrast
9 to what you've seen, the gridlock in Washington.
10 We're working in a bipartisan fashion to focus on
11 results.

12 So that's why, without further ado, we'll
13 have our first speaker to talk about the issues that
14 are facing his industry, Scott Wexler, the executive
15 director of the Empire State Restaurant and Tavern
16 Association.

17 Mr. Wexler.

18 SCOTT WEXLER: Thank you, Senator Carlucci.

19 And thank you, Senator Larkin, for the travel
20 advice.

21 I think he just wants me to stop in his
22 district and help pick up the economy in the
23 Hudson Valley. It would be my great pleasure.

24 [Laughter.]

25 SCOTT WEXLER: Good afternoon.

1 I'm Scott Wexler, and I'm here today on
2 behalf of the Empire State Restaurant and Tavern
3 Association, and, our association represents a broad
4 array of small-business owners who operate
5 establishments where people can consume alcohol for
6 on-premises consumptions: restaurants, bars, hotels,
7 ski areas, etc.

8 Almost all of our members are single-store
9 operators. We called them "mom-and-pop" businesses
10 25 years ago when I started with the association,
11 but they're local owners who live, work, and
12 reinvest in their community.

13 And while I thank you for the opportunity to
14 provide input into your discussion about eliminating
15 costly regulations, I again want to begin by
16 thanking you for the work that you've done so far,
17 because it's really important that it be noted.

18 Working with your partners in state
19 government, you've held the line on taxes, you've
20 enacted the property-tax cap to help slow the growth
21 of local taxes, and you've put economic development
22 and job creation at the top of your priority list.

23 These accomplishments have begun the
24 groundwork for our recovery here in New York.

25 I had the privilege of appearing at your

1 forum last week in Senator Marchione's district in
2 Saratoga, and I shared with you some thoughts that
3 our association has about the Alcoholic Beverage
4 Control Law and the State Liquor Authority.

5 Today I want to focus on other regulatory and
6 administrative issues of concern to our members.

7 One of the most egregious examples of a
8 regulatory burden being imposed on business is the
9 administration of the General Business Law Security
10 Guard Act.

11 The law was passed in 1992, and mandated the
12 training, approval, and registration of security
13 guards under the direction of the Department of
14 State and the Division of Criminal Justice Services.

15 The law was amended in 1994 to correct the
16 overly broad, or at least to attempt to correct, the
17 overly broad interpretation of the law.

18 According to the sponsor's memo at the time,
19 quote: As currently written, the law will impose
20 additional costs through unnecessary mandates upon
21 employers who are not contract companies. There is
22 a distinction between contract security agencies for
23 whom the law was originally designed, and
24 organizations which hire their own staff to perform
25 security surveillance duties.

1 While the Department of State, the agency
2 responsible for licensing security guards and
3 security-guard companies, interprets this law to
4 require bouncers in a bar or restaurant to be
5 licensed security guards, it's their determination
6 that the bouncer's responsibility to check proof of
7 age to make sure the patron is of legal drinking
8 age, and their state of intoxication to make sure
9 they're not drunk and not safe to serve, and denying
10 admission to those who are underaged, drunk, or
11 unruly, meet the definition of "a security guard."

12 Not only does this require the bouncers to
13 become trained security guards and be subjected to
14 all of those burdens, but it, therefore, defines the
15 bar or restaurant as a "security-guard company,"
16 requiring them to have that burden.

17 Now, the Security Guard Act was not designed
18 to apply to bouncers unless their principal duties
19 are to perform security functions, you know, like
20 security guards.

21 And, certainly, there are some establishments
22 that we've all been to or are familiar with where
23 the person at the door really does function like a
24 security guard.

25 I think about big nightclubs, for example,

1 where they really are performing a security
2 function.

3 But as a result of the overly broad
4 interpretation of the law, almost any time a person
5 stands at the door of a bar or a tavern, they're
6 defined as "security guard," requiring registration,
7 training, and the payment of hundreds of dollars in
8 fees.

9 The Department of State was so focused on its
10 view, that, in 2010, they proposed amending the
11 regulations covering Security Guard Act, to remove
12 the requirement that employees of licensed premises
13 function as security guards for at least half the
14 time in order to meet the definition.

15 In other words, it no longer would matter
16 what percentage of your job was security-related.
17 If you worked in a bar, restaurant, or similar
18 establishment and you performed security functions
19 at any time, you would be considered a security
20 guard and subject to those requirements.

21 Apparently, it didn't matter that the law
22 provides that a person has to principally perform
23 security functions to be covered. This proposed
24 amendment was contrary to the statute on its very
25 face.

1 Now, this proposal would have had the effect
2 of requiring almost all employees in licensed
3 premises to become security guards.

4 More reasonable heads prevailed, and that
5 proposal was slowed down and eventually withdrawn,
6 but the underlying overly broad policy remains in
7 effect, subjecting business owners to the cost of
8 compliance and fines for noncompliance, almost
9 always due to the business owner's ignorance, not
10 knowing that this burden was imposed on them.

11 Fixing this gross overreach by the unelected
12 bureaucrats at the Department of State would benefit
13 thousands of businesses throughout the state.

14 And while our experience has been with the
15 law as it relates to bars and restaurants, the same
16 interpretation would appear to cover ushers at a
17 movie theater, or anyplace else where someone is,
18 literally --

19 SENATOR LARKIN: Taking control.

20 SCOTT WEXLER: -- taking control --

21 Yes, Senator, thank you for your -- for that.

22 -- as opposed to what the law was originally
23 intended to cover.

24 Sales-tax audits are another problem for our
25 members.

1 Now, no one wants to be audited by the
2 Tax Department, but if you're in business, it's
3 likely to happen from time to time. And if you're
4 in a cash business, in the view of the auditors,
5 sales-tax audits are fairly common.

6 So our members are frequent subjects of
7 sales-tax audits, and have increasingly been subject
8 to aggressive envelope-pushing tactics by the
9 auditors.

10 A few years ago, the State hired hundreds of
11 new auditors to enhance the department's audit and
12 compliance programs and generate state revenue.

13 The department launched several new
14 initiatives, with these new auditors, that are
15 costly to business, as well as being unfair.

16 The first concern is the auditors' growing
17 emphasis and inflexibility with their recordkeeping
18 requirements.

19 Our members are increasingly having their
20 books and records deemed inadequate by the auditors,
21 often for the most technical of reasons.

22 If the Tax Department auditors deem a
23 taxpayer's records to be inadequate, then the
24 taxpayer can't defend its sales-tax payment to the
25 auditors, and leaves the assessment of sales tax due

1 to be determined by the auditor and by the
2 department, exposing the taxpayer to being charged
3 for sales tax due, plus interest and penalties, as
4 the State determines.

5 Our second concern and related, is the
6 auditors' use of external indices to assess the
7 sales tax due once they've determined that the
8 taxpayer's books and records are inadequate.

9 The auditors estimate correct sales of the
10 business by comparing the invoices, utility bills,
11 payroll, or other data for this -- for one taxpayer
12 with data for the industry at large.

13 Often, these indices are not based on local
14 standards and include few, if any, comparable
15 businesses in their analysis.

16 Senator Young called attention to this a few
17 years ago, when a sales-tax audit involving one of
18 her constituents, the restaurant was charging, you
19 know, \$4 for a hamburger, but the sales-tax auditor
20 estimated the cost of hamburgers at \$8, based on
21 this industry data.

22 SENATOR LARKIN: I remember that.

23 SCOTT WEXLER: In fact, that resource, which
24 is a common indice -- common index used by the
25 Tax Department, actually includes less than

1 100 restaurants in New York State in that database.

2 And, it's likely that there isn't a single
3 restaurant in that comparison that is actually just
4 like your business.

5 Senator Young and Assemblymember Schimminger
6 have introduced legislature to provide relief from
7 these regulatory burdens. Their bill, Senate 2691,
8 Assembly 5937, establishes a recordkeeping
9 compliance program.

10 Basically, it creates a safe harbor.

11 If business owners do these specific things,
12 as covered by Senator Young's bill, then the
13 Tax Department can't break the books. They have to
14 use the books and records.

15 And a second bill, Senate 2710, and
16 Assembly 5936, requires any external index used by
17 the Tax Department to reflect local economic
18 conditions.

19 We understand that, oftentimes, the
20 taxpayer's books and records won't be adequate, but
21 those decisions should be based -- it's better off
22 doing the sales-tax assessment based on the
23 business's actual records, when you can, and the
24 department should be more flexible and work with the
25 industry to accomplish that.

1 A third problem area for our members is the
2 Labor Department's rules for determining whether
3 musicians are considered employees or independent
4 contractors of a business.

5 Now, this is somewhat different than the
6 broader independent-contractor issue, because the
7 musician issue stems from an interpretation of
8 amendments to the Labor and Worker's Compensation
9 laws made in 1986.

10 In a supposed attempt to provide clarity to
11 the question of whether a musician is an employee or
12 an independent contractor, the law was amended to
13 provide that the musician is the employee of the
14 business, unless, by written contract, such musician
15 is stipulated to be an employee of another covered
16 employer.

17 But, it's not that simple.

18 The Labor Department has the narrowest
19 interpretation of the law possible.

20 Unless the chapter and verse of the statute
21 are specifically mentioned in the contract, the
22 musician is considered to be an employee of the
23 business -- of the business where they perform,
24 rather than an employee of the band or bandleader.

25 This doesn't appear to be motivated by logic.

1 This interpretation seems to be based on having the
2 broadest possible reach; or, perhaps, the easiest
3 way for the Labor Department to enforce the law by
4 finding a local employer to be liable.

5 Musicians who regularly perform for a
6 specific business, like a house band, are employees
7 and should be treated as such, but musicians who are
8 part of a band or are self-employed that regularly
9 perform at different businesses, are independent
10 contractors, and business owners should not have to
11 bear the costs that come along with classifying them
12 as employees.

13 These are the most prominent regulatory and
14 administrative burdens on our members' businesses,
15 but some rule, regulation, administrative directive,
16 or bureaucratic dictate gets in their way almost
17 every day.

18 While there are exceptions, very few of their
19 interactions with government are positive.

20 At your forum in Saratoga last week, the
21 owner of a local ski area expressed it best.

22 He told you he has a passion for running his
23 business, but that figuring out how to comply with
24 confusing government rules, and doing it right, is
25 demoralizing and costly.

1 Thousands of small-business owners know how
2 he feels, but your commitment is invigorating.

3 Our members are appreciative of your
4 accomplishments to date, and are impressed with your
5 willingness to continue to battle.

6 Thank you for giving me the opportunity to
7 share these concerns with you today.

8 We look forward to working with you in the
9 years ahead to get rid of some of these job-cutting,
10 costly business -- burdens on business.

11 Thank you.

12 SENATOR CARLUCCI: Great, thank you,
13 Mr. Wexler.

14 Senator Larkin?

15 SENATOR LARKIN: Scott, about two or
16 three years ago, you toured the Hudson Valley with
17 me, and if I recall, many of the people in business
18 say, and they still do, "Get off my back or I'm
19 going to close my door."

20 I assume that was your message here today?

21 SCOTT WEXLER: Yes; and it is a real pleasure
22 that we are now echoing the calls coming from the
23 leadership of state government, rather than making
24 plaintiff calls to state leaders who aren't
25 listening.

1 So, the reason we're invigorated, is that you
2 folks have actually made an impact on some of these
3 things, and it's very clear that you're going to
4 make an additional impact, Senator.

5 SENATOR LARKIN: Thank you.

6 SENATOR MARCHIONE: Scott, I just have a
7 statement.

8 I certainly listened to you in Saratoga, and
9 now here again today, and the information you're
10 giving us is just what we're looking for: the
11 specifics on how small businesses are being hurt.

12 Thank you.

13 You were our last speaker in Saratoga. I am
14 so thrilled that you became the first speaker here.
15 You were very patient last time.

16 And, again, let me just understand something:

17 Are you saying that if a band plays for a
18 week in a location, and then another week, that the
19 taxes, they're treated as an employee, each and
20 every location that they go?

21 SCOTT WEXLER: Yes.

22 And it's the employment taxes; so it's the
23 worker's compensation, it's the unemployment.

24 And, again, much like the Security Guard Act,
25 the way that the -- you know, if a big national band

1 is appearing in your nightclub, you don't expect
2 that they're ever going to file
3 unemployment-insurance claims or worker's comp
4 claims in New York.

5 So, it often comes as a surprise when the
6 Labor Department comes in, or, occasionally, the
7 Worker's Comp Board, but it's mostly the
8 Labor Department where this has been a factor.

9 They come in and find your -- the checks
10 you've written for the bands, and they say, Gee, you
11 didn't include any of their salary in your
12 assessment for unemployment insurance. Here's a
13 bill for....

14 And it's not a big bill, but as the Senator
15 said, it's one more reason why they feel like it's
16 not profitable to do business in New York.

17 SENATOR MARCHIONE: Right.

18 Thanks very much.

19 SENATOR CARLUCCI: Senator Gallivan.

20 SENATOR GALLIVAN: Thanks again, Scott, for
21 your testimony, twice. It is very helpful in
22 leading us to try and to do something about this.

23 Two questions; first one has to do with the
24 Security Guard Act.

25 Do the businesses have to get any license

1 themselves?

2 SCOTT WEXLER: Yes.

3 SENATOR GALLIVAN: So they have to get a
4 license to act as a security-guard company?

5 SCOTT WEXLER: Company, yes.

6 SENATOR GALLIVAN: And then the individual
7 security guards have to obtain their own license to
8 work for a security-guard company?

9 SCOTT WEXLER: Yes, their own license.

10 They have to register.

11 They have to take, it's a 16-hour
12 pre-licensing training.

13 Then there's an 8-hour, if you're familiar,
14 and then the constant training.

15 Yes, Senator.

16 SENATOR GALLIVAN: But the owner of the
17 bar/restaurant that employs bouncers, they have to
18 be separately licensed as a security-guard company?

19 SCOTT WEXLER: They have to register/license
20 themselves as a security-guard company.

21 SENATOR GALLIVAN: Jumping on to the
22 sales-tax audits, one of the areas that you talked
23 about is a problem, was, when the records were
24 deemed inadequate.

25 Do the -- are the regulations specific as to

1 what records must be kept, or are they general and
2 subject to interpretation?

3 SCOTT WEXLER: They're more general and
4 vague, subject to interpretation, than not.

5 The Tax Department -- and, Senator, in
6 Saratoga, one of the testifiers talked about how
7 there's hardly ever any information by the agencies
8 put out.

9 And I made the point at that hearing, the
10 Tax Department has been pretty good about this.

11 And there are some -- we have all kinds of
12 detailed guidance documents from the Tax Department
13 we can offer, to make sure there's recordkeeping;
14 but, still, there is vagueness.

15 For example, folks with point-of-sale systems
16 who think that they have really done above and
17 beyond, they have these fancy computers.

18 I don't even know how they work.

19 But, most point-of-sale systems aren't set up
20 in a way that makes the recordkeeping compliant with
21 the Tax Department rules, so there's an area where
22 the department's guidance is vague.

23 Again, to their credit, they're working with
24 the point-of-sales folks to do better, but we still
25 are subject to the vague interpretation of the

1 auditor.

2 SENATOR GALLIVAN: Would a system -- when you
3 talk about point of sale, would a system -- this is
4 not the case right now -- but right at point of
5 sale, if the money was transferred -- the sales tax
6 was transferred directly to the State right then, is
7 that a system that could be helpful?

8 SCOTT WEXLER: It could.

9 We've actually -- again, I -- you know, we
10 complain about government agencies all the time.

11 Last week, I told you the SLA was doing a
12 much better job, and it needed to be noted.

13 And the Tax Department, doing a very good
14 job.

15 And we've had some of these conversations.

16 If they would -- what we've asked for, is if
17 the Tax Department would certify certain
18 point-of-sale systems that are very well known, and
19 others that could apply, to meet the standards.

20 And one of the very specific suggestions we
21 put forward, is setting up a third-party account,
22 much like you do for the Lottery, where you move
23 that money over.

24 And, again, you'd have to demonstrate you
25 were actually doing those things, but for the

1 businesses who were concerned about wanting to make
2 sure they were compliant, such a process would be
3 very helpful.

4 SENATOR GALLIVAN: Thanks.

5 If I could follow up with you separately;
6 somebody actually testified in Buffalo at a
7 tax reform hearing about that.

8 I'd like to say it was my original idea, but
9 it wasn't, but, I'll get that individual's
10 testimony, and just ask for your comments on that.

11 SCOTT WEXLER: I'll look forward to that,
12 Senator. Thank you.

13 SENATOR GALLIVAN: Thank you.

14 SENATOR CARLUCCI: Senator Valesky.

15 SENATOR VALESKY: Thank you, Senator.

16 Scott, just a follow-up on
17 Senator Marchione's question to you about this
18 musician issue.

19 So as I look at your testimony, so, it
20 appears that the Legislature amended the law to try
21 to fix this problem, and you're saying that the
22 Labor Department has taken a very narrow
23 interpretation of the amendment.

24 So the question is: Does the Legislature
25 need to go back and re-amend what, apparently, we've

1 already amended; or is some this a -- or is this
2 something that the interpretation of the
3 Labor Department itself is the problem, and,
4 therefore, that's what needs to be fixed?

5 See what I'm asking?

6 SCOTT WEXLER: I do.

7 Senator Valesky, Senator Larkin, I've had the
8 pleasure with working with both of you for many,
9 many years.

10 David was a kindergarten student when we
11 started, Senator, to explain that --

12 SENATOR LARKIN: Speak for yourself.

13 [Laughter.]

14 SCOTT WEXLER: -- to explain that.

15 But, theoretically, as a student of
16 government, as a believer in this system of
17 government that we have, I think that proper
18 interpretation is really the way -- the better way.

19 You can't possibly pass a law to fix every
20 one of the 149,000 --

21 Was that the number, Senator Gallivan?

22 SENATOR GALLIVAN: Oh, no.

23 Over 140, 000 pages; over 750,000
24 regulations.

25 SCOTT WEXLER: Okay.

1 -- so -- but I will say to -- the direct
2 answer, Senator Valesky, I have now taken the
3 approach, if a conversation with the agency doesn't
4 show openness to fixing the problem and a progress
5 to fixing the problem, to come to one of you to
6 introduce a bill.

7 Senator Libous is carrying a piece of
8 legislation on this -- on the bouncer issue.

9 We actually do believe that bouncers should
10 be trained, but not the training to be a mall
11 security guard. You should be trained in checking
12 ID and the things that are appropriate.

13 So, unfortunately, we have, more often than
14 not, now, the best solution I can come up with is,
15 passing a law to supercede the regulation, and hope
16 that that law is implemented in a way consistent
17 with the Legislature's intent.

18 SENATOR VALESKY: Unless, of course, and
19 I assume this is not the case, but if the judicial
20 branch of government were to determine, through the
21 court system, that an agency is misinterpreting
22 and/or misapplying a statute, that, obviously, would
23 be significant.

24 I assume that has not happened here.

25 SCOTT WEXLER: And it's very challenging.

1 And, again, you've been very generous with
2 your time for me, so let me wrap it up and be brief.

3 If you go -- the Department of State hasn't
4 prosecuted anyone for a violation of the
5 Security Guard Act, so you have no opportunity --
6 we've had no opportunity to challenge DOS's
7 interpretation.

8 We're getting it through enforcement by the
9 Liquor Authority.

10 SENATOR LARKIN: That's right.

11 SCOTT WEXLER: And the question, if you
12 appeal a decision of any regulatory agency is,
13 "Was the decision arbitrary or capricious?"

14 Well, when the SLA is basing their
15 determination on a finding by the Department of
16 State, I can tell you that no attorney has suggested
17 to us we can overturn that as being arbitrary and
18 capricious.

19 We need to either get -- I should say, with
20 the Security Guard Act, the individual who is
21 usually responsible for slowing down, and eventually
22 stopping the regulation, who was working in the
23 executive chamber for Governor Paterson when the
24 2010 change was proposed, is now the exec deputy
25 commissioner at the department.

1 And if you and your colleagues deem this
2 regulation one that is worthy of some review, he, at
3 least, is sympathetic to, he understands, I think,
4 how the security-guards unit has made -- has taken
5 it in -- made a life of their own with it.

6 And we might actually be able to fix that
7 without a statutory change.

8 But I look forward to working with you on
9 that, back in Albany.

10 SENATOR VALESKY: Thank you.

11 SENATOR CARLUCCI: Senator Larkin.

12 SENATOR LARKIN: I want to follow up on what
13 you said about the State Liquor Authority.

14 This past weekend I -- knowing about this,
15 I visited some people on the waterfront, that you
16 did with me last year, and the complaint last year
17 is the same complaint.

18 These people got into a fist-fight or
19 discussion outside, on the street, and Bar A got
20 blamed for it. Bar A is in deep trouble right now,
21 because it's been two in the past month.

22 And they said they never were in his bar.

23 But now this guy, this owner, is -- you know,
24 he says, you know, I could lose everything.

25 I honestly believe, to all of our members,

1 that when we get to write the report here,
2 I think --

3 Because we just had a -- you helped me with
4 the Farm Bureau issue, with Rivera, who we've both
5 known for a long, long time.

6 -- I think that we ought to talk to Rivera,
7 the Tax, and the ABC, Rosen, and bring them together
8 with us, and some of their staff people, and go over
9 these significant points.

10 Because, you know, "cooperate and graduate"
11 is a good word, and I think that maybe what we ought
12 to do, I mean, if you saw the owners of this place
13 Saturday, that had no fights, no nothing, but as far
14 as they're concerned, they have two violations,
15 they've got to be in New York on Thursday of this
16 week, and, they could lose their license for
17 90 days.

18 And the two individuals that they've brought
19 together said, "We were never in this restaurant.
20 We had dinner at the other end, and we got into the
21 classic place, and that's where it hit."

22 But the fight was in the middle of the road.

23 So how do you blame a restaurant?

24 You gonna blame every restaurant?

25 I think we really have to look at some of

1 those things.

2 Because your people -- your representative in
3 the Hudson Valley asked me to meet him Saturday, and
4 we went.

5 And my wife kept saying, "Where are you?
6 Where are you? We're ready to go to mass."

7 I took a blessing, and I went to mass.

8 But it's a serious issue.

9 You know, someone says, Well, they must have
10 been drinking in there.

11 But the fight started on the street, not in
12 the bar.

13 So which -- which of the eight are on the
14 waterfront in Newburgh, who do you blame?

15 So, sorry, I didn't mean to take up time, but
16 it's a crucial issue for us.

17 David, you have waterfront.

18 SENATOR CARLUCCI: Sure.

19 SENATOR LARKIN: We both have it here in
20 Rockland.

21 SENATOR CARLUCCI: Well, Mr. Wexler, what we
22 get so much of the time in all of our offices is
23 help small businesses need, particularly dealing
24 with the Liquor Authority, and some of the things
25 are just processing applications.

1 Do you have recommendations and ways that you
2 see that could streamline some of this process, to
3 make sure that we're meeting the duty that needs to
4 be met, to make sure that unscrupulous business
5 owners aren't given licenses, but to make sure that
6 we weed that out of there?

7 Are there suggestions that your association
8 has to streamline that process?

9 SCOTT WEXLER: Senator, I took a great deal
10 of time up at your hearing in Saratoga to talk about
11 those things, and I've spent some time up here this
12 morning.

13 We do.

14 I mean, I think it's important to know note,
15 one, Liquor Authority has made really great
16 progress, particularly in the licensing area.

17 But as Senator Larkin has pointed out, and
18 I noted in my testimony last week, in the area of
19 compliance, there's some work to be done.

20 I'm sure that my testimony is sitting on your
21 desk, and there's a number of legislative
22 suggestions we've made.

23 Senator Gallivan, Senator Valesky, are
24 sponsoring some.

25 I'm sure there's room for a few more good

1 ideas, and we look forward to working with you to
2 see those through.

3 SENATOR CARLUCCI: Great, thank you.

4 SENATOR GALLIVAN: Thanks, Scott.

5 SENATOR CARLUCCI: Next we're going to hear
6 from the supervisor from the town of Clarkstown,
7 Supervisor Alexander Gromack, a former member of the
8 Assembly, has been working in the town of Clarkstown
9 to make sure the small business are thriving.

10 We thank you for coming in to talk to us
11 about some recommendations.

12 ALEXANDER GROMACK: Well, thank you, Senator.

13 And as you noted, in another life, I spent
14 14 years in the State Assembly.

15 Senator Larkin, I guess things are advancing,
16 because some new members here have certainly joined
17 the Senate, but, I do thank you for coming.

18 I don't have any prepared testimony, but
19 I can certainly give you some -- and I'll just,
20 maybe, give an example, and, hopefully, it's
21 something that you can focus on.

22 One of the concerns that I think we have is
23 the -- various regions of the state, different rules
24 apply to different regions, and I'll give one
25 example.

1 And I want to thank Senator Carlucci, who was
2 very helpful in getting -- cutting some red tape.

3 We're only three days away from opening the
4 shops in Nanuet -- it's just right around the corner
5 from you -- October 10th; a major Simon project.

6 And well into the project, as they were
7 getting tenants, they came across a problem, where
8 Apple wanted to be a tenant in Simon's new center.

9 And, they also own Woodbury Commons.

10 And they found out that there is a difference
11 at the border of Westchester or Putnam and Rockland,
12 and the way they wanted to do their vestibule, they
13 could not in Rockland County, but they could in
14 Westchester County.

15 And if Apple didn't do it the way they have
16 done it in other parts of the state, they did not
17 want to come.

18 So we had made calls to the Secretary of
19 State to find out, you know, how do we, kind of, cut
20 through this?

21 Because, obviously, if it's a weather issue
22 dealing with climate, or something, we don't see
23 much of a difference between the -- Westchester or
24 Rockland or the shopping center to the north.

25 And I guess, after a long discussion, you

1 know, the answer was, Well, these are the rules that
2 your region has to live by.

3 And with Senator Carlucci's help, we did
4 finally get from them, that you could apply for a
5 waiver; however, it's very rarely granted, and
6 there's lots and lots and lots of documentation.

7 Out of the fifty stores, we may have had
8 three or four. They said you couldn't do it
9 collectively; you'd have to do it individually.

10 So it became a whole big problem.

11 Well, the good news is, I guess they made
12 their case, with the new technology, and all the new
13 things that are out there, and we were able to get
14 Apple there.

15 But I think one area that would be helpful,
16 is to find out, you know, what are these different
17 rules that pertain to one county and not another?

18 I understand, in some areas of the state you
19 got to draw a line, and the line's the line, but,
20 when you talk about a county like Rockland, only
21 miles away from Westchester, to have completely
22 different sets of rules, there has to be a more
23 simplified waiver process if you make the case.

24 So as I said, in that sense, we almost lost
25 Apple coming to the shops at Nanuet because of a

1 Secretary of State rule. Some of these rules,
2 I assume, are probably decades and decades' old that
3 have not changed with the times, have not changed
4 with the new technology that is out there.

5 And I think it would be helpful to at least
6 be able to say up front, You know, what? We want to
7 help solve your problem, not put a roadblock.

8 And it would have been helpful up front if
9 they said, You know what? There is a waiver.
10 Here's the documentation. We would also be able to,
11 collectively, take four or five stores in one
12 review.

13 They had to go out and get five different
14 engineers, five different applications,
15 five different reviews, for, virtually, the same
16 type of problem. It couldn't be under the one
17 application of Simon.

18 So, it drove up the costs because, these
19 individual shops, they have to do their own
20 outfitting, but, certainly, it would have been
21 helpful if, again, Simon, or one person, could have
22 kind of handled it for the five or six that needed
23 that relief.

24 So I think, you know, in the host of things
25 that you're looking at, one of the areas certainly

1 would be the regional effect; what region you're in,
2 because there are different rules for different
3 regions.

4 And I can understand a different rule perhaps
5 for Buffalo and Rockland, but when you start to get
6 to the borders of Rockland, Westchester, or another
7 county, I think there needs to be some clear-cut
8 waiver.

9 And I don't necessarily mean, waiver, like we
10 want to skirt the rules, but, if you can provide the
11 documentation that shows why you should conform to
12 another region's rules if you're providing the same
13 or better technology to site a building in the
14 building codes, that certainly would be helpful.

15 SENATOR CARLUCCI: So -- and for those of my
16 colleagues that don't know Supervisor Gromack,
17 Supervisor Gromack is extremely proactive, and
18 besides this case, I think can provide us with a
19 whole slew of different ideas for removing some
20 unnecessary regulations.

21 So, we'll get the details from the specifics
22 of the Apple case and share them with the Committee.

23 One of the things, I don't know if you wanted
24 to touch upon, is one of the things we've been
25 working on is the Adopt-a-Spot.

1 And I don't know if you want to talk about
2 that in a minute or two?

3 ALEXANDER GROMACK: Sure.

4 That's another area in the town of
5 Clarkstown. We have a partnership with various
6 landscapers that are creating beautiful
7 Adopt-a-Spots, and some of them do fall in state
8 right-of-ways along DOT roads.

9 They're beautiful.

10 They've gotten more elaborate, with
11 waterfalls, lighting, and American flags, and
12 they've really become a showpiece.

13 So on town roads, we're very easily able to
14 site them, but the state regulation says that if
15 they advertise, I think that's one of the
16 impediments, that you can't put this Adopt-a-Spot on
17 a state road.

18 Now, I've seen other state roads where
19 they've had some recognition, you know, the
20 Rotary Club, this might be a -- you know, a name of
21 a landscaper, and it doesn't say anything other
22 than, you know, "Built by Bluescape Landscaping."

23 And so we're finding, on the state
24 intersections where we want to do this, that DOT is
25 becoming very difficult, and that's primarily where

1 we want to put them.

2 So, again, we just don't understand why this
3 regulation or rule is being so onerous, when, in
4 some cases, we're getting a partnership and a
5 donation of five to twenty-five thousand dollars to
6 beautify this Adopt-a-Spot.

7 And I think it even goes to some of the state
8 roads, where we have bus shelters, where they'll
9 take over the maintenance of a bus shelter, a
10 private organization.

11 And all they're really asking for is, you
12 know, "This bus shelter is being maintained by,"
13 The New City Rotary Club, or, the Nanuet Lions Club.

14 And absent that, we're finding some
15 difficulty in these beautification projects.

16 And, we'll certainly be glad to share some of
17 these projects.

18 As I said, they're very elaborate, with
19 waterfalls, and they really become a thing of pride.
20 They identify a hamlet.

21 And so, certainly, that's another DOT rule
22 and regulation which we're trying to work through,
23 with the help of Senator Carlucci, but finding it
24 very difficult.

25 We have landscapers, again, ready to make a

1 five- to twenty-thousand-dollar commitment on these
2 couple of spots that happen to be on the state
3 right-of-way, where we're having great difficulty.

4 Yes, sir.

5 SENATOR CARLUCCI: Senator Larkin.

6 SENATOR LARKIN: Transportation Committee's
7 meeting in New York City tomorrow, and I will
8 personally bring this up to Senator Fuschillo, and
9 I'll have him call you.

10 And then, whatever we do, the group here,
11 we'll have a meeting with, the DOT, Bill Gordon, the
12 acting director.

13 But I think that, eventually, we'll have to
14 go see Joe McDonald, because this is not an issue,
15 I'm sure -- I'm sure my colleagues from
16 Western New York and Central New York can tell us
17 that they have, and I think we ought to make a
18 full-court press on it.

19 Because this violates the business of, first
20 of all, it beautifies your areas. It gives credit
21 for the community that wants to help.

22 Tell me about it; I got stacks of it like
23 this [indicating] from them. After 36 years, the
24 pile is not getting any smaller.

25 ALEXANDER GROMACK: Again, it's confusing,

1 because I've certainly seen on state highways,
2 where, "Adopt-a-Road," and it lists the
3 organization.

4 So, I don't know why we can't have an
5 "Adopt-a-Spot," listing the organization.

6 And that is probably some of the regulatory
7 reform that needs to be clarified.

8 I don't see much difference.

9 The town is backing these organizations. We
10 get all the permits. We actually put in the
11 waterlines, the lightings, and we pay the bills.

12 It's just a very nice donation.

13 And I hope Senator Carlucci can share what
14 these Adopt-a-Spots look like.

15 They're not a simple thing. As I said,
16 they're very extravagant.

17 The other thing, I would just leave you with
18 this, and you have probably done this, but, you
19 might want to check with, like, the
20 Builders Association, to find some of the problems
21 they see in siting small and large businesses, and
22 some of the rules that they find difficult in
23 complying with the state.

24 I think they would be a great resource.

25 Peter Barry is certainly -- our building

1 inspector, could give you a list, but I'm sure
2 there's a state association that might highlight.

3 And, again, I just give one example of a
4 major mall, Simon, and how we almost lost Apple as a
5 major tenant, because of a rule that applied in
6 Rockland, but did not apply to Westchester.

7 Thank you.

8 SENATOR LARKIN: Childishness.

9 SENATOR CARLUCCI: Thank you,
10 Supervisor Gromack.

11 Next we will hear from two members of the
12 Rockland Business Association.

13 Why don't you both come up.

14 We have, Lena Bodin, who's the president and
15 CEO of People Resource Strategies, and she's also
16 the co-chair of the Small Business Council of the
17 Rockland Business Association;

18 And, Robert Pitkofsky, who is -- has his law
19 firm, Pitkofsky, LLC, and is the co-chair of the
20 Rockland Business Association's Small Business
21 Council.

22 Thank you both for coming today, and we
23 appreciate your time, and look forward to your
24 testimony.

25 LENA BODIN: Well, thank you very much for

1 having us here.

2 We will be providing separate testimonies on
3 separate issues, but before I get started, I wanted
4 to say, Good afternoon to the Senators:
5 Senator Larkin, Marchione, Carlucci, Gallivan, and
6 Senator Valesky.

7 As the introduction, my name is Lena Bodin.

8 In addition to being a consulting firm that
9 helps small businesses, I am also a board member for
10 the Rockland Small Business Association, and
11 I co-chair the Small Business Council, and also the
12 Human Resources Council.

13 In addition, I'm a board member of the
14 New York State Council of the Society of
15 Human Resource Management, which is New York State
16 SHRM, where I currently serve as the legislative
17 co-director of government affairs, and, also, I sit
18 on the board of the Westchester Chapter, and serve
19 as a legislative director on that.

20 As a legislative director, our job really is
21 to help advocate some of the laws or some of the
22 issues that the human-resource professionals have to
23 deal with on a day-to-day basis.

24 And I was actually at the Turning Stone on
25 Saturday, in Verona, and we had about

1 250 HR professionals that are volunteers.

2 And it was a resounding, when I mentioned to
3 them that I'll be here, "Please, let's get this
4 particular law modified, repealed, or whatever."

5 So that's what I'd like to talk to you about.

6 SENATOR VALESKY: How much did you win while
7 you were there?

8 LENA BODIN: I didn't have the opportunity to
9 play.

10 [Laughter.]

11 LENA BODIN: We were very busy. It was a
12 very intensive seminar.

13 I am pleased to appear today before you, on
14 behalf of these groups that I just mentioned, and
15 they really do want me to become the voice here.

16 What I'd like to talk to you about today is
17 the repeal of the annual reporting requirements of
18 the Wage Theft Protection Act of 2010-- I'm sorry,
19 Prevention Act of 2010.

20 And I'm going to refer to this as "The Act"
21 as I go on.

22 And it's a requirement that is not only
23 time-consuming and cumbersome for the
24 HR professionals, but it's also very costly for the
25 business owner; and, therefore, again, I do thank

1 you for the opportunity to speak.

2 You've also all voted yes, so that's a very
3 great start for us, but I know that, you know, even
4 though the Senate has voted yes, and in favor of it,
5 in June of this year, it still has to go through the
6 Assembly and the Labor Board.

7 So we're kind of wholly hoping that, you
8 know, we will be more than happy to be of any
9 assistance that you need to help progress that
10 through the Assembly.

11 Just to tell you a little bit about The Act:

12 It requires communication in the form of a
13 notice to every employee in New York State, and it's
14 a written statement that shows the rate of pay, the
15 overtime rate, any of the premiums or payments, the
16 pay date, and the employer's intent to claim
17 allowances, such as FICA, [unintelligible], you
18 know, social security taxes, and this is as part of
19 the minimum wage, and any other information that's
20 set forth in the statute.

21 A signed copy of this notice must be retained
22 by the employer for each employee.

23 And the annual notification requires that
24 this notice be reissued to each employee at the
25 beginning of each calendar year, and, again, have

1 signed copies collected from the employees to be
2 maintained by the employer.

3 In my consulting practice, I have hands-on
4 experience in working with the Wage Theft Prevention
5 Act, and how it's impacted my clients.

6 And I also regularly work with the
7 small-business owners and their HR staff to develop
8 workplace policies, balancing the interests of
9 companies and their employees, while ensuring that
10 those policies are in full compliance with
11 New York State employment laws.

12 And to that end, I know, and I understand,
13 because I've worked with the businesses, and I hear
14 their groans whenever the annual-notice time comes
15 up; and it's particularly due to the duplicative
16 nature of the information that's required on this
17 notice, and the timing of the notice of when it must
18 be provided to the employees, and, particularly, the
19 requirement that the employers collect signed copies
20 of this notice back from each employee, or risk
21 penalties for non-compliance.

22 The New York State Business Council, a couple
23 of years ago, had conducted a study, collecting data
24 from their member organizations, which is available
25 on their website, and their information can easily

1 be applied to any small businesses, as well as the
2 larger employers.

3 The Business Council statistics showed that
4 the cost of the compliance could be anywhere, from
5 \$3, up to over \$55, per employees, and that becomes
6 very cost-prohibitive for a very small employer.

7 They also have statistics, where there was
8 one employer, where their cost was \$161. And it's
9 probably because the person who's chasing these
10 signed documents from their employees, on an annual
11 basis, happens to be the business owner or an
12 executive within the company.

13 This issue was before the Legislature for the
14 past few years.

15 Most recently, the bill was introduced in
16 both the Assembly and the Senate by
17 Assemblyman Gabryszak and by Senator DeFrancisco,
18 which would have repealed the annual reporting
19 requirement of The Act.

20 And on June 21 of this year, in the final
21 hours of this year's legislative session, the Senate
22 passed its bill in a bipartisan vote of 43-20.

23 The Assembly, on the other hand, failed to
24 act before adjournment, and, although, its bill was
25 co-sponsored by a bipartisan mix of 62 members.

1 The groups I represent strongly support the
2 intent of the Wage Theft Prevention Act,
3 particularly the requirements that employers provide
4 wage information to their employees at the time of
5 hire, and any change in their rate pay when it
6 occurs.

7 But the annual-notice requirement, we feel,
8 is duplicative, because it is being applied: If an
9 employee get hired on December 14th, they're being
10 provided the notice; they sign it, they return it to
11 their employer.

12 January 1st, they get that notice reissued to
13 them, and a lot of times, the employees are the ones
14 that are coming back and saying, "I just signed
15 that. Why am I having to do this again?"

16 It really becomes cumbersome for the
17 HR professionals.

18 Usually their voices are not heard because
19 they don't come to testimonies such as this.

20 But at the beginning of the year, they're
21 dealing with wage -- W-2 statements, confirmation of
22 their benefits, you know, the 401(k) statements, any
23 other benefit notices; anything under Section 127,
24 all those reporting requirements happen at the
25 beginning of the year.

1 So this particular notice really becomes
2 another thing that they have to do, that they don't
3 have the time to get involved in and do.

4 The annual requirement is particularly
5 burdensome and costly for small businesses who don't
6 have a dedicated HR person, and it has to go to
7 somebody else within the organization that has to go
8 and chase down these forms.

9 Signed copies of this notice -- the annual
10 notice, along with each individual notice at the
11 time of hire, has to be maintained for six years.

12 It doesn't -- as I mentioned earlier, it
13 doesn't really cause a hardship to the employer at
14 the time of hire, because they're providing new-hire
15 documentation to the employee, and at the time,
16 they're signing everything and returning it.

17 It's the annual notification that really is
18 becoming the burden, and that's what we're
19 looking -- or, that's what we're asking to have
20 repealed, is the annual-notification requirement.

21 Given the economic fragility of our state,
22 and the U.S. economy as a whole, the RBA and the
23 New York State SHRM members implore you, and the
24 members of the Legislature, to take a close look in
25 early 2014 at the hardships New York employers have

1 encountered with the annual reporting requirement of
2 the Wage Theft Prevention Act.

3 I think that you will find, by amending the
4 law to eliminate the annual reporting requirement,
5 you will be eliminating a major burden for
6 employers, while maintaining the original intent of
7 the statute, that employees in our state are
8 well-informed about their rates of pay and any other
9 pay requirements set forth by statute.

10 Again, I wanted to thank you for providing me
11 the opportunity to speak on behalf of many of the
12 members who are not here, and I'm happy to answer
13 any questions that you might have.

14 SENATOR CARLUCCI: Great, well, thank you,
15 Lena.

16 What I'd like to do is, have Mr. Pitkofsky
17 speak as well, and then you can answer questions
18 together, because I think it would be a good
19 collaboration, the two of you both serving as the
20 co-chair of the Small Business Council.

21 So, Mr. Pitkofsky.

22 ROBERT PITKOFSKY: Great, thank you, Senator.

23 And I really -- and, really, to all of the
24 Senators, I really appreciate the opportunity to
25 speak with all of you today.

1 As the Senator noted, it's a wonderful
2 bipartisan relationship, and such a critical problem
3 for small businesses, you know, throughout our
4 region and our county and our state.

5 So, again, thank you for that opportunity.

6 There are a number of statutes, regulations,
7 and rules which hinder the creation of business
8 entities, but, just to give you a little background
9 of myself:

10 I'm a small-business attorney with a sole --
11 solo practice here in New City, and I consist of --
12 it consists of working with small and emerging
13 startup businesses to set them on the right foot.

14 And as has previously been mentioned, I'm
15 proud to serve the business community as co-chair,
16 with Lena, of the Small Business Council of the
17 Rockland Business Association, which is an
18 organization committed to advocating for business
19 interests in the Hudson Valley and in Albany.

20 And, we work with entrepreneurs, fewer than
21 25 employees, which are the lion's share of
22 businesses here in Rockland and the Hudson Valley,
23 generally.

24 And what we provide is a supportive forum to
25 discuss these business owners' operational,

1 marketing and employment concerns, confidentially,
2 because business owners have that -- or, are able to
3 establish that rapport in that relationship.

4 So, we're excited about the support that our
5 council's received.

6 But one of the most confounding requirements,
7 and I'm gonna speak about one today, that are
8 imposed, especially upon new business owners that
9 are looking to start up here in New York, is the LLC
10 publication requirement under the Limited Liability
11 Company Act.

12 New York's Limited Liability Company Laws,
13 Section 206, requires all members of
14 limited liabilities companies, which is one of the
15 most user-friendly corporate forms, incidentally, to
16 publish a legal notice in two newspapers, one daily
17 and one weekly, over a six-week timeframe within
18 120 days of the organization of the entity.

19 The Legislature has actually confirmed this
20 requirement several times; most recently in 2006.

21 To be quite honest, at least in my practice,
22 and from the literature prior to that amendment,
23 many entities decided to simply ignore the statutory
24 requirement entirely, because, before 2006, LLCs
25 that did not comply with this requirement were

1 simply un- -- they were unable to access the court
2 system to defend or prosecute an action in court.

3 So many of these entities, if there was an
4 action, simply filed for -- you know, at that time.

5 So it -- again, it became a burdensome
6 requirement that didn't advance the public need
7 anyway.

8 But, however, in 2006, the Legislature again
9 reaffirmed this requirement, and they seemed to
10 attempt to strengthen the penalty for
11 non-compliance, though, it's a bit unsure.

12 So under current law, as it stands,
13 Section 206(a) of the Limited Liability Company Law
14 states that the LLC's, quote, authority to carry on,
15 conduct, or transact business in this state,
16 unquote, is suspended as a result of failing to
17 comply with this publication requirement.

18 However, the language is nebulous at best,
19 and it does not seem to limit the LLC's ability to
20 contract or conduct business in the state.

21 Further, the Department of State does not
22 appear to keep any records of these non-compliant
23 LLCs, and does not have any mechanism for suspending
24 them, at least in my practice.

25 And so, again, it's -- from my experience,

1 this is the type of regulation that, certainly, this
2 Committee was formed to examine.

3 So, again, we continue -- my clients and
4 I continue to struggle with the public-policy
5 rationale behind this requirement, because after an
6 entrepreneur makes a decision about what entity to
7 choose, the client quickly turns to startup costs,
8 legal costs, and filing costs. It's just a natural
9 conversation.

10 So after the initial filing fee and the
11 registered-agent fees for any kind of business
12 entity, the publication costs, these LLC
13 publications' costs, can cost up to \$2,000 per
14 entity, depending on which county the LLC is
15 organized in, which is also very unfair as well.

16 So as my clients tell me often, "No one reads
17 the legal notices in the newspaper."

18 And this information is more readily
19 available on the Internet through the Department of
20 State's database.

21 There must be other technological ways to be
22 able to do this.

23 And this is a -- you know, again, an example
24 of how we can improve the business and economic
25 climate here in New York; because, again, from a

1 public-policy standpoint, I submit this requirement
2 has reduced the willingness of business owners to
3 open or conduct business here in New York, because
4 with the other, quote, more business-friendly
5 jurisdictions, such as Delaware, have taken
6 advantage of similar arcane requirements, such as
7 this publication requirement, and relaxed the
8 jurisdictional nexus that a business must have with
9 a foreign state in order to operate.

10 And I would further argue that this
11 requirement, which, again, does not have that
12 public-policy underpinning, seems to perpetuate the
13 unfair perception that New York State is not
14 business-friendly, which is completely antithetical
15 to what we're trying to do here; or, somehow, that
16 the state is not a great place to invest capital,
17 hire employees, and to manufacture products.

18 So I recognize, yes, that the elimination of
19 this requirement would reduce some revenue
20 recognized by the Department of State, in terms of
21 the filing fees. There is a formative fee required
22 after filing these publications.

23 In addition, there would be some loss of
24 revenue to the handful of newspapers that are
25 approved to publish these LLC notices; however,

1 I would argue that the elimination of the
2 requirement would encourage new and existing
3 business owners to consider doing business in
4 New York State, and that would result in a net
5 increase in tax revenue to the state.

6 Business owners who are considering which
7 state to incorporate in or do business in always
8 look at the bottom line.

9 So I respectfully ask that this Committee
10 look at this and examine this thoroughly -- there
11 are definitely resources that are available -- and
12 strongly consider substantially amending this, or
13 abolishing it altogether.

14 And so I thank you for your consideration,
15 and will certainly entertain any questions you may
16 have.

17 SENATOR CARLUCCI: Senator Larkin.

18 SENATOR LARKIN: May I call you, Lena?

19 LENA BODIN: Please.

20 SENATOR LARKIN: While you were talking,
21 I kept thinking about, I owned a business from
22 1975 to 1995.

23 Why do you think I sold it?

24 LENA BODIN: Because of too many --

25 SENATOR LARKIN: Every time I turned around,

1 there was something new.

2 LENA BODIN: [Unintelligible] do with the
3 employees. We have a lot of --

4 SENATOR LARKIN: But, you know, the media
5 that's here has to understand:

6 I owned a dry-cleaning.

7 Do you know why I bought it?

8 Because the guy said, "You come in here
9 a lot."

10 [Laughter.]

11 SENATOR LARKIN: I'm a retired army colonel,
12 and my uniforms have to be such-and-such. And,
13 I have three grown children who like their laundry
14 without being paid.

15 But the thing about it is, I saw -- you know,
16 I wasn't in there every day, because I was also the
17 town supervisor, but I saw, on one day, the people
18 coming in, looking at the smoke stack. The people
19 coming in, looking at the washer and the dryer.

20 We eliminated that because we bought a
21 machine that did washing and drying.

22 And I forgot to put a piece of paper on one
23 of the machines. It cost me \$500.

24 In 1975, 500 bucks was a heck of a lot.

25 LENA BODIN: Was a lot of money.

1 ROBERT PITKOFSKY: Sure.

2 SENATOR LARKIN: And we put it into the file
3 cabinet where the auditor said it should be, but
4 nobody told me that it had to be on the machine.

5 There's nothing in writing they could ever
6 show me.

7 So I took it, just as a case, took it to
8 court. We got our \$500 back.

9 But the point was, that the employees kept,
10 What did we do wrong? Are we going to be punished?
11 Are we going to lose money?

12 I'm going to tell you, I had it for 20 years,
13 it was good, but 28 people got paid.

14 But maintaining the records, when they got
15 pay raises or that, first of all, everyone was --
16 you know, you did all of this, and he did all of
17 this, and she did all the work.

18 We have to come up with something that is
19 simple.

20 You know, small businesses; you know, there
21 are small businesses that have 7 or 8, 10 people.
22 They don't need all of this, you know, because
23 they're not going to survive.

24 The people who bought my business kept it for
25 five years, and he said, "I can't afford it."

1 "I can't afford it."

2 He was making money, but every time he turned
3 around, somebody come up with a new form, or some
4 new regulation, you know, two and three and
5 four inspectors a day, you know, between
6 Taxation Department, Environmental Conservation.

7 LENA BODIN: OSHA.

8 SENATOR LARKIN: Oh, OSHA.

9 [Laughter.]

10 SENATOR LARKIN: That caused me to sell it.

11 But, I mean, what we're trying to do here is
12 the right thing, but, you know, Robert, you said you
13 hope we do this.

14 When am I going to see a letter from you and
15 our BS that says, This is a priority for us?

16 I mean, we've all taken notes here --

17 ROBERT PITKOFISKY: Okay.

18 SENATOR LARKIN: -- but we need something,
19 that when we go to a Committee and we say A, B, C,
20 we're gonna be able to say -- David and I both
21 represent Rockland County -- we're going to be able
22 to say, Our county is strongly for or against.

23 Not that we took notes at a meeting, but, in
24 writing of your position.

25 ROBERT PITKOFISKY: Absolutely. Understood.

1 I appreciate that opportunity to provide
2 that.

3 SENATOR LARKIN: Thank you.

4 Thank you very much.

5 ROBERT PITKOFSKY: Thanks, Senator.

6 SENATOR LARKIN: It was amazing to think that
7 somebody thought like I did.

8 SENATOR CARLUCCI: Senator Gallivan.

9 SENATOR GALLIVAN: Lena, thank you for your
10 detail. It was very.

11 You'd probably be interested in knowing, this
12 is now our sixth hearing that we've conducted.

13 That, has come up every time.

14 LENA BODIN: Yes.

15 SENATOR GALLIVAN: Large businesses, small
16 businesses, medium businesses.

17 LENA BODIN: It impacts every business.

18 SENATOR GALLIVAN: But the detail that you've
19 provided is very helpful, so we are focused on that.

20 I hope we can get some results.

21 But, thank you.

22 The LLC issue has also come up, and
23 interestingly enough, it's a mandate; it's a mandate
24 on local governments as well, that they have brought
25 up when they have to publish local laws.

1 So, I guess the supervisor, I think has moved
2 on, but, the towns in my district have articulated
3 to me that they can only pass -- propose a certain
4 amount of new laws per year, because they have to
5 budget for it, which is kind of crazy to me in this
6 day and age.

7 ROBERT PITKOFISKY: It's counterintuitive,
8 exactly. They're --

9 SENATOR GALLIVAN: But we appreciate your
10 detailed testimony as well.

11 ROBERT PITKOFISKY: Thank you, Senator.

12 SENATOR MARCHIONE: Yes, thank you.

13 SENATOR CARLUCCI: Well, Ms. Bodin and
14 Mr. Pitkofsky, thank you.

15 You gave us much detail, and we appreciate
16 your time and testimony, and we look forward to
17 working with you in the future on these issues, and
18 others as well.

19 Thank you.

20 ROBERT PITKOFISKY: Thank you, Senator.

21 Thank you all.

22 LENA BODIN: Thank you.

23 SENATOR CARLUCCI: Next we're going to hear
24 from Steven Porath, who is the executive director of
25 the Rockland Industrial Development Agency.

1 STEVEN PORATH: Well, good afternoon, and
2 thank you for having me here.

3 I'd like to start off apologizing; I don't
4 have formal remarks that I had sent to you in
5 advance, but I intend to follow up with that, and
6 maybe based on some of the discussion we have today.

7 My comments today are, more, some suggestions
8 of things we should have versus eliminating things
9 that exist; so let me start with that note.

10 Coming from the IDA, I think we -- I have a
11 certain perspective of what the type of projects
12 that the IDA typically does, and, also, sister
13 agencies like Empire State Development, that I can
14 say, by and large, the industry of economic
15 development does not lend itself easily to working
16 with small businesses.

17 It's structured, it's goals, it's the
18 regulations, that rule what we do, lends itself to
19 impactful projects.

20 And by "impactful," I'm talking about
21 two things: a lot of jobs, a lot of investment.

22 The small retailer, the small entrepreneur,
23 oftentimes is in -- there is no fit for them in the
24 world of the IDAs or Empire State Development
25 Excelsior programs, the former Empire Zones program.

1 It just wasn't a good fit.

2 And, I can understand the argument for some
3 of this.

4 Retail, inherently, is
5 demographically-oriented, as compared to
6 manufacturing.

7 A small, you know, retail shop is going to go
8 where the shoppers are.

9 A restaurant's going to go where, you know,
10 the customers are going to be.

11 And that oftentimes puts it at odds of what
12 economic development typically does, which is, try
13 to give significant tax incentives for it to go and
14 land into a specific spot.

15 But I think there's a way that we can bridge
16 that.

17 Because the industry of economic development
18 is geared towards jobs and overall investment,
19 looking at a small mom-and-pop company that has one
20 or two, maybe the employers -- the employees are the
21 owners, or they have one or two part-timers, in
22 itself is not impactful in the scheme of overall
23 investment and jobs.

24 So rather than looking at that individual
25 business, which is how incentives are provided

1 today, I would suggest that we start to really
2 change the paradigm a little bit.

3 Let's change the dynamic of how we look at
4 economic development, and maybe start considering,
5 and I'm talking specifically about Rockland, but
6 I think it can also lend itself to other areas of
7 the state, look at pools, areas of a community,
8 whether it's a retail sector or whether it's a
9 downtown, allow a mechanism, and with the
10 cooperation of the State and the local
11 municipalities, to define, maybe call them
12 "redevelopment zones" --

13 I like to call them "pockets of commerce," is
14 a phrase that I've used in the past.

15 -- where you define a zone, and if a
16 business, regardless of size, resides within that
17 zone and meets certain preestablished criteria, as
18 far as job creation, investment, every -- and other
19 criteria that can be defined locally, they will be
20 enabled to have some tax incentives, and that could
21 be in the form of property-tax abatements, perhaps
22 sales-tax exemption on, uhm -- things like the IDA
23 does, like sales-tax exemption on capital
24 improvements. If there's a -- you know, a financing
25 and there's a mortgage-recording tax, exemption on

1 that.

2 These are things that large businesses, and
3 I deal with this almost every day of the week as the
4 executive director of the IDA, those types of
5 incentives, a large company is very familiar with
6 it. They have the machine of economic development.
7 They have consultants, they have experts, they have
8 attorneys, that know how to acquire those benefits.

9 The small mom-and-pop simply doesn't, and
10 it's not a natural fit.

11 But, again, rather than having an individual
12 business have to go through, for example, the IDA
13 application process, have a community define a zone,
14 "a pocket of commerce," that if they fall within
15 that area, they can take advantage of some of these
16 incentives that already exist.

17 The machinery of those exemptions are in
18 place, it's just a matter of getting them to the
19 small businesses.

20 And that's it; I really just wanted to give
21 you a real, like, a bullet shot of one program.

22 I mean, there's a lot of things we can talk
23 about small business, from financing, and other
24 things, but, opening up the doors to some of these
25 programs to the small business I think is crucial to

1 seeing -- seeing, like, communities, like Rockland,
2 which has maybe a few downtowns, but also has retail
3 corridors, having stores within that take advantage
4 of it.

5 So, really, that's my comments, and I'm
6 available for any questions or thoughts you might
7 have.

8 SENATOR CARLUCCI: Very well.

9 Steven, thank you for the testimony, and
10 thanks for being concise.

11 The pockets of commerce, that idea, it sounds
12 great.

13 Now, it sounds similar to the idea of the
14 Regional Economic Development Council that has been
15 developed over the past few years.

16 How would you rate that, in your role?

17 STEVEN PORATH: Yes, I think -- and, in fact,
18 I think they go part and parcel with each other.

19 This pockets-of-commerce idea is really
20 almost boiling it right down to the local community.

21 It could be -- for example, I can give a very
22 specific example where this concept was adopted by a
23 municipality.

24 Two years ago, the town of Stony Point
25 adopted by resolution, this concept of pockets of

1 commerce for a retail corridor. It ran -- the
2 particulars are -- isn't really relevant, but it
3 went through Stony Point's retail corridor.

4 And it would take, as we were developing that
5 with the town of Stony Point, it quickly became
6 evident that there was a lot of regulations.

7 And, again, that industry of economic
8 development doesn't lend itself, without a lot of
9 changes, of how to incorporate that.

10 The stumbling blocks became very quick and
11 evident that it would be very hard to implement.

12 But, in that case, it would be a good fit.

13 With the regional councils, again, they're
14 set up to define these, and I think that's an
15 existing tool that we can incorporate into that
16 process, and use that as the vehicle to really
17 make -- put some meat to this concept.

18 SENATOR CARLUCCI: Well, Steven, you touched
19 on something that I think we've all seen, time and
20 time again, is that it's -- you know, we develop
21 these policies, the incentives, but the smaller
22 businesses aren't equipped to take advantage of it.

23 It's the bigger multinational corporations,
24 with the consultants, the attorneys, that can do it.

25 Do you have, in your experience, ideas where

1 you can make it easier for the mom-and-pops, the
2 small businesses, the budding entrepreneur, to take
3 advantage of some incentives?

4 STEVEN PORATH: Sure.

5 Yeah, I'll give you a very real example.

6 Several years ago, and it's our own
7 organization, Rockland IDA, we recognized this
8 issue, because the process of approvals, there's
9 inducements and authorizing resolutions and public
10 hearings, and, just the process, the machinery of
11 it, was bulky.

12 And because IDAs are fee-based organizations,
13 the fees themselves can actually cancel out the
14 benefit.

15 You know, fees cost you -- simple -- if it's
16 \$5,000 in fees, and you're only getting \$6,000 in
17 tax incentives over several years, it just doesn't
18 make sense to do.

19 So what the IDA did several years ago, we
20 created, we call it, informally, "our small business
21 program."

22 What we did was, for small businesses that
23 met certain criteria, they could have had a fixed
24 fee of, I believe it was \$1500, all told. They
25 could take advantage of sales-tax exemption only.

1 That's the 8.375 percent state and Rockland County
2 sales tax, for capital improvements. And it could
3 be up to \$100,000 in purchasing.

4 So it worked out to where it was very simple.

5 We kind of made the forms standardized. We
6 made their approval and the contracts and all the
7 agreements very standard, as compared to the
8 bigger -- bigger-blown ones.

9 And that was a very simple way to let some
10 businesses, that otherwise would have never taken
11 advantage of the IDA, to take advantage of it.

12 And we've got some examples of that.

13 But I will say, in all fairness, they also
14 weren't mom-and-pops.

15 I mean, if you go by the definition of what a
16 "small business" is, a lot of small businesses, by
17 federal regulations, are big enough to have CFOs
18 and, you know, everybody else.

19 So I'd like to see us even make it even a
20 little simpler.

21 That's a personal goal for the IDA; to lower
22 that bar even farther down to make it less
23 expensive, so businesses can take advantage of some
24 of these incentives.

25 But that's how we can do it.

1 And I think, working together with the State,
2 we can make that happen.

3 SENATOR CARLUCCI: Yeah, because that's one
4 of our goals.

5 I know Senator Marchione is a former clerk,
6 I was a former town clerk.

7 You'd meet with these entrepreneurs that have
8 ideas, have a dream, want to make a business, and
9 then they meet up against all the red tape that
10 you've heard about before.

11 So any strategies in terms of affecting
12 regulations, where we can help cut down on that
13 barrier to entry, or make it easier to get into
14 starting a business, you know, we're all ears, and
15 look forward to working on that.

16 STEVEN PORATH: Absolutely, and I'd be happy
17 to provide some of that.

18 SENATOR CARLUCCI: Senator Larkin.

19 SENATOR LARKIN: Years ago, Alex and
20 I chaired Local Government; he in the Assembly,
21 myself in the Senate, and we made a lot of progress.

22 One question that still bothers me, when IDAs
23 come about and say to town -- to the supervisor of
24 the town of Saratoga, We want you to give this
25 company 35 percent reduction on tax.

1 And I disagree with that.

2 I disagree, because I was a town supervisor.

3 You didn't have to make the budget. You
4 didn't have to meet everything.

5 Where do you get off telling me what benefits
6 I will give?

7 I think it's -- we've had one in
8 Orange County, Steve Neuhaus, now running for
9 county exec, he took it to court, and you know what
10 the court said?

11 "IDA, thank you very much for your help, but
12 when you start paying the bill, then you can make
13 the decision he is."

14 So I think that there's a little roughening
15 between IDAs and local governments, because some
16 IDAs across the state, and I've met most of them,
17 think I'm the guy with the pocketbook.

18 You are the guy with the pocketbook, but,
19 also, if you remember, that town or village or city
20 is also in the process of trying to recruit
21 business.

22 So I think that demanding that certain taxes
23 be exempt, I think is negative.

24 STEVEN PORATH: Senator, if you -- if you
25 were -- if I was to hand you an issue and say,

1 "Bring that up so I can respond to it," I couldn't
2 have put it better, because I couldn't agree more
3 with you on that issue.

4 And I would even go as far to say, a lot of
5 IDAs, they have the checkbook, but it's the
6 municipalities that actually have the bank account
7 that gets impacted.

8 So it's --

9 SENATOR LARKIN: You're exactly right.

10 STEVEN PORATH: So that lends itself to --
11 and it's, very rarely, do you have an opportunity to
12 respond so positively to something that's a serious
13 issue.

14 Rockland County is one of two IDAs throughout
15 the state that does not have the legal right to
16 impose a pilot on the local taxing entities: school
17 districts, towns, villages, and the county.

18 And a lot of times, when I first came to the
19 IDA, my first initial reaction was, Geez, we don't
20 have the same, you know, tools that our neighboring
21 counties have.

22 I've come around to coming and saying, that
23 one element, not having that right, has given us so
24 much benefit, much more -- because I'm very much
25 aware of these lawsuits that fly around.

1 I've talked to school districts, you say the
2 words "IDA," and they run. They look at you like
3 you're the enemy.

4 In Rockland County, because I don't have
5 that -- and when I say "I," I mean the IDA --
6 because we don't have the ability to impose, what we
7 do, by -- by -- initially, by -- because we had to,
8 but it has become a machine in its own sense, is to
9 meet with all the local taxing entities.

10 When we have an IDA project and the applicant
11 that's seeking a pilot, our first step, usually
12 informally, is to sit down with the town, a village,
13 the school district, the county, talk it through.

14 Because, how we're are set up is, I don't
15 have the ability to approve anything.

16 I can approve a business for the ability --
17 for the right to negotiate a pilot, but the towns,
18 the school districts, and village have to actually
19 consider it, structure it, and pass by resolution,
20 that deal.

21 As a consequence -- because we're forced to
22 work together, not only does the business and the
23 school districts and the towns, and everyone, reach
24 a deal that makes sense for everybody; that there's
25 some continuity, that it addresses the issues that

1 that business needs, maybe the pilot is front-loaded
2 a little bit more than spread out, or vice versa,
3 but as a consequence, a deal is made that's agreed
4 to by all.

5 And as a result, in Rockland County, there
6 has never been an IDA pilot challenged in court, or
7 even fought over.

8 There's clawback, and all the protections
9 that a municipality should have, if somebody doesn't
10 do what they're supposed to do.

11 But I think it's the best thing -- one of the
12 best things Rockland County has done, was not give
13 me the ability to impose that pilot.

14 So I agree with you more.

15 SENATOR LARKIN: I knew you -- I knew the
16 position of the county, because David and I spoke
17 about it, but I had -- but I just wanted to make
18 that you're giving advice to the rest of us who have
19 different parts of the state --

20 STEVEN PORATH: Absolutely.

21 SENATOR LARKIN: -- because it's -- many
22 times, it's a deterrent, rather than a positive,
23 because, when they look and they say, Well, she's
24 the town supervisor.

25 She says, I'm giving you 35 percent.

1 And he says, We're going to give them 50.

2 And she says, Wait a minute, where's the
3 15 percent coming from me? I don't have it. I got
4 the checkbook, but there's no 15 in there; there's
5 only 35.

6 So if you want it, you want to come to our
7 town, here's what we're giving you.

8 And I agree with you, this basic ground
9 movement is the positive solution.

10 STEVEN PORATH: It's a good -- that's one
11 thing at --

12 SENATOR LARKIN: I've promoted you, see that?

13 [Laughter.]

14 STEVEN PORATH: So, no, I thank you for
15 bringing that up because it's -- obviously, it's an
16 issue that's very near and dear to the -- our IDA's
17 heart, that we like how it is.

18 And I'd say, if I was to make a
19 recommendation, that this be considered elsewhere.

20 SENATOR LARKIN: Thanks for your response.

21 SENATOR CARLUCCI: Great, thank you, Steven.

22 STEVEN PORATH: Thank you very much.

23 SENATOR MARCHIONE: Thank you.

24 SENATOR GALLIVAN: Thanks, Steve.

25

1 SENATOR CARLUCCI: Next we're gonna hear from
2 Jim Calvin, who is the president of the New York
3 Association of Convenience Stores.

4 SENATOR LARKIN: Hi, James.

5 JAMES CALVIN: Good afternoon, Senators.

6 SENATOR LARKIN: How you doing?

7 JAMES CALVIN: Nice to see you.

8 SENATOR LARKIN: Good to see you.

9 JAMES CALVIN: My name is Jim Calvin. I have
10 the privilege of serving as president of the
11 New York Association of Convenience Stores.

12 We're a statewide trade organization that
13 represents nearly 8,000 retail establishments, from
14 one corner of the state to the other.

15 From a corner market in West Seneca, to a
16 bodega in Brooklyn; from a country store in
17 Saratoga County, to a Gas 'N Go in suburban Syracuse
18 or Spring Valley; convenience stores come in all
19 different shapes and sizes and formats.

20 Open extended hours, these small businesses,
21 many of which are independent family-run
22 enterprises, are proud to be part of an industry
23 that millions of New Yorkers rely on as a
24 gas station, quick-serve restaurant, bank,
25 refreshment center, and source of community

1 connection.

2 Our thanks to the Senate Majority Coalition,
3 and Senators Gallivan, Valesky, Marchione, Carlucci,
4 and Larkin, for convening this forum.

5 I'm very proud to say that Senator Marchione
6 is my senator.

7 Greetings from Kinderhook, New York, Senator.

8 SENATOR MARCHIONE: Thank you.

9 JAMES CALVIN: And NYACS is honored to be
10 able to testify today.

11 Convenience stores have a unique perspective
12 on New York State's regulatory climate because we
13 are engulfed by it.

14 We sell motor fuel, tobacco,
15 alcoholic beverages, prepared food, milk, snacks,
16 and a wide range of other products, and we collect
17 billions of dollars in excise and sales taxes for
18 the state of New York.

19 And, consequently, we're licensed and
20 regulated and audited and inspected by the following
21 state agencies:

22 The Consumer Protection Board;
23 Agriculture and Markets;
24 Environmental Conservation;
25 Department of Health, of Labor;

1 Division of the Lottery;
2 Department of State;
3 Department of Taxation and Finance;
4 The State Liquor Authority;
5 The Office of Alcoholism and Substance Abuse
6 Services.

7 If it isn't the tax auditors, it's the
8 alcohol-warning-sign police;

9 Or, Ag and Markets inspectors, monitoring
10 food-service sanitation;

11 Or, health departments, performing undercover
12 tobacco stings;

13 Or, a badge-wielding bureaucrat showing up
14 unannounced, and opening up every cigarette carton
15 to see if every pack has a valid state tax stamp;

16 Or, the Labor Department, checking your
17 wage-and-hour records;

18 Or, the environmental officer, writing you up
19 for fading paint on the caps of your underground
20 petroleum storage tanks;

21 Or, Weights and Measures, doing an
22 item-pricing inspection.

23 It's endless.

24 I swear, as Senator Larkin was alluding to
25 earlier, some days, more inspectors come through the

1 door than customers.

2 On more than one occasion, I have
3 half-jokingly suggested that, in the name of
4 efficiency and common sense, why don't the state,
5 local, and federal governments team up and assign
6 one dedicated, full-time "super-inspector" to each
7 convenience store to ensure 100 percent compliance
8 with every single law, regulation, and policy known
9 to man?

10 Most of our members got into the
11 convenience-store trade because they wanted to sell
12 stuff, interact with customers, earn a living, and
13 grow a business, but, wave after wave of additional
14 regulation has turned them into compliance officers,
15 draining their limited time and energy and
16 resources; draining it away from running their
17 business in order to ensure they meet the state's
18 ever-expanding regulatory requirements.

19 For the single-store mom-and-pop operator,
20 the challenge is almost insurmountable.

21 Now, in my written testimony, I've offered a
22 number of specific laws, regulations, and policies
23 that may merit your attention as you move forward.

24 I would be happy to discuss any of them
25 today, or in the future.

1 We're developing more, and I expect that our
2 individual members will be submitting additional
3 suggestions, using the feedback form that you've
4 provided.

5 One issue I do want to touch on here during
6 my oral testimony, has to do with preventing
7 underaged sales.

8 We wish to commend Senator Gallivan for
9 introducing legislation this year, Senate Bill 3493,
10 that will require all individuals wishing to
11 purchase alcohol or tobacco at off-premises
12 establishments, like ours, to present a valid
13 photo ID, regardless of age.

14 Existing law says, we have to ID a tobacco
15 customer who appears to be under 25, and a beer
16 customer who appears to be under 21.

17 But anybody who has ever worked in a retail
18 environment knows how hard it is to discern a
19 customer's age.

20 Too often, even properly trained cashiers
21 guess wrong, don't ask for ID, and mistakenly sell
22 to a minor.

23 That jeopardizes public safety and health,
24 and it subjects them and our stores to harsh
25 penalties.

1 This legislation would eliminate the
2 guesswork; thereby, reducing underaged sales.

3 Rather than training store clerks only to
4 ID customers who look younger than a certain age,
5 we'd be able to tell them, "Just ID everybody."

6 Some stores have already, voluntarily,
7 adopted this as a store policy, but, regrettably, it
8 has cost them business, because, when older
9 customers get annoyed at being asked for their ID,
10 they walk out and go across the street to a store
11 that doesn't have a policy like that.

12 A statewide law is the solution.

13 We -- this bill would also address the lack
14 of prompt notification on the part of the
15 State Liquor Authority when there is an
16 underaged-sale violation.

17 And what's been happening, as you well know,
18 Senator Valesky, from your friends at Nice N Easy
19 Grocery Shoppes, there are retailers that have
20 received notice of a violation, 6 months, 8 months,
21 10 months, after the alleged incident, and that's
22 the first time they become aware that there was an
23 underaged sale.

24 And that means that the State Liquor
25 Authority has allowed that clerk or cashier to

1 remain on the job; who knows how many additional
2 underaged sales they have made to the public without
3 the knowledge of management.

4 And, you know, contrary to their training,
5 and the law, it's important that we know as soon as
6 possible so we can remove the problem immediately.

7 So we look forward to working with
8 Senator Gallivan and the Senate Majority Coalition
9 to pass this legislation in 2014.

10 New York's pervasive regulatory burden would
11 be easier for all of us to bear if our
12 Native American competitors were held to the same
13 standards.

14 They sell billions of dollars worth of
15 cigarettes and motor fuel to non-Indian customers;
16 yet, they're not required to obtain licenses, to
17 collect and remit state taxes, undergo audits or
18 inspections, or abide by any of these regulations.

19 And in the case of the Oneida Indian Nation
20 in Central New York, their reward is an agreement
21 signed by Governor Cuomo, and ratified by the
22 Legislature earlier this year, under which our state
23 essentially promises to forever look the other way
24 on all of the above regulations, permanently
25 bestowing special privileges and competitive

1 advantages on those who have made a fortune thumbing
2 their nose at duly enacted standards for doing
3 business with New Yorkers.

4 Meanwhile, law-abiding convenient-store
5 operators who, for decades, have pleaded with the
6 State to end this injustice; instead, get poked in
7 the eye.

8 All we have ever asked for is a fair chance
9 to compete for retail trade.

10 We really appreciate the initiative that all
11 of you have taken, and the success that you have
12 achieved in a very short period of time, in starting
13 the arduous task of reforming and repealing and
14 rolling back and modifying costly and unnecessary
15 regulations that impede small-business growth.

16 When legislators ask me, "What can we do to
17 make things better?" the first thing I think of is,
18 refrain from making it any worse.

19 Thus, in 2014, when election-year proposals
20 for more burdensome legislation and regulations are
21 introduced, we ask you and your colleagues to just
22 say "no."

23 When they want to expand the "Bottle Bill" to
24 iced tea and juice and sports drinks and
25 flavored water, sticking us with the mess of having

1 to redeem and store empty, unrinsed containers,
2 please say "no."

3 When they try to impose mandatory sick leave
4 on private-sector employers who can't afford it, say
5 "no."

6 When they try to place new restrictions on
7 what products we can sell, or what form of payment
8 we can accept, please say "no."

9 When they try to prohibit retail businesses
10 from checking into whether an applicant for a
11 cashier position has any past criminal convictions
12 until after we conditionally offer them a job,
13 please say "no."

14 When they propose higher taxes on our core
15 products, say "no," because those tax rates are
16 already the highest rates in the country, or, among
17 the highest rates in the country.

18 When they want convenient-store operators to
19 wear "Kick Me" signs on their backs, by requiring
20 gas pumps to display the phone number of the
21 Attorney General's Office, so consumers frustrated
22 with gas prices can call and arbitrarily accuse us
23 of overcharging, please say "no."

24 Say "no," because these measures would drive
25 up our costs, reduce our sales, and/or erode our

1 ability to cope with the existing tax and regulatory
2 burden.

3 Say "no," because such actions would only
4 reinforce New York's reputation as having the worst
5 business climate in the country.

6 Say "no," because you sincerely want small
7 businesses to be able to succeed, and grow, and
8 provide employment, and generate tax revenue, and
9 contribute to the communities they serve.

10 On behalf of NYACS, thank you for your time
11 and attention, and for your bipartisan commitment to
12 addressing overregulation of small business.

13 SENATOR CARLUCCI: Great, thank you, Jim.

14 Do we have questions?

15 SENATOR LARKIN: Jim, one thing we talked
16 about earlier this year: I have seen some of your
17 stores, where somebody comes in, underage, and they
18 pick 'em up.

19 The underage person, in this case, was in
20 Highland Mills, New York. I was -- I brought to
21 the -- somebody brought the lady in.

22 She said, "I was asked to do this by the
23 Department of Health."

24 This lady looked more towards 30 than she did
25 towards 18.

1 Now, they got fined, but here's what bothers
2 me, and I think we as legislators ought to take a
3 good look at it:

4 This is a mom-and-pop store.

5 Mom-and-pop put 18 to 20 hours a day in
6 there, but, they lost their license to sell
7 cigarettes.

8 Ah! They lost the Lottery ticket sales.

9 They also lost the beer license.

10 Now, let's think about it:

11 Your customer comes in. It's near a bus
12 stop.

13 They come in; they buy a newspaper, they buy
14 a cup of coffee, they buy a pack of cigarettes, and
15 maybe something else, a sandwich, or something.

16 But when they can't buy those cigarettes or
17 that Lottery, "When you going to get it?"

18 "I don't know. It could be six to
19 nine months."

20 Where does your customer go? Someplace that
21 has it.

22 JAMES CALVIN: That's right.

23 SENATOR LARKIN: I mean, if you're going to
24 punish me for selling cigarettes, then punish me for
25 selling cigarettes.

1 I didn't sell, illegally, the Lottery or the
2 beer or the newspaper.

3 I think we ought to strive to get together
4 with the Lottery tax and Health on that, because,
5 Health, and the counties involved in this, so we
6 have to bring them in.

7 But, do we need to put someone out of
8 business?

9 Because when you say, in this case, these
10 people told me, it's almost nine months, and they
11 haven't sold a cigarette.

12 JAMES CALVIN: Yeah, losing your tobacco and
13 Lottery licenses, that's a death sentence for the
14 typical convenient store. Those are your two top
15 traffic-drivers.

16 We understand, that if there are repeat sales
17 of tobacco to minors, then you're gonna get your
18 tobacco license suspended.

19 We accept that.

20 But, to also require that your Lottery
21 license be suspended, on the theory that, if you
22 sold tobacco to minors here, you're probably going
23 to sell Lottery to minors over there, we don't --
24 that's not rational, in our view.

25 If you get pulled over for speeding, and you

1 get points on your license, you lose your driver's
2 license, should your hunting license be suspended?

3 I don't think so.

4 SENATOR LARKIN: Same thing.

5 JAMES CALVIN: But there's a presumption,
6 that because you committed an offense here, you'll
7 commit an offense there.

8 It's not fair to the retailer to lose that
9 Lottery license.

10 SENATOR LARKIN: The other thing I -- you
11 know, they forced me to do this; they said, Make
12 sure you go out and check all these stores in your
13 district.

14 I said, I do it every day. Buy a lottery
15 ticket from you, Lottery ticket from you.

16 [Laughter.]

17 SENATOR LARKIN: My wife says "fool's gold."

18 But the point about it is, I look at a place
19 that I didn't pay attention to.

20 I get my morning paper there, and my gas, and
21 I saw all these stickers.

22 You know, "Go to school on time." "Pick up
23 your child on time." "Oh, if you buy cigarettes,
24 they can't be this here."

25 There's more notices in these stores than

1 there is going to a doctor's office that says, If
2 you don't have a co-payment, we can't take care of
3 you.

4 Is there anything, gentlemen, that we could
5 pay attention to, to look at that?

6 Because I -- Saturday morning, somebody was
7 there when I was getting my paper at 6:30, and this
8 gentleman in business says, "Am I glad I don't own
9 one of these."

10 Because, what happened if somebody, by the
11 way, last night, in cleaning, took a sign down, and
12 the next day, a guy comes in and said, You're
13 supposed to have that sign.

14 And the guy says, "It was there yesterday."

15 "Well, you're fined for this here."

16 I mean, I think there's too many.

17 I don't know if you agree with me, but
18 there's -- you know, there's -- you know, go to bed
19 at 9:00, get up at 5:00; go get your newspaper, pay
20 the gas; pick up your grandchildren; have dinner for
21 the grandchildren.

22 I mean, I have that at home.

23 My wife said, Anna Jean [ph.] and the kids
24 are coming for dinner tonight, and tomorrow night,
25 and I got to go to something at 7:00, so she said,

1 "We're eating at 5:00."

2 I look at that, and that's my house.

3 But a business, I think you're causing
4 troubles.

5 I really do, gentlemen.

6 I think it's -- I mean, we all want to make
7 sure that we comply, that we help, and do that, but,
8 you know, there comes a time when you start to say,
9 What are we gaining by doing all of this?

10 JAMES CALVIN: Senator, we agree that -- at
11 least that there's a on our part, that, every
12 week --

13 SENATOR LARKIN: But why do we --

14 JAMES CALVIN: -- there are more --

15 SENATOR LARKIN: -- Jim, you've done this a
16 couple years ago, when we had this ration going on,
17 and you got people together.

18 Could we put together, for the board --

19 I'm speaking out of turn. I'm -- but I'm not
20 a member of this Committee, but this is my district,
21 and I wanted to find out what you folks cared about.

22 -- I think that we ought to go and put
23 Health Department, Liquor Authority, Lottery,
24 together, and say, Hey, what has to be in this
25 store?

1 You know, you got to remember, sometimes the
2 store's like this in here [indicating].

3 There's more signs on the wall than it tells
4 you how much a pack of cigarettes are.

5 And, you know, everybody knows how much the
6 Lottery is going to win, because they see it there.

7 But, all of these other signs, and you think
8 If I forget to put one of them up, or change it, it
9 could cost me my business.

10 I think that's a disgrace.

11 That's where, you know, the Governor said,
12 "We open for business," and he's serious about
13 looking at, how do we cover and protect it?

14 I would like to sit down with you in Albany,
15 and I know the rest of us would, bring some of your
16 people together, and we should do it before
17 January -- January the 8th, and say, What can we do
18 to help business, but, yet, ensure that things are
19 done right?

20 JAMES CALVIN: It would be our pleasure.

21 SENATOR LARKIN: You did it for me a couple
22 years ago, and we saved some people business.

23 JAMES CALVIN: Yes.

24 SENATOR LARKIN: But when you start to say, a
25 small mom-and-pop, somebody brand new, sold some

1 cigarettes, they lose Lottery, beer, nobody realizes
2 it, but they lost coffee and they lost a bun or a
3 sandwich.

4 SENATOR CARLUCCI: Senator Marchione.

5 SENATOR MARCHIONE: Jim, just a statement --
6 you know, your statement of "do no harm."

7 We heard that a couple of times in Saratoga
8 as well.

9 And it's interesting the people are saying,
10 Okay, it's really, really bad, but don't do anymore;
11 don't do anymore to us. You know, we're struggling
12 under the burden.

13 And our goal here is to get you out from some
14 of that struggling.

15 So, we appreciate your testimony today, and
16 bringing to light what you live under, because
17 I don't own a convenient store. I don't know the
18 rules and regulations that you're subjected to.

19 But your testimony so far, for me, has been
20 the most onerous out of any.

21 You look at a small store, and you think
22 about how you have to maintain your businesses.

23 And I just want you to know I appreciate what
24 you've brought to the table today.

25 JAMES CALVIN: Thank you, Senator.

1 SENATOR CARLUCCI: Senator Valesky.

2 SENATOR VALESKY: Senator Carlucci.

3 Jim, good to see you again.

4 JAMES CALVIN: Good to see, sir.

5 SENATOR VALESKY: One of the issues that has
6 been raised at at least three of the other hearings
7 that we've had, has been the issue of the expanded
8 SEQRA form. It is going into effect as we speak.

9 You mentioned Nice N Easy, which is a very
10 successful convenient-store chain in
11 Central New York.

12 So I would just ask you, if you would share
13 with us, as the process moves forward, your members
14 that are fortunate enough to be expanding, if you're
15 encountering any problems with this expanded form,
16 or that's slowing down the approval process locally.

17 I know that this Committee would be
18 interested to know that, from your -- from the
19 perspective of your membership.

20 JAMES CALVIN: I don't have a great deal of
21 feedback yet.

22 SENATOR VALESKY: Yeah, I didn't think you
23 would right now, but as we --

24 JAMES CALVIN: But I'm beginning to hear
25 members moaning about the additional information

1 that's required, and the level of sophistication
2 that you need in order to complete the forms to the
3 satisfaction of DEC.

4 In almost all cases, they have to use an
5 outside consultant, you know, a paid consultant,
6 naturally, or, they may have their own staff that
7 specialize, or an attorney, or what have you.

8 At the same time, the Department of
9 Environmental Conservation has just proposed new
10 regulations governing underground petroleum storage
11 tanks; mainly, to bring them into conformity, the
12 state regs, into conformity with the federal regs.

13 But it's introducing several new requirements
14 that, up to now, retailers that sell gas had not had
15 to meet.

16 There's a requirement for operator training;
17 you have to pass a test, certifying that you
18 understand all the ins and outs of underground
19 storage tanks. And, it's very technical in nature.

20 It's going to force a lot of retailers to
21 have to hire outside consultants to manage their
22 environmental compliance.

23 And I really fear what the consequences are
24 for the mom-and pop operators who don't have that
25 expertise, and don't have the resources,

1 necessarily, to hire an outside specialist to do
2 that.

3 So, environmental compliance is becoming more
4 and more of a concern, an administrative burden on
5 retailers.

6 We understand it's important.

7 We have a responsibility to protect
8 groundwater in the surrounding environment, but,
9 many of our members think we've gone a little bit
10 overboard.

11 SENATOR VALESKY: Thank you.

12 SENATOR CARLUCCI: Thank you, Mr. Calvin.

13 We look forward to working with you in the
14 next session.

15 Thank you.

16 Next we're going to hear from David Golub
17 who's the senior vice president of Price Chopper
18 Supermarkets.

19 DAVID GOLUB: Thank you, Senator Carlucci.

20 Senators, I have to start by saying that
21 I really applaud your efforts in going after
22 regulatory reform.

23 It's personally inspiring to me, as a
24 resident of the state of New York, to see a
25 bipartisan effort to really go after making

1 business -- more of a business-friendly environment
2 in New York State.

3 And in your efforts, I'm convinced, are
4 really going to make some additional headway towards
5 making New York more business-friendly, which is
6 going to favorably impact all the residents of
7 New York State.

8 My name is David Golub. I'm the
9 senior vice president of administration for
10 Price Chopper Supermarkets.

11 We're a privately held, full-service
12 grocery-store organization.

13 We operate in six northeastern states. We
14 have 132 stores; 81 of those stores are operated in
15 New York State.

16 We have five distribution centers. Those
17 operate in Rotterdam and Guilderland, New York, and
18 they service the entire chain;

19 As well as, we have 22,000 associates,
20 14,000 of which work in the state of New York.

21 While it's refreshing to hear some of the
22 other issues that the others before me have
23 mentioned, because a lot of those are also impacting
24 us, and it's nice to hear that a lot of the similar
25 types of issues that go across businesses are things

1 that, if you can make headway on, they can really
2 help all of the businesses across New York State.

3 There are a lot of topics that I could cover,
4 but, I'm going to focus on three areas that we feel
5 are the most in need of attention, from our
6 perspective.

7 To start: With the implementation of the
8 Affordable Care Act, and the mandate requiring all
9 U.S. citizens to have health-care coverage, and the
10 introduction of transitional reinsurance, it should
11 no longer be necessary to impose surcharges at the
12 state level on providers of health care in order to
13 fund the indigent care.

14 As an employer with a self-insured medical
15 plan, Price Chopper currently pays approximately
16 \$2 million per year in HCRA surcharges annually;
17 that's, "Health-Care Reform Act" surcharges.

18 Price Chopper has this as a tax on the
19 health-care services that negatively impact our
20 company and our associates, because some of these
21 fees are passed on to them as well.

22 And a reduction or elimination of this large
23 tax would help alleviate some of the burden on
24 companies like ours, and help to have a favorable
25 impact on job creation across the state.

1 Another area of opportunity involves a
2 significant cost to having a self-insured
3 worker's compensation program in the state.

4 Price Chopper currently has a self-insured
5 program, and we pay extremely high premiums and
6 assessments in New York State versus the five other
7 states that we operate in.

8 Just to give you some perspective:

9 Premiums and assessments in New York are
10 10 times more in dollars that we pay than in all
11 other 5 states combined.

12 As a percent of payroll, New York represents
13 7 times more than all other 5 states put together,
14 in premiums and assessments.

15 And we are aware that there's currently a lot
16 of work being done to identify opportunities for
17 improvement through a worker's compensation process
18 reengineering project, and as the ideas that are
19 generated from this process, we feel that this is
20 really a good process.

21 And we would ask for your support in helping
22 to bring down the stifling cost of
23 worker's compensation insurance and their impact on
24 business in the state.

25 And I think that the project that they're

1 doing, and it's done through the
2 Worker's Compensation Board, that they're going to
3 come up with some really good ideas, and would
4 I just ask for your support in trying to help to
5 make it more business-friendly in the state.

6 And the final area that I would like to cover
7 involves the inefficiency of licensing for food
8 retailers in the state.

9 When trying to open a food-retailing business
10 in New York, there's currently no uniformity in the
11 application process from the different state
12 agencies.

13 And, you know, it's funny, I started thinking
14 about, my daughter is a senior in high school, and
15 she's looking at applying to colleges. And I talked
16 to her about getting the applications together, and
17 make sure that, you know, she's got them all filled
18 out and sent out to all of the different colleges.

19 And I said, "You know, how have you gotten
20 all the different applications filled out?"

21 And she said, "Dad, that's so yesterday."

22 I don't know if you're familiar, but they
23 have a common application.

24 I mean, this is amazing, and it's great; and
25 they fill out one application, and they shoot it to

1 all the colleges.

2 So the thought here is, if you could get a
3 common application in New York State.

4 We currently fill out the same basic
5 information, over and over again.

6 For Tax and Finance, SLA, Ag and Markets,
7 Health Department, Division of Lottery, DEC; all of
8 these different applications, the same information,
9 over and over again.

10 If you could have a common place to be able
11 to fill out an application and submit it, that could
12 really streamline it, not just for us, but for any
13 food businesses in the state, from a licensing.

14 And I know Mr. Wexler was talking about, and
15 you were talking about, SLA, and I had an idea with
16 that, because when you asked for recommendations,
17 you know, one of the simple things with that is,
18 right now, when we apply to the SLA, we have to
19 apply to New York City.

20 We send in information to New York City
21 lockbox --

22 SENATOR LARKIN: And it's held there.

23 DAVID GOLUB: Right.

24 -- but then it goes back to the counties
25 14 days later that we're trying to get the licensing

1 for, and it puts another two weeks in process time.

2 So, I mean, any way that we can streamline
3 these processes can help make it more
4 business-friendly, because what it does is, it helps
5 businesses to navigate much more quickly and
6 efficiently.

7 And this would be good, not just for
8 businesses, but for agencies, because if you can
9 streamline the process for them, it's less arduous,
10 it's less expensive, and it's much better.

11 So I just see that as one of the other
12 opportunity.

13 And, you know, again, I just have to say
14 thank you for your efforts in going after, trying to
15 make this state -- you know, this is a great state
16 to live in, it's a great state to operate in.

17 And, you know, I think that your efforts can
18 only do much better things for helping to make this
19 business-friendly.

20 SENATOR CARLUCCI: Very well.

21 Thank you very much, Mr. Golub. We really
22 appreciate your testimony, and working with us.

23 We'll start off with Senator Gallivan who has
24 a question.

25 SENATOR GALLIVAN: Are you able to comment or

1 make a comparison; you talk about -- well, not talk
2 about -- you testified, you're in six different
3 states: New York and five others.

4 DAVID GOLUB: Yes.

5 SENATOR GALLIVAN: And the point that you
6 make regarding your premiums and assessment for
7 worker's comp, I mean, illustrates our problems,
8 among them.

9 But as far as trying to get in the
10 food-retailing business and opening a store, or
11 getting into another state, are you able to compare
12 for us, the cost and the timeliness?

13 You know, how much it costs in other states
14 to get started, compared to New York; and how long
15 the process takes?

16 I mean, I know you talked about it in general
17 terms.

18 Are you able to be more specific?

19 DAVID GOLUB: Not off hand.

20 I'd have to talk to some of our departments
21 that actually do some of the licensing.

22 I know that, in other states, the licensing
23 issues that we're seeing in New York are not
24 uncommon, so that, you know, getting licenses, it's
25 not really that streamlined anywhere.

1 So, I think that New York could really lead
2 the way in doing that.

3 From the standpoint of expense, or being able
4 to operate at a lower cost, the five other states,
5 in many instances, are much less expensive to
6 operate in, so that when we're looking at things
7 that -- places for enhancement, or to build new
8 stores, and to go in other locations, when we look
9 at the numbers, expenses like, worker's comp, you
10 know, any of the additional taxes, and, you know,
11 the different things with regard to, you know,
12 health-care surcharges, I mean, right now
13 health-care surcharges, we only have one other state
14 that has the health-care surcharge, and that's
15 Massachusetts, and that's \$42,000 a year versus
16 \$2.3 million a year in New York State.

17 And that's for something that should be
18 redundant, because Affordable Care Act makes it.

19 So there are things right now in New York
20 that make it actually difficult for us to want to
21 expand.

22 And as much as we want to expand, and this is
23 our home, and we really -- we're growing here, we've
24 been doing more building in a lot of other states
25 because of the climate, and some of those things.

1 So from the standpoint of, actually, the
2 registrations and the licensing, I can't say
3 offhand, because I'd have to -- I can get more
4 information on that, but, you know, we want to be
5 able to be here, and we already have a majority of
6 our chain here, and we're looking to build more
7 stores.

8 It's, just, if it could be made more
9 user-friendly, from a business standpoint, less
10 expensive.

11 SENATOR GALLIVAN: If you are able to get
12 that information, we would be very interested in it.

13 There's, uh -- on the back table, there's a
14 form there with the e-mail address on it, that you
15 could provide it, if you're able to.

16 DAVID GOLUB: Sure.

17 Sure, and I'll get information on whether
18 it's licensing, or whether it's anything -- any
19 other things that, in comparison, that could make it
20 easier for you to go after.

21 SENATOR GALLIVAN: Great, thank you.

22 SENATOR CARLUCCI: Senator Marchione.

23 SENATOR MARCHIONE: I just want to say that
24 I think your idea of a common application is right
25 on.

1 "It's right on."

2 I mean, coming from a county-clerk position
3 myself, I mean, we're -- the office is with paper,
4 but, boy, we put your name in, and everything you do
5 is on a second sheet; everything you need is on the
6 second sheet. I mean, it would tell you every
7 agency that you're involved in, and cut down your
8 paperwork.

9 And, it's just a terrific idea.

10 Thank you.

11 DAVID GOLUB: My pleasure, thank you.

12 SENATOR CARLUCCI: Senator Larkin.

13 SENATOR LARKIN: I love your business.

14 DAVID GOLUB: Thank you, we do, too.

15 SENATOR LARKIN: I'm a former employee.

16 DAVID GOLUB: Oh, you are?

17 SENATOR LARKIN: When I was a 14-year-old,
18 I worked at First and Monroe, when Uncle Morty used
19 to come from Schenectady.

20 And, Uncle Morty -- I'm not being
21 disrespectful -- he had glasses bigger than this end
22 here [indicating].

23 And he came down to every individual
24 employee; whether you were a weekend or day, or
25 what, but he had the greatest love for kids that

1 went to LaSalle High School, because it was
2 discipline, discipline, discipline.

3 And I can remember the day I left the
4 company.

5 I went into the army in 1944, April the 26th.

6 And the day before, he called and told me to
7 be there, and I got an envelope.

8 I never opened it, because you didn't do that
9 in front of Uncle Morty.

10 But what I liked then, and I think I learned
11 a lot, was how the store took care of its precious
12 customers.

13 Because if you -- there's not too many who
14 would remember here -- we used to have the butter
15 under the counter because they had to have stamps,
16 and they had sugar.

17 And I had a sister-in-law who was having a
18 baby.

19 "Should I be good to my sister-in-law?"

20 But, I just think the way you operated, and
21 the store you have in the Windsor at Five Corners,
22 when you first come in there, people said, Oh,
23 there's too many stores.

24 Well, there isn't.

25 You can go in that store, and I tell, from

1 you the bottom of my heart --

2 My wife goes there all the time when she
3 found out I was an employee of yours.

4 -- she said, "You know, it's always clean."

5 And if you stop someone and say, Where is
6 so-and-so? and the person doesn't know, says, "Just
7 a minute. Michael, would you take this gentleman to
8 where hangers are put," the attitude.

9 But the attitude is only important to some
10 extent.

11 If you are exceeding costs to maintain that,
12 something's gotta give.

13 I like your application, as Kathy said; you
14 know, one application.

15 We talk about one-stop for everything.

16 This would be a great thing, because you have
17 your cigarette license, you have your wine and beer
18 license, you have other licenses that go through
19 there.

20 And the competition today for business is
21 serious.

22 We talk about the WIC.

23 You know, people say to me, they have no idea
24 what it takes to keep all these tickets in stock,
25 and how we record them, and how we notify the State

1 and how we notify counties.

2 These are a lot of burdens that, somehow,
3 I think, whether it's the county or the State or the
4 federal government, we ought to sit down someplace
5 and say, How do we do this?

6 Granted, you're hiring somebody to do it, but
7 we're paying for it, because the price of what we
8 want, you're gonna have to change it, because these
9 are costs that are, technically, mandated, and you
10 have no way to cure it.

11 But I -- who was your father or uncle?

12 DAVID GOLUB: My father was Lewis [ph.].

13 SENATOR LARKIN: That's what I mean.

14 DAVID GOLUB: Yeah.

15 SENATOR LARKIN: Yeah.

16 DAVID GOLUB: So I'm fourth generation.

17 SENATOR LARKIN: Well, I shop there, and
18 I shop with pride, because I knew what it was as a
19 kid.

20 And, boy, if you gave out butter and sugar,
21 and you didn't have coupons to get it for --

22 DAVID GOLUB: Well, I appreciate your service
23 to us as an organization, as well as your patronage
24 as a shopper.

25 SENATOR LARKIN: Thank you.

1 [Laughter.]

2 SENATOR CARLUCCI: Senator Marchione.

3 SENATOR MARCHIONE: And I just would like to
4 add my thanks as well, coming from Saratoga.

5 I know that your first store was in
6 downtown Saratoga, and it was there for years, and
7 it's absolutely beautiful. You just remodeled it,
8 and, what, built new.

9 Absolutely gorgeous.

10 Thank you for what you've done for our
11 community.

12 DAVID GOLUB: Thank you for supporting the
13 store there.

14 SENATOR CARLUCCI: Thank you, Mr. Golub, for
15 your testimony, and we look forward to working with
16 you in our upcoming session.

17 DAVID GOLUB: Thank you, Senators.

18 Next we're going to hear from the
19 representatives from the New York State Motor Truck
20 Association. We have with us Joseph Fitzpatrick and
21 Karen White.

22 KAREN WHITE: Only Joe has the testimony
23 today, but I felt compelled to come up once my name
24 was called.

25 JOSEPH FITZPATRICK: Good afternoon,

1 Senators, and thank you for the opportunity to speak
2 to you today regarding the impact of burdensome
3 regulations on small businesses.

4 My name is Joe Fitzpatrick, and I own
5 Lightning Express, a small trucking company based in
6 Modena, New York, in Ulster County.

7 I started out in May of 2000 with one truck,
8 and by myself.

9 Today I employ 27 people who ensure that my
10 customers' good are delivered in a safe and timely
11 manner.

12 I am also a member of the New York State
13 Motor Truck Association, Eastern Region Board.

14 Lightning Express serves an average of
15 100 small businesses and retail customers a year
16 throughout New York State, so anything that impacts
17 my small trucking business trickles down to impact
18 all of the businesses I serve; and, in turn their
19 customers.

20 Since I started my company 13 years ago,
21 I have seen a great deal of growth, but as the years
22 have passed, running a business has gotten much more
23 difficult.

24 Worker's compensation insurance is now the
25 equivalent to over 13 percent of my entire payroll,

1 and the rate for my drivers is over 15 percent.

2 I was informed by my auditor that truckers
3 are now second only to roofers in
4 worker's compensation premium rates.

5 My business, like all other businesses, now
6 gets an extra bill each year for unemployment
7 insurance, to pay back the interest New York took
8 out on a federal loan it hasn't paid back.

9 And liability-insurance premiums on small
10 business are also exorbitant because of frivolous
11 lawsuits and the Scaffold Law.

12 Thanks to the Scaffold Law, I have to carry
13 general liability insurance on my facility to cover
14 even things that aren't my fault, or the fault of
15 the contractor I hired to replace windows, for
16 instance.

17 As you likely know, the Scaffold Law imposes
18 absolute liability for elevation-related injuries.

19 That means that the actions of an injured
20 worker, such as failure to use provided safety
21 equipment, or gross negligence, is, virtually,
22 irrelevant in court.

23 As an owner of a business facility, if I hire
24 company to install new windows, and one of their
25 workers is injured because he does not use the

1 safety equipment provided by his employer, his
2 employer is automatically held liable, and I can be
3 sued for liability as well.

4 An absolute-liability standard makes no
5 sense. It drives my insurance premiums through the
6 roof.

7 Additionally, New York is the only state with
8 such a standard, leaving me at a competitive
9 disadvantage to small trucking companies in
10 bordering states who do not have that financial
11 burden.

12 As I mentioned, in addition to being a
13 small-business owner, I am also a member of the
14 New York State Motor Truck Association, an
15 organization which represents the interests of the
16 trucking industry in New York State.

17 The number of rules and regulations stifling
18 the trucking industry in New York is astonishing.

19 For the sake of time, I will only touch on a
20 few of the most onerous regulations.

21 First, it should be noted that the trucking
22 industry in New York State employs over
23 270,000 people. It is responsible for delivering
24 everything that is produced, used, consumed, or sold
25 by nearly every business in New York State.

1 Trucking is the backbone of New York's
2 business.

3 What impacts the trucking industry impacts
4 all businesses it serves and the consumers served by
5 those businesses.

6 What's more, trucking not only supplies
7 New York's business, large and small, but the
8 majority of the state's 28,000 trucking companies or
9 small businesses.

10 One of the biggest financial burdens in the
11 trucking industry is the highway-use tax, or, a
12 ton-mile tax.

13 New York is the only state in the northeast,
14 and the only one of four states in the nation, with
15 a highway-use tax.

16 The tax puts New York at a competitive
17 disadvantage, and is the primary reason why New York
18 ranks as the second most-expensive state in the
19 nation in which to operate a truck.

20 Compliance with the tax is extremely
21 burdensome, not only to carriers, but to the State
22 as well.

23 In addition to the cost of the tax itself,
24 there is significant administrative costs to
25 maintain the detailed records required to comply

1 with the tax.

2 Many motor carriers have staff dedicated to
3 compliance with the highway-use tax.

4 Evasion of the tax is a serious issue that
5 results in loss of revenue to the state, and
6 inadvertently results in an unfair competitive
7 advantage to out-of-state carriers.

8 While there is an audit program in place, it
9 is much more likely for a company in New York to be
10 selected for audit by the New York State
11 Department -- New York State Tax Department than a
12 carrier based out of state.

13 Additionally, if an out-of-state carrier is
14 evading the highway-use tax, they're evading the
15 compliance with the International Fuel-Tax Program
16 and the International Registration Plan as well,
17 resulting in significant revenue loss to the state.

18 Currently, the tax generates approximately
19 \$145 million which goes into the dedicated Highway &
20 Bridge Trust Fund.

21 There are other alternatives for the state to
22 collect its revenue that ensures all commercial
23 users are paying the tax, not just those in
24 New York.

25 An increase in registration fees and fuel tax

1 can be evenly distributed through the
2 International Fuel-Tax Agreement and International
3 Registration Plan programs.

4 While not politically attractive, fuel tax
5 remains the most efficient mechanism by which to
6 generate highway funds, and increase in the fuel tax
7 is supported by the trucking industry as a way to
8 ensure parity.

9 A study conducted on five states that
10 repealed their highway-use tax found that annual
11 highway-user revenue, after the repeal, equaled or
12 surpassed the annual revenue collections when
13 highway-use taxes were in place.

14 In addition, in the year following the
15 elimination of their highway-use tax, reportable
16 taxable gallons of diesel fuels increased, on an
17 average, 5 to 7 percent more than the national
18 average.

19 This increase in diesel fuel can be
20 attributed to eliminating evasion, not because more
21 diesel fuel is actually used.

22 It is important to note that four of the
23 five states studied eliminated the highway-use tax
24 without any increase in other taxes or fees, in
25 attempt to replace the highway-use tax revenue.

1 The highway-use tax is an onerous, antiquated
2 tax that puts all businesses in New York at an
3 economic disadvantage.

4 Highway taxes continue to harm New York and
5 discourage business from establishing locations
6 here.

7 The elimination of this tax will help reduce
8 transportation costs in New York, and encourage new
9 business, as well as help retain the businesses
10 New York already has.

11 The second regulation I would like to discuss
12 is the Wage Theft Prevention Act, which Lena already
13 touched on, which came into effect in 2011.

14 Part of the act requires an annual wage
15 notice to employees, which involves a lot of time,
16 effort, and expense on the part of the employer.

17 This annual pay notice contains the same
18 information now required by State Labor Law to be
19 placed on each and every pay stub by employers,
20 including rate of pay; overtime rate of pay; basis
21 for pay, by hour, week, salary, etc.; allowances, if
22 there are any; payday; employer's name; DBA used by
23 employer; physical address; mailing address;
24 employer phone number; and employee name.

25 This is the exact same information we give

1 our employees every time they get their paycheck.

2 Further, the employer is required to obtain
3 written acknowledgment of the receipt of this notice
4 by every employee and maintain this documentation
5 for six years.

6 Realistically, the Annual Wage Reporting
7 requirement is a time-consuming cost endeavor for
8 both small and large employers.

9 In the trucking industry, even small business
10 often have drivers whose routes keep them away from
11 their terminal for weeks at a time. Getting them to
12 sign and return a slip of paper isn't always easy,
13 and there is nothing to be gained by doing so.

14 Though the Department of Labor has
15 acknowledged that the wage compliance is an issue
16 for only a small percentage of New York State
17 employers, the Annual Pay Notice requirement
18 universally applies to everyone, even those without
19 compliance issues.

20 This type of annual-notification requirement
21 is much better suited as an enforcement tool, and
22 should be the exception rather than the rule,
23 reserved for instances where non-compliance by an
24 employer has been an issue.

25 The trucking industry would like to see a

1 repeal of the requirement that force all
2 private-sector employees to provide a written pay
3 notice to every employee in New York State annually,
4 and obtain written acknowledgment of the receipt of
5 this notice by every employee.

6 This modification to the Wage Theft
7 Prevention Act leaves in place the act's most
8 significant reforms intended to ensure payment of
9 all wages earned by employees.

10 The other issue I have with that, my wife
11 does my HR, and it just gives her something else to
12 complain about.

13 And, trust me, I give her plenty.

14 [Laughter.]

15 JOSEPH FITZPATRICK: The final issue I'd like
16 to bring to your attention is the issue of
17 indemnification clauses in carrier contracts.

18 In the past decade, it has become common
19 practice for shippers to include language in their
20 contracts with for-hire carriers, indemnifying the
21 shipper against any liabilities or damages to the
22 goods being shipped regardless of fault.

23 SENATOR LARKIN: That's terrible.

24 JOSEPH FITZPATRICK: These clauses serve to
25 automatically assign liability to the carrier rather

1 than determine who was liable.

2 I'd like to give you an example.

3 A shipper hires a carrier to deliver a
4 truckload of housewares, including dishes and
5 glasses. Part of these goods is dropped by a
6 forklift operator in the shipper's warehouse,
7 damaging some of the breakables inside prior to
8 loading the truck. The boxes are loaded onto the
9 carrier's truck and transported to a retailer. The
10 retailer rejects the load due to damage.

11 Under current law, the indemnification clause
12 by the shipper would automatically make the carrier
13 responsible for all damage regardless of actual
14 fault or negligence.

15 Due to the number of shippers utilizing this
16 practice in New York, carriers do not have the
17 luxury of simply rejecting these contracts.

18 The increased instance of shippers assigning
19 liability to carriers for things out of the
20 carrier's control must be stopped, and the New York
21 State Motor Truck Association aims to do so with the
22 passage of Fairness In Contracts legislation.

23 This legislation, Senate Bill 1087, and
24 Assembly Bill 3673, was sponsored by
25 Senator Moraz [ph.] [sic], and Assemblywoman Lupardo

1 in 2013.

2 Fairness In Contracts legislation will level
3 the playing field by enabling the responsible party
4 to be held accountable for damages and liabilities.

5 This legislation would not limit anyone's
6 liability to sue someone who is at fault. Instead
7 of liability automatically being assigned to the
8 carrier, it would allow fault to be determined.

9 Currently, 38 states have adopted legislation
10 aimed at protecting carriers from overreaching
11 indemnification provisions in shippers' contracts.

12 More than half of those laws were passed in
13 the last four years.

14 In practical terms, that translates to
15 76 percent of the states in the country having a
16 competitive advantage over carriers in New York.

17 Pennsylvania, Connecticut, and Massachusetts
18 have adopted such legislation, and is being
19 considered in Vermont and New Hampshire, putting
20 New York carriers at even a greater disadvantage in
21 the region.

22 Senators, I would like to thank you for the
23 opportunity to speak to you today.

24 As I mentioned earlier, anything that impacts
25 the trucking industry impacts all businesses; it's

1 unavoidable.

2 I encourage you to keep that in mind as you
3 look to determine the top 1,000 impediments to
4 business growth in New York.

5 Thank you.

6 I need a drink.

7 [Laughter.]

8 SENATOR CARLUCCI: Thank you,
9 Mr. Fitzpatrick.

10 Senator Gallivan.

11 SENATOR GALLIVAN: Thank you for your
12 testimony.

13 Do you have extra written copies for us, or
14 at least one that you could leave with us?

15 KAREN WHITE: Yes, there is.

16 SENATOR GALLIVAN: Because there's a lot of
17 information there.

18 We appreciate that.

19 Scaffold Law; we have heard about that at
20 almost every hearing, very extensive.

21 And we actually have proposed legislation to
22 change -- to modify the absolute liability to
23 comparative negligence.

24 And what's interesting, Illinois was the last
25 state that had a law similar to New York's, and when

1 they repealed that law, construction jobs went up,
2 insurance rates went down, fatalities went down, and
3 workers' safety was enhanced.

4 So, where do you live?

5 JOSEPH FITZPATRICK: Gardiner, New York.

6 SENATOR GALLIVAN: Which is -- is that
7 Ulster County?

8 JOSEPH FITZPATRICK: Ulster County, yep,
9 between Newburgh and New Paltz.

10 SENATOR GALLIVAN: Call your Senator's
11 office, call your Assemblyman's office, and your
12 association.

13 It could be helpful if they were -- you know,
14 your association throughout New York, all the
15 members, if they were making calls and saying,
16 "Do something about this."

17 KAREN WHITE: Yeah, and on behalf of the
18 New York State Motor Truck Association, I'm the
19 deputy director, and we do support the reform of the
20 Scaffold Law.

21 SENATOR GALLIVAN: Are you part of the group?

22 KAREN WHITE: We are not officially yet, but
23 we will be soon.

24 SENATOR GALLIVAN: Perfect.

25 There's, uh -- see the good-looking guy back

1 there, with the glasses?

2 KAREN WHITE: Okay.

3 SENATOR GALLIVAN: Would you talk to him on
4 the way out?

5 KAREN WHITE: Absolutely.

6 SENATOR GALLIVAN: And we can get you signed
7 up.

8 KAREN WHITE: Okay.

9 SENATOR GALLIVAN: The other thing, the
10 indemnification clause, that you talked on the
11 carrier contract, and I just looked up the piece of
12 legislation, haven't read the thing yet, but it kind
13 of strikes me that that's somewhat similar to the
14 Scaffold Law, and it's throwing complete liability
15 on one party --

16 JOSEPH FITZPATRICK: Right, and --

17 SENATOR GALLIVAN: -- without any opportunity
18 to be heard.

19 JOSEPH FITZPATRICK: Right.

20 And there's so many times trucks get loaded
21 without the driver -- I mean, he's just told,
22 "Go pick up that trailer."

23 It's already sealed.

24 When you get to the other end, they open it,
25 start unloading it, say, "There's damage here," and

1 now the carrier is responsible.

2 SENATOR LARKIN: That's terrible.

3 SENATOR GALLIVAN: That was it.

4 Thank you.

5 KAREN WHITE: And, actually, Joe brought
6 up -- I just want to mention, Joe brought up a very
7 good point, when he mentioned that the truck was
8 sealed.

9 There a lot of times that a load is secure,
10 and the driver does not have access to open it, or
11 access it, so, they have to simply accept what is on
12 the trailer.

13 And then if it gets to the destination and
14 it's damaged, the driver is held responsible.

15 Clearly, like you said, just like the
16 Scaffold Law, it makes no sense.

17 SENATOR CARLUCCI: Senator Marchione.

18 SENATOR MARCHIONE: The highway-use tax that
19 you were discussing, is that paid through your
20 registration? Your trucking registration?

21 JOSEPH FITZPATRICK: No.

22 SENATOR MARCHIONE: Or is it direct?

23 Because I know, the highway-use tax at the
24 county level, whether or not the counties choose to
25 have that on each vehicle on the street.

1 This is a different money you pay to DOT?

2 JOSEPH FITZPATRICK: It's a separate tax.

3 KAREN WHITE: It's specific to trucking.

4 JOSEPH FITZPATRICK: And we have to keep a
5 sticker on the front of our bumper or the cab of our
6 truck, showing that we were registered with it, and
7 it's paid.

8 KAREN WHITE: Yeah, years ago, the
9 Tax Department did away with the highway-use-tax
10 sticker, which was a revenue-generator for the
11 sticker itself; and, instead, they raised
12 registration fees for trucks.

13 And then they decided to bring their sticker
14 back.

15 Of course, the registration fees for trucks
16 did not drop; instead, there's an extra fee for a
17 sticker.

18 And we actually had a carrier, just the other
19 day, who is getting a hefty fine because their
20 sticker fell off.

21 They paid the tax; they can prove they paid
22 the tax, but they got a hefty fine because the
23 sticker fell off.

24 The brand-new sticker is, that the
25 Tax Department just said, "You know, they won't fall

1 off, don't worry."

2 And that's exactly what happened.

3 SENATOR MARCHIONE: Well, coming from
4 Motor Vehicle, 'cause that's what I oversaw before
5 I became a senator, they always fall off.

6 [Laughter.]

7 KAREN WHITE: Exactly.

8 SENATOR MARCHIONE: We have been complaining
9 about that for five years.

10 KAREN WHITE: And one thing to mention about
11 the highway-use tax is, the highway-use tax, the
12 money goes into the dedicated Highway & Bridge Trust
13 Fund.

14 I obviously don't need to educate you, but,
15 65 percent of that money that's come out of the fund
16 so far, has not gone to highways and bridges.

17 So, it's money that's going in, but it's not
18 going back out, even where it's intended.

19 SENATOR CARLUCCI: Senator Larkin.

20 SENATOR LARKIN: You know, the moving
21 industry, you know, the truckers across country, and
22 everything else, they have come to our office last
23 week and said, "We joined them, can you help us?"

24 But, you know, one thing that this Governor's
25 gonna be looking at, is if we do this, how do we

1 fill that gap?

2 Now, if you remember, Joe, last year, when
3 they were talking about the 14 percent increase on
4 the Thruway?

5 JOSEPH FITZPATRICK: "45."

6 SENATOR LARKIN: "45."

7 Well, okay, I saw, you actually had more hair
8 then.

9 [Laughter.]

10 JOSEPH FITZPATRICK: It's that Wage Theft
11 Prevention law.

12 [Laughter.]

13 SENATOR LARKIN: You know, we've given the
14 Motor Vehicle and the Thruway Authority and the
15 Governor a proposal.

16 It's signage.

17 And they're saying we can't do it because, in
18 '65, Lyndon Baines Johnson convinced our
19 then-President to have a law, because she owned all
20 the radio and all the TV, but she didn't owned the
21 billboards, and they wouldn't go to her agreement.

22 So then we came to the Beautiful Act, and the
23 Beauty Act said, people keep saying, it says you
24 can't have signs.

25 The Beauty Act says "limited."

1 We've given a plan to digital.

2 Joe, you know where Woodbury Commons is?

3 JOSEPH FITZPATRICK: Yes.

4 SENATOR LARKIN: They think it's great.

5 We've talked all the way up to Buffalo, to
6 Pat's organization.

7 We're going to send you a copy, because maybe
8 you can say to them, Here's a way to reduce some of
9 the burden of taxes.

10 'Cause when they reduce some of these
11 burdens, this is where the individuals, whether it's
12 a business or whatnot, is going to benefit.

13 We look for your support.

14 JOSEPH FITZPATRICK: I'll be there.

15 SENATOR CARLUCCI: Well, thank you.

16 Look forward to working with you.

17 JOSEPH FITZPATRICK: Thank you.

18 Next we're going to hear from Chris Theising,
19 who is the adjunct professor in communication media
20 arts at SUNY Rockland Small Business Development
21 Center.

22 CHRIS THEISING: Thank you, Senator Carlucci.

23 I appreciate you asking us here today.

24 And my official capacity is as a business
25 consultant for the Small Business Development Center

1 located here in Rockland Community College.

2 I did not prepare any official statement, due
3 to the fact that our clients' confidentiality is
4 held in strictest confidence, and, by law, I'm not
5 allowed to have any official opinions on regulations
6 and restrictions, laws, that affect our small
7 businesses throughout the state.

8 To that I could say, that our clients have
9 voiced certain opinions to us.

10 What is most important in our job, is that,
11 while we are trying to help small businesses to
12 develop a business plan, and, perhaps get some
13 financing, a lot of the questions do come up
14 regarding our regulations.

15 For instance, a small business recently came
16 to us, "We're making cupcakes and cakes, and
17 everybody loves my baking, especially at the PTAs,
18 and perhaps some of the other meetings."

19 And to which point, they asked, you know: Is
20 this legal? I'd like to -- I'd really like to start
21 my own bakery here, but I don't have the money to
22 rent or lease a space.

23 Of course, we have to do due diligence and
24 give them the right information.

25 Now, we're not experts, and as you heard,

1 there's 786,000 regulations on the books.

2 To be able to memorize all of that, we'd be
3 geniuses, of course, and I don't proclaim to be one.

4 My basic modus operandi is to help these
5 individuals, and, certainly, come up with the right
6 questions.

7 And I think, that, at times, is more
8 important.

9 First, folks, I have to thank you all for
10 being here, and I really, really applaud your
11 efforts.

12 And, in any way, shape, or form, if I can be
13 of help, please, feel free.

14 It's too bad that Senator Larkin had to
15 leave, but, I could go over certain specifics, and
16 without divulging information, later on, in your
17 questions, if you have any, I would certainly be
18 more than willing to give you some of those.

19 But just in brief, what we've been busy with,
20 and one of the reasons why I haven't been able to
21 put together a cogent statement here today, is
22 because we've been very heavily involved in the
23 "Sandy" relief, the New York Rising program, which
24 I'm sure most of you are familiar with.

25 I'm trying to get out there and help the

1 business owners that have been affected.

2 And thanks, in part, to the recent
3 advertisements, we've been getting inundated with
4 calls. I think the word is finally getting out
5 there, and up to a couple of weeks ago, it was
6 trickling in.

7 But we've been finding that, again, because
8 of the regulations and some of the rules that have
9 been applied, it's been very slow in coming.

10 But I think, certainly, the Senate, the
11 Assembly, and, of course, the Governor's Office,
12 have heard the complaints loud and clear, and have
13 been, more or less, on the fly, making adjustments,
14 making it easier for these individuals who have been
15 affected by "Sandy" to get the help and the
16 much-needed assistance that they are asking for.

17 That said, part of what we do here also, is
18 to make the bonding efforts a little bit easier.

19 We're working with the Empire State
20 Development programs.

21 We've held a number of workshops for local
22 community organizations, as well as the business
23 owners themselves, because, as we've heard here
24 today, there's just so many rules and regulations.

25 One of the things, we have the

1 Tappan Zee Bridge being rebuilt, and, of course,
2 there's a lot of folks, local individuals, that were
3 chomping at the bit, trying to get, you know, just a
4 little piece of that.

5 When we start throwing billions of dollars
6 around in the media, and people say, Wow, I'd settle
7 for \$10,000, one of the ways we've tried to do that,
8 is to make the bonding efforts a bit easier, through
9 cooperative efforts, and through our workshops.

10 One of the things, of course, is the
11 SBIR grants, that the Senator has been involved
12 with, the SUNY tax-free zones that are coming up.

13 Again, I have to applaud your efforts.

14 I think the people have spoken.

15 I think the rateables, everybody's been
16 concerned about, and the taxes in New York State,
17 have certainly spoken very loud and clear that.

18 You're right, it hasn't been
19 business-friendly.

20 So I think these efforts, you know, just
21 going out there and finding out, "What are the right
22 questions we need to begin to ask?" that's more
23 important than having.

24 And listening to all of these individuals
25 today, you're right, there's an awful lot of

1 information here.

2 I think that you've begun to drill down, and
3 I think it's wonderful.

4 We have certain business boot camps.

5 And, of course, I'm sure most of you got the
6 little letter this morning about the MWBE.

7 We met 20 percent, which was one of our goals
8 for the Minority Women-Owned Business entities.

9 Over at the SBDC, of course, that's part of
10 what we do, is we help to certify all of these
11 individuals.

12 And, we take them, navigate them through the
13 process.

14 It's an arduous process, but it's one that,
15 certainly, in the last year, has gone online.

16 Prior to that, it was a packet about that
17 thick [indicating].

18 So, you know, government bureaucracy, it's
19 like that big steamship, as they say, and it takes a
20 while to turn it.

21 But I think, because of your efforts,
22 especially here today, we're beginning to recognize,
23 we do need to navigate different waters, and maybe
24 we need to turn the ship around; or at least a
25 different direction.

1 So I'd like to thank you for that.

2 And I guess, at this point, if there's any
3 questions, I'd be more than willing to --

4 SENATOR CARLUCCI: Thank you,
5 Professor Theising. We really appreciate your
6 testimony.

7 Do we have questions?

8 Senator Gallivan.

9 SENATOR GALLIVAN: Thanks for being here.
10 We have a form in the back, it's blank.

11 If you could take that, and the people that
12 you deal with, you mentioned specifics. We don't
13 need to know specific stories, but we would like
14 specific regulations that are particularly onerous,
15 duplicative, and that are outdated, and so on.

16 And it's very easy; people can respond
17 anonymously, and they can do it right to an e-mail
18 address that's right on there.

19 So if you'd take that, we'd appreciate it.

20 CHRIS THEISING: Perfect.

21 SENATOR GALLIVAN: MWBE certification; we
22 have heard, once or twice, that -- people talking
23 about the process and the duplication of that?

24 Federal MWBE --

25 CHRIS THEISING: Yes.

1 State and city.

2 SENATOR GALLIVAN: -- state, and then, in
3 some cases, you have localities; some counties in
4 the state, some cities in the state?

5 Do you experience that?

6 CHRIS THEISING: Yes, we have.

7 And from my understanding, of course,
8 Empire State Development has put together.

9 New York City now does recognize the state
10 certification, so, they've eliminated the duplicity
11 of that.

12 SENATOR GALLIVAN: What about in
13 Rockland County?

14 CHRIS THEISING: That's a real good question.

15 They recognize --

16 SENATOR GALLIVAN: Is there anything that you
17 are aware of?

18 CHRIS THEISING: No, not that I'm aware of.

19 SENATOR GALLIVAN: It's hit or miss around
20 the state, more than --

21 CHRIS THEISING: Yes.

22 SENATOR GALLIVAN: Okay.

23 Thank you.

24 CHRIS THEISING: Thank you.

25 SENATOR CARLUCCI: Great.

1 Well, Professor Theising, we really
2 appreciate your testimony.

3 And, particularly working in that barrier to
4 entry, how do we get these small businesses that you
5 are dealing with, up and running?

6 We've dealt with so many of those in our
7 district offices.

8 Like, you talked about the cupcakes.

9 You know, you can go under Ag and Markets and
10 be regulated in one way; and then, under the
11 Health Department, another.

12 So, we look forward to those specifics.

13 So, thank you.

14 CHRIS THEISING: Excellent.

15 And if I may, just one quick recommendation.
16 I guess I'm not out of line on this one.

17 When you folks are completed with this
18 arduous task, if you could supply us, or our office
19 with, dare I say, a one-pager? I don't think it's
20 possible, but...

21 [Laughter.]

22 CHRIS THEISING: To make us more effective as
23 counselors, as advisors, to be able to give us,
24 perhaps a list: If you want to start your own 7-11,
25 or start your own trucking business, and, perhaps,

1 these are the regulations that you need to be
2 familiar with, or at least comply with.

3 That would help us, and, certainly, I think,
4 make us more efficient and more effective as a
5 business advocate for our clients.

6 If it's possible.

7 Thank you.

8 SENATOR GALLIVAN: That is a great suggestion
9 that has come up.

10 People who are looking to start a business
11 don't know where to go. There's no one-stop
12 shopping for them.

13 So, the idea of some sort of clearinghouse
14 for that has come up, and it's a great suggestion.

15 That is -- that may be a recommendation from
16 our report, but our report won't do that, initially.

17 But when our report is published, it will be
18 available on the website.

19 We'll try to make sure that we publicize it,
20 but, on the nysenate.gov website, it will be
21 prominent, somewhere there. I can't tell you
22 exactly where.

23 And we will try to publish it throughout in
24 the Senate districts, so it's available.

25 CHRIS THEISING: Absolutely.

1 And I understand it's different in some
2 counties, as we have heard, from county to county.

3 And perhaps, working with the counties, we
4 could make it more generalized, so that the counties
5 do sign on for most, if not all, of it.

6 SENATOR GALLIVAN: That's a great suggestion.
7 Thank you.

8 CHRIS THEISING: Well, thank you, Senators.
9 Appreciate all your efforts.

10 SENATOR CARLUCCI: And next we're gonna hear,
11 for the Senators that don't know, we've got a
12 local -- a great local business here, that's been
13 here for years.

14 We have Michael and Larry Beckerly.

15 Were you planning to testify?

16 Or, no?

17 SENATOR GALLIVAN: Keep talking so we don't
18 have to go out in the rain.

19 [Laughter.]

20 MICHAEL BECKERLY: So, I'm Mike Beckerly, and
21 this my big brother, Larry Beckerly.

22 We run a building material, lumberyard,
23 retail, four locations in Rockland County, all
24 within 10 miles of each other.

25 So, I don't have a formal presentation, other

1 than short the a format, but, trying to focus on a
2 couple of things, one was sales-tax collection.

3 I know, reported, the revenue generated
4 recently, a couple years ago, they got rid of the
5 whopping \$250 per-quarter fee that they used to
6 refund us, finally, in our tax returns -- or, our
7 sales-tax returns.

8 And, of course, it's a lot more than \$250 to
9 do our quarterly sales-tax returns.

10 But more important than that is, there seems
11 to be such ambiguity on who is responsible for
12 keeping track of who's tax-exempt.

13 People come into our store with -- I have --
14 an exempt organization might be a religious
15 organization, or it might be a reseller.

16 And when you call the Tax Department, and
17 they say, Okay, they have to pay, like, say, being
18 specific, by a credit card from the exempt
19 organization or by a check from the exempt
20 organization, we can't get seem a straight answer
21 on, if they pay cash.

22 So, can you pay cash and be tax-exempt, and
23 you sign a ticket and off you go to the races?

24 You know, so that's a big issue.

25 On a bigger scale, I think, my personal

1 opinion is, nobody should be tax-exempt. There
2 should be less loopholes. I understand it's a
3 federal issue.

4 So that's one thing, is, Who is responsible
5 for holding those certificates?

6 And in our competitive world, the big boxes,
7 the Lowe's and the Home Depots that are around us
8 that we fight with all the time, successfully,
9 I think, to a point, we hear, pretty often, that
10 they come into our place and we'll say, Well, this
11 is not -- we need a certain type of form, and this
12 is not the form that the State tells us we need.

13 Oh, I go to so-and-so, and the big box, and
14 they give them just a different little certificate.
15 They don't give them a certain type of form.

16 So I just want to make sure we're on the same
17 playing field with them.

18 And along those same lines, with sales tax,
19 one thing that we hit constantly, is we have
20 installed sales.

21 So, the regulations that we understand is,
22 you have got to charge -- you have to collect --
23 I shouldn't say charge -- we have to collect for the
24 State, sales tax on the material for the installed
25 sale.

1 So if somebody puts in a door, they have to
2 pay sales tax on the door.

3 SENATOR GALLIVAN: Right up front?

4 MICHAEL BECKERLY: Right up front, right,
5 so -- yeah, when we deliver the door, they buy the
6 door, they have to pay sales tax for that material,
7 but, they don't have to say sales tax for the labor.

8 So that's the way we work.

9 And when we bill the customer, they see the
10 invoice and it has the items that's taxed; it has
11 the labor, no tax.

12 Over and over again we hear, Lowe's,
13 Home Depot --

14 We even had an employee from Lowe's reinforce
15 it, and he even called the New York State Sales-Tax
16 Department and they put in a complaint about it.

17 -- is that, I can go to Lowe's and I don't
18 pay sales tax on any of the products in -- either
19 product or the labor.

20 So, we're still trying to figure out how
21 that's possible; if they really hide the sales tax
22 in there and they actually are paying the sales tax?
23 Maybe they have an IDA exemption type of thing? --
24 is one of my concerns.

25 I've never really asked the IDA or anybody

1 like that, which -- you know --

2 SENATOR CARLUCCI: That's a good question,
3 yeah.

4 MICHAEL BECKERLY: -- it makes the playing
5 field unlevel.

6 So, we are constantly fighting that one.

7 On a bigger scale, not really a regulation,
8 but I'm very curious where the State is with
9 Scaffold Law, is one thing I hear about all the
10 time.

11 I heard it almost went through; got signed
12 through this year, but didn't quite make it to the
13 last signature.

14 But any number -- you have any dollar number
15 that that has added to the cost of the TZ Bridge?

16 SENATOR GALLIVAN: I do, actually.

17 MICHAEL BECKERLY: Because that sounds
18 insane, how much that's cost the New York State
19 taxpayers to pay for that insurance coverage.

20 SENATOR CARLUCCI: Senator Gallivan has done
21 a lot of work on this issue, so we'll let
22 Senator Gallivan produce the numbers.

23 MICHAEL BECKERLY: He's the numbers' guy?

24 SENATOR CARLUCCI: On this issue.

25 [Laughter.]

1 SENATOR GALLIVAN: Somebody else provided the
2 information, but we actually have an estimate.

3 Association of General Contractors at the
4 statewide organization, they estimate that cost to
5 be more than \$100 million added on to the cost of
6 the -- on to the cost of construction.

7 And that, of course, is just that.

8 New York City School Construction Authority
9 says that they could build another two or three
10 schools a year, because of all the money -- the
11 extra money they're spending on insurance.

12 If you compare it to -- they're spending
13 125 million a year on insurance.

14 And for New Jersey school construction, in
15 all of New Jersey, \$25 million is spent on liability
16 insurance.

17 Just two examples, but significant costs.

18 MICHAEL BECKERLY: You know, I'm also a
19 member of the "RBA"; the Rockland Business -- I'm on
20 the board of the Rockland Business Association, and
21 I've gotten more involved in the government affairs
22 committee, and all that stuff.

23 So another question I would have is: It
24 seems to me, I don't know if it's -- if you call it
25 a regulation, but one of the most expensive laws in

1 the state is the Taylor Law, and the associated
2 Triborough Amendment; and how that deals with our
3 local civil unions -- civil-service unions and the
4 arbitration process.

5 So, is there anything happening on those
6 fronts?

7 That seems to be a very expensive regulation
8 that needs to be corrected.

9 So, in general, that would be a tort reform
10 thing, which is big. "Big."

11 LARRY BECKERLY: I have a question.

12 I want to echo what others have said: Thank
13 you for doing this.

14 Many people already are very cynical about
15 government, and, in many cases, given up.

16 You know, a lot of our neighbors and friends
17 say, "I'm getting out of here, I'm moving south. It
18 costs less to live south than here."

19 So I think people being here, I think, I feel
20 it's a great thing, what you're doing, and trying to
21 do, and I applaud you for doing it; someone moving
22 forward.

23 I just wonder --

24 And I don't have any specific regulations to
25 address. I echo what I've heard here today.

1 I think those are all excellent ideas.

2 -- but to my question, is part of the process
3 of discovering, trying to find out what regulations
4 are onerous, and maybe need to be adjusted or
5 repealed, is there anything being done with looking
6 at what the regulations are in the neighboring
7 states?

8 I guess I heard, it was said we're ranked
9 50 out of 50.

10 I don't know if our neighbors, are they 45?
11 46? 47? 48?

12 But, you know, similar states with similar
13 demographics, has someone taken their manual and
14 looked at, do they have 750 -- 749,000 regulations?

15 You know, can we look and see?

16 There are, obviously, some things that we
17 need to have to protect the people of the state;
18 safety regulations, and things like that, but, you
19 know, there's got to be some commonality between the
20 states around us, at least.

21 Or maybe we should look at this -- one of the
22 medium states, and, instead of reinventing the
23 wheel, say, How does our reform book compare to
24 theirs? And what should we keep, and what should we
25 put to the side and say "throw out"?

1 I mean, you guys cannot possibly read
2 750,000 regulations.

3 Maybe those guys can [indicating].

4 [Laughter.]

5 LARRY BECKERLY: But, you know, if you start
6 looking at what exists already in the other states
7 around us, and seeing, Okay, those, we probably need
8 to keep.

9 And the other thing to keep in mind, which
10 I'm sure you do in this district, and many of the
11 districts throughout the state: We border on other
12 states, and we try to do business in other states.

13 So, we need to be able to be competitive to
14 go across state lines; and, to keep that in mind,
15 too.

16 SENATOR CARLUCCI: Please, Senator Gallivan.

17 SENATOR GALLIVAN: Comparisons with other
18 states are made on a regular basis when we're
19 researching laws; or, in this case, some of the
20 regulations.

21 There has been, over the years, numerous
22 attempts to overhaul regulations, and they've done
23 it in many ways, shapes, or forms; but, as you've
24 seen, it hasn't been that successful, over time,
25 for, I imagine, a variety of reasons. Politics

1 playing some of it.

2 When you look at that many, and you try to
3 engage all the state agencies to look at it, it
4 takes time and different administrations.

5 There's been different laws passed, over
6 time, that require a regular review, that then
7 generally -- that has not always gotten followed.

8 There are laws that have been passed that
9 require a review, I think, every five years, or, a
10 top-to-bottom review by agency, and it's fallen
11 apart over time.

12 We are starting this, to try to do something
13 about it.

14 It is -- it will not be completely
15 exhaustive, and it will not be a review of all
16 750,000, but the idea is, to call attention to this.

17 We all know our taxes are high, but that
18 other part of it, that so-call "death by a thousand
19 cuts," the idea is, to call attention to this and
20 start people looking at it, and, with hope, of
21 course, that things are regularly reviewed.

22 That we have a start; a minimum of 1,000,
23 that starts, and then, hopefully, it can keep up,
24 and whatever laws are passed to require people to
25 keep it up and regularly review it, that we would

1 hope that we can have some teeth in the laws, or
2 whatever we recommend out of this.

3 But your suggestion is a very good one.

4 Time prevents us from doing this.

5 We're looking to accomplish all of this in
6 about a month and a half, the hearings and the
7 recommendations, but the idea is, to have some
8 tangible number and goal to start to do something
9 about it.

10 And that's where we're starting.

11 But your point's very well taken.

12 LARRY BECKERLY: And I applaud that effort.

13 SENATOR CARLUCCI: It's very fitting to have
14 the Beckerlys testify and talk about this issue.

15 Being here in Nanuet, we're only a couple
16 miles from the New Jersey border.

17 So we're here in Rockland, very susceptible
18 to any type regulatory change, tax-code change, that
19 we know, that a certain product, once it hits a
20 price point, people are just not going to buy it
21 here in New York, and they can easily travel to
22 New Jersey and buy that.

23 So we've seen for years, some of the many
24 trade associations that testified earlier today have
25 shared with us, the amount of tax revenue that we

1 lose, and jobs we lose.

2 Once taxes hit a certain point for New York,
3 they can go right down the road -- for Rockland,
4 they can go right down the road to New Jersey.

5 So, that's something that is extremely
6 important for us here in Rockland, and that we share
7 with the rest of our colleagues in the state.

8 So, it's something that we have to stay on
9 top of, and you guys feel the brunt of that when
10 it's not being addressed.

11 So, do you have any further testimony?

12 MICHAEL BECKERLY: I just think -- I didn't
13 say, how it is fantastic you guys are doing this,
14 and gals.

15 SENATOR MARCHIONE: Thank you.

16 If I could just make one comment as well:

17 Through the Administrative Regulations Review
18 Commission, we have looked a little bit into Florida
19 and Texas, a little about bit into Nevada, where
20 they have started getting rid of their regulations.
21 They're getting -- you know, making a real concerted
22 effort to do so.

23 So, we have reviewed some of those, and
24 looking to say, What were they successful in getting
25 rid of, and can we mirror some of that ourselves?

1 So, we have addressed some of that, although
2 we have a long way to go with it as well.

3 MICHAEL BECKERLY: I am curious; I know
4 state, we're focusing on, but, is there any on the
5 lower levels, like the towns and villages, counties?

6 SENATOR CARLUCCI: Well, it's one of the
7 things that we're constantly dealing with, in terms
8 of when I talked about the elasticity factor.

9 I mean, it's something that we have to fight
10 with the localities, when they talk about raising
11 the sales tax or the mortgage tax or the transfer
12 tax, that's something that we have authority over,
13 and we can help with, and say, Look, you know,
14 you're chasing business out of the community.

15 But one of the things that we're looking to
16 do is, how do we streamline it?

17 And I know, as Senator Marchione talked about
18 her previous life as a county clerk, and me working
19 as a town clerk, and Senator Gallivan as a sheriff,
20 we can see that there are so many different things
21 we can do.

22 When we talked about the software for
23 businesses, you can do the same with localities, in
24 terms of, if you're processing an application, or
25 doing that with different state agencies, that

1 there's no reason why each municipality should have
2 a different software program; or that you're
3 recreating the wheel at every level.

4 So that's a part of what we would like to do,
5 is, How do you do that; how do you streamline
6 government?

7 Because at the end of the day, that means
8 less taxes; less burdensome regulations that the
9 small businesses have to go through.

10 SENATOR GALLIVAN: And if I may add to that,
11 that has come up, and that is something that we will
12 look at, to the extent that we the authority to do
13 something.

14 To give you an example, the way that it up:
15 We were doing -- construction was one of the
16 industries that we were doing out on Long Island,
17 and they talked about somebody who's licensed as an
18 electrician in Nassau County, if I remember
19 correctly, has to get --

20 Is it 26 licenses?

21 SENATOR VALESKY: Suffolk County.

22 SENATOR GALLIVAN: Oh, I'm sorry.

23 -- in Suffolk, 26 licenses, to work in every
24 one of those towns.

25 So, apparently, they get a license from the

1 state as an electrician, and in Suffolk, some of the
2 towns license them additionally.

3 And, now, apparently, the county -- or,
4 vice versa, the county licenses them, and now some
5 towns are looking to do that in Nassau.

6 I'm getting them goofed up.

7 But yet, in the other county, there's
8 26 licenses in addition to the state license.

9 So it has come up, and it's kind of opened
10 our eyes a little bit, to look at that.

11 Exactly how, I don't know, but it's come up,
12 and we are looking at that, or, we will look at
13 that.

14 UNKNOWN MALE SPEAKER: One comment to what
15 you were saying, in Connecticut, they tag one
16 license, and they can go throughout the state;
17 whereas, in Nassau, Suffolk, they have --
18 [inaudible].

19 MICHAEL BECKERLY: Yeah, that's a problem
20 throughout New York State.

21 You know, I don't know how much authority the
22 state government has over that.

23 SENATOR GALLIVAN: We're going to find out.

24 MICHAEL BECKERLY: Yeah, it's a huge problem.

25 LARRY BECKERLY: Well, to that point, the

1 County of Rockland does require a home-improvement
2 license; other counties do not.

3 And so, you know, what they -- the purpose
4 I think for the county regulation, is to make sure
5 that your contractor is properly insured and
6 properly trained, etc., so the consumer has
7 protections, so that someone, just a pickup truck
8 and a toolbox, doesn't come in and get hurt on the
9 job and then the homeowner's liable.

10 SENATOR GALLIVAN: Yeah, and I would imagine,
11 you know, somewhere we'll have to look at, where
12 they're doing it for legitimate additional purpose,
13 versus, just collecting a fee for the same thing,
14 that's just an out-and-out money-grab.

15 LARRY BECKERLY: But if you were to ask me,
16 and I think, according to what -- we would be better
17 off with a state licensing, rather than by each
18 individual municipality, because it is onerous on
19 the contractor.

20 MICHAEL BECKERLY: Is that where the, I'm a
21 little confused, the home rule comes into play?

22 Is that the issue?

23 SENATOR CARLUCCI: Well, with the home
24 contractor, that's something that each, county by
25 county, has authority over.

1 I mean, right now, Rockland County has it;
2 Orange County doesn't.

3 So the issue that you get into with doing it
4 on a statewide basis, is you have plenty of
5 counties, probably the majority of which, don't have
6 a licensing.

7 But something, that to really hit home on
8 this issue, is one of the things that we were able
9 to accomplish in the Legislature, finally, last
10 year, was, in Rockland County, we have 17 villages,
11 5 towns, and one of the problems we had was with
12 taxi cabs, and each village and town wanted to do
13 their own licensing.

14 Imagine the problems that you run into with
15 that.

16 And we finally were able to get a Taxi Cab
17 Bill passed by the Legislature, signed by the
18 Governor, that will allow for Rockland to be its own
19 commission to do the medallion process, which also
20 allows us to then go travel through other counties.

21 But it's just another example of this
22 burdensome situation, where you go from town to
23 downtown, municipality to municipality, where, if
24 you can do it on a countywide basis or a statewide
25 basis, you can make a big difference.

1 Well, thank you very much for your testimony.

2 We look forward to working with you.

3 MICHAEL BECKERLY: Thank you for your
4 patience, sir.

5 SENATOR CARLUCCI: Yes, thank you.

6 I think we have one more speaker.

7 I know Joe wanted to say a few words.

8 JOSEPH SCHWIMER: Joe Schwimer; thank you.

9 I'm not sure that this comes under state law,
10 or county law. It's been -- this has to do with the
11 Health Department in Rockland County.

12 I'll be very brief.

13 I own Clarksville Corners, which is probably
14 the most historic property in Rockland County. I've
15 owned it for 18 years.

16 This first occurred one year ago, practically
17 to the day. I think it was like the 9th of
18 October.

19 Clarksville Corners consists of
20 four buildings, and it has stores, a major
21 restaurant, another restaurant, and apartments.

22 On approximately October 9th, a person from
23 the Health Department came to the building because
24 there was a dispute about one of my tenants --

25 Which, by the way, I was 100 percent in the

1 right on this, and -- but that's beside the point.

2 -- and said, "This is a three-story
3 building."

4 By the way, someone has lived there for, at
5 least, over 150 years.

6 "It's a three-story building, and you're not
7 allowed to have a tenant in the third story."

8 Actually, it's listed everywhere as a
9 two-story building, and it is a two-story building.

10 It was once a single-family house converted
11 to a two-family house, and in 1955, the basement was
12 converted into a store.

13 The building hasn't grown.

14 This is still going on today, a year later.

15 During the time, by the way, where my wife
16 was deathly sick. She passed away two months ago
17 from Parkinson's.

18 When I heard about your meeting on laws, here
19 is one that is so absurd.

20 "So absurd."

21 How do you still have things like this going
22 on?

23 Now, I can elaborate further. This is all
24 papers having to do with it.

25 And the law, I have it here, it says that a

1 tenant can -- well, I had it here.

2 In any case, it says, that if you have a
3 tenant in a third story, you need to provide either
4 a fire system, which is ludicrous. It will only
5 destroy a whole building.

6 SENATOR CARLUCCI: Well, Joe, I think this
7 sounds like it's a municipal issue.

8 JOSEPH SCHWIMMER: It may be a county, but the
9 county says it's a state.

10 SENATOR CARLUCCI: Okay, so what we should
11 is, I'd like to do sit with you after this hearing,
12 and we can go through it, and go through those
13 documents and see, find out exactly what it is.

14 And if we find out that there are state
15 issues there, we can report back to the Committee.

16 JOSEPH SCHWIMMER: By the way, we are in
17 100 percent compliance with all state regulations,
18 all building-department regulations.

19 We have no violations, "zero," and this is
20 still going on. Still.

21 Oh, by the way, I am going to sue them now.

22 Now that my wife has passed away, I'm not
23 taking this anymore, and I am getting an attorney
24 and suing them.

25 This is an absurd law, and that's why I'm

1 here.

2 There are lots of absurd laws, and they have
3 to be changed or dropped.

4 You just cannot have the number that you
5 mentioned, what was it, 750,000, or whatever?

6 You know, it's absurd.

7 Really, the only thing that you can do, is
8 eliminate every one and put in new laws, sensible
9 laws, which have to do with the
10 twenty-first century.

11 I mean, it's a job, it's a tremendous job,
12 but, really, that's the only true answer.

13 SENATOR CARLUCCI: Well, Mr. Schwimer, we
14 appreciate your bringing this to our attention, and
15 I look forward to working with you on the specifics
16 of that, to figure out exactly where it's coming
17 from, and if there is something that we can do on a
18 state level to streamline the process, to make it
19 easier for people in the future.

20 So, thank you.

21 JOSEPH SCHWIMER: This is why I'm here.

22 SENATOR CARLUCCI: Yeah, we appreciate it.

23 Thank you.

24 JOSEPH SCHWIMER: Yeah, thanks.

25 SENATOR CARLUCCI: Well, that's the last of

1 our scheduled speakers, and we want to thank
2 everyone for coming out today.

3 And, I think we've gotten a lot of good,
4 specific ideas and proposals.

5 And like we said, this is one of seven
6 hearings that we're having around the state, and
7 I think this was really good, in terms of
8 pinpointing some key areas that we can go back and
9 find out, what can we do to make it easier for small
10 businesses, while, at the same time, making sure
11 that we're protecting the public, the environment,
12 and everything else that we're supposed to be doing
13 in the state of New York.

14 With that, if anybody else would like to
15 close with any comments?

16 Senator Marchione?

17 SENATOR MARCHIONE: Just, thank you all very
18 much for being here today, and for your testimony.

19 It is such an important part of what we're
20 doing, and we could not go forward and look for
21 1,000 rules and regulations without the help that
22 you've provided to us.

23 So, thank you for your time this afternoon,
24 and for sharing all of your thoughts.

25 SENATOR GALLIVAN: I thank everybody as well.

1 SENATOR CARLUCCI: Great.

2 Thank you.

3 [Applause.]

4 (Whereupon, at approximately 3:45 p.m.,
5 the public forum on Small Business Regulatory
6 Reform held before the New York State Senate
7 Majority Coalition concluded, and adjourned.)

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1 BEFORE THE NEW YORK STATE SENATE MAJORITY COALITION

2 PUBLIC FORUM/TOWN HALL

3 INSURANCE/BANKS REGULATORY REFORM - TO LEARN FROM
4 BUSINESSES AND INDUSTRY EXPERTS WHICH REGULATIONS
5 ARE THE LEAST USEFUL, LEAST COST-EFFECTIVE, AND,
6 THEREFORE, SHOULD BE ELIMINATED

7 Senate Hearing Room
8 250 Broadway 19th Floor
9 New York, New York 10007

10 October 8, 2013
11 10:00 p.m. to 3:00 p.m.

12 SPONSORS PRESIDING:

13 Senator Patrick M. Gallivan
14 Deputy Conference Leader for Economic Development

15 Senator Kathleen A. Marchione
16 Chair of the Administrative Regulations Review
17 Commission

18 Senator David J. Valesky
19 Chair of the Senate Committee on Commerce,
20 Economic Development, and Small Business

21 Also, Deputy Leader of the
22 Independent Democratic Conference

23 CO-SPONSOR PRESIDING:

24 Senator James L. Seward
25 Chair of the Senate Standing Committee on Insurance

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3	President & CEO		
4	Building Trades Employers' Association		
5	Arthur Rubinstein	13	33
6	Subcontractor, Trade Association		
7	President of Skyline Steel Corporation		
8	Christopher Jaskiewicz	13	33
9	Co-Chairman		
10	Greater New York City Construction		
11	User Council		
12	Also, Chief Operating Officer		
13	of Gotham Organization, Inc.		
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1 SENATOR GALLIVAN: I am Senator Pat Gallivan,
2 and we are very thrilled to welcome everybody to
3 what is, I think our sixth or seventh regulatory
4 reform hearing.

5 We are traveling across the state, conducting
6 industry-specific hearings in a goal of changing
7 what New York -- I'm sorry, a U.S. Chamber of
8 Commerce report indicated: New York is 50th out of
9 50 states, the worst business environment in the
10 country.

11 We know taxes are a problem and, separately,
12 we are trying to deal with that.

13 We have a bipartisan group that is going
14 across the state conducting tax-reform hearings, and
15 in the Senate we are very pleased to now hear the
16 Governor putting together a tax-reform commission,
17 so, hopefully, we can have some progress in that
18 area next year.

19 But we are here to try to deal with that
20 other part of it that creates impediments to
21 business, that slows growth in the state, that
22 prevents people from staying here in certain cases,
23 wanting to be here in other cases, and the
24 regulations.

25 If you didn't know, we have over 140 pages --

1 140,000, rather, pages of regulations in this state,
2 and it is our goal to try to do something about
3 that.

4 We are starting with a target of trying to
5 identify a minimum of a thousand of them, to publish
6 in a report probably by late November, early
7 December, which will become part of our legislative
8 agenda of the Senate Majority Coalition for next
9 year as we move forward.

10 Certainly, we won't be content with just a
11 thousand, but we have to start somewhere.

12 And what we're trying to do, by doing this in
13 an industry-specific manner, we are trying to drill
14 down.

15 We know that unemployment insurance, we know
16 worker's comp, we know of the Scaffold Law, are the
17 big things. I imagine we'll hear some of that
18 today. We've heard it at the other hearings.

19 But, we are trying to get down into each of
20 the different industries and enlist your help in
21 trying to identify things; the regulations that are
22 outdated, the regulations that make no sense,
23 antiquated, those where the costs greatly exceeds
24 the benefits.

25 So that's our purpose today, and we're very

1 happy that so many of you took the time out of your
2 day or to travel here to be part of this.

3 Senator Dave Valesky co-chairs this effort
4 with me. Senator Kathy Marchione is also part of
5 the panel traveling across the state.

6 Senator David Carlucci is not able to be
7 here; he might be a little bit later.

8 But that forms the basis of our Committee.

9 And today we're also joined by the Chair of
10 the Senate Insurance Committee, Senator Jim Seward.

11 So without further ado, I will pass it off to
12 my colleagues and then we'll get started for their
13 comments.

14 SENATOR VALESKY: Very good.

15 Thank you, Senator Gallivan.

16 Good morning, everybody.

17 My name is Senator David Valesky.

18 I represent 53rd Senate District, right in the
19 middle of the state; Madison County, parts of
20 Onondaga and Oneida county, including most of the
21 city of Syracuse.

22 I also serve as the Chairman of the
23 Senate Standing Committee on Commerce,
24 Small Business, and Economic Development;

25 And I'm also here as the Deputy Leader of the

1 Independent Democratic Conference.

2 And for those of you who may not be familiar
3 with that, the "IDC," as we're known, are
4 governing -- majority-governing partners with the
5 Senate Republican Conference in what I think has
6 been a very, very successful experiment in
7 bipartisan cooperation that we're seeing here in
8 Albany, and that we're not exactly seeing in
9 Washington these days.

10 So, as Senator Gallivan said, we're rapidly
11 coming to the end of this series of public hearings
12 across the state. We have two more to do, and then
13 we'll be preparing a report, and I'm sure several
14 recommendations that will both involve regulations
15 that are imposed by state agencies, and also looking
16 at legislation.

17 So, I anticipate we'll have a package ready
18 for action when the 2014 legislative session
19 commences in January.

20 I look forward to hearing from all of you.

21 Senator Marchione.

22 SENATOR MARCHIONE: Hi, I'm
23 Senator Kathy Marchione, and I represent the
24 43rd District, which is comprised of parts of
25 Saratoga, Rensselaer, Washington counties, and all

1 of Columbia County.

2 In addition to representing the
3 43rd District, I am the Chairman of the
4 Administrative Regulations Review Commission for the
5 Senate.

6 And it's interesting, when we've been
7 reviewing rules and regulations, the rules and
8 regulations of the state of New York, if you lay
9 them, 8 1/2-by-11 sheet of paper, go out to about
10 22 miles of regulations, and it's certainly a
11 massive financial burden to our economy and our
12 financial, in the financial sector in particular.

13 The purpose of the forum, as what you've
14 heard from Senator Gallivan and Senator, uhm, next
15 to me --

16 Sorry, forgive me.

17 [Laughter.]

18 SENATOR MARCHIONE: -- Dave Valesky, is to
19 listen to the insurance and -- today, and the baking
20 industry.

21 And, you know, the goal of this forum has
22 never been to point fingers or blame at anyone.

23 It's the -- our one and only purpose here is
24 to listen and find real solutions.

25 So, I welcome your input and look forward to

1 it.

2 Thank you.

3 SENATOR SEWARD: Well, thank you very much.

4 I'm Senator Jim Seward, and I represent the
5 51st Senatorial District, which is a swath of all or
6 parts of nine counties. We stretch from the
7 Catskills over to the Finger Lakes, and up into the
8 Mohawk Valley as well, right in Central New York.

9 And I also, of course, chair the
10 Senate Insurance Committee.

11 And I just want to congratulate my colleagues
12 who have been traveling the state and taking
13 testimony in terms of regulatory reform, with an eye
14 toward modernizing and streamlining, and
15 eliminating, regulation in New York State.

16 No question, there is a direct correlation
17 between our regulatory climate and our economic and
18 business climate here in New York State.

19 And if we are truly going to get our economy
20 moving in our state, we've got to deal with this
21 overregulation, particularly when it relates to our
22 employers and the business community.

23 You know, I am very proud to say that we, as
24 New Yorkers, can be collectively proud of the fact
25 that, traditionally, New York State has been the

1 financial capital of the world.

2 If we don't modernize and streamline the
3 regulation of this key industry, we may very well
4 lose this title, which employs thousands and
5 thousands of New Yorkers and is so critical to our
6 economy.

7 Now, no question in my mind that industry
8 should not write their own regulations. That's the
9 function of the regulatory agencies.

10 But it is important that, in writing
11 regulations, the various departments, and in
12 particular, we're talking today about the
13 Department of Financial Services, should take input
14 from all of the various stakeholders, whether that
15 be legislators on behalf of their constituents,
16 industry, those out there in the field, and, of
17 course, the general public, and this has not always
18 been the case.

19 And I'm concerned about the overuse of
20 emergency regulations on the part of the department.

21 There's certainly a time for emergency
22 regulations at a time of an emergency, but, I think
23 this has been overused on the part of the
24 department, and it has, in fact, cut out that
25 opportunity for industry, public, and legislative

1 input in the regulatory-making process.

2 Hopefully, as a result of these hearings, we
3 will be able to refine that process and make that
4 more workable and reasonable and responsible, and
5 I think the end result would be better regulations.

6 You know, I would just note that, at the time
7 we created the Department of Financial Services,
8 bringing banking and insurance together, at the time
9 that was created, we put, as part of the mission
10 statement of the new department, some very important
11 words, and I would just like to quote from that
12 mission statement that we all enacted together, and
13 that was:

14 "To encourage, promote, and assist banking,
15 insurance, and other financial-services institution
16 to effectively and productively locate, operate,
17 employ, grow, remain, and expand in New York State,
18 to establish a modern system of regulation,
19 rule-making, and adjudication that is responsive to
20 the needs of the banking and insurance industries,
21 and to the needs of the state's consumers and
22 residents, and to promote, advance, and spur
23 economic development and job creation in New York."

24 That is out of the mission statement that the
25 Legislature and the Governor has given to the

1 Department of Financial Services, and we are here
2 today to see how we are doing in meeting that
3 mission statement.

4 And, obviously, we, as members of the Senate
5 and our Coalition in the Senate, we are eager to
6 work with the Administration, as well as our
7 colleagues in the Legislature, to, in fact, promote,
8 advance, and spur economic development and job
9 creation in New York.

10 And we can do that through regulatory reform;
11 modernizing and streamlining, and, changing whatever
12 statutes need changing in order to meet this
13 objective.

14 So I'm very excited to be part of this
15 effort.

16 SENATOR GALLIVAN: Thank you, Senator.

17 I neglected to mention where I'm from, and
18 why I'm here.

19 I'm from the western end of the state, south
20 of Buffalo, south of Rochester, cutting across
21 four different counties, and I serve as our
22 Deputy Conference Leader for Economic Development.

23 So that's what connects me to this; to my
24 comrades here, and this effort, which we are excited
25 about.

1 I think I neglected to mention that we are
2 dealing with those industries that fall under the
3 State Department of Financial Services.

4 We grouped it together that way because it
5 made sense to bring insurance, banking, and
6 financial services together.

7 So, that is our purpose today.

8 We have -- we will do our best to stay on
9 schedule. We're just a few minutes behind, but we
10 usually make it up along the way.

11 We've tried to allot 15 minutes for each of
12 the presenters.

13 If you have written testimony that we do not
14 have yet, you can give it to the good-looking guy
15 with the glasses over there and he'll get copies for
16 all of us.

17 And, if I could just mention, if you're more
18 comfortable reading your testimony, fine, but we
19 have the written testimony.

20 We'd much rather hear you talk about the
21 things that you're going through, instead of
22 reading, and sometimes that helps us move along out
23 of respect for everybody's schedule.

24 So we will start, if our first speakers are
25 here, I believe, Lou Coletti, who is the president

1 and CEO of the Building Trades Employers'
2 Association;

3 And, Chris Jaskiewicz -- I hope I pronounced
4 it right -- who is the chief operating officer of
5 Gotham Organization.

6 And that is right, you have -- all right, the
7 other two are not here.

8 You do have -- well, no -- we only had -- who
9 else do you have with you?

10 LOUIS COLETTI: Arthur Rubinstein.

11 SENATOR GALLIVAN: Do you have Arthur?

12 Yes, Arthur.

13 Arthur Rubinstein.

14 And -- is there -- Denise Richardson was
15 also?

16 LOUIS COLETTI: She's on her way. We'll just
17 start.

18 SENATOR GALLIVAN: Okay, then she can come up
19 right when she's ready.

20 All right.

21 Sorry about that, Arthur, I didn't realize
22 you were here.

23 ARTHUR RUBINSTEIN: That's quite all right.

24 CHRISTOPHER JASKIEWICZ: Would you like us,
25 Mr. Chairman, to follow the order --

1 SENATOR GALLIVAN: You can go whatever --
2 whenever you're ready, you can go right ahead.

3 CHRISTOPHER JASKIEWICZ: Okay.

4 My name is Christopher Jaskiewicz. I am the
5 co-chairman of the Greater New York City
6 Construction User Council, and chief operating
7 officer of Gotham Organization.

8 Thank you, Senators, for your time.

9 In 1885, New York passed a law which required
10 contractors to have proper scaffolding at
11 construction sites. This law is referred to as
12 "240."

13 Since 1885, much of 240 has been rendered
14 obsolete by thousands of rules enacted to protect
15 workers.

16 These rules and laws include the
17 Occupational Safety and Health Act, Department of
18 Building Rules, and Worker's Compensation laws.

19 Under worker's comp rules, if a New York
20 worker is injured at a construction site, the fault
21 of the worker is not questioned. All of his or her
22 medical expenses are covered. This includes all
23 emergency bills, all surgery bills, MRI costs,
24 diagnostic, and rehabilitation costs.

25 In addition, the worker's lost wages are

1 covered, which can be up to eight to nine hundred
2 dollars a week.

3 Also, in New York, unlike many other states,
4 the worker can sue the contractor and owner of the
5 construction site.

6 Unlike the protection that developers and
7 contractors have in other states, we are not seeking
8 protection from being sued by injured workers.

9 We are seeking reform of the portion of 240
10 that makes owners and contractors strictly liable
11 when we are sued.

12 The fair standard is comparative negligence.

13 When that worker sues us, if that worker
14 contributed to his or her own injury by not
15 following safety measures, we want the right to be
16 able to explain that to a jury or judge so that that
17 can be taken into account.

18 Making one party strictly liable in the
19 context of workplace safety is wrong, and is
20 contrary to the principles of safety because it
21 removes incentive for the other party to take
22 reasonable measures to be safe.

23 If the owner of the construction site is
24 going to be liable no matter what the worker does,
25 and if the worker's own negligence is not going to

1 be considered by a judge or a jury, that sets up the
2 system that is unfair and ripe for abuse.

3 That is exactly what we have in New York: a
4 system that is unfair, a system that is being
5 abused, a system that is costing New Yorkers
6 billions of dollars, and a system that is driving
7 hard-working business owners out of business.

8 The facts speak for themselves.

9 New York is the only state in the entire
10 United States that forces strict liability on its
11 construction contractors and developers.

12 If a worker is 90 percent at fault for his or
13 her injury, that worker not only gets medical
14 expenses and wages covered, that worker can sue, and
15 will likely sue, because the New York judge or jury
16 will hold the owner or contractor 100 percent
17 responsible.

18 The system has led to extreme abuse in
19 New York.

20 Workers who ignore safety training, or take
21 unsafe risks, or refuse to wear safety equipment, or
22 otherwise cause their own injuries, file claims for
23 millions of dollars with the assistance of select
24 law firms and doctors.

25 Personal-injury lawyers specializing in

1 240 claims, with their own network of doctors, hand
2 out business cards at construction sites because
3 these cases are so easy to win. As a result,
4 240 claims and settlements in the millions of
5 dollars are routine.

6 After years of being prevented from arguing
7 comparative negligence, most construction insurance
8 carriers have left the New York market.

9 Losses to carriers in New York are at least
10 twice as high as in other states.

11 With average 240 claims and settlements in
12 the range of 2 to 3 million dollars each, the
13 carriers that remained have doubled their rates due
14 to this law.

15 This means that insurance costs are twice as
16 high in New York as they are in neighboring
17 Connecticut and New Jersey.

18 It is widely acknowledged in our industry
19 that the extra charge that carriers apply in
20 New York to cover their increased exposure is
21 4 to 7 percent of the project cost.

22 That increased cost hurts private development
23 and public projects.

24 For a private apartment building in
25 New York City, right here, that costs \$100 million

1 to build, this law adds at least \$4 million to the
2 cost.

3 That means some projects don't get built,
4 which means less work for thousands of workers.

5 For projects that do get built, it means
6 higher rent prices, higher sale prices, and more
7 pressure on affordable-housing initiatives.

8 Even worse is the impact on public projects;
9 government agencies subject to this law as well, and
10 their insurance costs are impacted in the same way.

11 The math is easy:

12 If the New York annual state capital budget
13 is 200 billion, the 5 percent 240 surcharge on
14 taxpayers is \$1 billion annually.

15 Legislators who care about small business
16 should reform this law.

17 When projects don't get built or when
18 insurance costs are too high for a company to pay,
19 small contractors, subcontractors, small developers,
20 and small building owners go out of business.

21 New York is the only state that forces strict
22 liability on its contractors and developers.

23 The last state that had a similar law is
24 Illinois. In 1995 it repealed its strict-liability
25 statute. Construction work went up, and workplace

1 injuries and fatalities went down.

2 For all of these reasons, 240 must be
3 reformed.

4 To quote the City of New York's memorandum in
5 support of the proposed legislation:

6 "Currently, even the most trivial violation
7 of 240 renders an owner or contractor absolutely
8 liable for plaintiff's damages. Unlike all other
9 areas of tort, almost, the owner or contractor
10 cannot ask a jury to consider plaintiff's relative
11 fault in the happening of the accident and
12 proportionally reduce recovery. This rule holds
13 even if the plaintiff is intoxicated or consciously
14 chooses to not utilize readily available safety
15 devices. New York is the only state that retains
16 such an imbalanced rule. The proposed legislation
17 strikes an equitable balance in addressing this
18 issue."

19 SENATOR GALLIVAN: Thank you.

20 I see some testimony here.

21 Are we all going to talk about the same
22 issue?

23 ARTHUR RUBINSTEIN: No, different element of
24 the same issue.

25 SENATOR GALLIVAN: Okay, why don't you go

1 ahead, and we'll reserve our questions -- or, we'll
2 wait until you're all finished.

3 All right, thank you.

4 ARTHUR RUBINSTEIN: Okay, good morning,
5 Senators. Thank you for this opportunity.

6 My name is Arthur Rubinstein. My company is
7 Skyline Steel Corporation.

8 And, you'll see a very impressive description
9 of my company, which, unfortunately, is incorrect.

10 That is not my company. It's another company
11 with the same name.

12 But I was very impressed. I hope you are,
13 also.

14 [Laughter.]

15 SENATOR GALLIVAN: Sorry about that.

16 ARTHUR RUBINSTEIN: I'm actually a mid-sized
17 specialty contractor doing steel stairs, railings,
18 and other metal products on construction sites.

19 I wanted to have the opportunity to give you
20 the experience that I've had over the past couple of
21 years, in terms of my costs and my difficulty in
22 obtaining insurance, due to the limited market of
23 insurers who are still willing to insure companies
24 like mine in New York State.

25 My record as a contractor is actually quite

1 good in terms of safety. We have what are called
2 "credits" on our worker's comp-experience
3 modifications, which means that we are better than
4 average in terms of the losses which our workers
5 experience, and the claims that exist.

6 Two years ago, I paid for my
7 general-liability program, a little over \$52,000 a
8 year.

9 I just renewed my insurance on June 15th of
10 this year.

11 So, two years ago \$52,000.

12 My premium currently is \$277,000.

13 That is a 531 percent increase over two
14 years, despite the fact that there's no
15 negative-loss history.

16 A clearly related fact to that is, my broker,
17 who really scoured the marketplace, was able to
18 attract a grand total of one proposal for our
19 renewal insurance.

20 No other company was willing to quote us.

21 That's -- I can tell you, as somebody who's
22 been a contractor my entire working life, that's
23 very scary, because there is this one insurer who
24 stood between me and not having insurance, and
25 having to default on my contracts in the middle of

1 construction.

2 It's that much of a crisis, and we are
3 teetering on the edge to that degree.

4 In addition to the cost of the insurance,
5 I'm actually -- the coverage is actually quite
6 inferior to what I bought two years ago.

7 One significant fact is that, what's called
8 "completed-operations insurance," which insures us
9 if there's a problem that comes up after the
10 building is completed, is normally part of a
11 comprehensive general-liability policy.

12 And it is in my policy, as it is in,
13 virtually, any construction policy; however, there's
14 a limitation.

15 The current policy, it does not cover
16 completed operations for projects which were covered
17 under what's called a "wrap-up," which is either an
18 owner-controlled program or a contractor-controlled
19 program, and the bulk of my work comes under these
20 programs.

21 So, I actually do not have insurance today if
22 there is a claim on one of these projects which
23 represent the bulk of my program.

24 After these projects are finished, or after
25 prior projects were finished, if there were a claim

1 today, I'm uninsured.

2 And this is not a problem which is unique to
3 me. This is being experienced throughout the
4 specialty-contractor industry by all of my peers --
5 or many of my peers; certainly those in high -- what
6 are called "higher-risk trades," where their workers
7 generally work on a scaffold, on a ladder, and are
8 subject to falls that come under the provisions of
9 240/241.

10 We've actually -- for this one problem, we've
11 been in discussion, through our trade associations,
12 with the Department of Insurance, now succeeded by
13 the Department of Financial Services, asking them to
14 mandate that these wrap-up programs provide
15 completed-operations insurance for a minimum of
16 10 years.

17 We've been in dialogue with them over this
18 issue now for five years, and it hasn't been
19 resolved.

20 So, the completed operations under the
21 wrap-ups generally last two, three years for many of
22 them. We're then uninsured after that because we
23 can't buy the insurance.

24 When you look at all of this, you could say
25 that, if a contractor -- if I or a contractor like

1 me were to be given a mental-health test as to why
2 they're still in business, I don't think we'd pass.

3 But I love what I do.

4 I hope that some of these situations are --
5 as bad as they are, are temporary, and that we can
6 look forward to continuing to thrive in
7 New York State, as opposed to considering whether we
8 really want to keep doing this and have these risks.

9 Thank you for your time.

10 DENISE RICHARDSON: Hi, I apologize.

11 SENATOR GALLIVAN: Good morning, and welcome.

12 DENISE RICHARDSON: Good morning.

13 SENATOR GALLIVAN: Perfect timing.

14 DENISE RICHARDSON: So sorry.

15 Denise Richardson, managing director of the
16 General Contractors Association.

17 My colleagues and I spent a lot of time
18 comparing our testimonies, so I won't be telling you
19 a lot of a different story than what you've already
20 heard, but I just want to emphasize that what we're
21 talking about is not a situation that will lead to a
22 lax of safety standards or creating any less of a
23 safe workforce or safe work practices than,
24 certainly, the unionized construction industry that
25 I represent or that my colleagues represent pay

1 attention to every day.

2 So as you look at the need for reform in the
3 Scaffold Law, please remember that this is not about
4 decreasing safety standards at all.

5 It is about creating fairness in a process
6 that will lead to cost reductions for all taxpayers,
7 and it is about making certain that when an accident
8 happens, there is a full and thorough investigation
9 where all of the facts leading to that accident come
10 out, because one of the most important things for us
11 to do as an industry is to learn from unfortunate
12 situations and to establish best practices to
13 prevent accidents from happening in the future.

14 And the standards under which we work now
15 with the Scaffold Law prevent a full and thorough
16 investigation because the immediate reaction is,
17 "How much will the contractor pay?"

18 The contractor is absolutely liable, and it's
19 just a matter of settling the case.

20 So to a certain extent, the existing
21 conditions in the Scaffold Law, frankly, are
22 creating a hardship for contractors to learn best
23 practices and to adopt best practices, because
24 there's not an opportunity for a full and thorough
25 investigation.

1 Also, I want to emphasize that, for small and
2 mid-sized contractors, particularly minority- and
3 women-owned businesses, their inability to get
4 insurance or to afford insurance prevents them from
5 working on many public projects.

6 And the goal of the MWBE programs is to use
7 government contracting to help those businesses
8 grow; and, yet, the Scaffold Law prevents those very
9 same businesses from having an opportunity to work
10 on those projects because, under the state's own
11 regulations, which are appropriate, a contractor
12 that cannot get insurance cannot work on a public
13 project.

14 So it is critical that this law be reformed
15 so that all parts of the government can work in the
16 best interests of both the industries and the
17 taxpayers.

18 Thank you.

19 SENATOR GALLIVAN: Thank you.

20 LOUIS COLETTI: Well, Senators, thank you
21 very much for the opportunity to speak this morning.

22 And thank you for taking the time to do what
23 you're doing, and going around the state in order to
24 find out what kind of issues are important in terms
25 of improving the climate for economic development.

1 And I really appreciate that.

2 My name is Louis Coletti. I'm the president
3 of the Building Trades Employers' Association.

4 We're an organization that represents
5 28 different union-contractor associations, and over
6 2,000 union companies, and we employ over
7 120,000 people, including the 100,000 members of the
8 building-trades unions.

9 You've heard much of the argument, so I'm
10 just going to go to a particular issue that Denise
11 brought up, that's very critical; and that is,
12 how do you grow minority and women businesses?

13 In New York City, probably -- and what is the
14 impact of the Scaffold Law?

15 Illinois, which was the only other state in
16 the nation that used to have, and repealed, their
17 Scaffold Law, over a five-year or six-year period,
18 found it increased -- it decreased insurance costs,
19 it increased the number of jobs, so much so, that
20 when an effort was made to reintroduce the bill,
21 organized labor opposed it; and it created new
22 construction jobs.

23 The real crisis we have, is my organization
24 has really worked very hard in helping to grow
25 minority and women businesses.

1 Competition is good.

2 We have the New York City School Construction
3 Authority, which probably has the preeminent
4 MWBE program for the last 20 years in this country.

5 They have recently sent out a letter to all
6 of their contractors, indicating to them that they
7 may, in fact, be requiring contractors, MWBE and
8 others, to provide their own general-liability
9 insurance, effective January 1st, because their
10 three-year premium is coming to an end.

11 They have gone out and solicited other bids.

12 I believe, at best, they may have gotten one,
13 and that was with extreme prodding.

14 The -- from what I hear, the cost of the
15 premium has more than -- gone up more than
16 100 percent, to the point where, if they were paying
17 \$300 million for three years, that number is
18 anywhere from five to eight hundred million dollars
19 for the next three years.

20 Think about how many schools we can build.

21 They're trying to determine what to do with
22 existing jobs.

23 What are they going to do with new jobs?

24 What happens to those contractors who are on
25 the job, who, when they put their bid in, did not

1 include the cost of insurance because they were
2 covered by an owner-controlled wrap-up program?

3 Now, the SCA, over the last 10 years, to give
4 you a sense of how strong their MWBE program is,
5 they've awarded over \$2.7 billion in construction
6 contract awards over the 10 years to over
7 800 minority- and women-owned businesses.

8 Without amending the Scaffold Law, and,
9 again, I think you've heard this morning, the
10 amendment we're seeking is -- and I guess it's one
11 of the basic premises of the American jurisprudence
12 system, is that everybody deserves their day court,
13 except if you're an owner or contractor under the
14 Scaffolding Law.

15 You have no opportunity; you go to court, the
16 judge determines it's a 240/241 case, it proceeds to
17 next stage, which is, basically, the insurers get
18 together and we all decide, Well, how do we settle
19 this case? Because we cannot provide any
20 information to a jury in cases where there might
21 have been some negligence on the worker's behalf.

22 This does not impact workers' rights one
23 iota.

24 What it does, is it gives us an opportunity
25 to present information, for a jury to make their own

1 independent determination as to the culpability of
2 the contractor and the employee in any injury case.

3 I was at an MWBE conference last week, and a
4 woman-owned contractor stood up, and she said to a
5 crowd of about 100 people, she does about 85 percent
6 her work with the New York City School Construction
7 Authority.

8 And the cost of her general-liability
9 premium, in the other 15 percent of the work, was
10 about \$75,000 a year.

11 Based on the notice she got from the
12 School Construction Authority, she went out into the
13 market and asked for a quote.

14 She got one, \$780,000.

15 If we don't have reform, and have it this
16 year, those MWBE contractors are out of business.
17 They can neither afford to pay the premiums that you
18 heard Chris and Denise and Arthur talk about, nor
19 will they get it.

20 You know, one of the things I hear -- and
21 I heard you this morning, we're not looking to
22 assess blame -- but I think those who oppose reform,
23 I've heard them say, Well, your problem's really
24 with the insurance companies.

25 Well, if the problem's really with the

1 insurance company, and they're making so much money,
2 why -- there used to be seven, eight, or
3 nine companies that would write general-liability
4 insurance.

5 They've all left the market.

6 If they're making so much money, I would
7 think you'd have 50 companies come in and say, Let's
8 go to New York, let's make some money.

9 They will not write general-liability
10 insurance.

11 And while it's a problem for the entire
12 industry, I can tell you it will devastate the
13 state's MWBE program across the board.

14 But the SCA is struggling, because they're up
15 first. Their OSA policy ends December 31st.

16 What are they going to do?

17 Are they going to pay a \$500 million premium
18 and build 30 less schools?

19 Are they going to then require all
20 contractors to provide their own insurance; thus,
21 reducing the participation of MWBE firms?

22 It's a real tough position to be in.

23 And as I said, they're out publicly. They've
24 written the letters to all the contractors.

25 To give you a comparison:

1 The New York City School Construction
2 Authority, and this is last year's OSA premium, was
3 \$300 million for 3 years; about a \$1.7 billion
4 capital program.

5 The New Jersey School Construction Authority,
6 which doesn't have 240/241, has the same size
7 capital program, their premium for three years was
8 \$75 million.

9 So the problem is now; it's today. The
10 implications are just incredibly dramatic.

11 And we ask that you will take back to Albany
12 the need for reform, because, as you go out on your
13 tour of finding out facts about what's going to
14 keep, continue the economic growth of this state,
15 strong, this bill has got to be -- reform of this
16 bill has to be on the top of the priority list.

17 Again, thank you very much.

18 SENATOR GALLIVAN: Amen.

19 I know -- I know -- I'll speak for myself:

20 There's need for reform in this area.

21 We've been working on it for a while.

22 I'm not sure if you're aware, and we've
23 actually sponsored legislation. It's S111, if you
24 wanted to look it up, and it's to introduce, not
25 repeal it like Illinois did --

1 LOUIS COLETTI: That's all right.

2 SENATOR GALLIVAN: -- but something very
3 reasonable, but to level the playing field.

4 I think Denise you had talked about fairness
5 in the process.

6 In my view, this is the only thing that
7 enters our criminal or civil justice system where
8 both sides don't get a say.

9 And I'm paraphrasing, when you have a judge
10 in a case -- and I'm sure, you may be familiar what
11 the case is -- say something to the effect, to the
12 injured person who said, "It was my fault, I wasn't
13 paying attention," the judge said something to the
14 effect, The fact that it's your fault is irrelevant,
15 that isn't -- that's just not right.

16 But in any event, I understand everything
17 you're saying, and I personally appreciate the
18 testimony.

19 We have a group, your organizations may be
20 part of it, I'm not sure.

21 LOUIS COLETTI: Yes, the Alliance.

22 SENATOR GALLIVAN: And if you are not, would
23 you just talk to Zach --

24 LOUIS COLETTI: Okay.

25 SENATOR GALLIVAN: -- to make sure that we

1 get you to be a part of it.

2 There are numerous groups, and we are working
3 very hard.

4 I mean, you bring up some of the different
5 things that I think, as we move forward into next
6 legislative session, the MWBE issue is very
7 significant, the New York City schools are very
8 significant.

9 And what I'm seeing, is that there are
10 different people paying attention to this now, that
11 were not likely at all to support amendments to that
12 240/241 in the past.

13 So I'm very optimistic and hopeful that we
14 can do something.

15 I have a question, though.

16 Denise, you had talked about a -- what has
17 come up, when people have opposed this, we generally
18 have two groups:

19 One is the group that's interested in
20 litigation, that immediately talks about how the
21 world is going to end if we're going to change this;

22 The other group are the workers.

23 And when you talk individually with some
24 workers, and you explain what we're trying to
25 accomplish, they agree about the fairness, when you

1 talk about the Illinois experience, and the fact
2 that when people wanted to introduce it, that
3 organized labor said No, no, we like what's going on
4 now with the increased jobs, better safety, lower
5 rates; things of that nature.

6 When you talk individually with people, after
7 they get past that initial aversion, just because
8 that's always been the traditional position, they're
9 very reasonable.

10 But the concern, of course, is worker safety.

11 And two things you brought up, and anybody
12 can answer:

13 You mentioned, Denise, something to the
14 effect, that contractors, not unwilling -- unwilling
15 or unable, or the law prevents them, from learning
16 and adopting best practices.

17 I mean, can you just talk further about that?

18 I'm not quite sure that I understand,
19 because, if -- in trying to defend it, if I say,
20 "Hey, we've got these owners of companies, they
21 don't want to lose their shirt, they want to get
22 work."

23 And my presumption is, that if there's a set
24 of rules, they should be following it, providing the
25 safety equipment, providing the training, and so on,

1 or else, of course, that would be found out in
2 court, even in comparative negligence.

3 But could you just talk a little bit further
4 about -- I mean, is that not happening now, the
5 learning and adopting best practices?

6 DENISE RICHARDSON: What happens now is that,
7 if there's an accident on a job, a contractor will
8 do a safety investigation on their own and document
9 what happened.

10 But typically in the past what would happen
11 is, is that the insurance company would send in
12 their own team of investigators to do a thorough
13 analysis of everything that happened leading up to
14 that accident.

15 One of the things that we have found over the
16 years, and, particularly, I would say in the last
17 five or six years, is that the emphasis has become,
18 "Let's just settle the case," because there's no
19 point investigating the cause of the accident
20 because you're liable no matter what.

21 So we're losing the opportunity to get a
22 third-party look at what happened, and to be able to
23 say, "These are the things you should be doing,
24 going forward," because the rush is to just settle
25 the case and move on.

1 And it's something that we've talked to the
2 insurance companies about, in terms of improving
3 their investigation and helping us document what's
4 happening, but the emphasis now is, not so much on
5 what has happened to prevent this from happening in
6 the future, but, let's just settle the case and move
7 on, because you're guilty no matter what.

8 That's where the problem is.

9 SENATOR GALLIVAN: So the third-party look
10 then, in the full and thorough investigation that
11 you spoke of, which was going to be my other
12 question, that would be the insurance company?

13 DENISE RICHARDSON: That has been the
14 practice. Usually they will bring in a safety
15 consultant to do an analysis of the job.

16 But one of the criticisms that our own
17 members have had in dealing with their own insurance
18 companies, is when something has happened, there
19 is -- there's an immediate rush to judgment because
20 of the Scaffold Law: Well, the contractor is
21 guilty, so let's just move on to settle the case and
22 to get beyond this; as opposed to looking at what we
23 could be doing in the future to prevent it.

24 And so from our perspective, we're losing the
25 ability of that very thorough third-party look at

1 what happened to help us prevent things from
2 happening in the future.

3 Which I think, if we had a situation where we
4 were looking at a comparative-negligence standard,
5 where we really need to take the accident apart and
6 understand what happened, we would gain a body of
7 knowledge that would allow us to improve our safety
8 training, or to allow us to put procedures into
9 place, that would prevent this from happening in the
10 future.

11 CHRISTOPHER JASKIEWICZ: And if I could add
12 to that, the other third party that's critical is
13 the judge, and assessing the incident.

14 Right now it's a completely unrealistic
15 assessment of what happened, and what led to that
16 accident.

17 When I said that a worker could cause --
18 could be 95 percent the cause of his own accident --

19 SENATOR GALLIVAN: It's irrelevant.

20 CHRISTOPHER JASKIEWICZ: -- the
21 owner-contractor is 100 percent liable.

22 That unrealistically changes the culture, the
23 safety culture, on job sites.

24 And if you have judges that are allowed to go
25 in and study the comparative negligence, and find

1 out if the worker ignored his training and didn't
2 tie-off, that will lead to positive consequences in
3 the safety environment at these jobs.

4 It's human nature.

5 It's totally consistent with the principles
6 of safety, to have everyone buy in and be
7 accountable.

8 That's what we're missing.

9 SENATOR GALLIVAN: In all likelihood -- for
10 the sake of time, I will stop with my questions now.
11 I could on for a long, long time.

12 We will likely, in our proposed legislation,
13 hold hearings in January specifically on 240/241.

14 And if we do, we're hoping that you can be a
15 part of it.

16 But if you would just make sure that you stop
17 and talk with Zach, to make sure that you're on our
18 list with all of that.

19 SENATOR VALESKY: Not a question, just a
20 comment, really.

21 Thank you very much for your testimony.

22 You might be interested to know that,
23 wherever we have been in the state, and on whatever
24 topic the hearing was focused on, whether it was
25 general small business issues or construction or

1 manufacturing or agriculture, this issue has come up
2 at every single hearing.

3 You're probably not surprised to hear that.

4 So, as Senator Gallivan said, there's no
5 question that more work will be done as we head into
6 the new session, and we appreciate your testimony.

7 SENATOR MARCHIONE: Is it the Scaffold Law
8 alone that's causing all of these difficulties for
9 you?

10 If I were to look in New Jersey, are you
11 telling me that the insurance companies who used to
12 write insurance here are still all writing there;
13 that this is the sole issue as to why they're not
14 writing here in New York?

15 LOUIS COLETTI: Yes.

16 What the insurance companies are telling us,
17 and this is the irony of it, is when they take a
18 look at our companies' loss record, in
19 New York City, we have a very good safety record.

20 That's a factor.

21 What they're looking at more and more, that
22 focuses completely on 240 and 241, is the size of
23 the judgments that are coming in at a
24 240/241 hearing; and they're getting larger and
25 larger.

1 They're getting -- the judges are broadening
2 their definition in cases.

3 So, when an insurer is calculating what your
4 premium is going to be, they take all of that into
5 consideration.

6 So if you have a good safety record, which
7 I would guarantee most of our companies do, it's
8 almost irrelevant.

9 CHRISTOPHER JASKIEWICZ: If you -- if an
10 identical case happens in New York and happens in
11 New Jersey, in New Jersey you can litigate the
12 worker's negligence.

13 Here, you can't do it; hands are tied.

14 It goes right -- there's two parts to trials:
15 One part is liability, the other part is damages.

16 In New York, these go right to the damages
17 phase. There's no litigating the liability.

18 That's the difference.

19 SENATOR SEWARD: Following up on
20 Senator Marchione's question regarding the
21 comparison with New Jersey, you know, the one thing
22 that disturbs me every time I come down to the city,
23 I look across the Hudson and see that skyline of
24 New Jersey; it's growing and growing and growing.

25 And that's a number of factors, but too much

1 of our financial-services industry is in New Jersey,
2 and I guess it's easier to build that skyline over
3 in Jersey than it is here.

4 You know, when it comes to this issue, and
5 I would echo what Senator Gallivan said, I also am a
6 co-sponsor on legislation to bring reform to
7 240/241; and, thus far, it's been a tough hill to
8 climb in the Legislature.

9 In terms of the Senate, there's some
10 cross-jurisdiction here.

11 When we talk about 240/241, those are
12 sections of the Labor Law, and even though there are
13 huge insurance implications, in terms of the costs
14 of the general-liability insurance, and even the
15 availability of it, this -- because it -- because
16 the Labor Law comes under our Labor Committee in the
17 Senate, not the Insurance Committee.

18 I wish it was under the Insurance Committee.

19 But, obviously, they're a cross-jurisdiction
20 there, and as we proceed on this issue, we're going
21 to have to bring Labor Committee and the
22 Insurance Committee, as well as this
23 Regulatory Reform group, together, to look for some
24 real changes.

25 You know, we do not need to, it seems to me,

1 you know, reinvent the wheel here. We just look at
2 other states.

3 You mentioned the Illinois experience, and
4 that was total repeal over there.

5 But, you saw the availability go up and the
6 price go down, in terms of the insurance coverage on
7 these jobs.

8 And I presume that that has led to an
9 expansion, if not an explosion, of the construction
10 in that particular state.

11 And we want and need that here.

12 And I-- we are going to need, as we proceed
13 on this issue, the help and support and advocacy on
14 the part of the Governor here.

15 And I think that the impact, I know there was
16 some announcements just last week, in terms of
17 women- and minority-owned businesses, and trying to
18 increase the amount of activity in that area.

19 This issue plays, as you pointed out in your
20 testimony, a very, very important factor in that.

21 It's hindering the growth of women- and
22 minority-owned businesses in our state, at least in
23 the construction area.

24 So, that's something that we hope will get
25 the attention of the Governor as we proceed on this

1 issue, as well as the impact on the great need for
2 improvements on the physical plant of the
3 New York City School District.

4 So, those are very important factors as we go
5 forward here, that you brought out in your
6 testimony.

7 I had one question for Mr. Rubinstein.

8 You mentioned -- are you involved with a
9 proceeding at the Department of Financial Services,
10 or discussions there?

11 ARTHUR RUBINSTEIN: Yes.

12 SENATOR SEWARD: You said have not -- could
13 you briefly elaborate on that a bit on where --

14 ARTHUR RUBINSTEIN: Yes, we have been in
15 discussions, as I said, five years ago, with the
16 Department of Insurance, asking them to mandate a
17 10-year completed-operations minimum requirement on
18 owner-provided or contractor-provided insurance
19 programs, because we, typically, in our own
20 insurance programs, those jobs are excluded from
21 coverage.

22 So once the contractor- or owner-provided
23 insurance, the wrap-up, once the completed
24 operations under that program expires, and they're
25 typically two, three, four years, our policy

1 specifically exclude coverage on those projects, so
2 we are left uninsured.

3 And we're asking the department to mandate
4 that the insurers writing those programs provide a
5 minimum of 10 years of completed-operations
6 insurance.

7 SENATOR SEWARD: So that would cover anything
8 that may --

9 ARTHUR RUBINSTEIN: Happen in the future.

10 SENATOR SEWARD: -- happen in the future in
11 that 10-year period?

12 ARTHUR RUBINSTEIN: Right.

13 SENATOR SEWARD: Okay.

14 Well, we will take a look at that, that
15 aspect of the issue.

16 ARTHUR RUBINSTEIN: Okay, good.

17 I would just like to point out one thing, if
18 I may take one more moment?

19 I want to make sure we've made crystal clear,
20 that if we are successful and if we get a
21 comparative-negligence standard, as opposed to what
22 we have today, if a worker is at fault and,
23 ultimately, he doesn't collect on a litigation
24 because he's found to be at fault, I want to make
25 crystal clear that that doesn't impact, in any way,

1 his protections under worker's compensation, where
2 he will get his medical expenses covered, he will
3 get a weekly payment for his living expenses, while
4 he is unable to work, totally independent of any of
5 this, and you're not leaving workers destitute or
6 without wherewithal if this were to be changed.

7 They have that protection; that's unchanged.

8 SENATOR SEWARD: Yeah, no question, there is
9 a perception in the organized-labor community that
10 this strict liability is necessary to, number one,
11 create the strong incentive for the employer to
12 create that safe workplace, and also, then, you
13 know, the benefits that would come from any injury
14 that occurred.

15 So that's -- you know, that's what we need,
16 to take steps as we go down this road of reform, to
17 overcome what I would consider to be misconceptions.

18 LOUIS COLETTI: If I may, just in closing,
19 just so -- based on your comments, Senator, just so
20 you know, we are, and have been, for a long time, in
21 direct conversations with the Governor's Office on
22 this issue, as well as having meetings with
23 organized labor.

24 And, perhaps, even meeting with the trial
25 attorneys. We're not sure of that.

1 But, this is a campaign -- and the minority
2 community.

3 I was at the state's conference last week,
4 basically telling them the message that we talked
5 about here, which is, they're out of business, and
6 they need to get on the phone with their elected
7 officials in the Minority Caucus and their own
8 districts, and tell them how important this issue is
9 for their own businesses.

10 DENISE RICHARDSON: If I could just add
11 something?

12 At the same time that we're going to be
13 looking at changes in the Scaffold Law, the
14 Legislature will also be looking at the DOT capital
15 program, the MTA capital program.

16 We've seen our insurance costs go from,
17 basically, 2 to 4 percent of a total project cost,
18 to 8 to 12 percent.

19 If you can reform the law and bring the
20 insurance costs back into that 2 to 4 percent level,
21 you have just given more money to both the DOT and
22 the MTA capital programs, and to the projects in
23 your districts, without having to find any other
24 revenue source.

25 So this really is a factor in the overall

1 cost of projects.

2 And I urge you to look at that, and
3 understand that this is an opportunity for the State
4 to save money, and also to create new opportunities
5 for so many of the projects that desperately need to
6 get done around the state.

7 SENATOR GALLIVAN: Is it your opinion that
8 that increase in costs is solely because of 240/241?

9 DENISE RICHARDSON: Yes, we've seen it in our
10 insurance premiums.

11 Our members -- we have 240 members, and we
12 did a survey, and our members' insurance costs over
13 the past 10 years have increased, anywhere between
14 300 and 1,000 percent, and it's due to Scaffold Law
15 claims.

16 CHRISTOPHER JASKIEWICZ: There's no question,
17 these claims are coming in at -- for 3, 4, 5 million
18 dollars.

19 It's easy money.

20 It's easy money for the plaintiffs' lawyers;
21 it's easy moneys for the workers.

22 SENATOR GALLIVAN: Get it.

23 All right, thank you very much.

24 CHRISTOPHER JASKIEWICZ: Thank you.

25 SENATOR SEWARD: Thank you very much.

1 SENATOR GALLIVAN: Marc Craw, who's the
2 vice president of the New York Insurance
3 Association.

4 When you're ready, Marc.

5 Thanks for being here.

6 MARC CRAW: Good morning.

7 Thank you very much, Senator Seward,
8 Senator Gallivan, Senator Valesky, and
9 Senator Marchione.

10 As mentioned, I am Marc Craw, vice president
11 of the New York Insurance Association, known as
12 "NYIA."

13 NYIA is the state trade association that has
14 represented the property and casualty insurance
15 industry in New York State for over 130 years.

16 Our membership is broad and diverse,
17 consisting of stock, mutual, and cooperative
18 insurance companies writing in every corner of
19 New York State.

20 NYIA's member companies write over
21 \$12 billion in premium in New York State yearly.

22 On behalf of NYIA, we wish to thank you for
23 the opportunity to address you regarding the serious
24 need for regulatory reform in the property and
25 casualty insurance sector.

1 Properly done, this reform could go a long
2 way toward truly making New York open for business
3 and lead to the thriving economy that benefits all
4 New Yorkers.

5 I'm merely going to provide a summary of my
6 written testimony. You can refer to that for
7 details on the proposals, and I refer you to that
8 testimony.

9 The regulations I will briefly touch on in my
10 remarks are those we have identified as imposing
11 unnecessary, burdensome, and/or excessive costs on
12 property and casualty insurance companies.

13 The first regulation that we see should be
14 eliminated, or at the very least, substantially
15 revised, is Regulation 30 of 11, New York
16 compilation of rules and regulations.

17 This regulation governs the uniform
18 classification of expenses for rate-making purposes.

19 We submit that statistical organizations,
20 such as the Insurance Services Office, already do
21 determine standards for the uniform classification
22 of expenses, and our members can use these.

23 Our primary issue with Regulation 30, a
24 regulation, I might add, that was enacted in 1948,
25 shortly after World War II, is to mandate that

1 insurers perform elaborate and detailed time studies
2 to verify the allocation percentages an insurer
3 conducts to allocate expenses to various insurance
4 product lines, and three major categories of
5 underwriting, claims adjustment, and investment
6 expense.

7 Today there are numerous rate organizations,
8 and insurers can deviate quite substantially, either
9 up or down, from bureau rates.

10 Insurers have a vested interest in seeking to
11 price their product appropriately; therefore, we
12 would submit there's no need for elaborate time
13 studies in most cases, and would respectfully submit
14 that this regulation should be repealed.

15 Another area that our members frequently
16 encounter, that can lead to frustration and
17 time-consuming expenditures, is the
18 financial-examination process.

19 New York State domestic and -- property and
20 casualty insurance companies have to undergo a
21 financial examination every three to five years.

22 While we fully recognize the usefulness of
23 these exams, we strongly believe that the exams
24 should focus strictly on financial matters only with
25 an eye towards solvency, and not stray into other

1 areas.

2 These unnecessary requests that can be
3 incurred during the financial-exam process
4 substantially burdens the insurers who actually pay
5 for the examination expenses.

6 An examiner will come to their home office
7 and spend time there, going through the examination
8 process.

9 We would submit that an overarching broad
10 principle for financial examinations should be to
11 keep in mind that the intent behind these exams is
12 to review the reliability of the assets and
13 liabilities reported by the insurance company at the
14 date of examination.

15 Just as an example, Department of Financial
16 Services -- "DFS" we refer to it -- financial
17 examiners have requested and spent substantial time
18 reviewing an insurer's board minutes; insurance
19 policies purchased by the company; expense
20 classifications, which goes to Regulation 30 that
21 I mentioned previously; employee benefits; privacy
22 compliance; and other non-financial items.

23 These items we respectfully submit should not
24 be the subject of inquiry during a financial
25 examination.

1 Instead, the department, DFS, has the full
2 authority and power to look at these matters in a
3 market-conduct exam.

4 So we would respectfully say that the
5 financial-exam process should be streamlined to only
6 deal with financial matters. That would actually
7 save domestic property and casualty insurance
8 companies time and expense.

9 A third area that we think could use some
10 streamlining and reform is the current regulations
11 for -- called "Regulation 79."

12 This is the photo-inspection regulation, and
13 implements the New York Photo-Inspection Law.

14 Just briefly, to summarize, this law requires
15 auto insurance consumers to obtain a photo
16 inspection from their auto-insurance carrier of a
17 new vehicle they obtained.

18 We believe this no longer serves a useful
19 purpose and could be modified to reflect modern
20 realities.

21 When the law was first enacted in 1977, there
22 was rampant auto fraud that could only be curbed by
23 physically inspecting vehicles to ensure phantom
24 vehicles were not being used to make fraudulent
25 claims.

1 However, since 1977, there have been several
2 developments to combat fraud.

3 For instance, there are sophisticated
4 databases that weren't present in 1977,
5 Uniform Salvage Disposal laws, and insurance
6 companies with large special investigation units, or
7 "SIUs," that exclusively work on auto-insurance
8 fraud issues.

9 This makes commission of a phantom vehicle
10 fraud almost impossible today.

11 We would suggest the following amendments:

12 First, broaden the ability of insurers to
13 waive the mandatory inspection requirement for an
14 additional and/or replacement vehicle.

15 Second, extend the time periods for
16 inspection, which would be a benefit to the
17 consumer, and, extend the time that the coverage may
18 be automatically provided for a replacement vehicle.

19 Our third amendment, we suggest eliminating
20 the requirement that the auto-insurance consumer be
21 notified of the inspection either in person or by
22 telephone, but still require the requirement that
23 the insurer furnish the consumer with inspection
24 site or sites.

25 This change would allow the regulation to fit

1 current practices, where many consumers no longer
2 engage in verbal contact with either an insurance
3 company or the agent; rather, they go online, and an
4 electronic footprint is placed in the insurance file
5 for documentation purposes, so we believe that,
6 still, providing notice of the inspection site
7 should be sufficient.

8 Another area that we see could be improved in
9 the regulatory process involves insurance-market
10 availability surveys.

11 This arose out of the liability-insurance
12 crisis in the 1980s, when it appeared that
13 commercial liability insurance for certain types of
14 risks were unavailable at any price.

15 As a result, the insurance department --
16 then-Insurance Department, through Circular Letter 3
17 of 1986, and now continued by Circular Letter 32 of
18 2001, began a yearly survey of insurance
19 availability.

20 This survey requires insurers to provide, in
21 a detailed format, a list of all the insurance
22 markets where they provide coverage.

23 Although the survey was designed to be
24 temporary, it has remained in place.

25 We would submit there's no need for this

1 availability survey anymore, as there are more than
2 adequate markets for most insurance products today,
3 excepting what we just heard regarding Scaffold Law.

4 DFS would retain the ability to act through
5 Section 308 data calls if they begin to see an
6 availability problem, but we feel there's simply no
7 need for insurers to be burdened with completion of
8 these surveys on a yearly basis.

9 We suggest Circular Letter 32 of 2001 be
10 withdrawn.

11 Another regulatory issue that we see
12 occasionally arise is DFS's use of emergency
13 regulations in circumstances where it is not
14 warranted.

15 Just one example, DFS adopted emergency
16 regulation earlier this year to institute a
17 mediation program for policyholders impacted by
18 "Superstorm Sandy."

19 While we have no quibble whatsoever with the
20 regulation, a month later, DFS had to provide a
21 detailed clarification regarding interpretation of
22 the emergency regulation, and the third-party entity
23 charged with administering the mediation program was
24 not ready to begin the program until the middle of
25 April.

1 This was beyond the 45-day comment period
2 that would have been required if the DFS had gone
3 through the ordinary regulation-adoption process.

4 Turning next to another regulation we feel
5 could be modified, and would help greatly, there's a
6 regulatory requirement imposed by DFS in the
7 continuing-education field for those licensed in
8 New York.

9 In brief, all continuing-education
10 applications must include a "wet," or original,
11 signature.

12 In this time of electronic signatures, this
13 requirement is anachronistic and should be
14 eliminated.

15 We believe that providing and securing
16 documents with an original signature is a needless
17 expenditure of time and attention for all those
18 involved in insurance continuing education in the
19 state, and we would suggest allowing these
20 applications to provide for an original signature or
21 a copy of a signature or an electronic signature.

22 The last regulation that we would cite in our
23 verbal testimony here -- and, again, I refer to our
24 written testimony for additional regulations -- is
25 the Department of Transportation regulations that

1 prohibit company cars from using certain parkways in
2 New York State.

3 What we saw during "Superstorm Sandy," was
4 adjustors didn't have the ability to go on these
5 parkways because their company cars had a logo on
6 it.

7 Obviously, this is a problem for adjustors
8 who need to respond to reported claims in a timely
9 manner, so we believe that this could be either
10 repealed or modified. That would be a great help.

11 In conclusion, we believe the most important
12 thing to keep in mind regarding insurance
13 regulations is the need to ensure solvency, while
14 allowing the market to have enough regulatory leeway
15 to be innovative in serving its New York customers.

16 This approach would protect New York
17 consumers, while permitting all property and
18 casualty insurance companies doing business in
19 New York to thrive and prosper.

20 When that happens, we truly believe the
21 result is more business activity that leads to a
22 growing New York economy and the creation of more
23 New York jobs.

24 We believe adoption of our regulatory-relief
25 proposals would be in the best interests of a truly

1 thriving and prosperous New York.

2 Thank you.

3 I can take any questions you have at this
4 time.

5 SENATOR SEWARD: Thank you, Marc, for your
6 testimony.

7 And as you were speaking, I was reviewing
8 your written testimony, and I want to thank you and
9 the New York Insurance Association for just clearly
10 outlining some very specific regulations that --
11 I think your overall theme is that they're -- that
12 either are outdated or duplicative and unnecessary?

13 MARC CRAW: Correct.

14 SENATOR SEWARD: Yeah, that would be as a
15 general theme, and so these kinds of specifics are
16 very, very helpful to the work of this group and --
17 as we go forward.

18 A couple of questions for you.

19 You know, I'm told that DFS is, as other
20 state agencies have been asked to do by the
21 Executive, is going through sort of, what I describe
22 as, I guess, a self-review of their regulations.

23 Have you -- you, at the New York Insurance
24 Association, have you heard anything about this, or
25 have you been asked to be part of any kind of a

1 process with the department?

2 MARC CRAW: We have, Senator.

3 Yes, starting a couple years back with the
4 merger, DFS employed an outside entity -- I forget
5 offhand the name of the firm -- but, to review, top
6 to bottom, their processes and procedures.

7 They did invite us in, and other insurance
8 trade organizations, to submit input, and we did do
9 so.

10 The primary areas we talked about was rate
11 and form filings, which is always a very important
12 matter for our members.

13 As you know, many insurance products have to
14 be filed with the department, the policy rates and
15 forms, for approval.

16 And we have seen significant improvement in
17 that area, so that's one area where DFS has
18 definitely followed through on that.

19 In addition, the financial-examination
20 process, we did talk about during that process as
21 well.

22 So we're looking forward to seeing further
23 implementation and rollout of these improvements as
24 it goes forward.

25 SENATOR SEWARD: You consider that to be an

1 ongoing process?

2 MARC CRAW: Yes, I would.

3 SENATOR SEWARD: In this issue of
4 emergency -- the use of emergency regulatory
5 authority, you know, I mentioned that in my opening
6 remarks, and you commented as well.

7 Do you have any guidance for our effort in
8 the Senate, in terms of, do we need to have some
9 stipulations or standards in the law, you know,
10 regarding the use of emergency regulatory authority?

11 Or, have you given any thought at all in
12 terms of how we could best delineate for the DFS, or
13 any other department of state government, for that
14 matter, in terms of better guidance under the law in
15 terms of the appropriate use of emergency
16 regulations?

17 MARC CRAW: I'll confess, we haven't looked
18 specifically at that.

19 As you mentioned, it's a broad spectrum that
20 would apply to all state agencies.

21 I think we would look to, perhaps, more
22 review and oversight of when emergency regulations
23 are used, because I do think there needs to be some
24 flexibility, obviously, in the system.

25 But on the other hand, you need some

1 oversight in order to ensure that it doesn't become
2 an easy, kind of, fallback position, you know, where
3 you become unduly over-reliant on these emergency
4 regulations.

5 So we would be willing to work with the
6 Senate on that.

7 SENATOR SEWARD: Right, I was just going to
8 suggest that.

9 If you want to give us some -- some thoughts
10 that NYIA may have, and your member companies, in
11 terms of the best way to have appropriate use of
12 emergency regulatory power.

13 And just in conclusion, I would ask you to
14 comment on the -- shall we say, the state of the
15 market here in New York when it comes to P&C
16 (property and casualty) insurance market.

17 Generally, my impression is, that we have a
18 pretty robust market here; plenty of choices for the
19 consumer.

20 Unlike our previous discussion with the -- in
21 the construction area, because of the
22 Scaffolding Law and the general-liability insurance
23 rates, and, you know, availability being an issue
24 there, but primarily because of lack of
25 competition --

1 MARC CRAW: Right.

2 SENATOR SEWARD: -- and people in the
3 market -- companies in the marketplace.

4 That's not the case when it comes to P&C.

5 There are plenty of companies who are
6 competing, you know, for the business of New York
7 consumers, and -- which -- which a competitive
8 marketplace, in my view, does take away the need for
9 some of these regulations that have been in place
10 since, perhaps, there was a different time in the
11 market, because if the consumer has plenty of
12 choices and options, both on coverages and price,
13 that serves as a way to kind of self-regulation on
14 the part of the consumer, in many cases.

15 Obviously, we need the department to keep an
16 eye on all of this, but, to make sure that is, in
17 fact, the case.

18 But, can you just give me your general
19 thoughts in terms of the condition of the
20 marketplace in New York and its impact on the
21 consumer?

22 MARC CRAW: Yes, thank you, Senator.

23 We would echo your comments, especially with
24 respect to the competitiveness of the property and
25 casualty insurance industry in New York.

1 New York is fortunate to see a truly
2 competitive market with over 300 market entrants
3 currently in the property and casualty insurance
4 sector, as a whole.

5 Obviously, you heard, on certain lines, such
6 as commercial liability with respect to contractors,
7 there is an issue, and we would definitely not
8 minimize that.

9 But in all the other lines, and in general,
10 auto insurance, homeowners, etc., there are plenty
11 of competitors in those markets, and they really are
12 serving the consumers in New York, and we think in a
13 very beneficial manner.

14 We think any reform of these regulations, as
15 we suggested, would even spur more competition and
16 innovation in providing insurance products to
17 consumers in the market, to the benefit of the
18 New York insurance customer.

19 SENATOR SEWARD: Would you include, add to
20 that list of benefits to the consumer, a possible
21 rate relief as well?

22 I mean, a cost-cutting?

23 I mean, if these regulations are expensive to
24 comply with --

25 MARC CRAW: Right.

1 SENATOR SEWARD: -- and --

2 MARC CRAW: We think, in time, given the
3 competitive market, it would work to, you know, help
4 in terms of rates.

5 It always -- rates look backward, as you well
6 know, look at loss history, so, you have to see how
7 it unwinds, but we think it would definitely rebound
8 to the benefit.

9 SENATOR SEWARD: Thank you.

10 SENATOR MARCHIONE: In part of your
11 testimony, and you talked about signs on vehicles,
12 the Department of Transportation, can't be on the
13 parkway, I'm not too familiar with this.

14 Are you saying that it doesn't have to do
15 with whether it's a truck or a car, but only has to
16 do with whether you have a corporate sign on your
17 vehicle?

18 MARC CRAW: Yes, Senator.

19 What it is, is, and I just didn't want to get
20 in depth, given time restraints, but, basically,
21 it's for an unrestricted vehicle already; i.e.,
22 mostly a passenger car or sedan driving on certain
23 parkways, mainly in Westchester County, that they
24 cannot have a company logo or insignia on their
25 vehicle.

1 What we found is, that hinders, as I said,
2 our adjustors' ability to get to sites quickly.

3 So, we would ask for some type of relief in
4 that arena.

5 SENATOR SEWARD: Commercial vehicle, I guess.

6 MARC CRAW: But they can't be like a truck or
7 a vehicle over a certain size, no, that's, you
8 know --

9 SENATOR MARCHIONE: A vehicle that has a
10 sign?

11 MARC CRAW: Yep.

12 SENATOR GALLIVAN: Well, a vehicle with
13 regular registration plates, as opposed to
14 commercial plates --

15 MARC CRAW: Correct, correct.

16 SENATOR GALLIVAN: -- for an escort, with an
17 insignia?

18 MARC CRAW: With the insignia, exactly,
19 Senator.

20 SENATOR MARCHIONE: That's a county law, not
21 a state law?

22 MARC CRAW: No, that is a State Department of
23 Transportation regulation, but it applies within
24 certain areas.

25 SENATOR MARCHIONE: God, we must have not had

1 much to do that day.

2 God.

3 The other question I have is on your
4 continuing education that you spoke about.

5 This is education that people in the
6 insurance industry continue to take?

7 Is that what you're telling me; it's
8 education that they seek by --

9 MARC CRAW: Yes.

10 SENATOR MARCHIONE: -- from --

11 MARC CRAW: For instance, agents and brokers
12 have a continuing-education requirement. Every
13 couple of years, they have to have X number of hours
14 of continuing education and study.

15 SENATOR MARCHIONE: Are they able to take
16 that on the Internet now?

17 Is that what you're saying?

18 And the difference in the original signature
19 is --

20 MARC CRAW: They are, but what it is more to
21 is, NYIA, we put on some educational programs, as to
22 the agents, the trade associations, and other
23 groups, and what we find is, it's very burdensome
24 and cumbersome at times to have to get the original
25 signature; whereas, in every other area, people use

1 an electronic signature even, or a copy signature.

2 SENATOR MARCHIONE: So you're getting the
3 signature from the broker?

4 MARC CRAW: Well, the instructor.

5 The instructor, yeah.

6 SENATOR MARCHIONE: Thank you.

7 SENATOR GALLIVAN: Thank you. Appreciate
8 your time.

9 SENATOR GALLIVAN: Dr. Sam, is it,
10 Unterricht?

11 DR. SAM UNTERRICHT: Yes, sir.

12 SENATOR GALLIVAN: Pronounced correctly, sir?

13 DR. SAM UNTERRICHT: Yes, sir.

14 SENATOR GALLIVAN: Great.

15 President of the Medical Society of the State
16 of New York.

17 And we appreciate you being here.

18 We also -- our first hearing actually had to
19 do with health and medical industry, in general, and
20 we had some representatives testify out in Buffalo a
21 couple weeks ago.

22 DR. SAM UNTERRICHT: Yes, Dr. Madejski.

23 SENATOR GALLIVAN: Yes, exactly.

24 DR. SAM UNTERRICHT: Yes.

25 SENATOR GALLIVAN: We appreciate you being

1 here.

2 DR. SAM UNTERRICHT: Thank you.

3 Thank you for inviting us.

4 SENATOR GALLIVAN: Whenever you're ready.

5 DR. SAM UNTERRICHT: Good morning, Senators.

6 My name is Sam Unterricht, M.D. I'm an
7 ophthalmologist from Brooklyn, and I'm president of
8 the Medical Society of the State of New York.

9 The society appreciates the opportunity to
10 testify on behalf of New York physicians regarding
11 the ever-increasing administrative and financial
12 burdens that we face in providing medical care to
13 our patients.

14 We look forward to working with you to lessen
15 these burdens.

16 You have my full written testimony so I'm
17 going to try to condense and paraphrase and --

18 SENATOR GALLIVAN: Excuse me, just one
19 minute. I'm not make sure that we do.

20 Let me just make sure.

21 DR. SAM UNTERRICHT: I believe it was
22 submitted late yesterday.

23 SENATOR GALLIVAN: We don't have it right
24 here, but, we're checking.

25 Go ahead.

1 DR. SAM UNTERRICHT: We'll certainly make
2 sure that you have it.

3 SENATOR GALLIVAN: Okay, great.

4 DR. SAM UNTERRICHT: So we hope to work with
5 you to lessen all these administrative burdens and
6 financial burdens, and I'm going to try to condense
7 and paraphrase and expand on selected areas.

8 It's important to begin by reminding the
9 Committee that New York is a very difficult state to
10 provide medical care, as well as business, and, our
11 patients, your constituents, expect and deserve the
12 best possible medical care.

13 And, it's very difficult to do this now due,
14 to a variety of factors; the main one is the high
15 cost of medical-liability insurance.

16 In addition, insurance companies continually
17 deny and delay payment for the care that we deliver.

18 We also face the burdens that all other
19 businesses face: extremely high taxes, rising
20 overhead costs.

21 But in addition, there are many state
22 mandates that significantly add to the physicians'
23 burden and take away from the time that we have to
24 deliver patient care.

25 It has been said that the medical industry is

1 the most highly regulated other than the nuclear
2 industry, and I believe that this is true.

3 We need to address these problems if we are
4 to assure that an adequate health-care safety net is
5 available for all the patients in New York State,
6 and hundreds of thousands of more patients are being
7 added through the health-insurance exchanges now.

8 MSSNY recently conducted a survey of over
9 800 physicians in order to get their views on the
10 health-care system in New York State.

11 Over a third of the respondents indicated
12 that they are seriously considering retiring in the
13 next two years;

14 Over 37 percent indicated that they plan to
15 reduce the services that they deliver over the next
16 two years;

17 And 16 percent indicated they were strongly
18 considering leaving the state.

19 Only 35 percent would recommend to their
20 children or young relatives that they become
21 physicians;

22 And only 22 percent would recommend to their
23 medical students that they work in New York State.

24 These statistics are a frightening indictment
25 of our already fragile health-care system.

1 What does this mean, and what can we do about
2 it?

3 First, we need to reform New York's
4 medical-liability system.

5 Physicians in New York State, particularly
6 the ones in the downstate area, are paying
7 extraordinarily high liability premiums in order to
8 open their doors, and these premiums are among the
9 highest in the country; and in many cases, the very
10 highest in the country.

11 Some have argued that the insurance companies
12 were at fault, but, the Department of Financial
13 Services must approve all of these rates.

14 The situation is actually far worse than it
15 would seem, because, despite these astronomical
16 rates, there are several insurance companies in
17 New York that do not have adequate reserves, and
18 there are numerous hospitals that cannot afford to
19 purchase malpractice insurance and are self-insured.

20 This exposes the hospital to bankruptcy if a
21 large award is given, and, also, it exposes the
22 physicians and the patients to inadequate coverage.

23 How high are the malpractice rates?

24 For example, a neurosurgeon in Long Island
25 must pay an astonishing \$331,000 for a single year

1 of malpractice coverage.

2 An OBG in Staten Island or the Bronx must pay
3 \$192,000.

4 Other high-risk specialties, including
5 cardiac surgery, vascular surgery, reconstructive
6 surgery, bariatric surgery, routinely pay over
7 \$100,000 a year just to open their doors.

8 The medical-liability payments in New York
9 far exceed any other states.

10 According to a recent report, over
11 \$760 million in medical-liability payments were made
12 in New York in 2011.

13 That's 2 1/2 times what the second-highest
14 state, Pennsylvania, had;

15 And 3 1/2 times higher than California and
16 Florida. And California has about twice as many
17 citizens.

18 New York's per capita medical-liability
19 payment of \$38.99 exceeds the second-highest state
20 and the third-highest state, and also Illinois by
21 about three times.

22 New York exceeds Texas and Wisconsin by over
23 10 times.

24 Faced with similar problems, many other
25 states have passed comprehensive medical-liability

1 reform laws, and these states have demonstrated
2 great success in reducing liability-insurance costs.

3 Since comprehensive reform was enacted in
4 Texas 10 years ago, 90 percent of Texas physicians
5 have had at least 30 percent reductions in their
6 premiums.

7 And over the last 10 years, 2,000 New York
8 physicians have moved to Texas.

9 That's 2,000 to Texas alone. Many others
10 have gone to other states.

11 It's noteworthy that, in Los Angeles, in a
12 litigious state, where a strong medical-liability
13 reform was enacted in the mid-'70s, OBGs pay less
14 than a quarter of the premium that OBGs in
15 Nassau and Suffolk pay.

16 Why should New York physicians and patients
17 should be at such a disadvantage is really a
18 mystery.

19 High liability costs also exact a large cost
20 on society at large, because health-insurance
21 premiums and taxes are elevated, and the cost of
22 doing medical care, in general, is elevated because
23 of defensive medicine.

24 Billions and billions of dollars are spent
25 each year on defensive medicine, with the ordering

1 of extra tests and consultations, and various
2 studies have shown that this is very significant.
3 Up to 30 percent of medical costs have been
4 estimated to be due to defensive medicine.

5 A few modest, positive steps have been taken
6 to address this problem, including the
7 Medical-Indemnity Fund passed by the Legislature in
8 2011; and an OCA demonstration project to facilitate
9 early negotiation of medical-liability claims.

10 While these are promising, these programs
11 have not yet produced any tangible premium relief.

12 We must do much more.

13 New York must follow the lead of many, many
14 other states who have passed legislation to bring
15 down the tremendous cost of medical-liability
16 insurance.

17 Some of these reforms include creating
18 alternative systems for resolving medical-liability
19 claims, such as medical courts, and a no-fault
20 system for neurologically impaired infants.

21 We must assure adequate funding for the
22 state-funded excess medical-liability insurance
23 program, and reduce the minimum coverage necessary
24 for obtaining this coverage.

25 We thank the Legislature for rejecting the

1 language proposed in the Governor's executive budget
2 last year -- this year, that would have cut the
3 funding, and limited the coverage to high-risk
4 specialties and only those accepting Medicaid.

5 We need to exact reforms that address some of
6 many flaws in New York's litigation process which
7 promote a very lengthy litigation.

8 For example:

9 We need to identify and assure the quality of
10 expert witnesses;

11 We need to identify the physician that
12 supplies the Certificate of Need -- Certificate of
13 Merit that allows the case to go forward;

14 We need to set reasonable limits on certain
15 non-economic damages, which have been enacted in
16 30 other states -- over 30 other states;

17 Immunizing statements of apology or regret
18 would help;

19 And, immunity for physicians providing
20 pro bono care.

21 Physicians are willing to consider any and
22 all tactics that would reduce liability costs.

23 We need to prevent the expansion of liability
24 because, despite the high cost of insurance, there
25 are those that are pursuing legislation to increase

1 these costs.

2 We urge you to strenuously oppose, as we do,
3 any measures to expand medical liability.

4 For example:

5 There's legislation that would create a
6 date-of-discovery rule;

7 There's legislation that would expand
8 wrongful death and permit pain and suffering in
9 wrongful death;

10 Legislation that would permit the awarding of
11 prejudgment interests on tort claims;

12 Legislation that would eliminate the current
13 statutory limitation on attorney contingency fees in
14 medical-liability cases;

15 And, legislation that would prohibit
16 ex parte interview by defense counsel of the
17 plaintiff's treating physicians.

18 Any one of these would have a calamitous
19 effect on premiums. They vary from 10 to
20 53 percent, each, increase in medical-liability
21 premiums.

22 So, any of these would be calamitous.

23 We need to simplify the administrative
24 burdens that are created by insurance companies.

25 We strongly support legislation or regulation

1 to create administrative simplicity in the
2 submission of claims to facilitate -- and also to
3 facilitate requests for needed patient care.

4 We're deluged by requests for authorizations
5 for care and medical-necessity determinations.

6 And greater uniformity would produce
7 tremendous savings in the health-care system.

8 A study showed that physicians are spending
9 about three weeks, each, annually, on administrative
10 tasks required by health plans, with a cumulative
11 cost of \$31 billion, and a per-physician cost of
12 \$70,000.

13 We would support the following reforms:

14 That claim forms to Medicaid, worker's comp,
15 no-fault, and commercial health insurance should be
16 uniform.

17 Right now they each have their own forms,
18 their own rules, it's very complex, and it takes a
19 lot of time to fill these forms out, and a lot of
20 staff as well.

21 In 2010, worker's comp created a new form
22 that was so complex, that an avalanche of physicians
23 just left the entire system.

24 Fortunately, they came to their senses and
25 they're reforming their forms.

1 And we would ask that all the insurance
2 companies and all the agencies adopt a standard
3 form.

4 Also, we're asking for a standard -- for a
5 law mandating the use of a uniform
6 prior-authorization form for prescriptions and for
7 medical care.

8 Again, all of these are different now, and
9 we're deluged now with all the insurance companies
10 asking for prior authorization for medicines that
11 last year were covered without any problem.

12 We need to reject any new mandates.

13 Physicians are swamped with costly mandates
14 from the State that interfere with our timely and
15 quality patient care, and drive up the cost of
16 health care.

17 We opposed a proposal that's being considered
18 by the State Public Health and Health Planning
19 Council that would require physicians to participate
20 in a Certificate of Need program if they wished to
21 perform certain medical procedures.

22 We should be reducing the Certificate of
23 Need.

24 The Department of Justice and other agencies
25 have said that the Certificate of Need program is

1 anticompetitive and raises the cost of medical care.

2 And we agree with that.

3 It disadvantages small providers, because the
4 cost of doing a Certificate of Need is so great that
5 it eliminates the small providers from the playing
6 field, and only large providers, large groups, and
7 hospitals can do Certificate of Need.

8 We oppose proposals that would mandate
9 physicians to adopt the interoperable electronic
10 medical-record system and participate in SHIN-NY as
11 a condition of practicing.

12 And we oppose legislation that would mandate
13 course-specific continuing medical education; for
14 example, pain-management courses.

15 Physicians should be able to choose the
16 courses that they need and that are appropriate for
17 their practices.

18 Again, the Medical Society appreciates your
19 efforts to identify ways to reduce administrative
20 burdens in the delivery of health care, and, we hope
21 that the physicians and patients are in a better
22 position to enjoy quality and timely health care in
23 the future.

24 I would be happy to answer any questions that
25 you have.

1 SENATOR GALLIVAN: Thank you.

2 I only have one question.

3 You made reference to reforms in California
4 and Texas, and maybe other states that I missed.

5 Was there any other things that they may have
6 done that was not included in your testimony with
7 your recommendations?

8 Reforms in other states, not included in all
9 the things that you have gone through, if you know?

10 DR. SAM UNTERRICHT: There were 30 -- there
11 are over 30 other states have had a cap on liability
12 for non-economic damages.

13 Many other states have had comprehensive
14 reforms, which include that, and a variety of other
15 reforms.

16 We can get you details on what's been going
17 on in other states.

18 SENATOR GALLIVAN: No, we're able to look
19 that up.

20 The question crossed my mind right when you
21 made reference to the other states, and then, of
22 course, you went into detail with your
23 recommendations.

24 I was wondering if they were one and the
25 same, but we can follow up on that.

1 Thank you.

2 Senators?

3 Senator Seward?

4 SENATOR SEWARD: Yeah, I would just make a
5 brief comment or two to your testimony.

6 I think -- number one, I think your clear
7 message is, do no harm, or do no further harm, in
8 terms of additional, either legislatively or through
9 the regulatory process, in terms of aggravating,
10 number one, medical-liability insurance rates, which
11 are a serious problem, and, also, just the cost and
12 difficulty of rendering medical care in
13 New York State.

14 Do no harm, I think, is a good way to
15 summarize much of your testimony.

16 And, with the -- in terms of some reform,
17 we're basically talking about tort reform here,
18 would you say?

19 DR. SAM UNTERRICHT: Yes, medical-liability
20 tort reform.

21 SENATOR SEWARD: Has a direct impact there,
22 because of the fact that the lack of serious tort
23 reform has -- is reflected in high medical-liability
24 rates?

25 DR. SAM UNTERRICHT: Yes, that's true.

1 SENATOR SEWARD: Insurance rates; that's a
2 given.

3 And, now, with the effort a couple years ago
4 with the -- I forget the exact fund that was set up
5 in terms of the neurologically impaired infants, you
6 see no -- you and your members have seen no impact
7 at all there?

8 DR. SAM UNTERRICHT: No.

9 The rates for neurosurgeons have gone up.
10 And for OBGs, of course.

11 There really has been no significant benefit
12 in premium rates.

13 SENATOR SEWARD: I see.

14 And I think your testimony, on terms of more
15 uniformity in terms of the forms that are required,
16 that I think would streamline the process
17 considerably in terms of making claims?

18 DR. SAM UNTERRICHT: Yeah, the administrative
19 burden is very high. Most physicians need about
20 four employees for each physician in order to do all
21 the paperwork, and it's a tremendous burden.

22 SENATOR SEWARD: They're not at the side of
23 the patient; they're at a desk?

24 DR. SAM UNTERRICHT: They're at a desk, just
25 getting authorizations, and filling out forms, and

1 calling insurance companies.

2 And, yeah, it's a big administrative burden.

3 SENATOR SEWARD: I know whenever I tour the
4 hospitals in my area, I know there are a lot of
5 people with "RN" on their name tag which are nowhere
6 near patients. They're also at desks, filling out
7 papers, primarily for, I guess, the State Health
8 Department.

9 Well, thank you very much.

10 SENATOR GALLIVAN: I actually do have one
11 other question.

12 You spoke at the beginning of your testimony
13 about delayed insurance payments.

14 Those might not have been the exact words,
15 but, payments for services from insurance companies.

16 Can you elaborate?

17 DR. SAM UNTERRICHT: Yes, insurance companies
18 are extremely clever and active in coming up with
19 ways to delay payments and deny payments.

20 They each have their own rules.

21 They follow Medicare rules when it's
22 convenient for them, and then they come up with
23 their own rules whenever they want to.

24 So every company has a different set of rules
25 as far as, which conditions they'll cover, which

1 diagnosis codes they'll cover, which procedures
2 they'll pay for, what bundle -- what procedures they
3 bundle.

4 So, you know, they always have gotchas that
5 they're constantly changing, you know, so that a
6 procedure that was covered one year, next year is
7 not covered, or the next week is not covered.

8 They -- each patient's contract also has all
9 sorts of different rules and regulations and
10 gotchas, which they can change constantly.

11 The patient may have, once a year, that they
12 can change coverage;

13 Whereas, the insurance company can change the
14 rules anytime, and they do, so that, all of a
15 sudden, a procedure is no longer covered; or it
16 suddenly requires prior authorization or permission
17 or a referral form.

18 It's endless.

19 You know, once you learn how they handle one
20 problem, they come up with another way to cause
21 delays and denials.

22 SENATOR GALLIVAN: Well, I recognize this
23 might -- this is likely cumbersome.

24 I mean, do you have the ability to say that,
25 I am not going to deal with any patients who have

1 insurance from Insurance Company A?

2 DR. SAM UNTERRICHT: Theoretically, the
3 physician has that ability, but, in actual fact they
4 really don't, because in almost every county in the
5 state, there are one or two insurance companies that
6 have the market, and, they have the lock on that
7 particular area, having 25, 40, 50, 60, 70 percent
8 of all the patients in a given area, so that if the
9 physician says, "Well, I'm not going to participate
10 in your company," they say, Okay, take it or leave
11 it. The guy down the street is going to take our
12 patients, and you can take the remaining 20 percent
13 of the patients.

14 So, really and truly, physicians don't have
15 any say.

16 We don't have the ability to competitively
17 bargain with any of these insurance companies.

18 Right now it's against the law.

19 We're trying to get collective negotiation in
20 New York, and that would be a great way to level the
21 playing field.

22 SENATOR GALLIVAN: Yeah, we're familiar with
23 that there's some proposed legislation. I forget
24 the number, but, we're aware of that.

25 SENATOR VALESKY: I think it actually passed

1 in the Senate at least once.

2 SENATOR GALLIVAN: Has it passed in the
3 Senate?

4 SENATOR VALESKY: At least once.

5 SENATOR GALLIVAN: Are you guys good?

6 SENATOR VALESKY: Just one, quick. I wasn't
7 going to have a question, but just a quick point
8 here, if you could, and if you don't have it now,
9 that's fine.

10 One of your recommendations, where you're
11 talking about enacting reforms to address some of
12 the flaws in the litigation process:

13 Point Number 5: Immunity for physicians
14 providing pro bono care.

15 If you could just get us some information as
16 to whether that's becoming -- physicians providing
17 pro bono care is becoming more common.

18 And if -- what, if anything, other states
19 have done on this issue.

20 I'm asking because of a local situation in my
21 hometown, actually, but I am curious to know from
22 your perspective, any information that you have on
23 that particular item.

24 DR. SAM UNTERRICHT: We would be happy to,
25 because a lot of physicians do provide pro bono

1 care, and there are many retired physicians who
2 would love to provide pro bono care, but they can't
3 get malpractice coverage.

4 SENATOR GALLIVAN: Thank you, sir.

5 DR. SAM UNTERRICHT: Thank you, Senators.

6 SENATOR GALLIVAN: Paul, I don't even want to
7 try your last name. I'm sorry.

8 PAUL MACIELAK: It's a Polish name, you
9 should know it.

10 SENATOR GALLIVAN: How do you pronounce it?

11 PAUL MACIELAK: Macielak.

12 SENATOR GALLIVAN: Paul Macielak, New York
13 Health Plan Association.

14 Thank you, Paul.

15 When you are ready.

16 PAUL MACIELAK: Senators, thank you for the
17 opportunity to appear.

18 I represent the Health Plan Association,
19 umbrella trade association for the health plans in
20 the state.

21 We represent national carriers like Aetna and
22 United; regional plans like Independent Health,
23 BlueShield of Western New York, MVP, CDPHP.

24 We represent almost all of the prepaid health
25 plans; the government program plans like

1 HealthFirst, Infinity HealthCare, MetroPlus, and a
2 number of the managed long-term-care plans that are
3 very front and center right now, in terms of some of
4 the new Medicaid reform efforts.

5 Unlike my brethren in the life and
6 P&C sectors, the health-insurance sector has, in a
7 way, gone through some regulatory and statutory
8 reform as a part of implementation of the
9 Affordable Care Act.

10 The federal government having set various
11 standards for the implementation of the exchanges,
12 New York had to come into compliance in how to align
13 its state statutes and regulations with the federal
14 rules.

15 As a result, in this past year's budget, you
16 adopted a number of statutory changes which affected
17 statutes and regulations, things that we had haggled
18 about with the agencies for any number of years.

19 So I'll give you two quick examples.

20 HMOs had very restrictive cost-sharing, and
21 we would say, Geez, they're competing against
22 insurance companies, not HMO-licensed companies, but
23 insurance companies that had more flexibility in
24 cost-sharing, and how were we supposed to design
25 products for small businesses with these restrictive

1 settings?

2 The Health Department took a very narrow
3 position in terms of co-pays and cost-sharing, and
4 it was hard for those HMOs to compete; therefore,
5 HMO enrollment in the state was declining over the
6 last few years.

7 Lo and behold, the ACA comes into effect.

8 We now go to set up our state exchange, and
9 the State realizes it needs to level the playing
10 field so HMOs and health-insurance plans can compete
11 on an equal field, and those rules got changed.

12 So, now, HMOs have more flexibility in their
13 co-pay and cost-sharing design.

14 Similarly, there was a reg called "Reg 146,"
15 that was a big risk-adjustment program that plans
16 had to deal with in terms of the old DOI, and now
17 DFS.

18 And, for years, I mean, we dealt with it. It
19 became very cumbersome, time-consuming, costly, and
20 every few years, we'd go through a big go-round,
21 trying to resolve how a payment would be made, and
22 then everybody would say, We're going to change the
23 regulation, going forward; update it.

24 We never did; we'd go on to the next crisis.

25 Well, the ACA solved that one for us, too,

1 because we've now moved to a federal methodology,
2 cleaner and simpler, so Reg 146 is going to be
3 phased out.

4 It doesn't mean that there still aren't
5 regulations that we need to look at in terms of
6 reform.

7 So what I would posit for all of you is:

8 Section 52.42(e), which deals with broker
9 compensation for HMOs.

10 Today that is capped at a 4 percent level of
11 compensation.

12 Insurance-licensed entities have no cap in
13 terms of their broker-agent compensation.

14 There's also rules and definitions that go to
15 supplemental compensation, the definition of
16 "services" when you're computing, you know, those
17 commissions, and, there's a difference between the
18 HMO broker and the insurance company rules.

19 So, we had testified about this back in 2008.

20 The old DOI and the AG had a hearing on
21 broker compensation and all these rules, and we had
22 made the pitch: Level the playing field. Either
23 cap everybody at the 4 percent, same definitions, or
24 uncap them and use the same set of definitions.

25 2008.

1 We're sitting here today, still not changed.

2 So we would say, that is something that
3 should be looked at in terms of a regulatory change.

4 Second proposal deals with Part 98. That's
5 the regulation for Medicaid-managed care plans.

6 Today, a Medicaid-managed care plan that
7 might subcontract with another entity, like a
8 Magellan Health or ValueOptions, to do behavioral
9 health services, those agreements are subject to
10 what's called a "management-services review."

11 It's like a full review by the Department of
12 Health on that agreement.

13 But there also is a character and competence
14 review, and there also is a requirement that this
15 vendor get a utilization-review state certification.

16 So you have to go through, like, three
17 separate processes for every one of these kind of
18 contracts.

19 The backlog today is anywhere from six months
20 to a year for one of these contracts to work its way
21 through the process.

22 In particular, the character and competence
23 component of it for a big company, like a
24 ValueOptions or an OptimumHealth, that operate in
25 20 or 30 other states, require them to go back to

1 those 20 or 30 other states to get documentation in
2 original form and submit it to the Health Department
3 for that to be accepted for their character and
4 competence to operate here in New York State.

5 The character-and-competence staff of DOH, on
6 my information and belief, consists of one person;
7 so one person is responsible for reviewing all the
8 agreements in terms of character and competence and
9 going through all the process.

10 They don't have sufficient staff to meet with
11 what the requirements are of the regulations that
12 they've imposed on the plans.

13 That delay is causing problems for plan
14 operation in terms of delivering service in
15 New York State.

16 So we would propose either, you know,
17 additional staffing, or come up with alternative
18 regulatory processes, so that character and
19 competence, you could have a submission by the
20 applicant; you could have it under penalty of
21 perjury; you could have post-approval audits, if you
22 will; you could attach penalties to, you know, any
23 discrepancies that you found; but there are
24 alternative solutions to the current process.

25 Third issue I wanted to raise deals, once

1 again, with that Part 98 Reg, and that deals with
2 reserves.

3 So, today, for government programs, like
4 Medicaid-managed care, Medicaid Advantage,
5 Family Health Plus, the reserve level is set at
6 7.5 percent for premiums.

7 However, for managed long-term care and
8 PACE plans and Medicaid Advantage Plus plans, the
9 reserve level is set at 5 percent, not 7 1/2.

10 Yet, if you go over to the commercial side of
11 the equation for commercial health plans and for
12 Medicare, the reserve level is 11 1/2 percent.

13 So we've got, like, three different levels of
14 reserves that plans are trying to meet in terms of
15 functioning here in New York.

16 Now, why this is a problem that's about to
17 come to a head, is that New York are looking to move
18 our dual-eligible population. It's older people
19 that are in nursing homes, also have Medicare
20 services, are trying to blend those programs
21 together.

22 So Medicare's got an 11 1/2 percent reserve
23 level, the person -- the Medicaid person in the
24 nursing home is going to be dealing with a 5 percent
25 reserve level, and we need to figure out some sort

1 of a rational agreed-upon level for the reserves for
2 that particular program, in particular.

3 Tied in with that, and Senator Seward would
4 be aware of it, the NAIC has a model regulation for
5 reserves. It's called "risk-based capital."

6 That's something that's been kicking around
7 for a number of years.

8 And, rather than the state's current
9 statutory 11 1/2 percent, we think that we ought to
10 be looking at NAIC risk-based model. It's more
11 flexible, its more modern, probably better
12 accommodates what's happening with health-insurance
13 companies and their various licenses.

14 So that's what we would offer there.

15 Final program I want to address is the
16 Health Insurance Antifraud Advertising program.

17 I think Pete Garnett might have been with the
18 Insurance Committee in the Assembly when it was
19 adopted, and I think it was modeled, or thought of
20 to model, after the auto-insurance
21 advertising-program antifraud effort.

22 So it required plans to develop an
23 advertising program, submit it to the State for an
24 approval; then to expend the money, run the plan;
25 then do filings with the State thereafter in terms

1 of what the result was.

2 As it applies to the health-insurance sector,
3 I mean, what's happened over the years is, the plans
4 have ultimately gotten together, and it's almost
5 like an aggregation of the plan monies. A third
6 party is used to purchase the advertising.

7 It's pretty innocuous.

8 There really isn't, in our belief, any
9 perceived value or any perceived result of the ads
10 that have been run.

11 So we would recommend that that be,
12 basically, eliminated.

13 Whatever the funding was from that could be
14 put into, you know, planned fraud efforts in terms
15 of their SIU units internally, and in working either
16 with the Office of the Medicaid Inspector General or
17 with the SF in terms of fraud and abuse billings.

18 Final point I would want to raise, is that --
19 no.

20 While there are a number of regulations,
21 there are also, from the various agencies, guidance,
22 in terms of implementing programs, or, the use of
23 circular letters.

24 I know a couple of prior speakers mentioned
25 them.

1 There's also what's known as "desk-drawer"
2 rules that are utilized by the Department of
3 Financial Services.

4 And those all have an impact as well on
5 what's happening in the marketplace.

6 A simple example you're all gonna be aware of
7 today, in terms of coach guidance, is the early
8 intervention program, which there's been a lot of
9 turmoil about.

10 That got adopted in last year's budget, and
11 it was implemented with a fiscal intermediary.

12 The State Department of Health ruled out
13 their program.

14 There was no regulation, no emergency
15 regulation. There was no opportunity for public
16 comment. There was no plan input into what came
17 out.

18 And what ultimately came out requires health
19 plans to pay the provider and send a separate
20 remittance back to this fiscal intermediary.

21 Well, health-plan IT systems haven't been
22 designed for it. They do not have the ability, as
23 we sit here, to do that, but nobody ever talked to
24 the plans. There was no ability to do it; hence you
25 have, you know, providers not getting paid on the

1 EI side because the remittances haven't been, you
2 know, calculated correctly.

3 There's also been a conflict with DFS rules,
4 in terms of non-par providers, in terms of what
5 happens to those checks, and, what the rules are at
6 DFS versus what DOH was rolling out.

7 It doesn't appear there was a lot of
8 coordination between those two agencies, even on
9 that rollout.

10 But that I just offer as an example of
11 guidance that sort of runs below the regulatory
12 radar screen.

13 So I guess, in conclusion, I would say, you
14 know, the ACA did force regulatory reform already as
15 it applies to the health-insurance sector.

16 There still is a need for some review of
17 existing regs, and we offered a couple of
18 suggestions there.

19 And as importantly, I would say be aware of,
20 you know, the guidance and Circular Letter-approach
21 that are still used by agencies in implementing
22 various programs.

23 Thank you.

24

25

1 SENATOR SEWARD: Yeah, just a couple of
2 points for you, Paul.

3 You know, you've offered some very good
4 specifics here in terms of items that needed -- that
5 continue to need attention.

6 The -- I would like your thoughts regarding,
7 Dr. Unterricht had mentioned about the more uniform
8 claim forms as being a benefit to the providers of
9 care, you know, in terms of making their claims.

10 What is -- what's your thoughts in terms of
11 about a more uniform claim-form process in the
12 state?

13 PAUL MACIELAK: I don't want to contradict
14 the doctor, but, the uniform prior-auth form for
15 pharmacy I think that was alluded to, that has been
16 adopted. That was a state requirement. We worked
17 with the Health Department.

18 And for pharmacy, a uniform
19 prior-authorization form has been adopted.

20 In terms of his comment about plans being
21 clever, in terms of coming up with different rules
22 and gotchas to avoid payment, I mean, to that end,
23 as you're aware, I mean, the Prompt Pay Law, you
24 know, clearly acts as the backstop there, in terms
25 of making sure that it's a clean claim, and that it

1 is paid within either 30 or 45 days.

2 So in both of those regards, I mean, I think
3 the system has already moved forward.

4 His comment about, you know, a couple of
5 plans, your ability to say no to a health plan, you
6 know, if you don't like the rules, to that end,
7 I would just point out that, in terms of market
8 share, the ACA and the implementation of the
9 exchanges have brought a number of additional health
10 plans into the marketplace, so there are now more
11 plans competing for business.

12 So -- and as a part of that competition,
13 they're trying to get doctors into their networks,
14 because the state has network-adequacy rules, and
15 also to appeal to consumers.

16 So there is pressure on plans to try and
17 accommodate physicians, to get them into the
18 network, and come up with rules or systems that keep
19 them happy, if you will, to participate with them,
20 and then to use that as a selling point with the
21 consuming public.

22 SENATOR SEWARD: Now, as you point out, there
23 are some -- some claim forms have been -- have
24 become more uniform.

25 Are there still others that out there that

1 could be made more uniform?

2 PAUL MACIELAK: I don't think it's really as
3 much the claim form itself. It's more of what
4 are -- what are -- might be rules surrounding it,
5 and that goes to, you know, sort of the market and
6 market innovation.

7 So you have, you know, whether it's bundling,
8 or whether it's medical-necessity review, etc.,
9 while, the physicians, everybody wants a
10 cookie-cutter one set of rules, you can have that
11 today with, be it Medicare or Medicaid.

12 The problem with that is, is that nobody's
13 got the best mousetrap, as we sit here.

14 And, you, as well as us, try and develop
15 innovative products or innovative approaches to
16 avoid, you know, unnecessary testing, duplicative
17 testing, abuse of billing, you know, all those types
18 of things.

19 And that's what plans spend a lot of time on,
20 trying to come up with to be most efficient and
21 become, you know, most cost-effective.

22 So that I think is some of the innovation
23 that you still want to have happen.

24 I mean, part of the whole state move today,
25 to move from Medicaid fee-for-service to

1 Medicaid-managed care, is to have plans do some
2 things that the State wasn't able to do, because the
3 plans can be more efficient, more effective, in
4 terms of trying to rout out waste or fraud or get
5 better bang for the buck.

6 So that I think is some of the conflict, or
7 tension, that's going to exist.

8 SENATOR SEWARD: Just one final question:

9 In terms of the prior-approval process that
10 was done by statute, what, 2009 or '10, and, do you
11 have any thoughts in terms of the implementation of
12 that, or any kind of regulatory issues surrounding
13 the prior-approval process in New York?

14 PAUL MACIELAK: Yeah, going back to its
15 original adoption, I mean, our problem with it is,
16 is that it leaves to the superintendent, like, total
17 unfettered discretion in terms of determining what's
18 equal to best interests for the public, or for the
19 people of the state of New York.

20 So while there is, you know, a requirement
21 that you have a medical-loss ratio, and that you pay
22 82 cents on the dollar for medical care, and, you
23 know, no more than 18 cents for administrative,
24 profit, taxes, all of that, and, you have a back-end
25 formula as well to say, If you don't hit those

1 numbers, you've got to rebate that money back to the
2 consuming public, that acts as sort of a formula to
3 ensure that the rate is going to be the right rate,
4 you know, going forward.

5 You still have this total discretion, so no
6 matter what we submit, the superintendent's got the
7 ability to say, the rate's too high. You know, we
8 want to lower the rate.

9 So, you know, it's our view that, you know,
10 the State could move to either, you know, the
11 formula determination of what the rate is, or,
12 alternatively, at least put some construct or some,
13 you know, some constraint in terms of that
14 unfettered discretion in terms of the
15 superintendent.

16 SENATOR SEWARD: So you say there's maybe a
17 lack of regulation in that area, as far as, I mean,
18 what the rules are?

19 PAUL MACIELAK: Statutory oversight, yeah.

20 SENATOR SEWARD: Yeah, yeah, yeah,
21 interesting.

22 Okay, thank you.

23 Thank you very much.

24 SENATOR MARCHIONE: I just have one question.

25 Under -- you discussed reserves; you said

1 there were different levels of reserves.

2 How did we get to those different levels?

3 Is there a reason for that?

4 Is there a reason why there's a

5 7 1/2 percent, 5 percent and 11 percent?

6 PAUL MACIELAK: Some of it, it's historic in
7 terms to when programs started.

8 Some of it is -- well, I'll give you an
9 example.

10 I mean, some of it are for the government
11 programs, as an example.

12 So, the State is paying the health plan sort
13 of a premium, or the rate. And then the plan is
14 paying the providers, taking money for
15 administrative costs, and putting some money for the
16 reserves.

17 Well, when the state budgets are tight, and
18 the State is looking to constrain Medicaid spending,
19 they're looking to pay the health plans less for the
20 premium.

21 So one place you could squeeze down on how
22 much premium you're going to pay is, we'll lower the
23 reserve.

24 So instead of having an 11 1/2 percent
25 reserve for Medicaid-managed care, we'll have

1 7 1/2 percent. The state just saves, I don't know
2 how many millions of dollars.

3 For some of the other programs, they were new
4 programs, and when people started, people -- they
5 would set a lower reserve level because the
6 companies were just getting formed. It might have
7 been a new company, it didn't have that much money
8 in terms of what was coming in, in terms of setting
9 the reserves, so it was viewed as, okay, we'll start
10 here, and we'll look to ramp it up.

11 Well, the ramp-up, maybe, did not occur over
12 time.

13 SENATOR MARCHIONE: So it's not tied to
14 anything statistically?

15 We just pull these numbers out --

16 PAUL MACIELAK: Some of -- yeah, some of the
17 numbers you couldn't find a great background or
18 rationale for it.

19 I mean, even the state commercial rate at
20 11 1/2 percent, I mean, that tracks back to the
21 insurance, I think it was the Article 42s were at
22 12 percent.

23 And that's how we started moving the HMOs,
24 and the PHSPs are supposed to move up to that
25 number.

1 That's why I raised the risk-based capital as
2 an alternative approach, because that, I think, has
3 been scientifically, or statistically, reviewed by
4 the insurance superintendents nationally, and they
5 came up with a model act.

6 SENATOR MARCHIONE: Thank you.

7 SENATOR GALLIVAN: Thank you very much.

8 PAUL MACIELAK: Thank you.

9 SENATOR GALLIVAN: Life Insurance Council of
10 New York, Thomas Workman, president & CEO.

11 When you're ready, Mr. Workman.

12 THOMAS WORKMAN: Good morning.

13 Pardon me.

14 I appreciate -- we appreciate this
15 opportunity to appear before you today.

16 LICONY is the trade organization representing
17 the life industry doing business in New York State.

18 Of the 69-member companies, 50 of them are
19 domiciled in New York and 19 are domiciled outside
20 New York.

21 These companies write a very large proportion
22 of the life, disability, long-term-care insurance
23 and annuities in New York, as well as across the
24 country.

25 I'm here today because LICONY has been

1 invited to provide you with its views regarding the
2 regulatory environment, including its views on
3 actions that can be taken to improve the business
4 climate so that LICONY members can grow their
5 businesses and provide more insurance protection and
6 financial security and independence for the citizens
7 of New York.

8 So, we appreciate your invitation.

9 The life-insurance industry makes major
10 economic contributions to New York and to the
11 United States.

12 We were struggling a bit to get numbers, for
13 certain, from the Department of Tax and Finance.

14 The last most-recent published they had was
15 2008, so we did a little projecting off of 2008 to
16 get a couple of these numbers.

17 We believe that approximately \$140 million
18 was paid in taxes in '11, and \$100 million -- hard
19 for us to believe -- 100 million in Section 206
20 assessments, and I'll address that a little bit
21 later in my remarks.

22 The life industry also had invested
23 \$364 billion in New York State in 2011, and paid out
24 \$26 billion in benefits and other payments to
25 New Yorkers. That's about \$500 million a week.

1 The life industry has 30,000 employees,
2 approximately, in New York; and 75,000 agents that
3 sell their products.

4 While all those statistics are important, the
5 most important point, from our perspective, is that
6 New Yorkers need more life insurance, more
7 annuities, more long-term-care insurance, and more
8 disability-income insurance.

9 Accordingly, our state government should be
10 doing everything possible to make it easier for
11 New Yorkers to secure this critically important
12 protection.

13 It often seems that very few outside the
14 life industry comprehend the extraordinary
15 importance of life insurers and their products to
16 individual Americans, to their families, to their
17 businesses, and to our government, and, actually, to
18 our country as a whole.

19 I want to just digress for just a moment, go
20 off the text here, and just observe that, that as we
21 think about this, we, of course, naturally, in a
22 governmental context, there are individual issues:
23 There are regulatory issues. There are legislative
24 issues. There are problems that people identify and
25 want to deal with.

1 But oftentimes those, the trees, get in the
2 way of the forest; that is, there is a lack of
3 appreciation on the part of policymakers and
4 government officials, oftentimes in general, to
5 really appreciate the importance of more of our
6 citizens having more of this protection.

7 The more protection they have to take care of
8 the loss of a loved one, breadwinner in the family,
9 to assist a company to survive having lost a key
10 employee, the more of that coverage there is, the
11 less burden there is on the very government that
12 makes these rules and regulations.

13 So we believe that the overarching
14 consideration you need to have in mind is, What can
15 we do to help New Yorkers, more New Yorkers, have
16 this protection?

17 This protection is critically important.

18 It will enable children to go to school, to
19 college. It will pay mortgages and help the
20 surviving spouse to stay in the home. It helps the
21 business remain in business.

22 So, this is the overarching consideration.

23 I know I get a lot of, sort of, from my own
24 staff, they will often say, Well, don't you have
25 your rose-colored glasses on when you're saying that

1 you're waiting for the day when government officials
2 come to you and say, "How can we help you get more
3 of your product sold?"

4 Well, actually, the fact is, that does occur
5 on occasion, but, that's a key point.

6 And, so, when we're thinking about
7 regulating, when we're thinking about legislating,
8 let's think about the long-term effect, and let's
9 recognize that many people need this coverage that
10 don't have it, so we shouldn't be imposing
11 impediments to them getting it, and getting it
12 readily.

13 I do have a few suggestions outlined in my
14 testimony, three of which are in the form of
15 Senate bills as they exist today, but before
16 commenting on those, I want to just recognize that
17 we very much appreciate the fact that the Senate has
18 been one of the most effective segments of
19 New York State government in adopting legislation
20 that fosters more of this protection for
21 New Yorkers; so we appreciate that very much.

22 Also, one other preparatory remark, and that
23 is, that when we are putting together our
24 affirmative, legislative, and regulatory programs
25 each year, one of the -- another overarching points

1 that we have to think about is uniformity to the
2 extent possible across the country, because, quite
3 often, New York is the exception to a national rule.

4 And when that happens, that adds expense, it
5 adds operational burden, and it also has the effect
6 of making it a little harder for people who need the
7 protection to actually get it.

8 So, accordingly, oftentimes our proposals
9 center on NAIC; that is, the National Association of
10 Insurance Commissioners, model laws and regulations;
11 the National Conference of Insurance Legislators and
12 their model laws; because they oftentimes provide a
13 national standard.

14 Many of our members, to state it simply,
15 endure regulations in the state of New York, which
16 are more restrictive, expensive, and inconsistent
17 with the regulations in the other 49 states.

18 The three bills that I want to mention today
19 as examples of important steps that the Senate and
20 the Legislature can take, is adopting, first, an
21 amendment to New York Insurance Law that would
22 enable the use of the NAIC model-replacements
23 regulation.

24 Right now, we have language in existing law
25 that prevents that from happening.

1 The regulation we currently have is Reg 60.

2 Reg 60, by many, both as regulators and
3 legislators, have said it's broken, it doesn't work.

4 It requires a tremendous amount of
5 information to be provided to the consumer, and the
6 consumer is swimming in this information and does
7 little with it, and, actually, seldom fully
8 appreciates the real meaning of it.

9 So it's an antiquated, out-of-date
10 regulation, needs to go away, but it can't go away
11 unless this amendment is adopted to existing law.

12 So -- so that would be a major step forward,
13 just for, not only for our companies and agents, but
14 for the people who are buying the product.

15 Oftentimes the individual has to wait for
16 sometimes a month before they can complete the
17 transaction if they happen to be replacing an
18 existing product, and during that month, their
19 health condition can change;

20 Or, if it's an investment-type product, the
21 investment circumstances may change and be quite
22 unfavorable by the time they ultimately get the
23 product in place.

24 So for those reasons, this really needs to be
25 fixed.

1 Next is the adoption of the interstate
2 product -- Interstate Insurance Product Regulation
3 Compact.

4 This is a compact that has been adopted in
5 43 states. It provides a uniform, simple
6 policy-form approval process that provides
7 uniformity.

8 So, you have -- and, also, if New York were
9 to adopt this --

10 And by the way, this legislation has passed
11 the Senate at least three times, maybe even four.
12 I've kind of lost track, so, we need to kind of work
13 on that other House.

14 -- but, nonetheless, it is something that, if
15 it passed, New York would automatically become a
16 member of the commission; and because of that,
17 New York would have a lot of influence over what
18 those standards ultimately would be.

19 And the truth is, that New York has
20 informally assisted the commission in some respects.

21 So, again, this is something that would be
22 very helpful. It would streamline, it would
23 simplify, and something that we hope that,
24 ultimately, can be accomplished so we can join the
25 other 43 of the other 50 -- of the other states.

1 Well, I guess if we could get it to 44, that
2 would be a good thing.

3 And then, thirdly, is the redomestication
4 law.

5 We have an interesting situation in New York.

6 We have half of the NAIC model
7 redomestication law.

8 We have the half that says -- that tells how
9 companies outside New York can redomesticate in to
10 New York, but we don't have the other half that
11 would enable a company to redomesticate out of
12 New York.

13 And as we often within LICONY refer to it,
14 it's kind of like Hotel California; you know, you
15 can check in, but you can't check out.

16 Now that, on its face, would make you think,
17 Gee, you know, I don't know if I want to support
18 legislation that would facilitate companies leaving
19 New York.

20 But, in fact, it's counterintuitive, because
21 what really it does, is it's saying to people who
22 are thinking about moving into New York, Hey, you're
23 not going to get stuck. This is an opportunity,
24 there's a business opportunity, to come to New York
25 and sell these products, make a bigger, better

1 marketplace for consumers, and then you don't have
2 to worry that you're going to be legally limited in
3 the future.

4 So, it actually is something that helps cause
5 more jobs, more business to come to New York,
6 because those companies will feel more at ease
7 taking the risk.

8 There is a reputation that New York has for
9 very onerous statutes and regulations and regulatory
10 environment, and so companies that are not sure are
11 going to stay out, unless they have some flexibility
12 going in.

13 So, we really hope that that, too, gets
14 serious consideration.

15 There is a fourth area, and that is something
16 that has been around for quite a while, and, in most
17 recent times, has been quite onerous for insurers,
18 all insurers; that is, domestic, property/casualty,
19 life, health, etc., and that is 206, or Section 206
20 assessments.

21 These are assessments that originally were
22 intended to be strictly for the purpose of funding
23 the regulator; in this case, the Department of
24 Financial Services, but in more recent times, it has
25 been expanded, and -- to fund other programs that

1 are unrelated to regulating insurance.

2 It becomes sort of an opportunity to gather
3 money from someone else that doesn't really have any
4 real relevance to the program you're interested in.

5 So -- or to put it more simply, insurers have
6 become a funding source.

7 There are other ways I could describe that,
8 but I'll just say, a funding source for programs
9 that are unrelated to insurance regulation, and as
10 that evolves, and grows, more and more expensive.

11 So this year -- I'm sorry, in 2011, that
12 number had grown to \$400 million in assessments, and
13 that is more than double what it was just a few
14 years ago.

15 Our companies, in one year, got a dramatic
16 doubling of this fee some years ago.

17 So, that is a problem, and we would hope in
18 the budgeting process that that will get serious
19 attention.

20 Finally, with respect to your inquiry about
21 the regulatory environment for life insurers in
22 New York, I begin by stating, unequivocally, that
23 the Department of Financial Services is filled with
24 highly talented executives and operating officials.

25 We appreciate their availability to meet with

1 LICONY and its members on, virtually, any and all
2 matters relating to the business of life insurers.

3 That said, it would be helpful to receive
4 prior notice of significant regulatory actions or
5 policies affecting life insurers, as that would
6 enable LICONY to provide meaningful, practical
7 comment before formal action is taken.

8 The adoption of regulations through emergency
9 promulgation and the use of Section 308, not just
10 for information gathering, but also to establish new
11 requirements, sometimes prevents the department from
12 receiving valuable input from the public and
13 industry before action is taken.

14 Accordingly, a change in regulatory practice
15 in this regard would be helpful in improving the
16 reputation of New York State among insurers; and,
17 thereby, making New York a more attractive place to
18 offer the protection that many, many New Yorkers
19 need badly.

20 Thank you very much for your time.

21 SENATOR GALLIVAN: Thank you.

22 I understand -- I only have one question, and
23 it actually has to do with right -- with the very
24 last part of your testimony.

25 I understand the concern about the emergency

1 promulgation of regulations.

2 I'm not familiar with Section 308.

3 I've not served on the Insurance Committee,
4 so this is the first I've heard of it.

5 Could you just expound on that?

6 THOMAS WORKMAN: Yes, well, I'm not sure how
7 much I can expound, but I'll give you my -- I'm
8 kidding.

9 I'm just --

10 SENATOR GALLIVAN: For your concern about
11 being aware in advance, and then being able
12 [inaudible] relate to that.

13 THOMAS WORKMAN: No, I understand your point.
14 I'm being facetious.

15 No, Section 308 is a very important tool for
16 the department to gather information, and it's
17 terrific. I mean, it's really needed.

18 And, of course, what it essentially means is,
19 that the department can, virtually, ask almost any
20 question to a regulated entity and get the answer.

21 So that's a good thing.

22 There have been a couple of instances in
23 recent years where the Section 308 has gone a step
24 further to -- to establishing requirements.

25 And we don't believe that there is authority

1 in Section 308 for the department to impose
2 requirements.

3 There is --

4 SENATOR GALLIVAN: Based on the information
5 that they gather, using Section 308?

6 I'm sorry to interrupt.

7 THOMAS WORKMAN: Correct.

8 SENATOR GALLIVAN: Okay.

9 THOMAS WORKMAN: Correct.

10 So we believe it is exclusively an
11 information-gathering tool, and so the point that
12 was made is, that if it is used to also impose
13 requirements, you know, we wake up in the morning
14 and see a 308, and, you know, we've had no
15 opportunity to talk with anyone about it, and, so,
16 once again, that presents a problem.

17 SENATOR GALLIVAN: Thank you.

18 Senator Seward?

19 SENATOR SEWARD: Just a couple of questions.

20 Number one -- well, the statement first.

21 I appreciate the endorsement of my
22 legislative program.

23 [Laughter.]

24 THOMAS WORKMAN: Indeed.

25 SENATOR SEWARD: The members on our -- the

1 members of our panel here have all joined me in
2 support of most of that program already in the
3 Senate.

4 In terms of the -- just a follow-up question
5 on the Section 308 discussion.

6 Now, when we get to that point of new
7 requirements, are they done -- are they imposed
8 through the emergency rule-making process, or just
9 new requirements? Or any process at all?

10 THOMAS WORKMAN: Yes, Senator, it's simply a
11 pronouncement. I mean, it's a statement of, Here's
12 the request. And sometimes included in the request
13 is, Here are things that you have to do.

14 So --

15 SENATOR SEWARD: And leading on to the
16 emergency adoption of rules, you know, without the
17 normal public comment period and input, you know,
18 from various stakeholders, the -- I mean, the
19 current law regarding that is, that that can be done
20 for the preservation of the public health, safety,
21 or general welfare, in compliance with -- that
22 requirements with -- the requirements of
23 subdivision 1 of the section, which outlines the
24 whole process of rule-making, would be contrary to
25 the public interests.

1 Would you say that this language is too
2 general and too vague?

3 In other -- should we be looking for ways to
4 further define just what is an "emergency
5 situation"?

6 When emergency rules and regs would be
7 appropriate?

8 THOMAS WORKMAN: Senator, that's an
9 interesting question.

10 It, uhm -- probably more specificity would be
11 helpful. I think that's probably true.

12 I think if I were the regulator, I would want
13 to have as much running room as I can have.

14 But, yes, I think that that would be helpful,
15 uh-huh.

16 SENATOR SEWARD: I guess, getting back to the
17 Section 308, the new requirements, would it -- would
18 it be helpful just simply to give -- to have, you
19 know, more notice, you know, a period of time before
20 those so-called "requirements" were put in place, so
21 that there would be an opportunity for reaction and
22 discussion?

23 Is -- would that be an appropriate approach
24 there?

25 THOMAS WORKMAN: Yes, Senator, I think that

1 would help, and, it does occur on occasion.

2 There are occasions of that, but there are
3 also occasions when it is very much of an
4 after-the-fact situation.

5 SENATOR SEWARD: Well, I think anything we
6 can do to, you know, modernize and streamline the
7 regulatory process here in New York would help us
8 get beyond that, we used to call it the
9 "49-and-1 phenomenon," where, you know, there are
10 insurance products that are available in 49 states
11 but one, and that "one" being New York.

12 Obviously, you know, we -- you want to make
13 sure that insurance consumers here in our state are
14 properly protected.

15 But, on the other hand, the -- you know,
16 I think there are ways of doing that without having
17 our insurance consumers in New York missing out on
18 the opportunities that are -- for new products or
19 variations of products.

20 And, of course, with, you know, 50 of your
21 69 members of your Life Insurance Council of
22 New York are New York-based companies employing, you
23 know, thousands and thousands of New Yorkers, and
24 whenever we can ease their doing business in a
25 multitude of states, is certainly good for our

1 economy, because they are based here.

2 THOMAS WORKMAN: Yes, and, indeed, as
3 I mentioned in the first part of my testimony, and,
4 indeed, most important of all, it will provide more
5 protection; and more protection is a good thing.

6 SENATOR SEWARD: Absolutely.

7 And less strain on government services.

8 THOMAS WORKMAN: Right.

9 Correct.

10 SENATOR SEWARD: Programs.

11 Thank you.

12 SENATOR GALLIVAN: We're good.

13 THOMAS WORKMAN: Thank you all very much.

14 SENATOR GALLIVAN: Independent Insurance
15 Agents and Brokers of New York, Andrew Kaufman,
16 chair of the board.

17 ANDREW KAUFMAN: Thank you, Senators.

18 I want to thank you all for giving me the
19 opportunity to speak on behalf of the
20 Independent Insurance Agents and Brokers of
21 New York.

22 My name is Andy Kaufman. I'm chair of the
23 board of the Independent Insurance Agents and
24 Brokers of New York; or, "IIABNY," as we're referred
25 to.

1 I'm also president of Aurora, Incorporated,
2 insurance agency, located in Albany, New York, and
3 we provide property and casualty insurance to both
4 businesses and individuals.

5 There are several requirements that we
6 believe the Coalition could look into that impose
7 unnecessary costs and burdens on the industry.

8 Some of those have already been referenced a
9 bit today, and, so, I will not repeat what others
10 have said.

11 You also have a copy of my testimony as well,
12 so I will not repeat what you have in front of you,
13 so, I'll just try and hit those high points.

14 We have, actually, six items that we wanted
15 to bring up today; the first of those is
16 Regulation 194.

17 And for those of you that are aware,
18 I believe it is producer-compensation disclosure
19 which was passed in January of 2011.

20 When this was being proposed at the time, it
21 was our assertion that it was somewhat unnecessary
22 because most insurance consumers have an idea that
23 we do, in fact, get paid a commission, and that
24 their primary concern was probably what they paid
25 for an insurance policy.

1 Several years later now, we've -- been found
2 that that is, in fact, the case.

3 I can give you examples from my office.

4 We service thousands of policyholders, we've
5 never had a request.

6 Our association has done similar research.

7 And, it's come to bear that on only one or
8 two instances have insureds even requested
9 information.

10 And, the disclosure process is a two-step
11 process. Everyone that has an insurance application
12 gets notification that we do, in fact, get paid
13 commission, and is told in this letter that if they
14 want more information, they can do so.

15 But the recordkeeping, it's a three-year
16 recordkeeping process to keep all this there.

17 And it really -- because of some of the
18 vagaries in the regulation, we have to disclose
19 things if we are asked.

20 If one carrier were to buy us lunch or bring
21 in a box of doughnuts, these are things that we need
22 to track for a three-year period.

23 It does seem cumbersome and unnecessary.

24 And the fact that so few consumers are even
25 asking for this, it's our recommendation that we

1 would remove this regulation in its entirety.

2 The second area I wanted to bring up today
3 was continuing education, and it was brought up in a
4 slightly different manner earlier today.

5 We are not unlike a lot of other professions
6 where we do have continuing-education requirements,
7 and we are lucky that there are now, today, many
8 ways for us to pursue this. It's not just an
9 in-person classroom setting. They're offered online
10 and self-study.

11 Like a lot of other professions, we can take
12 advantage of self-study. Unfortunately, unlike
13 other professions, insurance producers have to take
14 an examination in the presence of a monitor that has
15 to be approved by the department.

16 So if I were to take a prerecorded online
17 course, I couldn't take the test then. I would have
18 to then go to a separate place, pay a fee of, let's
19 say, \$75, to sit in this room.

20 And, to my knowledge, there's no other
21 profession that has this burden placed on them.

22 This rule is -- from what we're aware, it's
23 not found in the NYCRR or in statute, but these are
24 internal procedures within the department.

25 And for that reason we would ask, that if

1 there were a way to do so, we would remove this
2 requirement.

3 Another regulation that was brought up
4 earlier today was Regulation 79, and that's the
5 requirement that insurance companies conduct an
6 inspection of a vehicle before providing
7 physical-damage coverage to the car.

8 As we stated earlier, this regulation is over
9 35 years old and it was very well-intentioned at the
10 time. It was designed to prevent insurance fraud
11 and protect against insuring phantom vehicles.

12 But as was stated before, things are much
13 more sophisticated today. There is an
14 Insurance Crime Bureau database, there's CARFAX;
15 there are many different ways for insurance
16 companies to make sure that they are not victims of
17 fraud.

18 And, clearly, insurance carriers have the
19 motivation to make sure that they don't have fraud
20 perpetrated on them.

21 So, again, what we are asking is, just to
22 waive the requirement, make it an optional piece,
23 that insurance companies can determine what's in
24 their best interests, and what is the best way for
25 them to pursue potential fraud against them.

1 The next area that we want to discuss briefly
2 is the regulation that requires motorists to
3 actually carry a paper automobile-insurance ID card
4 as proof that they have automobile insurance.

5 Today is a little bit different than it was.

6 There are 28 states presently that allow you
7 to carry an electronic version of your card. It can
8 be on a smartphone, or some type of device like
9 this.

10 And our assertion [sic] is that it will
11 save law enforcement and the court system a lot of
12 money by, in fact, allowing people not to have this
13 piece of paper; or, if, in fact, someone is pulled
14 over and they can't produce the paper, but they do,
15 in fact, have auto insurance and they were to have
16 it somewhere else, that that other proof would
17 suffice.

18 And, so, we're suggesting that the
19 DMV Regulation 32.9 be amended, to allow for the
20 option, at least, of an electronic insurance
21 ID card.

22 The largest item, and one that has been on
23 our agenda for a long, long time, and was brought up
24 by the first group of speakers, are
25 Sections 240 and 241 of the Labor Law.

1 Some might think it's counterintuitive for an
2 insurance agent to want to see lower prices in the
3 marketplace, because we do get paid a commission,
4 but I can tell you that those that pay high premiums
5 are the lucky ones, because there are so few
6 insurance carriers that are willing to write
7 insurance coverage in New York State.

8 We represent, in our office, between 20 and
9 30 insurance carriers, and it's so difficult to find
10 a carrier that's willing to write it.

11 If you are a very, very large entity, you at
12 least have a chance because there's enough premium
13 there that an insurance carrier might take a look,
14 but most of the insurance carriers out there will
15 not write it.

16 And the effect that that really has, is the
17 small- to medium-sized business owner in
18 New York State just can't secure insurance coverage.

19 And I can tell you firsthand, we've seen a
20 lot of clients that went out of business because
21 they either can't afford the premiums or they can't
22 secure coverage.

23 And, while it was a tighter marketplace a few
24 years ago, it's even more so now.

25 I know that this Coalition has sponsored a

1 bill.

2 If we can't do away with those laws,
3 certainly, the comparative-negligence standard
4 that's been suggested, I think, is a real solution,
5 as was pointed out earlier, so, we stand firmly
6 behind that position.

7 The last area we wanted to bring up, it's
8 another antiquated insurance law that we are still
9 trying to figure out what benefit it has today, and
10 it deals with advertising requirements.

11 This law requires that an insurance company,
12 in an advertisement, display the insurance company's
13 full name, the city and the town and village of its
14 principal address.

15 And when we refer to insurer, we can mention
16 price.

17 So, for example, as an agency, if I want to
18 place an ad that says we represent a particular
19 company, we have to tell them where the company is
20 based out of, even though it's not really relevant
21 in today's society. Most insurance carriers have
22 branch offices in multiple locations, and the home
23 office doesn't bear much relevance whatsoever.

24 It seems that consumers, again, will be more
25 concerned with what's local.

1 So, Senator Seward has sponsored a bill, it's
2 S3064, that would repeal this requirement that
3 producer advertisements display an insurer's full
4 name and principal office location.

5 So we thank you for that.

6 Those are the issues that we had today.

7 I want to thank you again for the
8 opportunity, and if there are any questions, I would
9 be happy to answer.

10 SENATOR GALLIVAN: Any questions?

11 SENATOR SEWARD: Yes, just a couple of
12 questions for you.

13 First of all, I want to know in which
14 community did you grow up?

15 ANDREW KAUFMAN: Cortland, New York, Senator.

16 SENATOR SEWARD: There you go, very good.
17 That's part of my district.

18 ANDREW KAUFMAN: A wonderful district.

19 [Laughter.]

20 SENATOR SEWARD: Absolutely.

21 Andrew's father was the superintendent of the
22 schools there for many years, and a friend of mine.
23 We miss him a great deal.

24 Back to the issue at hand, in terms of the
25 Reg 194, on the -- you know, the

1 compensation-disclosure provision, I would hate to
2 ask you to, shall we say, negotiate against yourself
3 here, but, short of a full repeal of that, is there
4 anything that we could advocate, that would make it
5 more workable or reasonable for all concerned?

6 ANDREW KAUFMAN: Well, you know, as
7 I mentioned, there are two pieces to this.

8 The first piece is this general piece of
9 paper that goes out, that in essence says, that we
10 are an insurance agent that receives compensation in
11 the form of commission, and if you want to know
12 more, you can ask us.

13 And that, in and of itself, is a pretty easy
14 thing.

15 You know, we think of it in terms of all
16 these pieces of paper that go out that no one really
17 responds to.

18 SENATOR SEWARD: Yeah, there's plenty of
19 paper --

20 ANDREW KAUFMAN: And many trees that are dead
21 in Upstate New York [unintelligible].

22 So, that's a concern.

23 You know, it's more the burden of going
24 through the process, and the -- I would say, useless
25 paper, because so few people respond to it.

1 The second piece, and this is where it's a
2 bit difficult, because it is vague in terms of our
3 compensation, every carrier pays us a commission.
4 Those are reasonably close, but there are
5 contingency commissions paid at the end of the year,
6 and those are all very different with each of our
7 carriers. They change from time to time, and many
8 times it's a guess on our part. And, you know, some
9 carriers do other things for us.

10 So the vagaries, I think, of that piece make
11 it difficult.

12 And, again, the three-year recordkeeping
13 requirement on that piece as well.

14 I think the law, the intention was to, you
15 know, again, be transparent, and I think that's a
16 valuable piece.

17 But what we found in practical form, is that
18 people just don't seem to be concerned, and I think
19 they recognize that we get paid a commission, and
20 I think sometimes they might be surprised we don't
21 get as much as they think we do, when all said and
22 done.

23 But I -- you know, perhaps, to your point, if
24 there's a way to eliminate some of the vagaries, in
25 terms of what this compensation piece is, perhaps

1 that might be something, but, I'm not sure that that
2 really eliminates the issue.

3 SENATOR SEWARD: Well, what you're saying is,
4 then, there's -- there's so many variables in terms
5 of what the compensation may be, depending on the --
6 how good a year there was, and --

7 ANDREW KAUFMAN: And --

8 SENATOR SEWARD: -- experience --

9 ANDREW KAUFMAN: Exactly.

10 It's a bit of a guess because you're trying
11 to forecast what might happen at the end of the
12 year.

13 And, again, you know, we've been told that,
14 well, the department might not be as concerned with
15 some of these other little pieces.

16 But, no one wants to take the chance of being
17 caught, because the fines are significant as well,
18 and I think that's the other piece that we were
19 concerned about at the beginning, is -- is the group
20 of folks that passed it we had some comfort level
21 with, but forecast this years down the road, are
22 those folks going to look at it the same way,
23 perhaps, as the other people did?

24 SENATOR SEWARD: Well, perhaps, just letting
25 the consumer know that -- you know, that you are

1 working on a commission basis, and let it go at
2 that, perhaps.

3 Because, you know, as a practical matter,
4 the -- I think -- I agree with you, the consumer is
5 more interested in: What's the bottom line? And if
6 I don't like that bottom line, as long as we have a
7 robust market in New York, I can go down the street
8 and maybe I can find a better bottom line.

9 ANDREW KAUFMAN: It happens every day, yes.

10 SENATOR SEWARD: Yeah, yeah.

11 And I think that, in itself, I think is --
12 you know, is really what the consumer is looking
13 for, is the best deal possible with the coverage
14 that they need.

15 And, you know, how you arrive at that bottom
16 line is -- I don't know that there's concern.

17 But, you know, I think, certainly, letting
18 them know that, you know, their -- the agent's
19 working on a commission, you know, is -- is --
20 I think it's pertinent, perhaps. I think most
21 people assume that anyway, but, if they're getting
22 that in front of them, perhaps we ought to just
23 leave it at that.

24 ANDREW KAUFMAN: Okay. Yeah, very good.

25 SENATOR GALLIVAN: Thank you.

1 ANDREW KAUFMAN: Thank you, Senators.

2 SENATOR GALLIVAN: Gary Henning,

3 American Insurance Association.

4 GARY HENNING: Good afternoon, Senators.

5 SENATOR GALLIVAN: Good afternoon, Gary.

6 GARY HENNING: My name is Gary Henning.

7 I'm the vice president of the Northeast Region of

8 the American Insurance Association.

9 "AIA," as we're known as, is a national trade
10 association of property/casualty insurers.

11 More than 300 companies, our members,
12 collectively write 8.2 billion in premium in
13 New York State, represents a little less than
14 a quarter of all the New York market.

15 And our companies write insurance for
16 homeowners, drivers, small businesses, big
17 businesses; so, we write, pretty much, every type of
18 property/casualty insurance.

19 And I'd like to thank the Coalition for the
20 opportunity to discuss insurance regulatory reform.

21 It seems most -- many of my issues have
22 already been addressed by some of the others, so,
23 you have my written testimony. I'll just go through
24 this pretty quickly then, maybe point out some
25 different nuances, what have you.

1 Okay, first, I'll start with the insurance
2 ID cards.

3 The -- we won't -- we would also like to be
4 able to produce those electronically. That seems to
5 be the trend in other states. It just makes sense.

6 I mean, you know, you pull out your
7 smartphone and it's right there, rather than
8 fumbling through the glove compartment, the used
9 gum, old Lotto ticket. If it's on your smartphone,
10 you know where it is.

11 And it's a very -- the regulation,
12 15 NYCRR 32.9, I mean, it's very specific that it
13 has to -- you know, it has to be on a piece of
14 paper.

15 There's no reason that it has to be on the
16 piece of paper, so we think this is low-hanging
17 fruit, if you will.

18 Insurance Regulation 79, the photo-inspection
19 reg, this has been touched upon numerous times
20 already.

21 One thing I would like to point -- emphasize,
22 point out, I think the argument -- we would like to
23 see it optional. If companies think it makes sense,
24 let them use it.

25 The argument -- the only argument against

1 that could be, Well, we need to mandate this because
2 it's good for the consumer. The insurers, even if
3 they don't want to, need to do this because it will
4 prevent insurance fraud.

5 That's really the only argument you can come
6 up with it being optional.

7 However, I can tell you, my companies -- not
8 all of them, I know of several of my companies will
9 take -- have the pictures taken, have the reports
10 taken, and then they just warehouse it and never
11 look at it again, because these things are
12 completely useless to them.

13 So with the onset of all -- with the onset of
14 the -- you know, the claims databases that the
15 companies have access to, the DMV records, these
16 Reg 79 reports really serve no purpose other than to
17 inconvenience the driver and cost money for the
18 insurance companies.

19 So we would recommend that Regulation 79 be
20 amended so that it's optional. And if the
21 department doesn't want to do it, we would urge --
22 I know there's legislation out there that would make
23 it optional.

24 So, either way would be fine.

25 Moving on, I will just touch upon no-fault --

1 automobile no-fault insurance, Regulation 68.

2 I don't want -- this is -- these are
3 little -- little niggling things which are really
4 annoying, but present the opportunity for various
5 "gotcha" situations, either in regulatory, or more
6 importantly, in civil litigation.

7 So I think these are very important.

8 Even though they're not huge issues, they can
9 start costing money when -- once you get into the
10 adversarial context of no-fault.

11 For example, the first -- my first example,
12 there's a requirement of denial -- "denial of
13 economic loss" claims has to be sent in duplicate.

14 I've been told by companies' no-fault counsel
15 that they've had -- they've had defenses thrown out
16 because they can't prove that it was sent in
17 duplicate. They can prove they got it, but they
18 can't prove it was sent in duplicate.

19 Another one, I love this one, one regulation
20 requires that a specific form be printed on
21 buff-colored paper.

22 No one follows that regulation, but, again,
23 it just points out, you know, that there are a lot
24 of silly -- silly little things that need to be
25 fixed.

1 One thing within -- throughout the regulation
2 that we would urge that you focus on and push with
3 the DFS, is wherever you see the word "mail,"
4 replace it with the word "send," because when it
5 says "mail," you're talking U.S. Postal Service
6 snail-mail.

7 So, you'll have regulations -- requirements
8 within Reg 68, where the attorneys for both sides
9 are required to mail things back and forth.

10 That just doesn't make sense in the age of
11 e-mail. It just doesn't make sense.

12 And, you know, now you can do the proof that
13 the e-mail was read, you know, with the Outlook, so
14 there's really, you know, no reason that you need to
15 have "mail" rather than "send."

16 One last thing in no-fault, a little bit more
17 substantive: There's a rule, and this is on my
18 fourth page, B -- 11 NYCRR [sic] 65-39B, this
19 affect -- this deals with the insurer's ability to
20 negotiate interest on a -- overdue on a settlement.

21 In all the other contexts of settlements,
22 insurance law, what will happen, is that the lawyers
23 for both sides will say:

24 Okay, here, you know, the settlement's X.
25 We'll give you this much interest.

1 They say, Well, okay, with that settlement,
2 we want a little more interest.

3 But, they'll just come to a number. They'll
4 figure out the number, and you can go up and down
5 with the settlement number, with the interest, but
6 there's negotiation allowed.

7 The regulation requires -- requires 2 percent
8 monthly, no negotiation. That's 24 percent
9 annually.

10 And that is a disincentive to settle these
11 cases, because if I -- if I can settle -- if I can
12 settle a case and pay 10 percent interest on it,
13 I might be willing to do that, but, I might want to
14 take the chance in court if I have to pay 24 percent
15 interest on it.

16 So, we don't -- we don't think -- you know,
17 we don't think there's a -- I think public policy --
18 put it this way, public policy would be better
19 served if the insurers were allowed to negotiate on
20 that.

21 Moving on, this one, a little bit esoteric.
22 I'll let you read it, but, there's a basic -- a
23 basic principle I want to raise here.

24 It's dealing with two insurance regulations,
25 107 and 110, duty to defend in liability policies.

1 The context, I guess, is, basically, in a
2 liability policy, when you buy a liability policy,
3 if you're sued, the insurance -- the insurance
4 company is required to pay for your legal defense
5 when you're sued.

6 Okay?

7 And generally what will happen, in many of
8 the policies, particularly the ones for homeowners,
9 auto, small business, the insurance company not only
10 has to pay, but they have to provide the duty to
11 defend. They actually hire the counsel, they will
12 go to court for you.

13 So, pretty much, your defense is in the
14 insurance company's hands.

15 However, with some sophisticated insureds,
16 let's say, a Fortune 500 company, they would prefer
17 to retain this duty to defend with themselves.

18 So, if their board gets sued, the insurance
19 company would pay, but the corporation would be --
20 the board would be able to pick its own lawyers and
21 actively manage its own defense. They would rather
22 have the fate in their legal counsel's hand rather
23 than the insurer's legal counsel's hand.

24 Remember that the insurer is still paying for
25 the legal defense, it's just a question of who

1 manages it; who has the actual duty to defend.

2 And everything was fine, up until about 2008,
3 when the Insurance Department came up with an
4 opinion, saying that, in liability policies,
5 insurers were no long able to transfer or allow the
6 transfer of that duty to defend to the policyholder,
7 and they stopped approving forms with that provision
8 it in.

9 So basically what you had is the
10 Insurance Department saying, No, you don't know
11 what's best for you. The insurance company should
12 provide the duty to defend.

13 This one, it has hampered innovation. It
14 goes against what other states do, and, it really
15 doesn't make a whole lot of sense.

16 To their credit, we're trying to work with
17 the department on this. We've been working with
18 them for quite a while on it, but this is one
19 I really think that needs to be looked at because,
20 again, it -- it's -- it's actually having the State,
21 through DFS, telling a Fortune 500 company, We know
22 what's better for you than you do; and that's
23 problematic.

24 Okay, Insurance Regulation 168: Actually
25 this one is going -- is -- I think it was just put

1 out in the -- today's -- today's State Register for
2 comment, adopted on an emergency basis, but also put
3 out for comment to be officially adopted.

4 This is the confidentiality for
5 domestic-violence victims.

6 While property/casualty insurers understand
7 and have no problem protecting the confidentiality
8 of domestic-violence victims, this regulation -- I'm
9 sorry, the law was clearly aimed at health insurers
10 and health insurance.

11 And through what I think is a misguided
12 reading of the statute, DFS is applying some of
13 these domestic-violence confidentiality protocols
14 and rules to property/casualty insurers, and it
15 just -- it really doesn't make a whole lot of sense.

16 For example, companies have to set up
17 protocols for confidentiality of a domestic-violence
18 victim, all insurers.

19 So one of my insurers, FM Global, sells
20 nothing but commercial-property insurance to
21 large -- I mean, large commercial -- they're one of
22 the largest commercial-property insurers in the
23 world. They insure -- you know, I think they
24 insure, like, 30 Rock, to buildings like that.

25 According to this reg, they have to have a

1 notice on their website saying, "If you're a victim
2 of domestic violence, please call this number."

3 Now, in and of itself, the requirement, you
4 know, okay, someone has to go in and change the
5 coding, but, they're a State-regulated industry, so,
6 okay, you have one state doing its own thing that
7 may be silly, no one's gonna look at.

8 But we get very concerned when you have
9 states doing state-specific notices.

10 You multiply that by 50, and then what was a
11 niggling problem became a huge problem.

12 So if there's -- I mean, I don't -- we don't
13 understand how insurer -- property/casualty
14 insurers -- this regulation would be helpful for
15 property/casualty insurers.

16 I mean, if -- I can understand with health
17 insurance, the abused spouse is still getting health
18 insurance from the abuser's insurance, but, I don't
19 know how that would work in auto or home.

20 Maybe no-fault; no-fault medical claims, and
21 we would be fill willing to work with the department
22 on that.

23 But, to have a whole new set of requirements,
24 confidentiality protocols, a notice requirement,
25 just doesn't seem to make sense -- make sense for

1 us -- to us.

2 And then, finally, I'll mention this, this
3 was brought up before, the use of insurer names in
4 advertisements.

5 We have a little bit different take.

6 I think there's a specific -- there's a
7 specific section in law that deals with agents.

8 There's specific regulations that deal with
9 life insurers and health insurers.

10 We get pulled in because they have a
11 desk-drawer rule saying we should be treated like
12 everyone else.

13 And the rule is -- I think the rule is kind
14 of silly, frankly.

15 The rule -- what they have told us is that --
16 and they issued an opinion in 2008, which still
17 stands -- that you cannot use the trade name of the
18 insurance group. You have to use the specific names
19 of the companies that are selling the insurance.

20 So, for example, Travelers; you couldn't put
21 an advertisement with "Travelers." You would have
22 to put every corporate entity of Travelers that is
23 actually selling insurance in New York State, along
24 with their addresses.

25 So, you would have to put: Travelers

1 Casualty Insurety [sic] Company, Travelers Home and
2 Marine Insurance Company, Travelers Property
3 Casualty Insurance Company.

4 A twist on this, St. Paul's Fire and
5 Indemnity, which is one of their companies, but
6 which has no name connection, people wouldn't
7 connect St. Paul's with Travelers.

8 So, not only is it cumbersome, I mean, you
9 know, you start getting with some of these bigger
10 companies that have 30 subs, the advertisement is
11 going to be half small print with all the names
12 being listed.

13 And then you're gonna have companies which
14 people will say, That's not Travelers, that's
15 St. Paul.

16 Well, no, it's Travelers.

17 So it gets -- it's a waste of resources for
18 the company, and it's a -- it can be confusing to
19 the consumer.

20 So we would argue that there's -- there's
21 a -- they have an interesting reading of the
22 statute. They're saying it calls attention to an
23 unauthorized insurer, and -- which is why it's not
24 allowed by Section 2122 of the Insurance Law.

25 And they're saying an -- it's doing an

1 insurance business, and since that trade name is not
2 a registered insurer, they're doing a business -- an
3 insurance business by advertising that trade name;
4 and, therefore, it's not allowed.

5 It's really an interesting reading of the
6 law.

7 We think it makes no sense, and to benefit --
8 benefits no one, so we would urge that this go onto
9 your list, and, hopefully, once it's on that list,
10 they see it, they'll drop the opposition to the use
11 of trade names in advertisements.

12 That's it for me for now.

13 As I said, you have my testimony. I go --
14 written testimony goes into everything a little more
15 fully.

16 I'd like to thank -- thank all of you for
17 your time, listening to our concerns regarding
18 regulatory reform.

19 SENATOR SEWARD: Well, thank you very much,
20 Gary, for your testimony.

21 You know, we had a discussion with
22 Mr. Kaufman, on behalf of the agents, on that
23 comp -- disclosure of compensation issue.

24 In terms of your member companies, and so on,
25 from the companies' side, do you see any -- any need

1 to change and -- or roll that back or repeal it?

2 GARY HENNING: What, the compensation?

3 SENATOR SEWARD: Yeah, the disclosure issue,
4 is there any impact in terms of the companies' side?

5 GARY HENNING: Well, we -- let me say, we
6 agree with the agents that it doesn't make sense.

7 However, as it doesn't impact us, because we
8 pay them what we pay them.

9 The disclosure is all on their side.

10 So, yeah, we think we would be -- we would
11 have no problems with changing, but it doesn't
12 affect us, day to day; the regulation.

13 SENATOR SEWARD: And just, finally, you know,
14 the -- in terms of the department, DFS, in terms of
15 any kind of self-review or -- in terms of
16 regulation -- their own regulations, are you
17 involved at all in that?

18 GARY HENNING: Yes, I mean, to their credit,
19 they have -- they have been looked -- since the
20 merger, they have been looking at the regulations.

21 I think it's fair to say it's gotten better,
22 at least from -- at least with me, about notice.

23 I mean, there's still times, I mean,
24 especially during "Sandy," but I guess that's
25 somewhat understandable, but, when something --

1 I think Mr. Workman was bringing up, something will
2 pop without any advanced notice.

3 That happened a bit earlier on in the tenure
4 of the new agency, and we squawked quite a bit, and,
5 they have made an effort to give us some advanced
6 notice -- some more advanced notice, I should say.

7 So, we would always like more, but, it's
8 going in the right direction.

9 SENATOR SEWARD: Thank you.

10 SENATOR MARCHIONE: I just have one question.

11 We've heard two different people now talk
12 about the auto physical-damage --

13 GARY HENNING: Yes.

14 SENATOR MARCHIONE: -- coverage, and not
15 having a need.

16 You don't feel a need to have a picture of
17 that vehicle?

18 I thought it was more of a protection for
19 yourself than it was for the --

20 GARY HENNING: I would have thought so, too,
21 but after listening -- I'm not an expert on all
22 these databases, but, apparently, you know, you
23 can -- with all these databases, you can check out
24 when the car -- when the car had an accident.
25 What -- you know, the -- the claims report, what was

1 the damage? Was it fixed?

2 So, again, I'm not a claims expert.

3 I just -- my guys said they don't look at it because
4 they can get whatever they need from all the
5 databases.

6 SENATOR MARCHIONE: Well, you know, if
7 I backed up and hit a tree in my own house, and you
8 didn't have an accident report, you don't have
9 anything, so, you know, and then I said, you know,
10 that just happened.

11 And it maybe happened previous.

12 You know what I'm saying?

13 I don't -- you know, if somebody -- if
14 I bought it, and there was a -- somebody hit it
15 already, but they didn't -- it wasn't a reportable
16 accident, I buy it the way it is and I might tell
17 you there's something wrong with it.

18 You know, how do you know?

19 I mean, you're now responsible for me, and
20 I -- you know, it may have been damaged previously.

21 GARY HENNING: Okay, I'm sorry, I'm not
22 following the --

23 SENATOR MARCHIONE: If I bought a car from
24 someone and it was already damaged, but it wasn't a
25 reportable incident, just damaged, and I now come

1 in, I buy it, and you don't take a picture of it,
2 and then I tell you that I did this and I want you
3 to take care of it.

4 GARY HENNING: To fix it?

5 SENATOR MARCHIONE: That's why I always
6 thought it was a protection for the insurance
7 companies.

8 GARY HENNING: So there would be no accident
9 report of it?

10 SENATOR MARCHIONE: No.

11 You know, at least that's what I thought.

12 You know, all the times that people have
13 taken pictures of my car, I thought it was more for
14 your protection.

15 You know --

16 GARY HENNING: All I can tell you, maybe
17 theres' some instances like you say, but, my guys
18 say they don't use the pictures.

19 SENATOR MARCHIONE: Okay.

20 GARY HENNING: They use the databases. They
21 use the discretion of the agents.

22 Most -- maybe it's a little different for my
23 mix of companies.

24 My companies -- I'm thinking through this
25 here.

1 I think almost -- almost all of my companies
2 use the independent agent -- Independent Agent
3 Distribution System, so, we rely on the agents when
4 they're selling -- when they're selling the
5 insurance as well, to weed out some of those type of
6 incidents -- incidences.

7 So you would come in and our agent would say,
8 "Well, you've got this damage," and they would tell
9 us.

10 So, maybe that's -- maybe it's different for
11 some of the other carriers, where --

12 SENATOR MARCHIONE: Always my agent who takes
13 my photograph of the vehicle.

14 GARY HENNING: No, but what I'm saying is, so
15 if the agent is going to look at it, the agent -- we
16 wouldn't -- we wouldn't need a photograph.

17 What would happen is, the agent would --
18 would -- when they're writing the insurance, would
19 tell us, Okay, this car is already damaged.

20 SENATOR MARCHIONE: Okay, so you want -- you
21 want to look, you just don't want to take a picture?

22 You -- you're saying the agent is still going
23 to look.

24 GARY HENNING: Well, the agent is going to --
25 no, it's a little -- so what I -- the scenario I'm

1 envisioning, okay, is, you go to your agent's -- you
2 go to your agent's store and get insurance, and he's
3 just going to take a quick look at the car.

4 It's different than having to go -- go have
5 him take out the thing, or go to a third party, such
6 as CARCO, to look at it, if your agent is going --
7 is not going to fill out the official report.

8 So, yeah, we don't -- we don't -- we don't
9 think the report is necessary.

10 The agent may not be the one that is doing
11 it. You may have to take it to CARCO, you know,
12 within I think -- I think it's five or seven days to
13 do that.

14 But, we're relying on our sales force to
15 alert us of any preexisting damage in those
16 situation.

17 SENATOR MARCHIONE: Thank you.

18 GARY HENNING: You're welcome.

19 SENATOR GALLIVAN: If I could follow up on
20 that, you may not know the answer to this:

21 Is there any data -- well, do you know when
22 this photo-inspection requirement came into being?

23 GARY HENNING: 1977.

24 SENATOR GALLIVAN: So is there any data to
25 suggest that that stopped insurance fraud?

1 If you know?

2 I'm just kind of curious, because I'm like
3 Senator Marchione, I would think of it more as a
4 thing that would protect the insurance companies,
5 and so it's interesting to hear the industry --

6 GARY HENNING: I don't think you can say
7 it's -- you know, insurance fraud has -- since 1977,
8 phantom cars has dropped precipitously; therefore,
9 it's the -- it's because of the photo inspection,
10 because, at the same time, the industry was
11 developing, plus, include the accident -- I mean,
12 the claims databases which they use.

13 I don't know of any studies,
14 Senator Gallivan.

15 SENATOR GALLIVAN: Just curious, but, really,
16 I mean, you'd have to take it back further in time
17 and go, '75, '76, and then what took place --

18 GARY HENNING: But what I'm saying is -- but
19 then I -- but then you would also have to overlay --

20 SENATOR GALLIVAN: Of course.

21 GARY HENNING: -- where -- where -- when did
22 the -- what was the development of these claim
23 databases?

24 SENATOR GALLIVAN: I understand. I was just
25 a little bit more curious than anything else.

1 Thanks.

2 GARY HENNING: Let me just -- wait.

3 The thing that I point to is, right now, we
4 take these pictures, we have them, and they simply
5 warehouse them, because they provide -- if they have
6 to go out, and they're following the law and the
7 regulation now, they're taking these pictures and
8 taking the reports, they have this information --
9 they have these reports already.

10 If they could be of any use, I don't know why
11 they wouldn't use them, because they have to do
12 them.

13 I mean, you could argue, oh, it's expensive,
14 but they're doing it now.

15 But I think the main point to me is, they're
16 not even using them. They're taking them and then
17 they're, basically, throwing them in the circular
18 file because they have no use, because of their
19 business -- you know, the databases they use.

20 SENATOR GALLIVAN: Understood.

21 My question has -- well, first of all, we
22 appreciate your testimony, and I know you're kind
23 of -- everybody couldn't see your face, but it was,
24 like, you were a little embarrassed when you were
25 talking about these nitpicky things, but I'll tell

1 you, we can't do anything about it if you didn't
2 bring it up.

3 So we do appreciate it, because those are the
4 things that we generally would not hear about in
5 Albany.

6 GARY HENNING: Thank you.

7 SENATOR GALLIVAN: So we appreciate that you
8 brought those smaller things up, because my
9 contention is, all those smaller things can add
10 up --

11 GARY HENNING: Add up, yes.

12 SENATOR GALLIVAN: - have an impact.

13 My question has to do with your discussion of
14 duty to defend.

15 I have the concept and I understand it.

16 I've talked with some small businesses.

17 In my particular case, in dealing with the
18 people, it was in the area of different types of
19 professional services and liability insurance; not
20 any product, but they're providing some sort of
21 service, and they're sued by somebody.

22 In their liability policy, the duty to defend
23 was there.

24 The insurance company engages an attorney,
25 they pay for the attorney, they pay for the defense.

1 Then they settle the case, unbeknownst to
2 their insured, and the insured, that little
3 professional service agency, their premiums go up
4 because of that.

5 GARY HENNING: Yes.

6 SENATOR GALLIVAN: So if we back up in time,
7 and you were talking about more of those Fortune 500
8 companies, and they were allowed, essentially, to
9 choose their own lawyer and mount their own defense,
10 even though the insurance company, I'm assuming
11 approved, the insurance company still paid for it --

12 GARY HENNING: Correct.

13 SENATOR GALLIVAN: -- could those Fortune 500
14 companies and their attorneys then make the decision
15 whether or not to settle or to fight the case, or
16 did they need the insurance company to sign off on
17 that?

18 GARY HENNING: There's a consultation.

19 It's -- I'd have to look back at the exact
20 law, but I know, in the real world, there's
21 consultation on -- between -- between the defense
22 team that you've chosen and the insurance carrier.

23 I don't think the insurance carrier even has
24 the -- when they have the duty to defend, can say,
25 We're shutting you off.

1 But let me check on that.

2 SENATOR GALLIVAN: I'm curious, and then the
3 question would follow: If that's an area that's
4 appropriate to take on, is it not also appropriate
5 for the consumer to ensure that they have some sort
6 of say in the settlement?

7 Because, ultimately, they pay for it in the
8 way of increased premiums if the insurance company
9 settles without their knowledge or without their
10 approval.

11 GARY HENNING: Let me look into it and get
12 back to you.

13 SENATOR GALLIVAN: [Unintelligible].

14 And your feedback, or anybody else's.

15 You guys all set?

16 All right, thank you.

17 Alan Plafker, Professional Insurance Agents.

18 And as Alan is making his way up, if you'd
19 just give us a couple of minutes, they have to
20 change the tape.

21 We're set?

22 Okay, you don't have to wait, so, when you're
23 ready.

24 Did I pronounce your name right?

25 ALAN PLAFKER: Yes, thank you.

1 I have one extra copy. They're sending the
2 full --

3 SENATOR GALLIVAN: Okay.

4 When you're ready.

5 ALAN PLAFKER: Okay.

6 Well, good morning -- good afternoon.

7 I thought it was going to be a morning thing.

8 SENATOR GALLIVAN: Us, too.

9 ALAN PLAFKER: Good afternoon, Senators, and
10 thank you for the opportunity to present the
11 testimony of the Professional Insurance Agents of
12 New York at this Insurance Regulatory Reform Forum.

13 My name is Alan Plafker, and I am president
14 of PIA New York.

15 And, I also have an agency in the
16 New York City-Long Island area.

17 PIA is a voluntary membership-based trade
18 association representing professional independent
19 property/casualty insurance agents and brokers.

20 We're your neighbors providing valuable
21 property/casualty insurance coverage to protect
22 homes, businesses, and automobiles for the citizens
23 of New York State.

24 A statewide organization, PIA serves member
25 insurance agencies doing business in every New York

1 community. In every city, every town, every
2 village, PIA members are small businesses that
3 employ more than 20,000 insurance professionals,
4 provide insurance for more than
5 2 million households, and 750,000 businesses,
6 governmental units, and other organizations.

7 PIA issues/protect insurance consumers.

8 Today I'd like to briefly talk about
9 four subject areas.

10 In the interest of time, I'll be brief in my
11 testimony, and I'll be available to answer questions
12 you may have and/or follow up with any additional
13 information you request.

14 My testimony today will center on the topics
15 of Scaffold Law reform, the standardization of
16 homeowners insurance hurricane-deductible triggers,
17 mandatory automobile photo inspections, and allowing
18 insurance agent and brokers' fiduciary accounts to
19 be held in credit unions.

20 You've already heard a lot of this already so
21 I will try and be very brief.

22 We applaud Senator Gallivan for his
23 sponsorship of the legislation, S111, reforming the
24 New York antiquated Scaffold Law.

25 As a member of the Lawsuit Reform Alliance of

1 New York, PIA has long advocated for changes to the
2 Labor Law's absolute-liability standard, and, we
3 urge the Legislature to enact the change and provide
4 relief to the state's businesses and property
5 owners.

6 High-cost lawsuits threaten to drive
7 construction companies and property owners out of
8 business, and people losing jobs, because of this
9 law, 240 and 241.

10 We've already heard a lot about it today, and
11 I understand also, on the Long Island forum, there's
12 was also a big topic.

13 So, I'll keep it very, very brief.

14 As we know, they've sky -- the skyrocketing
15 litigation over accidents at the work sites.

16 New York is the only state that maintains
17 this strict-liability standard for lawsuits, and the
18 state worker's compensation system already provides
19 the medical treatment, wage-loss benefits,
20 regardless of fault.

21 The proposal would allow property owners and
22 general contractors to mitigate their liability, and
23 we support that, and we urge the lawmakers to remove
24 this burden from the New York State business by
25 passing the Scaffold Law reform.

1 Second, we must standardize the coastal
2 homeowners-insurance hurricane deductible.

3 When, not if, a severe hurricane hits
4 New York coastal areas, it will reveal
5 inconsistencies that will cause a public outcry over
6 the lack of foresight by policymakers.

7 Hurricane-deductible triggers vary widely by
8 company.

9 This lack of standardization causes
10 neighboring homeowners who suffer equal damage from
11 a coastal storm to find out one homeowner has
12 coverage for the damage, and the other one does not.

13 Standardizing the trigger point at which the
14 insurer's windstorm deductible will apply will
15 protect consumers against this type of scenario, and
16 it needs to be done now.

17 The State Insurance Department proposed such
18 a regulation in 2010 to standardize these triggers.

19 And, recently, Benjamin Lawksy,
20 superintendent of the state's Department of
21 Financial Services said, that, "More uniformity
22 would help people compare offerings from competing
23 insurers. We must reform this regulation."

24 I live on Long Island, and I insure thousands
25 there, and I experienced the effects of "Sandy"

1 personally.

2 Thirdly, we must repeal the mandatory photo
3 inspections that cause policyholders to lose auto
4 physical-damage coverage.

5 We just spoke about that at length.

6 You know, I think I'm the fourth person to
7 comment on that.

8 You know, one of the things that I heard was,
9 there's a cost benefit to it; that even though it
10 does help insurers, for the few times that it might
11 possibly help something, the cost and the regulation
12 of enforcing it is very burdensome.

13 The other thing is, is that, under the
14 regulation, an insurance company can't pay a claim
15 if somebody hasn't gotten their photo inspection
16 done.

17 So even if it's a legitimate claim, it would
18 be against the regulation.

19 So that's a very good point I think that
20 wasn't brought out.

21 And there are -- numerous people have lost
22 coverage for damage to vehicles because it wasn't
23 performed, and even though they were reminded to get
24 it done, they just didn't get it done.

25 Sometimes the inspection station was closed;

1 They weren't available to take pictures;

2 Or sometimes they forgot.

3 So that's another aspect of why that should
4 be repealed.

5 And, finally, I also want to ensure that
6 insurance agents and brokers are able to maintain
7 fiduciary accounts in credit unions, that that
8 effect is preserved.

9 The Insurance Department has specifically
10 addressed, and previously concluded, that an
11 insurance agent or broker may maintain a premium
12 account in a federally insured credit union,
13 provided the credit union is located and authorized
14 to do business in New York State, and permitted by
15 its own regulators to hold premium accounts.

16 And that was an OGC opinion that -- that's on
17 record.

18 The restrictions on premium accounts are
19 imposed to ensure that agents and brokers, as
20 fiduciaries, protect their principals' funds to the
21 utmost degree.

22 The fact that the department previously
23 concluded that federally insured credit unions fall
24 within the term "bank" or "banks" duly authorized to
25 do business in the state, and satisfied the

1 federally insured requirement for premium accounts,
2 provided that they're located and authorized to do
3 business in New York State, and the regulator of the
4 credit union permits the holding of such accounts,
5 led the department to conclude it had no objection
6 to an insurance agent or broker to maintain that
7 account which is insured by NCUA, subject to the
8 aforementioned qualifications.

9 Respectfully, we see no compelling reason to
10 reverse that determination now, and request that
11 this action be preserved in any update of
12 Regulation 29.

13 I thank you for this opportunity, and would
14 be happy to any questions you have.

15 SENATOR VALESKY: Thank you, Alan.

16 Just a quick follow-up on your last point:
17 So, is there pressure --

18 SENATOR SEWARD: Yeah, that was my question,
19 too.

20 SENATOR VALESKY: -- and if so, where is it
21 coming from, to reverse that determination?

22 ALAN PLAFKER: Okay, well, what happened is,
23 is there is an update. It's been presented many
24 times, an update of Regulation 29.

25 And, the update had many, many purposes: To

1 give more options to agents. Allow some outside
2 New York State banks to -- you know, to do business.

3 One of the things that they did was, they
4 took out the ability for an agent to use a
5 credit union with their premium account.

6 So we have been advocating.

7 We had a meeting with DFS, some discussions
8 about it. There are discussions about memberships
9 in credit unions, and when you can or can't.

10 But the bottom line is, we just don't want
11 that option out of it. We want to make sure that
12 the agents have that option, when it's permissible,
13 to use a credit union which may even be better
14 protection.

15 The banks have multiple locations. Insurance
16 companies have funds in banks, clients have funds in
17 the banks, and the limits of \$250,000 would apply to
18 any one of those.

19 So, for instance, if an insurance company had
20 money in a bank, and we put our money in that bank,
21 we've now eliminated, you know, that federal
22 protection, so, it could really lend to more.

23 And we just want to preserve that option, not
24 that it would be, you know, so widely used and
25 convenient as to so many banks, but credit unions

1 have really been a great alternative to the public
2 and to businesses, you know, in this economy.

3 SENATOR SEWARD: Just one quick question.

4 I was going to seek clarification on that
5 Reg 29 as well, but you've answered that well.

6 Just to go back to our discussion with
7 Mr. Kaufman on the compensation disclosure, in PIA's
8 view, how is that going, and working?

9 And would you also like to see repeal and/or
10 changes there?

11 ALAN PLAFKER: We would certainly want to
12 eliminate anything that's burdensome that we feel is
13 unnecessary.

14 You know, we're following the laws.

15 It's so easy to make a mistake and have
16 violated a regulation which, in our experience, in
17 my office, and my other colleagues that I speak to,
18 nobody really has had somebody -- I shouldn't say
19 nobody -- very, very rarely has anybody ever asked
20 what the compensation is, and that whole disclosure
21 process is very burdensome, and hasn't really
22 accomplished anything, to our knowledge.

23 As a matter of fact, we have no control over
24 the premium and compensation relationship.

25 So when we do provide a policy, our

1 compensation usually has no bearing on the premium,
2 which is based on approved rates, so the rate for
3 that policy wouldn't change whether we made more or
4 less compensation. And, in most cases, it's a very
5 small difference from one agent to another.

6 So it really -- in my opinion, and PIA's
7 opinion, obviously, if we could eliminate it, that
8 would be great.

9 SENATOR SEWARD: Well, I guess the difficulty
10 with that is if you have to be -- even if the
11 consumer -- very, very rarely would a consumer or
12 client ask for the additional information, but the
13 difficulty is, you have to be ready to answer that
14 question, under the regulation --

15 ALAN PLAFKER: Yes, but --

16 SENATOR SEWARD: -- in that very rare
17 instance when it's asked.

18 ALAN PLAFKER: And, certainly, if there was a
19 regulation that said we must disclose it when asked,
20 if we refused to and we violated a regulation,
21 somebody would form a complaint with the Department
22 of Financial Services if we violated it.

23 So, the purpose of that whole disclosure, and
24 the process of providing it when asked, we've always
25 been open to be transparent.

1 If somebody asked, I think even as he said,
2 sometimes it's embarrassing how little we actually
3 make on the commission, so, it's not something that
4 we would have a problem to disclose.

5 SENATOR SEWARD: Thank you.

6 SENATOR GALLIVAN: Thank you.

7 ALAN PLAFKER: Thank you again.

8 SENATOR GALLIVAN: James Owens, president and
9 CEO, CARCO Group, Inc.

10 Are you going to talk about photo
11 inspections?

12 JAMES OWENS: I am.

13 [Laughter.]

14 SENATOR GALLIVAN: When you're ready.

15 JAMES OWENS: Thank you very much, Senators.
16 I appreciate being allowed to testify today.

17 Obviously, there's already been a lot of
18 commentary today about the photo-inspection program,
19 Regulation 79.

20 I'm the president and CEO of the company,
21 CARCO Group, that really administers the
22 photo-inspection program in New York, along with
23 several other states.

24 We're Long Island-based. We have about
25 250 people in our company; about 1600 sites across

1 New York State where we do the photo inspections.

2 And, of course, the idea behind that is to
3 provide a site that's reasonably close to people so
4 they can get the inspection done without too much
5 inconvenience.

6 In general, the program was originally
7 enacted to look for preexisting damage.

8 I know Senator Marchione talked about that
9 earlier.

10 There are other purposes to the program, too,
11 which have been mentioned earlier: phantom cars,
12 cloned cars, were also -- and a deterrent effect,
13 were important for the program.

14 Obviously, I've written comments, but I'm
15 going to make some additional statements based on
16 what's already occurred on the record.

17 We also have additional purposes for the
18 program now, too, where we've tuned the program to
19 look for "Sandy" cars, because, obviously, with a
20 quarter million cars that are flooded, that's one of
21 the few opportunities you get to see flood damage on
22 a car; and, we also make a regular note on the
23 inspection form of various features that might
24 affect safety, or indicate that the car could be
25 used in an unsafe manner, such as, you know,

1 after-market accessories, and things like that, and
2 it goes into underwriting.

3 The interesting thing that was discussed
4 earlier was this notion that databases and -- can
5 take the place of a physical inspection, and we beg
6 to differ with that point of view.

7 CARCO actually, this past year, did a study,
8 where we pulled database reports from CARFAX and
9 AutoCheck, and compared them against cars that we
10 found to be fraudulent, were submitted to the
11 National Insurance Crime Bureau.

12 And, in fact, we took 30 cars in that random
13 sample of cars we submitted to NICB, that were
14 determined to be stolen and recovered, in fact, and
15 22 out of those 30 had clear reports from both
16 CARFAX and AutoCheck.

17 And, unfortunately, that is the state of
18 affairs for most of the databases out there.

19 I know those databases very intimately.

20 CARCO also participates in the
21 National Motor Vehicle Title Information System. We
22 provide that to consumers as an additional product.

23 We also include that database in our
24 inspection, so when you run a regulatory inspection,
25 we also do an NMVTIS check as part of that, which

1 detects title-washing across state lines.

2 But given our knowledge of that database, we
3 also are painfully aware of the holes that still
4 exist in a lot of the databases.

5 I think a statement by -- earlier was, you
6 know, Can the databases catch all instances of
7 damage?

8 And the answer is no.

9 It depends on reporting, and reporting is
10 like Swiss cheese; sometimes it happens, and
11 sometimes it doesn't.

12 We still have problems with cars that are
13 totaled, that go across state lines and get
14 title-washed and end up on DMV records with clean
15 titles.

16 There was a mention that DMV databases are
17 better than they used to be.

18 Not too much.

19 In general, DMV still allows vehicle
20 identification numbers that don't balance to be put
21 on their books, because we get cars in at CARCO
22 where the VIN (the vehicle identification number) is
23 mathematically impossible; in other words, the check
24 digit doesn't match the -- what the numbers are
25 supposed to be, and this happens quite frequently.

1 The other thing about it, too, is that
2 there's this impression that CARCO inspects all the
3 cars; and, in fact, we only inspect 8 percent of the
4 number of cars insured in the state.

5 So, we don't inspect any new cars, we don't
6 inspect any cars where the insured's been with the
7 carrier for more than four years, and there are
8 other waivers that exist that -- essentially, the
9 program was tuned to only inspect those cars where
10 there was a high risk that there could be a
11 potential situation of fraud involved.

12 I wanted to provide some statistics, because
13 I think that there was a question earlier about the
14 effects of the program.

15 You have to go back to 1977, and the
16 two years after that, to really look at what the
17 program did, independent of other advances that have
18 happened in the industry which have also had an
19 effect in reducing our car-theft rates.

20 In 19 -- after the program was enacted in
21 '77, New York City -- or, New York State experienced
22 a 7 percent decrease in theft rates, while the
23 surrounding states saw increases of 36 percent,
24 18 percent, and 16 percent, for New Jersey,
25 Connecticut, and Pennsylvania, respectively.

1 So, essentially, it's the most clear-cut
2 case, where you can see that the program pushed
3 thieves out of New York and into the surrounding
4 areas.

5 Now what's happened since then is that, you
6 know, with electronic keys and better law
7 enforcement, and, yes, databases in certain
8 instances, better tracking of cars, better
9 surveillance, the overall theft rate in the
10 United States has gone down by -- drastically.

11 In fact, it's gone down by more than a factor
12 of 10 since the '70s, and it's pretty much, if you
13 look at the national statistics of 2011 and '12, it
14 looks like it's leveled out; it's settled out about
15 230 thefts per 100,000 people in 2011 and '12.

16 New York State enjoys one of the lowest theft
17 rates in the country.

18 On a per capita basis, New York State has --
19 enjoys 99.2 out of 100,000, which I think is the
20 fifth-best, in a per capita measurement, of all the
21 states.

22 Now, that's compared -- it's kind of like a
23 tale of two states.

24 You compare New York's rate, and then got
25 another urban, highly-developed state, very populace

1 California, and California's at the other end. They
2 are 389.6 per 100,000.

3 Now, it's hard to say that this program is
4 solely due to that, and it's not, but California
5 doesn't have a pre-insurance inspection program, and
6 New York does.

7 One of the things about car theft is that --
8 which was a point was made earlier, is that many
9 casual -- you know, car-theft rates have gone down,
10 but I'll point out that, essentially, what's been
11 eliminated is the casual thief.

12 So the single thief that's gonna take a --
13 you know, jam open the door and just steal the car
14 right there on the spot, as a casual theft, is
15 gone -- all but gone.

16 And, in fact, the only thing that remains,
17 really, are professional car thieves which operate
18 as part of car rings.

19 One of the things that CARCO does as part of
20 the inspection, we talked about photos, CARCO takes
21 a photograph in addition to the form that has to be
22 filled out, which is done electronically most of the
23 time now.

24 You have a -- pictures of each diagonal of
25 the car, and you also have a picture of the

1 EPA sticker. That's that little funny sticker in
2 the door jam that everyone probably -- you know, you
3 see it every once in a while, you don't know -- it's
4 got a bar code on it, and the numbers, and things
5 like that.

6 It turns out that sticker is very important.

7 And CARCO, in many instances, identifies
8 stolen car via scrutinizing that EPA sticker.

9 That -- the picture of that sticker is very
10 important for this program, because a lot of car
11 thieves, when they clone a car or they -- they'll
12 actually print off a new sticker and they'll paste
13 it -- or, remove the old one and paste a new one on
14 it with a different number on the car.

15 And, see, that's where the problems start,
16 because that's like a person assuming another
17 person's identity on a credit report.

18 When the wrong VIN is on the car, when
19 someone goes to run a report or a database check,
20 they're checking the wrong vehicle.

21 They're checking the vehicle that was stolen,
22 not the vehicle that's in front of them.

23 And, they're also insure --
24 double-insuring -- they're insuring that vehicle,
25 but there's also a real vehicle that's -- that's

1 another vehicle that's got that same number on it.

2 And believe it or not, those cars get insured
3 all the time.

4 And so, you know, in this day and age,
5 where -- we talked about agents having some impact
6 on this --

7 And, in fact, CARCO does have agents do
8 inspections. They're called "blindsides."

9 -- but, in fact, most -- or, much of the
10 underwriting that happens today is via direct
11 writing, so there is no agent involved.

12 And, in fact, without the inspection,
13 physically sighting the car, there -- you would be,
14 literally, underwriting a paper car because there's
15 no sighting of the car whatsoever.

16 And that's unusual, because other high-value
17 insurance usually requires some attestation of the
18 condition of it.

19 For example, if you were to buy -- if you
20 were to take out insurance on a very expensive ring
21 or jewelry, you have to provide pictures of that or
22 have some evidence of what the condition is for that
23 the material to the insurance company.

24 Same thing with home insurance; usually you
25 can't get home insurance without having a home

1 inspection.

2 So why is it that the second most expensive
3 thing that people buy should have its insurance
4 written, sight unseen, without any verification as
5 to its condition?

6 So, you know, to give you some statistics
7 about what we give, in terms of the NICB, we provide
8 about 100 cars annually out of our -- when we do our
9 inspections to NICB, which are candidates for being
10 stolen.

11 In other words, we've already looked at their
12 EPA stickers, and we've determined that there's
13 something wrong with them that indicates there's a
14 high probability the vehicle's been stolen.

15 Out of that, probably one-tenth of those are
16 identified as being associated with car rings.

17 The statistics show that, you know, when you
18 close down a car ring, it saves anywhere from a
19 1 1/2 million to 6 million dollars; and, so, you
20 know, just doing the math here, that's -- you know,
21 averaging that number, that's \$30 million in
22 benefits that are occurring.

23 The entire program, by the way, costs about,
24 probably 12 million -- not even 12 -- it's probably
25 less than 10 million in New York State, and that

1 amounts to about a quarter; that's one -- that's
2 25 cents per policy renewal.

3 So, you know, the cost of the program, in
4 terms of, you know, what it means to the insurer
5 paying for it, is very low.

6 The return, in terms of what we find, in
7 terms of getting stolen cars back and stopping car
8 rings, is very high.

9 Law enforcement very strongly supports
10 Regulation 79.

11 I would encourage you to go talk to
12 law enforcement.

13 And the last thing I wanted to talk about in
14 relation to the -- to views on the regulation, we
15 strongly support modernization of Regulation 79.

16 In fact, we worked with the department for
17 what were called -- what was called the
18 "fourth amendment" to Regulation 79, which was, the
19 department was putting a lot of energy into that a
20 couple of years ago.

21 That energy sort of lessened once the law
22 that was talked about went in front of the Senate
23 and Assembly, to try and make the program optional.

24 But I would strongly encourage that the
25 department pursue those modifications with renewed

1 vigor, because I do -- I agree, in large part, with
2 what Mr. Craw said from the NIA, we can safely
3 increase the grace period, from 5 days, to even
4 10 to 14 days, without any significant impact in the
5 fraud-fighting aspects of the program.

6 And, in fact, many of the old mail-based or
7 paper-based notification requirements are completely
8 and hopelessly out of date; and, in fact, they don't
9 even agree with the way CARCO's conducting the
10 program today.

11 For example, CARCO -- and we've coordinated
12 this with a regulator -- but CARCO uses an iPhone or
13 Android to connect -- collect inspection forms at
14 many of our sites, so we've, largely, gotten rid of
15 the U.S. mail-based process and eliminated a lot of
16 the time delay, to reduce those issues where people
17 waited till the last minute and then their insurance
18 collision coverage gets canceled.

19 And we're gonna continue to -- we would like
20 to move completely to a paperless solution, across
21 the board, to address those types of concerns.

22 So, any way we can get the regulation to
23 align with a more twenty-first-century approach,
24 we're absolutely in favor of doing that.

25 But I did want to make the comment that we

1 don't agree with the notion of making the program
2 optional.

3 We believe that -- it's easy to talk about,
4 in competition with -- in auto insurance.

5 And competitive markets, they're great, but,
6 you know, but the auto-insurance market is not
7 perfect competition, because, number one, insurance
8 companies, by their very nature, they have to serve
9 two masters: they have to serve policyholders, but
10 they also have to serve their shareholders.

11 And, savings for auto -- when you're
12 competing, you can only -- the only variables that
13 you can use to adjust the competition -- the price
14 you're offering as your competitive product, are
15 those variables that you can control; in other
16 words, your costs, or the value you're delivering.

17 Unfortunately, costs -- car-theft rates are
18 not something that the insurance companies can
19 really control very well.

20 And, so, the problem with making a program
21 optional in this area, is you're setting up a
22 situation where the insurance companies might stop
23 doing the photo inspections, under the notion that
24 they might be able to maybe make it slightly more
25 convenient and save a tiny amount of money to the

1 consumer.

2 But the net effect of it is, it might remove
3 a very strong deterrent to keep car thieves from --
4 out of operating in New York State, and it could
5 result in unintended consequences; namely, that
6 theft rates could start to go back up, and the very
7 thing that we're trying to prevent, which is
8 car-insurance rates from going back to high levels,
9 could actually occur.

10 And at the end of the day, the insurance
11 companies, you know, in that situation, would simply
12 raise rates to cover their costs; and that's not, at
13 the end of the day, in line with what consumers
14 would like.

15 So we have to balance -- you know, this
16 program exists in a nexus, where we're balancing the
17 concerns of insurance companies and agents, but we
18 also have to pay attention to what the consumers'
19 objectives are, which is to gain fair coverage at a
20 reasonable price.

21 And with that I'll close my comments and take
22 any questions.

23

24

25

1 SENATOR SEWARD: Just a quick question for
2 you, Mr. Owens: Would the formally using --
3 permitting the use of these electronic devices, in
4 terms of taking the actual photos, would that reduce
5 costs in terms of, both, from the taking the picture
6 to the storage, and any other related costs?

7 JAMES OWENS: It does. It has a number of
8 beneficial effects in many different ways.

9 The first is, that it reduces our internal
10 costs, because there's a lot of labor involved at
11 CARCO in processing the paper forms.

12 We're not going to be able to totally
13 automate the process because, at the end of the day,
14 we have to have -- one of the values that CARCO
15 provides, is that we have very trained operators at
16 our headquarter sites that scrutinize those
17 EPA stickers.

18 But the plumbing, if you -- if we can
19 automate the plumbing, of getting that inspection to
20 CARCO with a -- you know, no U.S. mail, no dealing
21 with paper forms, that reduces the cost factor
22 tremendously, and CARCO can pass those cost-savings
23 on to the carriers, which then, in turn, gets passed
24 to the consumer, although, it's a quarter -- it
25 would go from a quarter to something less than a

1 quarter, it's still measurable.

2 But the biggest benefit -- I think the
3 biggest benefit, rather than the absolute lowering
4 in cost, is the benefit of time.

5 Right now, it takes about three to four days
6 for a paper form to make its way from one of the
7 1,600 sites that CARCO has across New York State.

8 And it varies, depending on where in the
9 state; about three or four days for that form to
10 make it through the U.S. mail to CARCO's
11 headquarters.

12 Now, the grace period is five days.

13 So if someone waits until the very last
14 minute and then they mail the paper form in, you can
15 see a situation where the person's coverage could be
16 canceled in that intervening period.

17 So, you know, we advocate attacking the
18 problem from two separate directions.

19 The first is, make the grace period longer to
20 give people more time, because it really doesn't
21 have a large impact on the fraud-fighting elements
22 of the program.

23 The second benefit is exactly what you were
24 alluding to; that once you make that
25 inspection-transmission electronic, it's

1 instantaneous.

2 So, as soon as that transmitter -- that
3 inspection is transmitted, CARCO gets it and we
4 process it. We provide an immediate receipt back to
5 the person, that the inspection has been
6 transmitted, which eliminates all the doubt that
7 exists in people's minds as to whether the
8 inspections, you know, made it to CARCO, and this --
9 or, what's going to happen with that, and it allows
10 us to get that information back to the carriers as
11 quickly as possible.

12 The other thing I think it does is
13 increase -- increases the -- how -- that data is
14 updated in real time, Senator Seward, which, you
15 know, makes the data more valuable to carriers and
16 law enforcement.

17 One thing I didn't mention is that, you know,
18 insurance companies accessed our database over
19 3 million times last year, SIU units and claims
20 units, to look at the inspections.

21 So, insurance companies are using this
22 information. You know, they use it in various ways,
23 some more than others, but, you know, they use it.

24 And law enforcement uses it extensively, too.
25 I think it was accessed over 150,000 times by

1 law enforcement.

2 So, you know, the database is in use, but the
3 more real-time information we can get into that
4 database, the more valuable it is to the folks that
5 are using it, at the end of the day.

6 SENATOR SEWARD: One final follow-up: Would
7 the use of these electronic devices, would that
8 require an updating or change in the regulation?

9 JAMES OWENS: Technically, yes.

10 I mean, you can -- you know, we've gone to
11 the department and briefed them on -- on what we're
12 doing, and they were very pleased with the
13 approaches that we've taken, and it's a natural
14 extension of the department allowing us to use
15 web-based technology, and it's an earlier
16 reiteration where someone could use the web form to
17 fill out the inspection program.

18 But, really to align the regulation with what
19 we would like to do, and also remove that paper
20 notification requirement that was talked about
21 earlier by the NIA, we really need to get the
22 regulation modified to sort of align to the
23 twenty-first century.

24 And there's no reason why this entire
25 process -- notifications; site scheduling, because

1 people often go to one of the insurer's sites, and
2 we have integrations with those sites to provide the
3 nearest site to the person, to make it easy -- all
4 that should be completely electronic at this point.

5 There's really no reason for any of this
6 stuff to be on paper whatsoever, and we highly
7 advocate that that be done.

8 And I think if we do that, we can maintain
9 the fraud-fighting benefits of the program, while
10 minimizing the inconvenience to the insured.

11 SENATOR SEWARD: I guess we've come a long
12 way. I can remember, I guess, back in the late
13 '70s, somebody showing up with a Polaroid camera to
14 take a picture of a car I had purchased.

15 JAMES OWENS: I think CARCO, for a number of
16 years, kept Polaroid in business. We were probably
17 their last customer before they closed their doors.

18 Fortunately, now we have a -- you know, a
19 hot-site, you know, completely mirrored electronic
20 database that's instantaneous.

21 So, yeah, we have come a long way in the past
22 35 years.

23 Thank you.

24 SENATOR GALLIVAN: Can I ask you about that
25 subset of vehicles, just so I have the correct

1 understanding as to what the regulation is?

2 New vehicles do not require a photo?

3 JAMES OWENS: Technically, if you have a bill
4 of sale, they do not; but in practice, no new
5 vehicles ever get inspected.

6 SENATOR GALLIVAN: And vehicles that carry --
7 where the owner carries liability insurance only?

8 JAMES OWENS: That's right, they don't need
9 to be inspected.

10 SENATOR GALLIVAN: So then every other used
11 car that has the comp or collision?

12 JAMES OWENS: Well, except, if you've been
13 with a carrier for more than four years --

14 SENATOR GALLIVAN: Those are excluded?

15 JAMES OWENS: -- and you have an
16 additional -- you want to insure another car, you
17 won't need to be insured -- you won't need to have
18 an inspection.

19 SENATOR GALLIVAN: Because they trust you?

20 ALAN PLAFKER: Because the trust you.

21 The idea is, is that if you --

22 SENATOR GALLIVAN: That's written into the
23 regulation?

24 JAMES OWENS: That's written into the
25 regulation already.

1 Now, the fourth amendment wanted to move that
2 from four years to two years, so they were going to
3 loosen that 10-year requirement slightly.

4 We think that's reasonable.

5 I mean, the idea is that -- you know, who are
6 we to say exactly what the break point is as to when
7 an insurance company can trust an individual?

8 That's a tough call.

9 But what we think is a dangerous thing, is to
10 make the program optional, because -- well, this was
11 done, by the way in Massachusetts.

12 And what happened in Massachusetts was, the
13 program collapsed. All the insurance companies just
14 stopped doing the inspections completely.

15 And so, you know, that's removing a deterrent
16 effect.

17 It's too soon to tell whether that's going to
18 result in an increase in theft rates, but theft
19 rates have already leveled out; and so one of the
20 things that we're trying to do, like, you know,
21 policing, you're trying to maintain those crime
22 rates low, we want to maintain theft rates low for
23 New York.

24 SENATOR GALLIVAN: Thank you.

25 JAMES OWENS: Thank you.

1 SENATOR GALLIVAN: And last but not least,
2 Excess Line Association of New York, Dan --

3 Is it, Maher?

4 DANIEL MAHER: The Irish tell me it's Maher.

5 SENATOR GALLIVAN: -- Maher, just like the
6 athletic director at Canisius College, who you
7 probably don't know. That's how he pronounces it.

8 Thanks for being here.

9 When you're --

10 And just, by the way, for anyone who's
11 keeping track, James Clyne is not here, from the
12 Leading Age of New York. He has submitted written
13 testimony.

14 When you're ready, Mr. Maher.

15 DANIEL MAHER: Thanks, very good.

16 I'm Daniel Maher. I'm the executive director
17 of the Excess Line Association of New York, which is
18 also known as "ELANY."

19 And I thank you, on behalf of my members, for
20 providing me this opportunity to make the following
21 brief remarks.

22 By way of background, ELANY is a
23 statutorily-created entity which exists to
24 facilitate and encourage compliance with the laws
25 regarding excess-line transactions.

1 The excess-line industry, also known as the
2 "surplus-lines industry," exists to underwrite
3 property and casualty insurance risks rejected by
4 licensed insurance companies.

5 Most excess-line risks have significant
6 volatility or greater exposure to loss.

7 Excess-line insurers cover distressed risks,
8 risks with a bad loss history, or new businesses
9 with no loss history, or new insurance products,
10 such as cyber-liability insurance.

11 By way of example, the excess-line industry
12 writes a significant amount of construction risks in
13 the state of New York. It also provides standalone
14 flood insurance, either excess of the National Flood
15 Insurance Program or for exposures that are
16 ineligible for the National Flood Insurance Program.

17 ELANY projects it will process approximately
18 220,000 excess-line transactions this year,
19 supported by approximately \$3 billion in premium.

20 This will generate direct taxes of about
21 \$100 million this year to New York State, while
22 supporting thousands of jobs directly and
23 indirectly.

24 Excess-line insurers are licensed in at least
25 one jurisdiction, but not by the State of New York.

1 New York permits financially-sound insurers
2 to be eligible to underwrite -- in New York to
3 underwrite excess-line risks.

4 Excess-line transactions are regulated by
5 duties imposed on specially-licensed brokers known
6 as "excess-line brokers."

7 These brokers have expressed legal duties to
8 (1) attempt to place risks first with
9 New York-licensed insurers before accessing any
10 excess-line market, and (2) to use due care in the
11 selection of a financially-sound, solvent, eligible
12 insurer.

13 Excess-line insurers consider risks rejected
14 by licensed insurers because they have what's known
15 as "freedom of rate and form." They can charge
16 rates commensurate with the greater exposures that
17 they insure and they can customize coverage, terms,
18 and conditions.

19 ELANY has three distinct proposals to amend
20 the regulations that affect excess-line
21 transactions.

22 Under Section 2118, as I noted before, an
23 excess-line broker must use due care in selecting
24 the unauthorized insurer from whom policies are
25 procured.

1 New York Insurance Reg 41 does not define
2 what "due care" is, but it does require the broker
3 to ascertain the insurer's financial stability and
4 capacity to support the business it underwrites, and
5 also to verify the insurer's claims practices are
6 satisfactory, and its management is trustworthy and
7 competent.

8 In support of all excess-line brokers, ELANY
9 has, for the past 25 years, analyzed and examined
10 excess-line insurers for financial solvency, and
11 other metrics, to verify that these insurers should
12 be eligible in New York.

13 ELANY publishes a list of those insurers and
14 maintains a financial database available to
15 excess-line brokers on each eligible insurer.

16 So ELANY's first recommendation, is that
17 Reg 41 be amended to state: That an excess-line
18 broker is presumed to have exercised due care when
19 it places coverage with any insurer listed by ELANY,
20 subsequent to ELANY's financial review and
21 examination.

22 This won't prohibit the excess-line broker
23 from placing insurance with other excess-line
24 insurers. It will just simply allow that broker to
25 have the presumption that they've used due care, due

1 to the efforts ELANY has made, on behalf of the
2 excess-line broker, in examining the financial
3 condition of the insurance carriers.

4 Our second item:

5 In order to place a risk with an excess-line
6 insurer, an excess-line broker must conduct what's
7 known as a "diligent search," which essentially
8 means the broker must approach three licensed
9 insurers whom the broker has reason to believe
10 writes this type of coverage or class of insurance.

11 The excess-line broker or a producing broker,
12 when there's two brokers involved in a transaction,
13 must provide 21 data elements in an affidavit for
14 each placement regarding the diligent search,
15 detailing various pieces of information about the
16 licensed and insurers that declined to write the
17 account.

18 That is quite burdensome and time-consuming,
19 and, frankly, a costly process on the brokers
20 involved.

21 We believe that the statistics attached to my
22 testimony show that a substantial percentage of
23 accounts renew every year.

24 Approximately 40 percent of all accounts
25 renew at least once, or maybe twice, in the

1 excess-line market.

2 And reason that is, is because the risk
3 profile of an account does not change, you know,
4 that substantially overnight. An account that is in
5 the excess-line market tends to stay there for a
6 couple of years.

7 So, ELANY's second proposal is, that the
8 diligent search made in year one in a placement be
9 deemed by Regulation 41 to be valid for 36 months.

10 In this manner, you're reducing the burden on
11 the brokers. You're recognizing that the -- that
12 the accounts do not move out of the marketplace
13 overnight.

14 They don't move usually after 12 months; they
15 move after 24 to 36 months.

16 Now, that would not -- this change would not
17 prevent a broker from moving the account back to the
18 licensed market if a licensed market became
19 available, but it would reduce the burden on
20 excess-line brokers and producing brokers, and allow
21 the broker to spend more time on customer-oriented
22 services.

23 The third proposal also relates to the
24 diligent search.

25 Medical-malpractice insurance is a major line

1 of business in most states for excess and surplus
2 lines, but not so much in New York.

3 New York's medical-malpractice market is very
4 limited. Only three licensed insurers write a
5 material volume of this business in New York.

6 There's also the residual market, the
7 Medical-Malpractice Insurance Pool, also known as
8 "MMIP," and various risk-retention groups, which are
9 exempt from most state insurance laws, write the
10 balance of this business in New York State.

11 Under the Insurance Law, an excess-line
12 broker cannot place primary medical-malpractice
13 insurance for a doctor, a dentist, or a general
14 hospital with an excess-line insurer unless MMIP,
15 the residual market, has rejected that risk.

16 MMIP has informed ELANY that it would reject
17 risks where the insured would prefer a excess-line
18 insurance policy, but is not empowered to do so.

19 It is our understanding that the
20 superintendent of Financial Services has the
21 authority to permit MMIP to reject risks by
22 consenting to an amendment to the Plan of Operation
23 of MMIP.

24 ELANY proposes, our third proposal, is that
25 ELANY would like MMIP's Plan of Operation to be

1 amended, to permit MMIP to reject the risk at the
2 request of the insured.

3 This will give the insured the broadest array
4 of available markets which can address things like
5 multi-state underwriting exposures, and other risk
6 exposures, that MMIP simply was not designed to or
7 equipped to handle.

8 The insured is in the best position to
9 determine whether MMIP or an excess-line insurer is
10 offering the best terms and conditions available.

11 So with that, I'll take any questions you
12 might have.

13 SENATOR SEWARD: Dan, just at the outset,
14 I just wanted to say that the -- we've always been,
15 in our Committee, supportive of ELANY (the Excess
16 Line Association) of New York, and all the member
17 brokers, because it keeps that business -- you keep
18 that business here in New York that otherwise --
19 I mean, if insureds are -- have been rejected by
20 licensed insurance companies, that they could very
21 well go elsewhere in terms of their coverage, but
22 you keep them here -- you keep that business here in
23 New York.

24 DANIEL MAHER: I thank you for that,
25 Senator Seward.

1 SENATOR SEWARD: Just as a follow-up on the
2 medical-malpractice insurance coverage:

3 So, currently, excess-line brokers are not in
4 that business at all because of the fact you can't
5 get a rejection from MMIP?

6 Is that --

7 DANIEL MAHER: That's correct with respect to
8 primary medical-malpractice coverage for doctors,
9 dentists, and general hospitals.

10 So, ELANY's members are a major player with
11 respect to placing such risks, as nursing-home risks
12 and other risks which have some medical-malpractice
13 exposures.

14 But you're right, they're precluded,
15 essentially, the way the reg currently, essentially,
16 blocks them from getting a rejection from MMIP,
17 which means the insureds are not being shown,
18 perhaps, in some cases, what might be their best
19 alternative for coverage.

20 SENATOR SEWARD: I see.

21 So by allowing that MMIP to reject, then that
22 would open the door for excess line to provide an
23 option?

24 DANIEL MAHER: That's correct, and it would
25 be at the insured's request, where the insured is

1 recognizing that they would like to see the
2 alternatives that might be available in the
3 excess-line market.

4 SENATOR SEWARD: You know, well, you want to
5 be -- you're getting a little bit more review of all
6 of this, but I think it's an interesting concept
7 that ought to be explored because of the, you know,
8 what's happening.

9 We heard testimony earlier from the -- that
10 the medical-malpractice area is a difficult area in
11 terms of coverage.

12 DANIEL MAHER: Very tough class of business.

13 SENATOR SEWARD: Yeah, but you'd like to be
14 in it?

15 DANIEL MAHER: That's what my members do.

16 SENATOR SEWARD: That's right, they take the
17 tough ones.

18 DANIEL MAHER: That's right.

19 [Laughter.]

20 SENATOR SEWARD: Well, your other
21 recommendations, I -- we appreciate your specific
22 recommendations, and we'll, obviously, consider
23 those.

24 Thank you.

25 DANIEL MAHER: Don't you want to ask me about

1 Reg 194?

2 SENATOR SEWARD: Okay, well, hey, let's do
3 that.

4 DANIEL MAHER: As long as I'm here?

5 SENATOR SEWARD: Yes, why not.

6 Yes.

7 DANIEL MAHER: We would support the repeal of
8 Reg 194.

9 When -- before it was promulgated, there was
10 testimony -- we essentially testified, that if I was
11 buying an appliance at Sears that was \$1,000, and
12 the same appliance was \$900 at Best Buy, am I going
13 to ask, you know, how much they're paying the
14 salesman?

15 You know, it appears, based on the testimony
16 before, insureds just are not availing themselves of
17 the right to request.

18 So, while the regs are often well-intended,
19 here's a reg that was put in place to protect
20 consumers, and the consumers are saying, We don't
21 really want the information.

22 So, I thought I would add that.

23 SENATOR SEWARD: Yes, I would note that the
24 push for that regulation came under a different -- a
25 previous administration, and it's continued.

1 But, obviously, that's an area I'm sure that
2 our group will take a close look at.

3 DANIEL MAHER: Well, thank you very much.

4 SENATOR GALLIVAN: Thank you, Mr. Maher.

5 DANIEL MAHER: Thank you for this
6 opportunity.

7 SENATOR GALLIVAN: For the record, we also
8 have written testimony submitted by the
9 New York Bankers Association, from Michael Smith,
10 president and CEO;

11 And, also, the New York State Land Title
12 Association, Robert Truber, who is the
13 executive director.

14 That will conclude our hearing today.

15 We appreciate everybody's input, those
16 remaining.

17 And we will look for a final report towards
18 the end of November.

19 Thank you, everybody.

20 (Whereupon, at approximately 1:55 p.m.,
21 the public forum on Insurance/Banks Regulatory
22 Reform held before the New York State Senate
23 Majority Coalition concluded, and adjourned.)

24 ---oOo---

25

2

PUBLIC FORUM/TOWN HALL

3

4 MANUFACTURING REGULATORY REFORM - TO LEARN FROM
5 BUSINESSES AND INDUSTRY EXPERTS WHICH REGULATIONS
6 ARE THE LEAST USEFUL, LEAST COST-EFFECTIVE, AND,
7 THEREFORE, SHOULD BE ELIMINATED

6

7

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Corning Community College
Triangle Lounge
1 Academic Drive Building
Corning, NY 14830

10

11

October 9, 2013
12:00 p.m. to 2:00 p.m.

12

13

14

SPONSORS PRESIDING:

15

Senator Patrick M. Gallivan
Deputy Conference Leader for Economic Development

16

17

Senator Kathleen A. Marchione
Chair of the Administrative Regulations Review
Commission

18

19

CO-SPONSOR PRESIDING:

20

Senator Thomas F. O'Mara

21

22

SENATE MEMBERS ALSO PRESENT:

23

Representative of Senator Catharine Young's Office

24

25

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1 SENATOR O'MARA: Good morning, everyone, and
2 thank you for being here for the New York State
3 Senate Majority Coalition Regulatory Reform Public
4 Forum, and the focus of today's forum is on
5 manufacturing regulations.

6 You know, we hear all too often about how
7 New York State is uncompetitive and does not have a
8 positive business climate, and we are working on a
9 variety of ways to try to improve our business
10 climate in New York State; something that we all
11 focus very much on here.

12 And part of the purpose of the
13 regulatory-reform forums that we're having across
14 the state in a variety of industries, including
15 manufacturing, which is today's, we're doing them on
16 construction, on agriculture.

17 What's the other topic we're doing?

18 SENATOR GALLIVAN: We've done health and
19 medical.

20 SENATOR O'MARA: Oh, health and medical is
21 the other major area.

22 SENATOR GALLIVAN: Insurance and banking.

23 SENATOR O'MARA: And insurance and banking,
24 for topic areas across the state.

25 So, I want to thank you all for coming out

1 and participating today, to give us your input on
2 regulations.

3 Our focus is to come up with
4 1,000 regulations statewide, and out of the
5 100,000-plus regulations we have in New York State,
6 we don't think that should be too difficult of a
7 task to meet.

8 But, we're committed to reducing regulations
9 everywhere we can.

10 And, obviously, with the tax structure, or
11 the tax climate, in New York, again, the
12 Tax Foundation out of Washington D.C., came out with
13 its annual report, either yesterday or today, I just
14 read about it, where we are number 50 again out of
15 all countries [sic] in tax climate.

16 And, you know, I firmly believe in the motto
17 that Governor Cuomo has spoken about since he took
18 office, and that is, "New York State has no future
19 as the tax capital of the nation."

20 So, we need to focus on reducing taxes, and
21 the Governor's announced a commitment to looking at
22 reducing taxes in this coming legislative session
23 starting in January.

24 And part of that, I believe, is equally
25 important, is to ease the regulatory burdens and

1 structures that we have in New York State.

2 So I look forward to your testimony here
3 today.

4 Those of you that are testifying, and those
5 of you that are here to attend and listen, thank you
6 for your interest.

7 And I will introduce my colleagues here.

8 Senator Patrick Gallivan, who's one of the
9 co-chairs of these forums, and
10 Senator Kathy Marchione.

11 Kathy is from the Saratoga area, and
12 Patrick is from the Erie County, Livingston County,
13 area of New York State.

14 We all have districts that cover multiple
15 counties throughout the state.

16 We do apologize for starting a few minutes
17 late today. Patrick came up from New York City,
18 from some work he was doing down there yesterday,
19 and you know how that travel can get delayed at the
20 bridges and tunnels, and whatnot.

21 So, Patrick, thank you for coming to Corning
22 with this forum.

23 SENATOR GALLIVAN: Thanks, Senator.

24 And good afternoon, everybody, and thank you
25 for being here, and thanks for hosting this.

1 We, of course -- the Senator gave a great
2 introduction, and really took most of the words that
3 we have been saying at these different hearings, out
4 of our mouths; but, clearly, 50 out of 50 today, the
5 Tax Foundation came out with that report.

6 Earlier this year, the U.S. Chamber of
7 Commerce came out with a report that ranked
8 New York State 50 out of 50 as having the worst
9 business climate in the country.

10 And it comes down to the two things, I think,
11 that Tom articulated: taxes, and that so-called
12 "death by a thousand cuts" regulations.

13 We are conducting a parallel series of
14 hearings across the state.

15 One is focused on tax reform, and then
16 Senator Marchione and I, Senator Dave Valesky from
17 the Syracuse area, and the Senator from down
18 Rockland County, have been traveling the state,
19 doing these regulatory-reform hearings.

20 We're near the end. This is our
21 second-to-last. We finish up with a biotech
22 industry next week in Rochester.

23 Our goal is to put forward, as Tom had
24 mentioned, a minimum of 1,000 regulations to repeal,
25 period. Not to replace, not to redo, but to repeal.

1 And the idea is, not just to focus on the big
2 things, but the so-called "death by a thousand
3 cuts." And if we can identify the outdated
4 regulations, the useless regulations, the
5 regulations where the costs greatly exceeds the
6 benefit, where we can catch up with modern
7 technology and replace paper with electronics,
8 that's what our goal is.

9 That thousand is just a start, though.

10 But we will have a report that will be
11 available on our website for everybody to view, and
12 we anticipate that being done, probably by the end
13 of November, and it will form the basis for our
14 legislative agenda as we move forward.

15 So, we appreciate everybody being here,
16 because we can't get down, drill into the
17 industries -- we don't do those things for a
18 living -- without people in the various industries'
19 help.

20 So we appreciate your time and willingness to
21 be here to testify today, and I'll just turn it over
22 to Senator Marchione before we get started.

23 SENATOR MARCHIONE: Thank you, and good
24 morning to everyone.

25 It's a pleasure for me to be here with you as

1 well.

2 And, just to add a little bit to what
3 Senator O'Mara and Senator Gallivan have said, all
4 of the rules and regulations and red tape, if you
5 were to lay them, paper by paper, 8 1/2-x-11, they
6 account for more than 22 miles of red tape that
7 New York businesses are tangled up in.

8 And I'm looking forward to hearing from the
9 manufacturing industry today, recognizing that there
10 are over 462,000 manufacturing jobs in
11 New York State, and we need those jobs; we need to
12 expand this industry.

13 And we're hoping what we're doing here today
14 will provide you with some needed relief; that we
15 will be able to get rid of some of the rules and
16 regulations that form those 22 miles.

17 I want you to know, though, that we're not
18 here to point blame at anyone. We're here for the
19 sole purpose, our only goal, is to listen to each
20 and every one of you, so that we can find solutions,
21 real solutions, to the problems that we have.

22 So thank you all for being here, and I look
23 forward to your testimony.

24 SENATOR GALLIVAN: Thank you, Senator.

25

1 Our first speaker is G. Thomas Tranter,
2 president of Corning Enterprises.

3 And we appreciate your patience, and your
4 willingness to testify today.

5 G. THOMAS TRANTER: Thank you, Senator.

6 SENATOR GALLIVAN: When you're ready, sir.

7 G. THOMAS TRANTER: And I appreciate the
8 opportunity to come before you and give you some
9 feedback, and if I do it in five minutes, we'll be
10 right back on schedule, so -- and I think I can do
11 that.

12 [Laughter.]

13 G. THOMAS TRANTER: So, first of all,
14 Corning, Incorporated, is a worldwide employer, but
15 we're proud of the fact that we have our
16 headquarters, our research facility, and our
17 environmental plants in the Corning Valley.

18 Approximately 6,000 employees of the 26,000
19 that we have are in New York State. About 5,400 are
20 here. We also have manufacturing plants in Oneonta,
21 Canton, and Fairport.

22 And I'm just gonna kind of run through
23 quickly what we see as some of the changes that we
24 would like.

25 So, first, and I know you've, all three, been

1 working hard on this, is repeal 18-A.

2 Tom has heard us say that loud and clear.

3 That costs us about a million and a half
4 dollars a year.

5 And that's something, you know, when you
6 compare us to places that we do business in the
7 United States, such as Virginia, North Carolina, and
8 Kentucky, we don't have that kind of utility tax.

9 So, I'd really like to see that go away.

10 Speaking of taxes, as you did, we pay over
11 \$12 million in local property taxes in
12 Steuben County, which, obviously, being the largest
13 industry in the area is appropriate, but one of the
14 frustrating things is all the levels of government;
15 and, again, a lot of the regulations that you refer
16 to.

17 Just simple things like, you know,
18 multi-jurisdictional tax bills, you know, can't we
19 have one tax bill?

20 And the layers of government in
21 Steuben County; we have 22 different school
22 districts, as well as all the communities that you
23 deal with, villages, cities, towns, counties.

24 Again, if you compare us to Virginia,
25 North Carolina, and Kentucky, most of those have

1 only one or two. Generally, the county oftentimes
2 runs the school district, and, you know, many of
3 the, like, water, sewer; all those kinds of things.

4 So, I know this governmental structure goes
5 way back, but, anything you can do to kind of
6 consolidate would be greatly appreciated.

7 Another one that I know your House has done a
8 great job on, but we really want to see, because
9 it's driving our insurance rates up tremendously, is
10 repeal of the Scaffold Law.

11 I think -- I don't have to explain it to you,
12 you understand it, but it is a big liability for
13 something that we shouldn't have to bear
14 responsibility for.

15 You know, we're a telecommunications company.

16 There's a nice little write-up, actually;
17 we're in, really, four major business areas, but one
18 thing we want to make sure is, that there's not any
19 new regulations, because there's already a lot of
20 regulations over the Internet usage and rates, and
21 terms and conditions of services.

22 Right now, the way New York does it, and we
23 think it works pretty well, is through the
24 Public Service Commission.

25 We don't need more regulations imposed by the

1 Legislature.

2 You know, again, another one that I think
3 your House has worked on repealing is the
4 annual-notice requirement called "The Wage Theft
5 Prevention Act."

6 That's very burdensome for somebody that's
7 got 6,000 employees, that we've got to send every
8 single one an official notice, and have to have it
9 signed, sealed, notarized, and back in their file
10 every year.

11 I mean, it seems kind of ridiculous, frankly.

12 You know, another one is prevailing-wage
13 determinations.

14 Up here it's really important, that if they
15 do prevailing wage, that it reflect regional, you
16 know, differences. I mean, the wages here,
17 obviously, are nothing compared, you know, to
18 New York City and larger metropolitan areas.

19 And there clearly is an emphasis, in recent
20 years, about expanding the definition of
21 public-works and prevailing-wage mandates.

22 And while that doesn't impact Corning, the
23 wages we pay our employees, it certainly does with a
24 lot of contract services; for example, you know,
25 landscaping, janitorial, those kinds of security

1 services that are contracted out.

2 And then, lastly, kind of in the
3 environmental area, there's lots of regulations.

4 Just deal with DEC, and you'll find out, of
5 that 22,000 miles, I don't know how much -- or,
6 22 miles, I don't know how much they have, but they
7 have a lot of regulations.

8 But some of the ones that are difficult is,
9 first of all, you know, again, compared to other
10 states, the SEQR, and I don't have to tell you how
11 long and involved the SEQR process is.

12 I mean, we just built the new plant here, and
13 the SEQR process takes, like, four months before you
14 can even do anything. And that was to, you know,
15 add to -- 250 jobs to our already 500 employees at
16 our diesel manufacturing.

17 But -- and then the other thing that's really
18 difficult about SEQR, besides all that you're
19 required to do, is the fact that people can,
20 basically, file objections, and just from the public
21 at large, and they don't really have any personal
22 injury, or anything, that they're actually losing.

23 And what happens a lot of times, it just
24 becomes a cause. They're against, you know, a new
25 facility in their neighborhood or backyard, or

1 whatever.

2 Another one is Article 10.

3 I know you've done a fair amount in terms of
4 that, but, again, you know, when it makes a lot of
5 sense, fast-tracking that process that meets certain
6 environmental criteria, like, things like pollution
7 reduction and economic development, expansions, it
8 just seems like those drag on and on and on.

9 And then, you know, all the monitoring that
10 DEC does with air permits and water quality and --
11 you know, again, we abide by all of that, but -- and
12 always will, but, you know, they're onerous
13 regulations.

14 So -- and, if you want, I can send you some
15 of those details from some our environmental people.

16 But, again, I appreciate the opportunity to
17 make some comments, and anything you can do would be
18 greatly appreciated.

19 And this is certainly important, and
20 I commend you for trying to get rid of some of these
21 regulations, because my belief is, what happens,
22 over time, they just add and add and add and add,
23 and they never delete.

24 Right?

25 SENATOR MARCHIONE: That's true.

1 G. THOMAS TRANTER: So, thank you very much.

2 SENATOR GALLIVAN: That's exactly it.

3 Well, thank you.

4 You would be interested to know, there are
5 over 140,000 pages of rules and regulations.

6 The department that has the most, is the DEC;
7 24,698 pages, believe it or not.

8 G. THOMAS TRANTER: I rest my case.

9 SENATOR GALLIVAN: We would appreciate, if
10 you are able to put together some of the specifics
11 that you mentioned --

12 G. THOMAS TRANTER: Okay. Yep, no, I can do
13 that.

14 SENATOR GALLIVAN: -- so we can take a look
15 at some of the specific regulations, that would be
16 appreciative.

17 G. THOMAS TRANTER: Yep, I'll be glad to do
18 that.

19 SENATOR GALLIVAN: And then we can --

20 G. THOMAS TRANTER: It will be our
21 environmental people, but I'll transmit it to you.

22 SENATOR GALLIVAN: No, that's fine. No, that
23 would be good.

24 Scaffold Law has come up -- well, much of
25 what you have spoken about has come up in the

1 different industries that we're dealing with.

2 Scaffold Law, yesterday, we were in New York,
3 our hearing was about four hours: insurance and
4 banking, financial services.

5 About two hours was spent on the
6 Scaffold Law.

7 And, we're somewhat optimistic. We have
8 legislation that we have tried to advance.

9 G. THOMAS TRANTER: Right, and you passed it
10 in your House; right?

11 SENATOR GALLIVAN: We haven't yet, but it
12 really wouldn't have mattered, because the Assembly
13 wouldn't do anything about it.

14 But, we are now trying to work with the
15 Governor's Office, and, we're somewhat optimistic
16 that we may be able to have some action on it.

17 G. THOMAS TRANTER: That would be great.

18 SENATOR GALLIVAN: But, I mean, we will
19 continue, so we appreciate that it keeps coming up
20 in testimony, so we can use it, obviously, when we
21 make our recommendations.

22 But I appreciate your testimony.

23 I don't have any questions.

24 I don't know if --

25 SENATOR MARCHIONE: I do, if you don't mind.

1 G. THOMAS TRANTER: Yep.

2 SENATOR MARCHIONE: And just to add to the
3 Scaffold Law a little bit, I mean, yesterday we
4 heard from the insurance companies, that it's
5 getting so bad out there, that there's "a company"
6 who's writing.

7 And for the insurance aspect of this, it's
8 10 times more costly than it used to be 2 years ago.

9 G. THOMAS TRANTER: Right.

10 SENATOR MARCHIONE: So it's very serious.

11 We hear what you're saying, but we appreciate
12 that we're hearing it from all different industries:
13 construction; now manufacturing, and insurance and
14 banking.

15 But I have just a couple of questions on the
16 DEC regulations.

17 Do you find in your business that EPA -- the
18 federal EPA regulations and the DEC regulations, are
19 you finding them duplicative?

20 Are you --

21 G. THOMAS TRANTER: I would say there's times
22 that they are. Generally, though, we deal more with
23 DEC than EPA.

24 We also, though, you know, and to add to what
25 you're saying, we also deal with Army Corps; and,

1 so, there's really the three, kind of, regulatory
2 agencies.

3 SENATOR MARCHIONE: To add to the request
4 from Senator Gallivan, if you have duplicative
5 regulations you're dealing with, could you list
6 those as well, so we would know.

7 G. THOMAS TRANTER: Sure.

8 SENATOR MARCHIONE: Perhaps we could get rid
9 of some of ours if EPA has them.

10 SENATOR GALLIVAN: Yes, and as long as you're
11 tasking your environmental people --

12 [Laughter.]

13 SENATOR GALLIVAN: -- I know the SEQR
14 process, they have a new form?

15 G. THOMAS TRANTER: Right.

16 SENATOR GALLIVAN: And we've heard about some
17 of the questions that are on there, that don't seem
18 to make any sense, that are highly technical, and
19 don't seem to serve a purpose.

20 G. THOMAS TRANTER: Comment on them?

21 SENATOR GALLIVAN: So, if your environmental
22 people are able to comment on that, that would be
23 appreciative as well.

24 G. THOMAS TRANTER: Yep, okay.

25 SENATOR GALLIVAN: And, right directly behind

1 you, the good-looking guy with the glasses, can give
2 you an e-mail address, that --

3 G. THOMAS TRANTER: Okay.

4 SENATOR GALLIVAN: -- yeah, right in the
5 very back, he can give you an e-mail address.

6 SENATOR O'MARA: He did say "good-looking,"
7 but, the guy with the glasses.

8 SENATOR GALLIVAN: All the good-looking guys
9 with the glasses, but, the one in the back.

10 SENATOR O'MARA: Tom, thank you for being
11 here.

12 And I certainly want to thank
13 Corning, Incorporated, for its commitment to the
14 Southern Tier; being their largest employer in the
15 Southern Tier, and committing to expand
16 manufacturing into the Southern Tier, with your
17 heavy-duty diesel plant, where you chose Irwin to
18 expand that as opposed to going to Asia.

19 We're certainly very proud to have you as our
20 number one employer in the region, and thank you for
21 your participation today.

22 G. THOMAS TRANTER: Glad to help.

23 Good luck.

24 SENATOR GALLIVAN: Thanks again.

25 SENATOR MARCHIONE: Thanks.

1 SENATOR GALLIVAN: Our next speaker is
2 William Wolfram, board chair of the New York State
3 Chemical Alliance.

4 Oh, hi there.

5 And did I pronounce your name correctly?

6 WILLIAM WOLFRAM: That's fine.

7 SENATOR GALLIVAN: And, Margaret Gorman, who
8 is also with the -- or, who is with the
9 American Chemistry Council.

10 Thanks, both of you, for being here.

11 MARGARET GORMAN: Thank you.

12 Good afternoon, Senators O'Mara, Gallivan,
13 and Marchione.

14 My name is Margaret Gorman, and I'm manager
15 of state affairs for the northeast region for the
16 American Chemistry Council.

17 We're a national trade association based in
18 Washington, D.C., but have our regional office in
19 Albany, about -- just up the block from you.

20 We represent chemical and plastics
21 manufacturers throughout the country, throughout the
22 world.

23 We have over 80 plant sites in
24 New York State, with a huge concentration of those
25 facilities in Western New York and the

1 Hudson Valley, in the Capital Region and
2 Long Island.

3 We have sites throughout New York, but that's
4 where a major, you know, portion of our facilities
5 are.

6 In addition to that, we have about 500 plant
7 sites from customer bases that are also throughout
8 New York State.

9 Over 96 percent of all manufactured goods are
10 directly touched by the business of chemistry,
11 making the industry an essential part of every facet
12 in our nation's economy.

13 Chemistry provides significant economic
14 benefits in every state, including New York.

15 Thanks to chemistry, our lives are healthier,
16 safer, more sustainable, and more productive than
17 ever before.

18 For every job created by the chemistry
19 industry in New York, an average additional two jobs
20 are created in dependent industries, including
21 mining and utilities, construction, health care,
22 manufacturing.

23 We directly employ over 40,000 jobs in
24 New York State, and indirectly support another
25 88,000 jobs.

1 The average wage of a chemistry-industry
2 employee in New York is approximately \$74,000, and
3 then the industry directly generates over
4 350 million in state and local taxes, and another
5 700 million in federal taxes, supporting the needs
6 of New York and its residents.

7 I know a few of you have been to our sites
8 throughout New York.

9 And one thing that I've noticed, as I've
10 traveled and visited those sites, is just the
11 longevity of the employees there.

12 I've met some people that have been there
13 35, 40 years. They started in the industry, you
14 know, that's the first job out of school, their
15 first job, and that's where they're going to end.

16 So, they're really dedicated to staying in
17 the industry; they're loyal in staying in New York.

18 Chemistry creates fertilizers that enable an
19 abundant food supply; plastic packaging, in
20 Canandaigua, New York, for example, that help to
21 preserve healthy food shipped from New York farms
22 and factories to homes across the country.

23 Chemistry creates solutions that help local
24 food producers purify water, and sanitize meat and
25 poultry, to reduce food-bourne illness.

1 Many lithium-ion and lithium-polymer
2 batteries, for example, are made in New York and
3 employ chemistry to create rechargeable batteries
4 for consumer and military applications, including
5 laptops, cameras, mobile phones, communication
6 devices, and GPS systems.

7 Chemistry's essential to our everyday lives.

8 The business of chemistry transforms the
9 natural raw materials of the earth, sea, and air
10 into products that we use every day.

11 The business of chemistry drives innovation
12 and creates jobs and economic growth by creating
13 products that bring major societal benefits to our
14 quality of life.

15 Our industry represents 9 percent of total
16 New York manufacturing and employment in New York,
17 and 24 percent of overall manufacturing shipments.

18 Innovative and dynamic industries work,
19 creating jobs, and help with our economic growth in
20 New York.

21 Today, in 2013, New York is now ranked at the
22 seventh largest chemistry producer in New York
23 State.

24 It was the fifth.

25 Notice I said "was"?

1 I was curious to see, when we were the fifth,
2 so I did a little research and noticed that was this
3 time, last year.

4 It is now outranked by North Carolina that
5 has surpassed New York, and North Carolina is now
6 the third largest chemistry producer in the
7 United States.

8 Comparing 2006 to 2011, latest available
9 data, shipments in New York have declined
10 27 percent; from 41 billion, to 30 billion.

11 In North Carolina, they have risen
12 43 percent; from 39 billion, to 56 billion.

13 And you've all made some, you know, great
14 points about New York being at the bottom of the
15 tier in best places to do business in the country.

16 I did a little, you know, side-by-side on
17 North Carolina, because they have similar jobs
18 that -- you know, similar amount of jobs in the
19 state, although they're a little bit more revenue,
20 but it's pretty similar on those statistics.

21 North Carolina on that ranking is the third
22 best place to do business in the country, compared
23 to New York's 50.

24 So I think that's a good way to kind of look
25 at, you know, you've got opportunities. You've also

1 got, you know, as you said, there's burdensome, you
2 know, tax issues here as well, overregulation, etc.

3 So I think that's a really good way to look
4 at that, and that state is just soaring, soaring
5 past New York.

6 I know you've mentioned, you know, and we
7 commend you for going across the state and
8 collecting regulations, and you're going to hear
9 more from William today, on specific regulations
10 that are impacting our industry.

11 But, it's also important to note that, in
12 addition to those that are out there, there's also
13 those that can be prevented.

14 And so many times you've seen in legislation,
15 that there's sections in the legislation that allows
16 DEC, for example, to promulgate rules and
17 regulations that would be in an additional burden,
18 for example, on the industry.

19 We have one that is going to come up during
20 session, and it's a bill that we -- is one of our
21 key issues; and that's Senate Bill 4614 and
22 Assembly Bill 6328.

23 It would, essentially, create a state
24 chemical regulatory program, with the ultimate
25 intent of allowing an estate, through a

1 chemical-prioritization process, to target specific
2 chemicals for bans in consumer products.

3 ACC opposes the legislation, for the primary
4 reason it is predicated on the assumption there's
5 inadequate protection for consumers and children in
6 the marketplace.

7 The justification used for pushing this
8 regulation at the state level, is the current
9 federal regulatory system for chemicals is broken;
10 and, therefore, states have to step in.

11 We strongly disagree.

12 The legislation is already being addressed by
13 EPA and does not need to be addressed by DEC.

14 S4614 does not acknowledge the broad safety
15 net of existing federal consumer-protection and
16 chemical-regulation laws.

17 Over 14 different federal statutes play a
18 role in regulating chemical use in consumer
19 products.

20 The issues in this legislation are being
21 addressed by EPA today, and reporting information
22 about chemicals, prioritization of chemicals,
23 assessment of chemicals, and regulation of chemicals
24 are all things that EPA is already looking at.

25 And I can -- you know, we can follow up and

1 provide you a real detailed list on what -- what
2 they're specifically looking at.

3 Here's one example:

4 The chemical-data reporting rule, in February
5 of this year, EPA released information it had
6 collected from chemical manufacturers last year
7 about their uses of chemicals; industrial uses,
8 commercial uses, consumer-product uses, for example.

9 In February, EPA then established
10 83 work-plan chemicals for review and assessment,
11 and regulation where warranted.

12 So my point in this is that, you know, this
13 legislation, for example, would require DEC to
14 create another list of chemicals; just creating an
15 additional reporting requirement for businesses in
16 New York State.

17 And William's gonna touch base on that as
18 well, and just the general impact that that would
19 have.

20 And, New York being an outlier in the country
21 on that, a state like North Carolina does not have
22 this; does not require this.

23 So in looking at those two states, what would
24 prevent, you know, a business, and all these
25 different requirements, from just moving out?

1 The piecemeal review of a few chemicals a
2 year will do nothing to enhance the safety of
3 New York residents, nor will it provide any
4 certainty to New York chemistry businesses that will
5 never be certain when their products will come under
6 state regulatory scrutiny.

7 On behalf of ACC, we would ask you, during
8 session, not to support this legislation, going
9 forward.

10 In addition to that legislation, we also
11 have, there's other product-ban legislation that
12 we're always seeing in New York State, but for the
13 purposes of this forum, this is a key one, because
14 it -- it does promulgate additional rules and
15 regulations.

16 One -- another particular area that we are
17 supportive of, that doesn't have any regulation yet,
18 is the access to natural gas.

19 Access to vast new supplies of American
20 natural gas from shale deposits is one of the most
21 exciting domestic energy development in decades;
22 particularly for the business of chemistry.

23 Our industry actually relies on affordable
24 natural gas as a source of energy, as a raw material
25 or a feed stock for countless chemical products.

1 The low price of natural gas, that gives
2 U.S. manufacturers an advantage over competitors
3 that relied on more expensive oil-based feed stock.

4 And William has, you know, just from 2010
5 till now, the price in natural gas has decreased due
6 to that.

7 The business of chemistry is at the heart of
8 manufacturing.

9 Access to shale gas is dramatically boosting
10 America's competitiveness, and can help meet our
11 nation's goals for increased exports and new jobs.

12 State oversight of hydraulic fracturing is
13 appropriate, since state governments have the
14 knowledge to oversee the process in their
15 jurisdictions.

16 So on behalf of ACC, I appreciate you giving
17 me the opportunity to present, and we look forward
18 to working with you throughout session.

19 And at this point, William Wolfram, who is
20 the chairman of the board of the New York State
21 Chemical Alliance, and a member, also, of the
22 American Chemistry Council, he's director of global
23 regulatory affairs for SI Group, is going to speak
24 on the company perspective.

25 WILLIAM WOLFRAM: Thank you, Senators.

1 I really appreciate the opportunity to
2 address you today.

3 SI Group is a family-owned and privately held
4 global chemical company.

5 We have 19 manufacturing locations in
6 10 countries.

7 We are headquartered in Schenectady,
8 New York.

9 We employ 350 people in New York State,
10 600 nationally, and about 2,000 worldwide.

11 So, all told, we're about a
12 billion-and-a-half-dollar enterprise, in terms of
13 turnover.

14 We've been in -- we were founded in
15 Schenectady, back in 1906, so, we're over 106 years
16 old.

17 And, our company, through its payroll,
18 contributes about \$45 million annually to
19 New York State, to the economy, and an additional
20 \$110 million through the purchase of goods and
21 services as a consumer of articles and feed stocks
22 in New York State.

23 Our production: We have our headquarters in
24 Schenectady and a production facility in
25 Rotterdam Junction, New York.

1 The production facility employs 200 people.

2 And in 2012, we produced about 440,000 metric
3 tons of high-value chemical intermediates. That
4 equates about to about 97 million pounds, if that's
5 an easier number.

6 But, mainly for the rubber-coatings and
7 adhesives industry, and about a quarter of these
8 products are actually imported to other regions of
9 the world, and even China.

10 So, we're probably one of the few sectors
11 that actually exports our products to China instead
12 of, let's say, getting products from China.

13 As far as our company is concerned, we are an
14 ACC member.

15 We're also, as an ACC member, a
16 responsible-care company, so we really have a
17 comprehensive environmental, health, and safety,
18 security -- safety and security management system.

19 So I think that's really important to
20 mention, because I think the business of chemistry
21 has really come to the realization that we,
22 ourselves, have to become a lot more transparent, as
23 far as communicating to other, you know,
24 stakeholders in the value chain.

25 And I think ACC has done a great job really

1 promoting the product-stewardship aspects.

2 And, basically, this comes along with
3 membership, so you can't be an ACC member and not be
4 a responsible-care company.

5 So, these two things go hand in hand.

6 I just wanted to, perhaps, just say a few
7 words about the things that Margaret's already
8 mentioned.

9 But, obviously, one of the hugest, or most
10 critical, issues for the chemical industry in
11 New York State, and certainly nationally, is
12 regulatory certainty and a level playing field.

13 Even a -- let's say, a relatively small
14 company like we are, we're about in the top 150 of
15 chemical companies in the United States.

16 We do business in 32 of the 50 U.S. states,
17 and we could really imagine nothing worse than a
18 patchwork of disparate chemical regulations that
19 would, basically, be very disruptive of commerce.

20 And, again, these specific state-by-state
21 actions, and, you know, without being insulting to
22 any particular group, many times, they don't seem to
23 be particularly well-informed, and they're based on
24 various regulatory lists, which are candidate lists.
25 There's no real objective evidence or any specific

1 ties to a positive environmental or human-health
2 outcome to a lot of these programs.

3 Obviously, they're very impactful, because
4 there is a strong emotional appeal to many
5 stakeholder groups, so we don't want to discount
6 that.

7 But, certainly, we would certainly concur
8 with ACC that the best solution for the U.S. is a
9 strong national chemical-control scheme based on the
10 Lautenberg-Vitter Bill; U.S. Senate Bill S1009.

11 And, certainly, this offers the best
12 opportunity for chemical regulatory certainty; an
13 assessment that's based on a risk-based assessment
14 that's really founded in sound science and a
15 balanced weight-of-evidence approach, which we feel
16 is crucial.

17 The Lautenberg-Vitter Bill has many, really,
18 what we think are good attributes. I think industry
19 has kind of -- this has kind of been -- the nickname
20 has been, like, it's the "industry bill."

21 But in our view, it's really a balanced bill
22 that protects all the stakeholders in the supply
23 chain, and certainly allows U.S. chemical industry
24 to be sustainable while protecting human health and
25 the environment.

1 And, again, it's -- we agree 100 percent that
2 this is probably the best opportunity for
3 TSCA reform that's been presented in the past
4 decade, and may, in fact, be the last opportunity,
5 you know, if these basic principles are not upheld.

6 But the basic -- some of the big issues for
7 the chemical industry, is that the safety standard
8 in the Vitter-Lautenberg Bill really is a standard
9 that assures no unreasonable harm to human health or
10 the environment from exposure to a chemical
11 substance in its intended use.

12 In other words, there are many, many things
13 that have intrinsic hazards. You know, even pure
14 water has an intrinsic hazard that can't be denied.

15 But it's really the safe-use standard that's
16 really critical to chemistry.

17 And, also, the ability of, let's say, the
18 regulatory community, if they adopt this bill, to
19 give regulatory certainty.

20 In other words, is this an absolute safety
21 standard? And you're either a high-priority
22 substance or you're a low-priority substance.

23 So, in the past, there's always been this
24 kind of changing landscape.

25 There's been, EPA has promulgated a chemical

1 action plan; then a work-plan chemical program.

2 None of these things seem to fit together in
3 any cohesive way or coherent way that describes a
4 program that would actually prioritize and make
5 these safety determinations.

6 I mean, obviously, they're trying, but we
7 think the Lautenberg-Vitter Bill certainly has as
8 many advantages to facilitate that process.

9 Again, I wanted to just switch gears a little
10 bit and talk about energy utilization in the
11 chemical industry, and this goes back to the
12 development of shale gas.

13 Our plant in Rotterdam Junction, New York, in
14 recent years, it's basically the -- we're very happy
15 and grateful for this, that our natural gas bill is
16 actually coming down.

17 Back in the early 2010s; 2010, 2011, we were
18 paying about \$5 million annually in natural gas; and
19 that annual natural gas bill now has come down to
20 about \$3 1/2 million, due to the development or the
21 plentiful supply of shale gas.

22 And so what this means, in real numbers:

23 Back in 2010, we were paying about \$9.35 a
24 dekatherm, and that has steadily decreased to
25 \$9.15 in 2011, \$8.61 in 2012, and this year it's

1 \$6.68, per dekatherm.

2 And this is hugely important for us.

3 And not only the market price, but,
4 certainly, in the history of natural gas, and
5 I guess you could say probably the oil industry as
6 well, there have been huge swings in natural gas
7 prices.

8 Back in 2006 and 2008, where there was a lot
9 of speculation in the market, that natural gas price
10 was almost double, and sometimes triple, that price;
11 so it went up to over, like, over \$13 a dekatherm
12 for an extended period.

13 So with the availability now of natural gas,
14 the trend line for natural gas prices has smoothed
15 out.

16 In other words, the -- I guess the drivers
17 that people would be able to, let's say, use
18 potential shortages, or other, let's say, global
19 political factors, to say natural gas would be short
20 in supply, is now gone.

21 So that's -- it's the trend line is now much
22 smoother than it was, so this, again, allows people
23 to plan, allows for more certainty.

24 I think it's all -- it's -- there are some --
25 certainly, shale-gas development, I mean, none of

1 these positive benefits have yet been realized in
2 New York.

3 And I think we've -- in terms of the chemical
4 industry, another big source of interest and
5 innovation for us, is the fact that there have been
6 a number of world-scale chemical feed-stock
7 facilities that are now planned in the
8 United States, and they're being planned in places
9 like West Virginia, Pennsylvania, and Ohio.

10 They're certainly not being planned in
11 New York State.

12 And these are going to bring, let's say, a
13 very high, not only jobs, but the raw material, the
14 supply -- the ready supply of reasonably-priced raw
15 material, is a magnet for other chemical industries.

16 And so, right now, the natural gas price in
17 the United States is really half to one-third that
18 of the natural gas price in Europe and Asia, and
19 this gives the U.S. chemical industry a huge
20 competitive advantage, especially in, let's say,
21 high-energy industries.

22 To balance that, there's, also, the market is
23 now shifting, since we have this abundance, to
24 actually produce liquid natural gas -- well, gas
25 liquefaction facilities that will allow the U.S. to

1 export liquid natural gas to other countries.

2 And, again, this is an area that we watch --
3 or, intend to watch very closely. This is supposed
4 to, basically, come to fruition in the 2016-2017
5 timescale, which could, again -- certainly, the
6 drivers are all economic because, if natural gas
7 prices are much higher in Europe and Asia, they'd
8 certainly pay a lot more than they would pay in the
9 U.S. to get that gas, which would then raise -- have
10 an effect on domestic prices.

11 So this is another reason why, you know, a
12 balanced program for safe natural gas development
13 would be important for New York State, potentially,
14 to counterbalance some of those future price swings
15 if -- I don't know if it's -- it's probably not good
16 even to say "if" -- when this will happen, because,
17 obviously, people will want to harvest these profits
18 during -- by exporting natural gas.

19 I'd like to switch now, and maybe give you
20 some more specific examples; and I'd like to discuss
21 the impact of the regulatory environment in New York
22 on an upstate company headquartered in Schenectady,
23 New York, who shall remain nameless.

24 But, basically, our company submitted a -- we
25 submitted a Title V air permit, that was granted in

1 2001.

2 And Title V air permits get renewed every
3 five years, so, 2006 was a normal renewal date.

4 And we submitted our renewal several months
5 ahead of the deadline, but since that time,
6 actually, there have been a number of mitigating
7 circumstances, but the bottom line is, is that it's
8 now been 12 years, and we're still on that
9 2001 Title V permit; 12 years later.

10 SENATOR GALLIVAN: If I can interrupt; so the
11 2006 permit application, the State hasn't responded
12 to yet, or granted or denied?

13 WILLIAM WOLFRAM: That's correct.

14 Actually, that's a part of the story.

15 The original permit adviser, apparently,
16 retired in 2010.

17 And, basically, we did submit a renewal
18 application in 2006, and this was held by DEC for,
19 basically, 5 years without significant action.

20 But, basically, the new permit adviser came
21 on board -- there was a transition period. He came
22 on board, basically, in 2006, and, basically, threw
23 out the 2006 permit application, because it no
24 longer reflected the conditions on the plant, even
25 though it was the standard.

1 In other words, the legal requirements,
2 compliance requirements, were still the 2001 permit,
3 which, to my knowledge, is the way it is today.

4 So, we submitted a new permit application,
5 basically, in April of 2012. That's within a month
6 or so, a year and a half ago, and we have yet to see
7 any action on DEC.

8 So, the draft version of our permit has not
9 been accepted and not been offered for public
10 comment.

11 So, basically, the only approved document
12 that we have for our Title V permit is now,
13 essentially, a decade old.

14 And, you know, part of the -- you know,
15 getting back to the uncertainty aspect of this,
16 I mean, we're very concerned, number one, that the
17 regulations are changing all the time.

18 There's a Part 212 regulation that we hope
19 not to be caught by in this, because you're really
20 only subject to those regulations at the time of
21 permit renewal.

22 So we're still in the renewal phase, so if we
23 don't get this going, we may actually be subject to
24 additional regulations that we would not have been
25 subjected to if our permit had been approved

1 earlier.

2 So -- I mean, eventually, these regulations
3 do catch up with you at the time of permit renewal.

4 And, again, I'm not suggesting to you that
5 there are any bad actors here, but what we can say,
6 is that there is a lack of transparency in the
7 permitting process; that it's -- we hear this over
8 and over again, that the permitting process takes
9 inordinately long.

10 And in our case, really long.

11 That there could be an improved process that
12 would aid all the stakeholders: the regulators, the
13 regulated community, and the environment, we think.

14 So -- and just to answer one of the prior
15 questions, I mean, many of the DEC regulations,
16 obviously, are based on federal regulations that
17 DEC is now empowered to promulgate, by EPA.

18 So, I mean, the fact that Title V is
19 certainly a federal EPA program, but the states,
20 typically, are in the business of implementing
21 those; but what they can control, or have more
22 control over, is the permitting process for these
23 things.

24 So, I think that that's one example.

25 Another example, and this is not really --

1 we're still working on this: We had a -- basically,
2 a chemical waste stream that was solvents that were
3 used in our process, that we actually could sell.
4 We had a buyer who had already evaluated our
5 material, and would be using this as a carbon source
6 for steel-making, because steel requires, if you're
7 making carbon steel, you have to put in a certain
8 amount of carbon as an alloying agent to produce the
9 steel of a desired quality.

10 But we've tried, on several occasions, to get
11 DEC to approve this, and we're not done with this
12 yet, but this has caused us, basically, to have to,
13 essentially, dispose of this solvent, thousands of
14 gallons of the solvent, as a hazardous waste, to
15 have it burned -- to pay to have it burned, instead
16 of being allowed to use it for a -- let's say, a
17 constructive purpose.

18 So these are other issues that we think,
19 perhaps, there's still some room to, basically,
20 recycle and repurpose some of these raw-material
21 streams.

22 And, obviously, a company like we are,
23 there's very little -- I mean, we're -- waste
24 minimization is a full-time job. I mean, we have a
25 whole team of engineers that do nothing but process

1 improvement and waste minimization.

2 So, I think that's an area that we could
3 maybe ask for a little more cooperation in.

4 The last thing I'll talk about is just the
5 DEC's environmental self-audit policy, and DEC has
6 been very transparent about this. They've actually
7 announced this policy over a year ago.

8 We understand that DEC intends to post a
9 finalized policy in the coming weeks.

10 We applaud that.

11 The only thing that we still have some issues
12 with, is that -- is how the policy would be
13 utilized, and its usefulness to New York State
14 chemical industry.

15 So I've listed here a number of -- actually,
16 several pages of analysis of this law, but,
17 basically, it talks about a self-reporting of
18 violations.

19 The only caveat is, that if you have a
20 previous consent decree, or you've had an issue -- a
21 compliance issue with this, you're barred from
22 applying for this.

23 And this is, of course, to prevent, let's
24 say, quote/unquote, repeat offenders from utilizing
25 this law to escape permit violations.

1 But the other side of that coin, is that it's
2 written so strictly, that, really, the only time
3 that it could be used, would be, let's say, if you
4 had no egregious violations in the past at all, or,
5 if you just purchased a new chemical facility and
6 there were some unknown issues that you were unaware
7 of, or, you were in a -- let's say, a regulated
8 entity, like a hospital, or something like that, and
9 you may have disposed of a waste improperly, you're
10 not, let's say, really a chemical facility, but you
11 may not have been up on the most current
12 regulations.

13 But since we're here to talk -- or at least
14 we are, about the chemical industry, there's really
15 a very narrow window of opportunity for a chemical
16 industry to actually use this bill.

17 And, again, DEC has a lot of stakeholders
18 involved, and it's pretty obvious that it's not a
19 "Get Out of Jail Free card."

20 That's kind of what some of the NGOs have
21 called it if they were to relax some of these
22 things.

23 But, I think DEC is very interested, not only
24 in compliance; they use the term "beyond
25 compliance."

1 But I think, if there was a more, let's say,
2 rational program, that you, basically, didn't have
3 to, you know, commit hari-kari by submitting these
4 self-audit documents, that there could be some room
5 for improvement.

6 Also, one of the biggest things is, that this
7 is a New York State program, and nowhere in this
8 program does it give you immunity from EPA.

9 So if you, basically, spill your guts and
10 say, "I've done this, please forgive me DEC," EPA
11 could, basically, unload the ton of bricks on you,
12 even though you've, let's say, disclosed this under
13 this program.

14 So there's no immunity from EPA prosecuting
15 you, should you divulge this.

16 So it's really an atmosphere, where, you
17 know, it's nice on paper, but how do you use it?

18 But, there are certainly a number of issues
19 that are certainly pending; for example, the
20 Part 212 imposed modifications to the air rule.

21 And these are still under study, so, I guess,
22 they're not fully vetted, but, obviously, there's
23 the constant trend of reducing emissions.

24 And that's all well and good, but, you know,
25 sometimes the -- some of the emission-reduction

1 goals are, more or less, just put out there, you
2 know, a tenfold reduction, for example, and then
3 you're left to figure out, Well, how the heck are we
4 gonna -- how do we get there? Is it even possible
5 to get there? And what's it going to cost us to get
6 there?

7 So, again, we haven't finished our analysis
8 of that, but some of these things, obviously, are
9 laudable goals, but getting there, sometimes, is not
10 going to be easy for the industry.

11 So thank you very much for your time, and
12 I really appreciate the opportunity.

13 SENATOR GALLIVAN: Any questions?

14 Just a minute.

15 SENATOR MARCHIONE: Go ahead. I'm just going
16 to look, if you don't mind?

17 SENATOR GALLIVAN: I'm interested in the
18 Senate Bill S4614, but for sake of today's time, and
19 my lack of understanding right now with more
20 research, you indicated that you were going to be
21 following up, your association, with submitting
22 things, I'm assuming, to all the members of the
23 Legislature.

24 MARGARET GORMAN: Yes, we are.

25 SENATOR GALLIVAN: So we'd be very interested

1 in that.

2 And that, of course, is something that we'll
3 be dealing with in the regular legislative session.

4 MARGARET GORMAN: I anticipate that,
5 definitely.

6 SENATOR GALLIVAN: So I'll hold off on
7 questions --

8 MARGARET GORMAN: Okay.

9 Well, we can follow up with individual
10 meetings.

11 SENATOR GALLIVAN: -- until we get that in,
12 and your points.

13 Okay.

14 MARGARET GORMAN: Sure.

15 SENATOR GALLIVAN: Thank you.

16 And that was all I had.

17 SENATOR MARCHIONE: Yeah, I think I'm okay as
18 well.

19 You know, we've heard -- we hear a lot, you
20 know, "do no harm," you know, and we're hearing that
21 from you. We heard it from our first speaker.

22 And it's a trend that we are hearing.

23 Also, also I am hearing from other
24 manufacturers that I visited personally, about your
25 workforce, and how the workforce in manufacturing

1 plants, such as yours, is very stable. And even
2 when there is a downturn, there's not an influx or,
3 you know, a reduction in your workforce.

4 So these are jobs that New York needs to be
5 very concerned about, and, certainly, ones that we
6 want to keep.

7 So thank you for your testimony.

8 Are we going to get a copy -- can we have a
9 copy of your testimony?

10 SENATOR GALLIVAN: Do we have a copy of that?

11 Oh, we don't?

12 MARGARET GORMAN: I have copies I can give
13 you.

14 SENATOR GALLIVAN: Okay, great. Thank you.

15 MARGARET GORMAN: Thank you.

16 SENATOR GALLIVAN: Our next speaker is
17 Mark Johnson from Pepsi Cola Bottling, and the
18 New York State's Bottlers Association.

19 And as Mark is making his way up, I would
20 also like to note that Jessica Jones, from
21 Senator Cathy Young's office, is also represented
22 today -- or, is here today representing the Senator.

23 Thanks for being here.

24 We can get this figured out, thanks.

25 When you are ready, Mr. Johnson.

1 Thanks for being here.

2 MARK JOHNSON: Well, thank you,
3 Senators Gallivan, O'Mara, and Marchione, for seeing
4 me, and hearing me.

5 My name is Mark Johnson, and I'm the
6 vice president of finance for both Pepsi Cola and
7 Canada Dry Bottling Companies of New York.

8 We manufacture and distribute mostly PepsiCo
9 and Dr. Pepper Snapple Group products, including
10 soft-drink brands such as Pepsi, Canada Dry, and
11 Schwepps.

12 We also distribute non-carbonated beverages,
13 like Gatorade Sports Drink, Evian, and Aquafina
14 water to the five boroughs in New York City,
15 Westchester, Suffolk, and Nassau counties.

16 Pepsi operates two bottling plants, and
17 half a dozen of distribution warehouses in the
18 New York market.

19 We're part of a group of bottlers owned by
20 the Honickman family. They are one of the largest
21 privately held bottlers in the United States.

22 And since we cover densely populated areas
23 with many individual retailers, we sell our
24 beverages primarily through independent distributors
25 who have long-term relationships with their

1 customers.

2 We also utilize company employees to
3 distribute our Canada Dry portfolio of brands.

4 Our workforce consists of over 1,500 people.

5 As a company, we have a historic track record
6 of investing in our manufacturing and distribution
7 business, the New York economy, and the communities
8 in which we operate.

9 Manufacturing businesses like ours need your
10 assistance addressing out-of-control regulatory
11 challenges in this state so that we may continue to
12 survive and thrive in New York.

13 While you will hear from, and have heard
14 from, many of our corporate colleagues today
15 regarding a vast array of hurdles New York companies
16 face, I'm here today to provide testimony on the
17 single largest regulatory impediment to our
18 businesses, which is New York State's worker's
19 compensation system regulations; in particular,
20 scheduled loss-of-use awards. They're commonly
21 referred to as "SLUs," but I'll get back to that
22 after I provide you with some important background
23 information.

24 As you are well aware, the
25 worker's compensation program was developed to

1 provide financial support to employees who are
2 injured while working or who are prevented from
3 working because of work-related illnesses or
4 diseases, while relinquishing the employer of any
5 tort of negligence.

6 The worker's compensation system was designed
7 to provide some replacement income and cover an
8 employee's medical expenses, but it was certainly
9 never intended to give employees rich windfalls.

10 Let me be very clear: Our companies take
11 very seriously injuries that are a result of
12 employment with us, and we acknowledge and we
13 embrace our responsibility to recompense every
14 injured employee, even though it is often virtually
15 impossible to differentiate non-work-related
16 injuries from work-related injuries.

17 This is an inherent system-design weakness
18 and, essentially, tilts the scale in favor of the
19 employee.

20 For example, an employee could have injured
21 their knee, arm, hand, back, or foot participating
22 in a personal sporting activity over the weekend,
23 completely unrelated to their job; nevertheless, we
24 pay the bill.

25 We had hoped that the reforms of 2007 were

1 going to bring us some relief from the huge burden
2 of comp costs which plague New York manufacturers.

3 Instead, we were met with very unwelcomed
4 results: our comp costs skyrocketed.

5 As a reference point, here's our company's
6 scorecard, before, and after, the
7 Worker's Compensation Reform Act of 2007:

8 In 2003, we had 379 reported claims, versus
9 201 in 2012; a reduction of 47 percent.

10 We, essentially, cut the number of incidents
11 in half.

12 Our costs, however, in 2003, were
13 \$5.4 million; or an average of \$14,000 per claim.

14 In 2012, our costs are \$10.8 million; or
15 \$54,000 per claim.

16 To sum it up, we've cut our accidents in half
17 and our costs have doubled.

18 How does a company compete with those kinds
19 of costs that other employers in other states simply
20 don't have?

21 This phenomenon alone is enough to deter any
22 business from locating to New York State.

23 The economic model of New York State's
24 worker's compensation system can be broken down into
25 three categories:

1 One, indemnification of lost wages;

2 Two, reimbursement of medical and other
3 related expenses;

4 And, three, loss-of-use awards.

5 Let's discuss the indemnification of wages.

6 Currently, workers are entitled to two-thirds
7 of their weekly wage, capped at the New York State
8 average weekly wage.

9 Today, the weekly rate is \$803 not taxable;
10 or the equivalent of \$1,071 taxable wage. That's an
11 annual rate of \$55,000 per year.

12 Our average annual wage for our hourly
13 employees is around \$55,000.

14 Therein lies a very significant systemic
15 problem.

16 Assuming an injured employee earns \$1,000 per
17 week, and while not working under the comp system is
18 entitled to \$667 per week, which is two-thirds of
19 their average weekly wage, that \$667, adjusted for
20 taxes, because it's nontaxable, is really equivalent
21 to \$889 per week; or 89 percent.

22 "89 percent" of their regular earnings to
23 stay home.

24 That's a compelling incentive to stay out of
25 work, and we're seeing it.

1 Prior to the Worker's Compensation 2007
2 Reform Act, the maximum cap was \$400 per week.

3 That all changed with the 2007 Reform Act.

4 The regulations were changed to be indexed to
5 two-thirds of New York State average weekly wage,
6 which, today, is \$803.

7 So, today, on the very same employee, instead
8 of paying \$400, we are now paying \$667; a 67 percent
9 increase.

10 Our recommendation regarding the weekly rates
11 would be to either roll them back to 2007
12 pre-Reform Act rate of \$400, or extract Wall Street
13 wages from the average weekly rate calculation, but
14 something must be done to address the excessive
15 rates.

16 It puts New York companies at a severe
17 disadvantage to other states, as well as creating an
18 unintended incentive to stay out of work.

19 Now, let's transition to medical costs.

20 I'm sure you're all aware of the compounded
21 increases in medical costs over the last several
22 years.

23 We recognize our collective inability to
24 impact medical-industry cost curves; however, you do
25 have the authority to make legislation that would

1 require the most current and most evidence-based
2 medical-treatment guidelines, as opposed to relying
3 on either New York-specific or outdated practices.

4 We need to address and eliminate the wide
5 discrepancies of findings between doctors.

6 Lastly, but certainly the most important of
7 all three categories, the exponential growth of the
8 loss-of-use awards; or the "SLUs."

9 Here's how SLUs work:

10 Assume our employee that I mentioned earlier
11 had injured her arm and was out of work for
12 12 weeks, and she had surgery that cost \$25,000.

13 At this point, the company has incurred a
14 cost for lost wages of \$8,000, which is the
15 12 weeks times \$667, plus 25,000 in medical costs,
16 for a total of \$33,000.

17 Now, let's move on to post surgery and
18 rehabilitation:

19 The employee visits her doctor, and the
20 doctor makes a determination that the employee has
21 loss of use of 80 percent of that arm.

22 The company's independent medical doctor
23 examines that employee and makes a determination
24 that there is zero loss of use; completely
25 rehabilitated.

1 Lawyers for both sides negotiate and settle
2 on 40 percent.

3 Here's where the proverbial wheels come off:

4 At this point, you simply look at the
5 SLU chart. It has percentages across the top in the
6 columns, and the type of injury on the left-hand
7 side and rows, and it will show you, 124 weeks, for
8 a 40 percent loss for the arm; so the math is:

9 124 weeks times two-thirds of the employee's
10 weekly wage, which is \$667, and the SLU
11 determination totals \$82,700.

12 The company must now pay an additional SLU
13 award of \$74,000.

14 You simply take the SLU, and you subtract out
15 what you've paid for lost wages; so, the 74 plus the
16 medical.

17 So that's how it works.

18 We offer two different recommendations:

19 Eliminate the SLU concept for any no-loss
20 time or little loss-time injuries, leaving
21 exceptions in the severe instances of a lost limb or
22 injuries that were the original reason for such
23 awards;

24 Or, again, roll back the weekly
25 indemnification rates to the pre-2007 reform levels.

1 Regardless of the chosen path of SLU reform,
2 it must be acknowledged that award payouts and
3 frequencies have severely grown since the doubling
4 of the weekly benefit.

5 For effective economic development to occur,
6 these windfall award amounts must be brought back
7 down.

8 Finally, as you may be aware,
9 worker's compensation fraud is a serious problem in
10 New York.

11 New York ranks second in the nation for
12 questionable worker's compensation insurance claims,
13 according to the National Insurance Crime Bureau.

14 The analysis noted that questionable claims
15 in New York more than doubled between 2011 and 2012,
16 with 344 reported in 2012, and 161 in 2011.

17 Now, going after fraud is the correct
18 approach, and we recognize the difficulty in proving
19 fraud.

20 Believe me, we have many cameras and private
21 investigators, but, virtually, no convictions.

22 Fraud enforcement requires significant
23 resources, and, realistically, we don't expect
24 New York State to have the necessary manpower to
25 fully eliminate fraud, but this does not excuse the

1 Worker's Compensation Board, the Attorney General,
2 or the local DAs from doing their job to root out
3 and prosecute this fraud which dramatically hampers
4 the economic vitality of this state.

5 We would hope to see more teeth in
6 fraud-abuse cases.

7 In summary, we have shared our company's
8 internal information with the Worker's Compensation
9 Board to demonstrate the devastating impact
10 attributable to the rate increases from the
11 2007 Reform Act.

12 The worker's compensation system in New York
13 has been transformed into an entitled-bonus-award
14 system, leaving companies defenseless, even in the
15 face of non-work-related injuries.

16 The reduction of SLU awards and/or rates are
17 the only alternatives to the current system that
18 would promise significant cost impact.

19 Hopefully, I have provided you with some
20 insight to a critical cost that is driven by both
21 regulation and legislation that places New York
22 businesses at a severe competitive disadvantage.

23 I would welcome the opportunity to answer any
24 questions you may have regarding these important
25 issues.

1 I want to leave you with five points on this,
2 okay, five points, by lowering the rate:

3 Worker's comp, it's complex. The
4 legislation's complex. There are a lot of things
5 that you could get dragged down in the details and
6 lose the forest for the trees.

7 Just by focusing on the rate, here's what you
8 can accomplish:

9 You can protect your base businesses in
10 New York.

11 They have alternatives.

12 Relocate, I'm sure you're aware of that.

13 There's also technological innovation, which
14 is not manufactured here. It's manufactured over in
15 Europe. It exists.

16 Prior to this legislation, the advances in
17 technology, automated loading systems, versus the
18 return, we're out of whack, which is why people
19 don't invest, but now it's tilted.

20 The returns on these investments are very
21 real, so it's a risk to your base business, not
22 talking about the new business.

23 The second point: You reduce the cost
24 barrier for the new businesses, new manufacturing.

25 The third point is, you will reduce fraud,

1 guaranteed.

2 The fourth point: You will eliminate the
3 incentive for employees to stay out of work.

4 We want them back to work, but why work when
5 you're getting over 80 percent of your salary?

6 And, five: You can raise revenues for
7 New York State, because the 5 million that we paid
8 back in '03, went to 10 million.

9 That extra 5 million is not taxed.

10 We were paying taxes on it back then, and
11 New York State lost revenues on it.

12 And many companies have this issue.

13 I've been with UPS, I've been with Con Ed,
14 with Coca-Cola; these are major -- when you have a
15 manufacturing environment that requires physical
16 labor, their costs are crushing them.

17 "Crushing them."

18 And it's very difficult to fight.

19 And we understand that, but the rate, when
20 they changed the rate, the system has just exploded.

21 So, thank you for your time.

22 If you have any questions?

23

24

25

1 SENATOR MARCHIONE: No, just thank you for
2 your in-depth testimony on this problem for your
3 company.

4 We've heard worker's compensation on other
5 hearings, but never so in depth, and I appreciate
6 the testimony you've given today.

7 MARK JOHNSON: Well, thank you.

8 I just -- my hope is that, the rate --
9 everybody runs from the rate.

10 They run from it, because they try to fix
11 this or fix that; there's a lot of pieces.

12 Park that to the side, we can deal with that
13 later.

14 The rate alone can be a home run for the
15 state of New York and the companies; just the rate,
16 take it back.

17 So that's what we ask.

18 SENATOR O'MARA: I want to say thank you for
19 this very explicit outline of the impact of the
20 worker's comp reform that was done.

21 I was in the State Assembly in 2007, and
22 I was very skeptical at the time, how you could
23 raise the average weekly wage so dramatically, and
24 then, at the same time, claim you're gonna have
25 savings in the system as well.

1 And it's, politically, extremely difficult to
2 take something back once you've given it.

3 And that's -- you know, I think we probably
4 should focus on the SLU part of it, and those,
5 because I just don't know how, politically, you can
6 get over the hurdle of cutting back into something,
7 or maybe at least freezing it now, or holding it.

8 So -- but, to go back to 400, that's not a
9 political reality. Let me just be frank about that.

10 But, I think you've outlined this very well.

11 I was wondering if -- have you've gotten any
12 feedback from the Worker's Compensation Board by you
13 sharing this outline to them?

14 MARK JOHNSON: Yes, I have.

15 We met with the Office of the Governor, with
16 Alfonso David, and we were there with Con Ed and UPS
17 and some attorneys.

18 And, you know, at the end of the day, you
19 know, we relayed our concerns, and, you know, they
20 walked away with, Yeah, we can look at some
21 evidence-based things.

22 But I'm a finance guy, and I'm telling you,
23 you know, that stuff is just -- you're barely going
24 to scratch the surface on it.

25 The rate drives not only the cost, but the

1 rate drives the incentive for employees to stay out
2 of work and to do fraud.

3 That's what's going on.

4 And the promises, as you referred to,
5 I actually took that line out, when you said it is a
6 political -- I was going to tell you guys, this is
7 easy, and it's difficult.

8 It's easy, because you flip rate.

9 It's difficult, because it is a political
10 hot-button.

11 I totally agree with you.

12 But, if we ignore the rate, you're still
13 going to be faced with a lot of challenges.

14 I mean, you can go after the SLU awards, but
15 I think people -- I didn't get the sense that there
16 was an excitement behind going after anything more
17 than touching evidence-based. You know, tweaking
18 some of the medical guidelines.

19 But it's a problem. It's a major problem.

20 SENATOR O'MARA: What has your experience
21 been in the time frame it takes to get from the
22 initial claim to an SLU award?

23 MARK JOHNSON: They vary. It could be
24 several months, several months. It does vary.

25 I mean, this thing has become a money-grab.

1 Attorneys are on it; they're making money on
2 it. They used to give away this business. They're,
3 you know, keeping it now. And, they know the
4 charts.

5 I mean, the chart, it's the chart.

6 I wasn't kidding; it's a chart, and it's a
7 guaranteed number.

8 And they basically say, Okay, my doctor says
9 this, your doctor says that; we'll split it.

10 Go to the chart; write the check.

11 It's broken.

12 And, it's unfortunate, that it's -- it wasn't
13 designed to incentivize people. It was designed to
14 get people back to work.

15 SENATOR O'MARA: So is there any
16 limitation -- I don't believe there is -- any
17 limitation on that worker, once they get their SLU
18 award, from going back to work the next day?

19 MARK JOHNSON: No. All they need is a note
20 from the doctor, and then we give them what's called
21 a "faculty-capacity exam task."

22 SENATOR O'MARA: That doesn't impact the SLU
23 award they got?

24 MARK JOHNSON: No, they're going to get the
25 award.

1 And here's the trouble:

2 The person comes back from -- first of all,
3 the award, you know, if I were 20 years old and --
4 or you're 20 years old, do you think your shoulder
5 looked, 20 years old versus a 50-year-old?

6 It's gonna be -- we're paying for that.
7 That's in the system, and we understand that, and we
8 are paying for that.

9 But it's -- the awards, that's just one
10 award.

11 They can come back the next day and get hurt
12 again; and they go from here, to here, to here, to
13 knees, to here, to here, and there's nothing -- you
14 cannot prove that somebody is not hurt when they
15 take an X-ray and they say, Yeah, you've got a
16 problem.

17 And we're stuck with it, whether we caused it
18 or not.

19 And we're the first to get behind employees,
20 as far as getting them back; but, why do it, when
21 you got an automatic bonus?

22 You want to go on vacation.

23 What we see is, pre-vacations.

24 People go out. They're going to get an
25 award, gonna pay for the vacation, and, their lost

1 time is covered, medical is covered, and I'm going
2 to give you a bonus.

3 And that is what the system is today:
4 pre-retirement.

5 We're seeing it more and more.

6 People ready to retire, right before they
7 retire, what do they do? They go out.

8 I can't prevent you.

9 I can -- any one of you can come work for us
10 and have a claim the next day.

11 Under cameras: We've got it on camera,
12 I can't defend it. You cannot defend it when
13 someone reaches down under a camera and lifts up a
14 case of soda.

15 You can't defend it.

16 You could have hurt your arm any way, but I'm
17 paying for it, and I can't defend it, and you're
18 getting a bonus.

19 I'm giving you a bonus.

20 I'm gonna pay your wages, your medical, and
21 I'm giving you a bonus for that.

22 And that's what the system has turned into.

23 And I know, and I have heard it over and
24 over, that it's a political problem, the rates, but,
25 it got in there.

1 I'm making a plea: Is there anything you can
2 do with the rates?

3 I mean, it really is, it's problematic for
4 manufacturers who have physical work.

5 So, thank you.

6 SENATOR O'MARA: Thank you.

7 SENATOR MARCHIONE: Thank you.

8 SENATOR GALLIVAN: You spoke about fraud.
9 Who's doing anything about it? Anybody?

10 MARK JOHNSON: Fraud, it's not sexy enough
11 for an Attorney General.

12 We've tightened up our internal approach with
13 it, challenging people who have multiple cases.

14 People have five, six, seven, eight,
15 nine claims, out for six, seven hundred days,
16 different periods of time, but these people are
17 habitual.

18 And we've taken the position with the union,
19 and said, We're going to start taking these people
20 in our collective-bargaining agreement to
21 arbitration.

22 Because, someone who has 7, 8, 9, 10,
23 15 worker's comp claims, they're not -- they can't
24 do their job.

25 They really can, but they're just gaming the

1 system, and, it's hard to prove fraud, even when we
2 have evidence.

3 We have evidence of people who's out with a
4 bad knee. We have film shots; we sent our
5 investigators out, they catch them dancing on the
6 table.

7 The judges go, "He had a good day."

8 We have footage, we have cameras; guys, we
9 have it all.

10 We have footage of a guy driving a forklift,
11 one mile an hour, it's all on the show, slow little
12 slide, we're paying.

13 We're paying; he didn't get hurt.

14 But, I mean, you can't -- you're defenseless,
15 you can't fight it.

16 So the system is tilted, relative to your
17 inability to defend; the disparity between this
18 doctor says 80 percent, this doctor says 40 percent.

19 So it's tilted already, and this just
20 exacerbated it and blew it up.

21 Our costs did not double.

22 I mean, our frequency, our accidents, went
23 down, in half, and our costs doubled.

24 It's a serious problem.

25 So, I do make a plea to you to do the best

1 you can with rates.

2 And I do, we do, recognize it's a political
3 problem.

4 So, thank you.

5 SENATOR GALLIVAN: Thanks for your testimony.

6 SENATOR MARCHIONE: Thank you.

7 SENATOR GALLIVAN: Randy Wolken, president of
8 the Manufacturing Association of Central New York.

9 Did I pronounce that correctly?

10 When you're ready, sir.

11 RANDY WOLKEN: Sure.

12 Good afternoon, and I want to start by
13 thanking you for this opportunity to speak about
14 this really important issue, and for recognizing the
15 immediate need to address regulatory costs and
16 improving the economic climate, for not only
17 manufacturers, but businesses statewide.

18 And I commend you for the goal of eliminating
19 1,000 regulations. That may be just the start as we
20 start to look at this issue.

21 As you've mentioned, I'm the president of the
22 Manufacturers Association of Central New York.

23 I'm also here representing the
24 Manufacturers Alliance of New York State, as my role
25 as its president.

1 As you may know, the Manufacturers Alliance
2 of New York State is the state's largest
3 manufacturing group. It represents small and large
4 manufacturers in every industrial sector throughout
5 New York State.

6 We have proudly served as the leading
7 advocate for pro-business policy agendas that help
8 manufacturers compete in this global economy, and
9 allows policymakers to make better business
10 decisions, helping businesses in New York State.

11 It's well known that the strong manufacturing
12 base is critical to any successful economy, and
13 during New York State's difficult fiscal times, a
14 solid manufacturing base is needed more than ever to
15 be able to do what our sector does best: retain and
16 create family-supporting high-paying jobs, maintain
17 a significant amount of economic and tax revenues,
18 and provide communities with the jobs and economic
19 stability that's so necessary.

20 As you're well aware, the ongoing efforts to
21 revitalize New York State's economy has proved
22 incredibly challenging.

23 It's a well-known fact, in order to create
24 economic growth, a vibrant and friendly business
25 climate must be established and fostered so that

1 businesses can operate efficiently and successfully.

2 And that's not always the case in
3 New York State. The state's manufacturing sector
4 experiences this firsthand.

5 Regulatory burdens have become so exhaustive
6 on the manufacturing sector, and the businesses in
7 general, and it has significantly hindered the
8 sector's ability to do what it needs to do: generate
9 economic development, sustain and grow jobs in our
10 community.

11 As a part of this testimony, I'm pleased to
12 announce, that based on the request of this effort,
13 as well as others in Albany, for regulatory burden
14 and feedback, we've conducted a study with our
15 Manufacturing Alliance members which represent over
16 2,500 companies and organizations throughout
17 New York State.

18 And in this survey, we've asked what specific
19 regulatory burdens are they experiencing, and what
20 departments are they having difficulty in working
21 with?

22 The survey is currently being compiled into a
23 report and will be released in the near future.

24 And I can assure you, you will you have
25 copies of this survey for your consideration, and

1 I hope you'll find the responses directly from the
2 statewide manufacturing community to be helpful.

3 As a reference, we've included a copy of the
4 questionnaire in my testimony so you can see the
5 questions we've asked members and manufacturers
6 throughout the state.

7 But just to let you know, we've already
8 heard, specifically around departments and areas,
9 such as the Scaffolding Law, the Department of
10 Taxation, the Department of DEC, and the
11 Department of Labor, all come in as high areas of
12 concern.

13 And while there are hundreds of regulatory
14 burdens that hinder the manufacturing sector, at
15 your request, we've outlined just a few key areas
16 that our members have specified are areas that need
17 immediate reform.

18 Let me also echo some of the other comments
19 we've heard this morning, that we've heard from our
20 members:

21 The repeal of 18-A, which Tom from Corning
22 recommended as a high priority;

23 Tax burden and compliance, in general,
24 continues to get discussed;

25 The Scaffolding Law.

1 And, really, I really applaud Mark for doing,
2 actually, an extensive look at worker's comp, which
3 we're hearing across the board from our members,
4 that, we did worker's comp reform, but reform did
5 not accomplish its outcome, and much more work has
6 to be done here.

7 Economic regulations on businesses includes
8 such areas as, prices, or wages allocation, public
9 resources, use of these tax dollars.

10 And one of the significant areas is in need
11 of reform here, is through the Department of Labor
12 and their unemployment-insurance regulations.

13 Historically, manufacturers have taken a
14 significant hit from UI, fiscal irresponsibility,
15 and lack of oversight; and most recently, resulting
16 from an overborrowing in 2011, New York owed the
17 federal government \$3.3 billion for borrowing funds
18 so it could afford to pay for unemployment benefits.

19 In 2011 alone, \$115 million was owed by
20 New York in interest costs, and over 500,000
21 New York State employers, manufacturers amongst
22 them, were blindsided by these costs, and for no
23 reason other than the State could not afford to pay
24 it back.

25 These added fees, whether permanent or not,

1 significantly impact the manufacturer's ability to
2 operate a business here in New York State.

3 And simply put, the solution is not to put
4 the cost burden of UI State borrowing on the backs
5 of manufacturers and employers in New York State.

6 The fund must be returned to solvency, and
7 must be done without increasing the cost on
8 employers.

9 The state and federal governments need to fix
10 this structural problem and relieve the burden
11 that's placed on businesses, once and for all.

12 I implore you and the Administration to take
13 a lead on this effort.

14 Another area is social regulation. It comes
15 in the effect of areas of environmental protection,
16 consumer safety, employment discrimination, and
17 public health.

18 A significant example of the DEC regulatory
19 reform comes from improving SEQR, and permitting
20 programs to give business a more certain workable
21 timetable for environmental review of major
22 investment projects --

23 Obviously, very important to manufacturers.

24 -- including a more appropriate standard for
25 adjudicating issues in the DEC permitting hearings;

1 assuring that regulatory timetables for project
2 reviews are adhered to; creating an expedited
3 process for applications that meet in certain
4 criterias, such as replacement of projects and
5 pollution reduction; and integrating coastal-zone
6 reviews with other state environmental review
7 requirements.

8 Additionally, amending DEC's new
9 source-review regulation to eliminate unnecessary
10 restrictions on capital investments and operating
11 changes that are intended to improve efficiency and
12 competitiveness or reduce emissions in energy, would
13 also prove beneficial to the state's manufacturing
14 sector.

15 Another area is compliance regulation which
16 significantly hinders manufacturers' abilities to
17 function effectively.

18 Paperwork and documentation compliances are
19 just two such examples.

20 As was discussed already by Corning, the
21 Wage Theft Protection Act that was passed in 2009 is
22 just one example of such burdensome regulatory
23 compliance, unnecessary for a large percentages of
24 businesses in the manufacturing community.

25 One area where our members routinely identify

1 as a target for reform has been the Wage Theft Act.

2 In fact, I'd like to point out one specific
3 incidence that just illustrates the point.

4 The New York State Legislature recently
5 passed an amendment to Section 193 of the Labor Law
6 which governs the deduction from wages, which was
7 then signed into law.

8 Specifically, employers were given the right,
9 in writing, to deduct for correction and repayment
10 of an overpayment of wages.

11 Also, they're now able to deduct for a loan
12 repayment when they allow their employees to borrow
13 against future wages.

14 However, the issue, is that these new rules
15 require, and I quote: The employer shall comply
16 with regulations by the commissioner for this
17 purpose, which regulations shall include but not
18 limited to provisions governing the size of
19 overpayments that may be covered by this section,
20 the timing, frequency, duration, method of such
21 recovery, limitations on the periodic amount of such
22 recovery, a requirement that notice be provided to
23 the employer [sic] prior to the commencement of such
24 recovery, a requirement that the employer implement
25 a procedure for disputing the amount of such

1 overpayment or seeking to delay commencement of such
2 recovery. The terms and content of such a procedure
3 and requirement that notice of the procedures for
4 disputing the overpayment or seeking to delay
5 commencement of such recovery be provided to the
6 employer [sic] prior to commencement of such a
7 recovery.

8 Now that's a mouthful.

9 However, to date, the commissioner has not
10 issued any regulations for employers to follow to
11 ensure compliance.

12 As a result, employers are going to be held
13 to a standard, retroactively, once it's written.

14 Just one example of how a regulation gone
15 amuck causes problems throughout manufacturing and
16 businesses at large.

17 What's most interesting was, my comment on
18 the wage-theft regulation, or lack thereof, is that
19 one may be led to believe that we're asking for
20 regulations to take place.

21 That's not my message here.

22 What I'm pointing out is, it's a clear case
23 of government making a regulation and not taking the
24 necessary action to implement it.

25 What does this say about the regulation and

1 its necessity in the first place?

2 I think this provides just one example, and a
3 concise example, of a regulatory burden that's not
4 even necessary.

5 I ask you to consider this in the upcoming
6 session when regulations are introduced.

7 As you know, MACNY and the
8 Manufacturers Alliance has a long history of working
9 with our business-partner organizations and your
10 conference in finding ways to help create a better
11 business climate.

12 We've had a number of successes, thanks to
13 your leadership, including the passage of
14 Recharge New York and a 25 percent reduction of the
15 corporate franchise tax for manufacturers.

16 It is our belief, by addressing regulatory
17 burdens, we would further enable manufacturers to
18 operate more efficiently and effectively.

19 And, generally, these don't cost anything,
20 and they don't need to be done during the regular
21 budget process. It doesn't also increase the tax
22 burden.

23 So by reviewing the current regulatory
24 burdens, making recommendations on easing them, and
25 more importantly, acting on these regulatory

1 changes, a better business climate can be created so
2 that manufacturers can do what they do best: foster
3 economic development, and sustain and grow jobs.

4 Thanks for your time and your consideration
5 in these critical matters, and I look forward to
6 working with you in the future.

7 SENATOR O'MARA: Thank you, Randy.

8 SENATOR GALLIVAN: Thank you.

9 We did get some testimony from MACNY in
10 Syracuse, and we will look forward to the report.
11 I think that will be useful. Very useful.

12 RANDY WOLKEN: And we appreciate it.

13 Again, I was mentioning it to Tom on the way
14 in, we had the pleasure of walking on the way in:

15 This really is a critical issue, and you
16 taking a leadership role and focusing on actual
17 reduction in regulations, would dramatically help
18 businesses.

19 And we appreciate that.

20 SENATOR GALLIVAN: Do I understand, you've
21 now collected, all the surveys have been returned --

22 RANDY WOLKEN: We are putting that into a
23 report, and then we'll actually provide that to you.

24 So we'll have, not only access to the
25 comments specifically, but we can also then go back

1 to those member organizations and companies, and
2 continue to work on this issue with them.

3 SENATOR GALLIVAN: Is that something that you
4 think will be prepared this month, or the month --

5 RANDY WOLKEN: In the near future, yes.

6 SENATOR GALLIVAN: Okay, great.

7 Thank you.

8 RANDY WOLKEN: You bet. Thank you.

9 SENATOR GALLIVAN: Keith Bowman from
10 F.M. Howell & Company.

11 KEITH BOWMAN: Good afternoon.

12 SENATOR GALLIVAN: Good afternoon.

13 When you're ready, sir.

14 KEITH BOWMAN: I very appreciate the
15 opportunity to address these issues.

16 I'm vice president of finance with
17 F.M. Howell & Company, a much smaller company than
18 Corning and the others, but, we have been around for
19 130 years.

20 We operate in three different business
21 sectors in Elmira:

22 One is, and the primary and the core unit
23 being, folding carton packaging, primarily for the
24 pharmaceutical industry;

25 Secondly, we have a contract packaging

1 operation, again, focused on the pharmaceutical
2 industry, and including fulfillment services, which
3 I will address a bit in specifics;

4 And, thirdly, we have a plastics operation
5 which, again, is focused on packaging.

6 All right, first, I found a different survey
7 that actually ranked New York 49th, rather than
8 50.

9 SENATOR O'MARA: Awesome.

10 [Laughter.]

11 KEITH BOWMAN: One of the comments that they
12 specifically cited in this is was from
13 ChiefExecutive.net, is that New York is headed in
14 the right direction, but still way behind other
15 states.

16 And that's an important thing to recognize,
17 that the efforts are going in the right direction.

18 The second they mentioned, is that no matter
19 how good the people and the weather are, activist
20 departments of revenue, lots of regulations, and
21 high taxes make states like California and New York
22 bad options.

23 I think it's obvious they were referring to
24 California when they talked about the weather.

25 [Laughter.]

1 KEITH BOWMAN: But, I think -- I've
2 personally witnessed negative consequences with
3 interactions with activist state government
4 employees, but I really don't want to dive into
5 generic governmental cultural attributes. I think,
6 those, I would rather deal with in a separate forum,
7 and instead, in this case, be as specific as
8 possible.

9 Secondly, New York State corporate tax rates
10 are very high, and I think you'd expect to hear that
11 from a finance guy, but I don't think that they are
12 the top priority.

13 I find a higher priority in companies trying
14 to make employees whole who are facing the personal
15 and local taxes that our employees face.

16 It makes it extremely difficult for us to
17 hire high-caliber people, and to get them to come to
18 New York State.

19 There was, at one time, a study done, that
20 reflected that a New York employer had to pay
21 43 percent more than a Carolina employer in order to
22 keep the employee whole.

23 Dated data, but I doubt that it's changed a
24 lot.

25 Next, the tax code is itself, and as an

1 accountant, I can attest to this one very
2 personally, it is very cumbersome and very difficult
3 to navigate.

4 Particularly obtuse are the sales and use tax
5 regulations in New York.

6 I think that's evidenced by the recent news
7 of the pretzel factory that got a back tax bill
8 because they warmed the pretzels.

9 It's very difficult, and takes excessive
10 effort, lots of training, to try to navigate the
11 sales and use tax rules, and it is something that is
12 discussed among manufacturers, that, the difficulty
13 in dealing with.

14 Again, this is not something that can be
15 dealt with on a very specific basis. It really
16 needs to come back to bringing the sales and use tax
17 codes into a more concise and understandable
18 structure.

19 In terms of additional code, New York should,
20 I believe, strive for conformity with IRS codes.

21 The tax rules promulgated at the federal
22 level should be recognized and they should be
23 elected at the state level.

24 An example of one that I recognize the need
25 for, but has created problems, is the non-conformity

1 by the State of the federal Economic Stimulus Act of
2 2008, which allowed 50 percent bonus depreciation.

3 While at the time that may have seemed like a
4 relatively easy change to make, what it has created
5 is a different set of tax basis for every asset
6 elected for the bonus depreciation.

7 That adds to audit fees. It adds to
8 complexity in the business.

9 And, to me, the issue really here should be,
10 to try to eliminate the two sets of books, and to
11 try to keep the tax codes as closely as possible in
12 compliance with the federal codes.

13 Next is a very particular issue.

14 Our business has a customer who has not gone
15 away yet, but has told us they're going to;
16 specifically, as a result of New York State tax
17 rules.

18 The issue, is that, under a C-corporation
19 structure or under an S-corporation structure, a
20 company can use the services of a New York State
21 fulfillment-service operation.

22 And Tom is well aware of this one.

23 Unfortunately, an LLC cannot take advantage
24 of that, so an LLC does not get the exemption for
25 the fulfillment services.

1 We would like, very much, to see the
2 Senate Bill, which was 3473, and, the Assembly
3 Bill 5944, which is currently tabled, move forward,
4 in order to try to alleviate the problem.

5 It might be a good thing that the customer is
6 from Illinois, and with the increase in their tax
7 rates, has been a little less adamant over the past
8 year, but, it is an issue where we will lose a
9 customer; we will lose employees as a result of
10 losing that customer.

11 And it again goes to consistency in the
12 application of the laws. An LLC should not have a
13 different set of rules than a C corp or an S corp.

14 I'd like to address here some of the
15 employment laws, and I wholeheartedly concur,
16 particularly with Mr. Johnson, on the worker's comp
17 rules.

18 It is an issue that we suffer with as well.

19 It is a very, very high-cost state in which
20 to have a worker's comp program.

21 But, there are several other employment laws
22 that we would like to see addressed.

23 One: The Minimum Wage Act, or, Article 19 of
24 the New York Labor Law, has prescribed an increase
25 of 20 1/2 percent in the minimum wage over the next

1 two years.

2 While I understand an increase, that, to me,
3 is somewhat excessive, but I would propose, and urge
4 again, that consistency be established relative to
5 federal rules, and not create uncompetitive
6 situations in New York relative to our neighboring
7 states.

8 Secondly, which has been brought up a number
9 of times, the Wage Theft Prevention Act, or,
10 Section 195 of the New York Labor Law, is an
11 extraordinarily burdensome regulation.

12 The requirement to have a documented review
13 with each employee, and to reinforce to them their
14 wage, when they see it on their weekly paychecks, is
15 burdensome and completely unnecessary.

16 We strongly urge that the proposed
17 legislation, S2313 and A2482, which is in process,
18 I believe, to repeal that, that that be adopted.

19 The New York State Fair Pay Act, which is
20 proposed legislation, S1491, A5958 --

21 I'll digress for a second here.

22 I do find it interesting that, while we're
23 dealing with a thousand laws that are on the books,
24 we're also dealing with proposals to put new laws on
25 the books.

1 And I think it's as important to stop the new
2 ones as it is to get rid of the old ones. They are
3 both extremely important.

4 The New York State Fair Pay Act gives the
5 Labor Department the responsibility of creating a
6 single job-evaluation system.

7 I'm going to quote from the New York State
8 Business Council.

9 "Once the department establishes a single
10 job-comparison system, it will require all employers
11 to use it. This would be unprecedented government
12 intrusion into the establishment of private-sector
13 organizations' pay methods and systems."

14 I don't think you can say it much better than
15 that.

16 It's an opportunity for an expansion of State
17 oversight into employment practices, that is
18 unacceptable.

19 Next, the proposed legislation, again,
20 proposed, it's S2626, it's relating to paid sick
21 leave, would require employers to provide up to
22 80 hours of paid sick time, if more than
23 10 employees; or 40 hours, if less than
24 10 employees.

25 This is certainly an uncompetitive and a

1 burdensome mandate on state's employees -- or, state
2 employers, and we suggest that the legislation be
3 rejected, as, ultimately, it will result in fewer
4 jobs being added, and fewer jobs being retained, in
5 the state.

6 Next, proposed legislation again, S2509,
7 A7029, mandates that employers provide three months
8 of continuous or intermittent unpaid job-protected
9 leave for victims of domestic-violence abuse. It
10 further mandates that employers provide paid medical
11 insurance while the employee is on leave.

12 We are empathetic to domestic-violence
13 situations, but we do not feel that employers should
14 be put in the position of bearing the burden for
15 employees' personal matters.

16 Next, New York City recently proposed
17 family-leave legislation, mandating paid benefits of
18 up to 12 weeks of injury or sickness, pregnancy, or
19 family care.

20 And if this legislation were to reach
21 upstate, it would cause serious damage to the
22 upstate manufacturing sector.

23 We have had a number of conversations about
24 our employees, and, unfortunately, there are
25 employees, wherein, a sick-leave allowance is very

1 much perceived to be an additional vacation; and to
2 mandate that structure leaves that opportunity open.

3 My preference, is that the good employers
4 offer good benefits, and that that not be mandated;
5 but that, instead, be operated on a
6 good-manufacturing basis.

7 And to close here, I'm going to skip one,
8 but, the activist Departments of Revenue and Labor,
9 excess regulation, high taxes, have really created
10 what, in accounting terms, is called a
11 "death spiral" in New York State.

12 Enacted or proposed legislation, such as the
13 Wage Theft Protection Act, the New York State Fair
14 Pay Act, and the paid sick-leave mandates, really
15 present a picture that indicates that "open for
16 business" could be overwhelmed by bad legislation.

17 So I'd like to close with:

18 It has been a privilege to participate in
19 this, and I commend the efforts, and wish you the
20 best of luck with all of them.

21 SENATOR O'MARA: Thank you, Keith, for being
22 here.

23 And I assure you that I continue to work on
24 the fulfillment-services legislation.

25 I have, in addition to introducing that

1 legislation, upon learning about it from
2 F.M. Howell & Company, and that, obviously, the
3 intent of that original exclusion for corporate
4 income taxes in the state is to encourage the use of
5 fulfillment services from outside corporations.

6 And, to treat an LLC or partnership
7 differently than corporations, I believe, is just --
8 is wrong.

9 And I'm making some progress.

10 We have passed it in the Senate two years in
11 a row, and we're trying to get the Assembly to do
12 the same.

13 I'm also working in trying to get that
14 incorporated into the budget; as well as, I have
15 referred that to the Governor's Tax Commission to
16 review the code.

17 Now, that tax commission, as many of the
18 other commissions and task forces in the state, have
19 been in place for some time, with little or no to
20 show for it, so, that that part of it is
21 frustrating, but we will continue to work.

22 And, I just wanted to assure you of that.

23 And these other legislations, you know,
24 there's thousands of bills introduced every year.

25 And, as this is a task force put together by

1 the Majority Coalition in the Senate, I can tell you
2 that we worked very hard, as this majority that we
3 have, to stop legislation like that.

4 Without getting too political, it's important
5 that that type of majority is maintained.

6 SENATOR MARCHIONE: I just want to thank you
7 for bringing forward, not only what's burdensome to
8 you now, but the future legislation that's before
9 us, because it is true, every year, approximately
10 300 new rules and regulations are put upon our
11 businesses and organizations within the state of
12 New York.

13 So as you saw us looking, we were actually
14 looking up those bills while you were talking about
15 them, so we could get a better understanding.

16 So I really appreciate that part of your
17 testimony as well.

18 KEITH BOWMAN: Very good.

19 Thank you very much.

20 SENATOR GALLIVAN: Thank you, Mr. Bowman.

21 SENATOR O'MARA: Thanks, Keith.

22 Jack Bebernes from Dresser-Rand.

23 SENATOR GALLIVAN: Did I pronounce that
24 correctly?

25 JACK BEBERNES: Close.

1 SENATOR GALLIVAN: How do you pronounce it?

2 JACK BEBERNES: Bebernes.

3 SENATOR GALLIVAN: Bebernes.

4 Well, thank you for being here.

5 Whenever you're ready.

6 JACK BEBERNES: I've been with Dresser-Rand
7 for exactly one week, so --

8 SENATOR GALLIVAN: Oh, jeez.

9 [Laughter.]

10 JACK BEBERNES: I'm here instead of Doug, our
11 plant manager here in Painted Post, but, there are a
12 couple of comments I think I can make that may be
13 helpful, so this will be a short presentation,
14 I think.

15 SENATOR O'MARA: I know, generally, what
16 you're about, so I'll let you speak, and we'll get a
17 little bit of dialogue going, so, make it easier for
18 you.

19 JACK BEBERNES: Thank you very much.

20 There's bits in regulation about liquid
21 natural gas storage in the state of New York for,
22 I think, many years.

23 And I believe there's a -- there's proposed
24 legislation to change that, and there's a hearing,
25 I think the end of this month, and public comment on

1 that until November 4th.

2 So first thing I want to say is, that's very
3 positive, and can be very good for our business.

4 We are looking at some potential product
5 lines that would involve compression and storage of
6 liquid natural gas, and that could mean substantial
7 employment opportunities for the Southern Tier, for
8 the Painted Post-Corning area.

9 So that's a positive thing. I hope that
10 happens.

11 The other issue, that just in this past week
12 I've worked on, is a variance of Section 161 of the
13 New York State Labor Law; it's about work hours.

14 I think the regulation in New York is, you
15 have to offer people one day off out of seven, and
16 if you want to work a schedule different than that,
17 you need a variance from that law.

18 We have -- I have a very thick file on all
19 the work we've done year after year after year to
20 get that variance, which is important for our
21 business as we schedule work, and we've always been
22 granted that variance. It's just a burdensome
23 process to go through.

24 And we just had a variance approved last
25 week, as a matter of fact.

1 SENATOR O'MARA: How frequently do you have
2 to get that variance approved?

3 JACK BEBERNES: Once a year.

4 SENATOR O'MARA: Once a year?

5 JACK BEBERNES: Once a year.

6 But, you know, we work with our union. We
7 need their support in doing that. They always
8 support us as long as there's nobody laid off at the
9 time.

10 So, just from a scheduling perspective, and
11 many manufacturing industries need an alternate
12 scheduling, you know, that flexibility, so I think
13 that can be a troublesome regulation to the state of
14 New York.

15 Other than that, as a person moving back to
16 the state, I'm a native Upstate New Yorker from near
17 Watertown. My wife is from near Syracuse.

18 After I graduated from Syracuse University in
19 1986, we left, and this is my first time back.

20 So, as somebody just moving in, tax rates are
21 burdensome here. It's gonna be difficult, make it
22 more difficult, to attract the right talent to this
23 area of the country, to be competitive.

24 And I've been in the midwest quite a bit over
25 the last couple of decades, and there's some very

1 bright spots in Ohio and Michigan that take those
2 burdens away, where the tax rates aren't so high for
3 individuals, and I think that's a big competitive
4 issue for New York.

5 So, I think that's all I have.

6 SENATOR O'MARA: Well, Jack, I appreciate you
7 coming up here on your first week with Dresser-Rand,
8 and I think Doug Rich owes you for throwing you out
9 here like this.

10 JACK BEBERNES: That's okay.

11 SENATOR O'MARA: But I have been very active
12 in the last year on the LNG regulations; and,
13 particularly, we had legislation drafted at the end
14 of session, which we passed in the Senate, and it
15 got hung up in the Assembly, as, unfortunately, so
16 many pro-business things do.

17 And there is certainly concern over that,
18 with the anti-fracking sentiment in this state.

19 And anything that uses natural gas will,
20 somehow, help that effort along.

21 But, I understand that the products that you
22 have at Dresser-Rand, that are interested in
23 developing, is a conversion process for LNG, and
24 these regulations that we're working through, and
25 I've been in contact with the Governor's Office and

1 with DEC on this, and these proposed regs came out
2 recently, that will be reviewed at the hearing for
3 which we're under a comment period right now.

4 And I'm in the process of reviewing those as
5 well, and hope that those are gonna come out
6 favorable, for you to be able to pursue at Dresser
7 the opportunities of LNG conversion.

8 You know, we in New York are the only state
9 in the country that does not allow the storage of
10 LNG gas.

11 You're allowed to truck it, a tanker full of
12 it across New York State, with a truck operated and
13 fueled by liquified natural gas, but you can't stop
14 and fill up; you can't unload that and store it
15 anywhere in the New York State. We're the only
16 state that doesn't allow it.

17 There are federal regulations that cover all
18 of this throughout the country.

19 New York, because of an explosion in 1976, in
20 Staten Island, of an LNG storage tank --

21 For just a little history of everybody.

22 -- the storage tank was under maintenance,
23 and being repaired and being painted. Didn't have
24 LNG in it at the time of the explosion; yet, we've
25 had a ban for 30 years of LNG in New York State

1 because of that.

2 There were a significant number of deaths in
3 that explosion, and it was a serious incident.

4 But, to continue to ban LNG in this state
5 flies in the face of economic development and the
6 use of cleaner-burning fuel, lower-cost fuel, and
7 this great manufacturing opportunity for Dresser to
8 be able to, hopefully, produce this product right
9 here in the Southern Tier.

10 Now, I understand that the regulations that
11 are put out there --

12 And are you familiar with the regs, Jack, to
13 discuss them at all, or --

14 JACK BEBERNES: I read some this morning.

15 SENATOR O'MARA: Okay, all right.

16 -- I mean, it will allow a limited amount of
17 storage, I believe, for Dresser to partake in that
18 some of that.

19 And we're looking at the ability to actually
20 go through the conversion process, so that Dresser
21 can test and experiment with the equipment in your
22 processes of manufacturing.

23 We're trying, I think, to expand the
24 regulations that are proposed right now, to make
25 that a little more friendly to you in what you want

1 to do with Dresser.

2 But, I applaud your efforts at Dresser, your
3 technological advances in this area, and a scenario
4 where -- that will spin off with so many other
5 businesses in New York State: the trucking industry,
6 the delivery industry, other manufacturers that
7 could power their equipment with liquified natural
8 gas.

9 There's a paper company up in the
10 North Country that can't get natural gas supplied to
11 them, but they could utilize LNG to power their
12 manufacturing facility.

13 These regs, as they stand right now, my
14 understanding, still would not allow that type of
15 action to happen in New York.

16 So, we're looking to do this in New York.

17 You've been away for a while, Jack, but,
18 we're either first or we're last, and it's usually
19 not for the right reason, in my opinion.

20 So, it's a difficult state, but, you know,
21 I've been all in on helping Dresser and the issues
22 with LNG here.

23 So, thank you for being here today.

24 JACK BEBERNES: Thank you very much,
25 Senators.

1 SENATOR MARCHIONE: I actually had some
2 questions on LNG, and I thank you for that education
3 you just provided, because you answered some of the
4 questions I had.

5 Thank you, Senator.

6 SENATOR GALLIVAN: Thanks, Jack.

7 George Miner from Southern Tier Economic
8 Growth, and, Jamie Johnson from Steuben County IDA.

9 GEORGE MINER: Am I going first?

10 JAMIE JOHNSON: You're on the agenda first.

11 GEORGE MINER: I'm going first, good.

12 That's Jamie.

13 Thank you.

14 JAMIE JOHNSON: I can provide some. I don't
15 have any right at the moment.

16 GEORGE MINER: I left mine at my seat. If
17 you want to grab it, it's right in that portfolio
18 right there.

19 Yes, thank you.

20 My name is George Miner. I serve as
21 president of Southern Tier Economic Growth, whose
22 mission is promote prosperity and job creation in
23 the Elmira-Chemung County region.

24 Elmira has a rich manufacturing tradition.

25 You just heard from Keith Bowman, who's

1 been -- his company's been here for over 100 years,
2 manufacturing product.

3 For over 100 years, our labor force has
4 manufactured fire trucks, helicopters, planes,
5 trains, machine tools, water valves, fire hydrants,
6 glass bottles, food products, televisions,
7 automobile parts, and I didn't have "packaging"
8 until Keith got up there, so I added packaging.

9 But, just numerous parts of products that are
10 sold all over the world.

11 And that's one of the things that just amazes
12 me, is how taken for granted manufacturing is, and
13 how the economic impact of manufacturing isn't
14 realized.

15 All the wages that Keith was talking about
16 that go to F.M. Howell employees come from outside
17 our area. They don't sell any product in
18 Chemung County. It's all going to other companies,
19 and part of other products that are sold all over
20 the world.

21 The pharmaceutical industry he talked about.

22 It's all new money to our region that's
23 paying those wages.

24 I'm not going to bash retail. Everybody
25 loves retail, we all shop, but when you go to

1 Wal-Mart, you know, the money that's being -- those
2 wages being paid there, it comes from the people
3 that are already in that community that are
4 buying -- you know, buying those goods, and it's
5 just kind of circling around, you know, briefly at
6 that store until it goes to corporate headquarters.

7 Manufacturing is just the opposite of that;
8 it's money coming into our area. It's new money in
9 this global economy, it's coming from around the
10 world.

11 And it's just like I said, it amazes me how
12 much citizens need a good education in capitalism.

13 And I say "capitalism" as if -- it's like a
14 dirty word these days, but it's what our economy is
15 based on, it's what the world's economy is based on.

16 And it scares me that, and it's not just
17 young people; it's people my age, old people, that
18 don't understand the importance of manufacturing,
19 and that's because so few of us work in
20 manufacturing these days.

21 In Chemung County, we're down to about 13 --
22 somewhere around 13, 14 percent. We used to be
23 close to, at the height of World War II, we were
24 close to 50 percent.

25 You know, that's how much it's downsized in

1 our area.

2 I've lived in New York State for 56 years.

3 I've lived in Upstate New York for 38 of those
4 years.

5 For the past 30 years, in the
6 economic-development profession, I've witnessed
7 New York State earn its reputation as the most
8 expensive place to do business in the United States.

9 Once in a while, Hawaii or California, maybe
10 Connecticut, once every 10 years, will pass us in
11 some worse rankings.

12 What's so troubling, is that in all the
13 categories of how a state is looked at as far as a
14 place to do business, in every category, we're in
15 the top three or four of being the worst, if not the
16 top.

17 If it was just one, like electric rates, that
18 would be great, we could address that. You guys
19 could come up with more recharge programs, and we
20 would be great at everything else, and we would be
21 flourishing, but we are terrible at everything.

22 Now, you heard about worker's comp. I'm
23 going to rattle off some things, too. I'm not
24 really going to add a lot more to it, but I'm just
25 sharing with you, like I said, 30 years of

1 frustration in economic development.

2 The best one I see here, that Keith alluded
3 to, we rank 49th, not 50th, as the worst state
4 for business climate, according to "Chief Executive"
5 magazine.

6 Those are not -- that's not tax rates, that's
7 not some statistics from the Department of Labor or
8 Taxation and Finance.

9 Those are interviews with CEOs across the
10 country that say, This is a terrible place to do
11 business.

12 Those are the decision-makers; those are the
13 guys and ladies that make those kinds of decisions.

14 Those are the people that Jamie and I work
15 with, to try to get to come here, and they're coming
16 right out in an interview saying that this is a bad
17 place to do business.

18 I have been laughed at over the phone when
19 I have contacted companies outside New York State to
20 consider locating in the Elmira area and in the
21 Batavia area, over 30 years.

22 Just, the guy, you know, he's like holding
23 the phone away from his mouth because he's laughing
24 so hard.

25 Over the past five years, I have watched

1 thousands of workers from outside of New York State
2 come to New York to work in the natural gas
3 industry. These people have been treated with the
4 utmost discourtesy and scorn that I've ever
5 witnessed.

6 I'm embarrassed for my community, for our
7 state, the way these people are treated.

8 They are -- often, they are required to drive
9 their trucks home.

10 We all joke around here about the white
11 pickup trucks that Chesapeake and Schlumberger and
12 other gas companies drive.

13 Those people are treated just terribly, in
14 church, at grocery stores, and school-board
15 meetings...everywhere they go.

16 Their spouses, the trailing spouses, are not
17 happy about being here, because the way that they're
18 treated by people.

19 I mean, when did New York -- now, we've
20 always been, you know, Ellis Island; we've always
21 welcomed people from all over the world, and, now,
22 these gas workers come in from Oklahoma and Texas
23 and other areas, and they're treated so poorly.

24 I don't like going and visiting with the
25 gas-company people to see what we can do to help

1 them with expanding.

2 We've had companies, like, Schlumberger made
3 a \$40 million investment. They employ about
4 300 people. They pay amongst the highest wages in
5 the region.

6 But when you talk to those people, not as
7 Schlumberger executives or decision-makers, but as
8 people, people you want to play gin rummy with, they
9 don't feel welcomed here, and that really infuriates
10 me.

11 At the same time, I've seen thousands of
12 Upstate New Yorkers, and many, many, many from the
13 Southern Tier, move to Pennsylvania, Ohio,
14 West Virginia, to secure high-paying jobs supported
15 by the natural gas industry.

16 I've got, my sons -- my sons have friends
17 that went to RIT, that went to Alfred, that went to
18 Syracuse, okay, they got degrees in engineering.

19 Okay?

20 They're gone.

21 They're not coming back to New York; they're
22 gone.

23 They've got great jobs with the natural gas
24 industry. They're not -- they're not -- they don't
25 have to -- they've all got these strange titles, but

1 they're not dangerous jobs. They're good jobs,
2 they're rewarding jobs, with tremendous, tremendous
3 opportunity.

4 They didn't want -- you know, I talked to
5 their parents. Their parents are, you know,
6 What are we going to do? Are we gonna follow the
7 kids?

8 I mean, usually the kids follow the parents.

9 "Are we going to follow their kids?"

10 Our municipalities have been prevented from
11 earning millions and millions in revenues.

12 I've seen the reports from Pennsylvania; the
13 way the sharing has gone on in Pennsylvania, what
14 the counties get from the royalties from natural gas
15 exploration.

16 That would go a long way in the Southern Tier
17 to help rebuild infrastructure in our area and
18 support manufacturing and other businesses.

19 100 percent, every penny, of property tax
20 paid to Chemung County goes to pay for
21 New York State-mandated social-service programs.

22 "Every penny."

23 And then I think it's another 30 percent of
24 our sales-tax income goes to pay for welfare,
25 Medicaid, probation, childhood intervention.

1 These funds are not available for much-needed
2 infrastructure.

3 We're -- our roads are falling apart, our
4 pipes are bursting, we have lots of services that
5 need resources, and they're not there, because
6 they're going to pay for unfunded mandated
7 social-service programs.

8 Besides taxes, energy rates are the highest
9 in the nation.

10 It costs NYSEG, it costs National Grid, the
11 same amount of money to buy this energy -- to buy
12 gas, to buy electricity -- as PENELEC in
13 Pennsylvania; yet, we're 60 percent higher than
14 PENELEC.

15 That's my competition; I compete with
16 Pennsylvania.

17 That's because of taxes.

18 NYSEG's done a really good job on their
19 electric bill of breaking that stuff out.

20 I don't have a National Grid bill, but I'm
21 sure they've done the same thing, of just layer upon
22 layer of taxes.

23 We have a systems-benefit charge.

24 We have the 18-A charge, I was told to say by
25 my peers when I asked, you know, "What regulations

1 should I talk about?"

2 And then there's the
3 greenhouse-gas-initiative charge.

4 We just have all these layers of extra
5 charges and taxes and regulations that drive up the
6 cost of electricity, in particular.

7 And natural gas has come down, but it's still
8 more expensive in New York than it is in
9 Pennsylvania. Not because that they can drill in
10 Pennsylvania; it's because of these extra taxes that
11 we put on the utilities that businesses have to pay
12 for.

13 New York State businesses pay the State over
14 \$4 billion annually in taxes, to have the State
15 regulate the insurance industry, and health-care
16 providers and employers to oversee the health-care
17 industry and the insurance industry.

18 Employers pay that, manufacturers pay that,
19 extra cost.

20 It's just a total lack of trust by the State
21 to the business industry, to the health-care
22 industry, to the insurance industry, that they have
23 to create this whole bureaucracy to regulate and
24 oversee them.

25 Health-insurance costs, like you heard from

1 Keith earlier --

2 [Technical difficulties.]

3 -- is driving manufacturers out of
4 New York State and discourages new businesses from
5 coming here.

6 Site-location consultants point to taxes,
7 such as covered-lives assessment in the HCRA
8 surcharge, Section 332 assessment, and the premium
9 tax, as taxes that place New York manufacturers at a
10 competitive disadvantage.

11 I crossed out my LNG stuff because I saw
12 Dresser-Rand on here, but I'll talk about LNG, and
13 I know Jamie's got a lot more to say about it.

14 But, 13 percent of Chemung workers work in
15 manufacturing. Many of these workers manufacture
16 compressors, valves, and related equipment that's
17 used in the energy industry.

18 It's one of the fastest growing industries in
19 America, the energy industry, and New York is not
20 allowed to play in this because one of the issues
21 you see is LNG. Manufacturers are denied the
22 ability to manufacture projects that convert natural
23 gas into liquid natural gas.

24 It's an inexpensive gas.

25 I don't understand. I mean, I know why

1 Dresser-Rand is interested in doing it here, is
2 because they make the best compressors in the world,
3 right in Painted Post.

4 But, you know, if it wasn't for that, they
5 wouldn't even be considering New York State.

6 Why would you consider New York State for
7 doing this if it's the only state in America that
8 will not allow the storage of liquid natural gas?

9 New York labor laws are often repressive to
10 employers.

11 The state's Wage Theft Prevention Act needs
12 to be repealed.

13 A major manufacturer can handle that extra
14 bureaucracy. They hate it, but they can handle it.

15 It's really -- and so many manufacturers,
16 you've got the big ones, you know, here, you know,
17 today, but there's so many manufacturers that are
18 5-man shops and 10-man shops, and that's where these
19 regulations are so burdensome.

20 The mandated Paid Family Leave Bill drives up
21 the cost of doing business in a state that's
22 already, as I said, the most expensive place to do
23 business.

24 These laws are particularly burdensome for
25 small businesses.

1 In 1885, states enacted a Scaffold Law to
2 protect construction workers.

3 For the past 128 years, construction
4 companies have paid high insurance costs that have
5 driven up the cost of building commercial and
6 residential facilities.

7 Today, New York is the only state which
8 retains this antiquated law which drives up the cost
9 of roads, bridges, and simply every kind of facility
10 you want to build in this state.

11 This is one area of regulatory reform that
12 can be addressed while not infringing on worker
13 safety, and result in lower costs of doing business
14 and encourage investment in infrastructure and
15 create jobs.

16 I know another issue, which I don't really
17 fully understand, but is the Wicks Law. It just
18 puts layers of public bidding and multiple contracts
19 into public-works projects; and the end result, it
20 drives up cost; and the end result is, things just
21 don't get built.

22 I mean, our roads are falling apart; like
23 I said, our pipes are bursting; and they're just not
24 getting done because it costs too much.

25 And if we can get rid of things like the

1 Wicks Law and the Scaffold Law, and repeal them,
2 costs would come down.

3 As I stated in the beginning, the negative
4 antibusiness environment in New York State is not
5 new. It was inherited by this Legislature and by
6 this Administration.

7 I'm not blaming you folks.

8 Believe me, I've lived here, like I said,
9 56 years. I've been reading about it and seeing it.
10 I studied it at Geneseo State.

11 The loss of manufacturing jobs is not just a
12 New York problem, it's a national problem, but one
13 where economists, policy analysts, and,
14 unfortunately, the people I deal with,
15 business-location consultants and CEOs, all point to
16 New York as a prime example of a bad place to do
17 business.

18 We're not just losing jobs; we're losing
19 people. Our population is declining, and declining
20 rapidly.

21 The majority of upstate counties lost
22 population in the last census, 2010.

23 I'm terrified to see the results of the next
24 one.

25 Neighboring Broome County had the largest

1 population loss of any county in New York State.

2 The Governor acknowledges that the upstate
3 economy is in a crisis.

4 We need real solutions, or we risk losing
5 many upstate communities and citizens for
6 generations to come.

7 I want to thank you for allowing me to speak
8 on the record today, and close by saying:

9 That while I don't hold much optimism for
10 much productive change in New York business climate,
11 I do commend all of you for acknowledging that there
12 is a problem, and for seeking ways to reverse
13 New York's decline.

14 Thank you.

15 Jamie.

16 JAMIE JOHNSON: Thank you, George.

17 And I'd like to thank all of you for the
18 opportunity today to talk about the issues facing,
19 not only our manufacturing industry, but economic
20 development throughout the region.

21 My name is Jamie Johnson. I'm the
22 executive director of the Steuben County Industrial
23 Development Agency, which is the designated economic
24 development organization for Steuben County.

25 Steuben County is the largest geographic

1 county in the Southern Tier, and with over
2 1400 square miles of land area, we have an extremely
3 diverse industrial base.

4 Steuben County is fortunate to serve as the
5 headquarters for many of the companies you heard
6 here today, including Corning, Incorporated, and
7 other global corporations with their locations and
8 manufacturing operations in Steuben County, such as
9 Dresser-Rand, World Kitchen, Kraft, and Alstom, just
10 to name a few.

11 We also are home to a significant number of
12 small- and medium-sized manufacturing operations all
13 facing similar issues today.

14 Manufacturing represents nearly 19 percent --
15 18.9 percent -- of our total economy in
16 Steuben County, double the state average, and
17 5 percent greater than the U.S. average; and as with
18 Chemung County, it has been on the decline.

19 Manufacturers in Steuben County employ over
20 7,000 people; or 15 percent of the total workforce,
21 but the more important number, is that this number
22 represents over 40 percent of the total payroll in
23 the county.

24 So while manufacturing only makes up
25 15 percent of the economy, it makes up 40 percent of

1 the wages that are being paid in the county.

2 I'm going to echo a lot of what you've heard
3 here today, so I apologize if I repeat myself, but
4 it's important enough to say again.

5 Unfortunately, New York ranks among the worst
6 states for doing business, stifling the growth of
7 our manufacturing operations.

8 We've already talked about the
9 Tax Foundation's "2013 State Business Climate
10 Index," putting New York State at dead last as far
11 as all of the other states in the country.

12 These rankings, you know, represent the worst
13 income taxes for individuals, the sixth-worst
14 unemployment-insurance taxes, and the sixth-worst
15 property taxes in the country.

16 New York State needs broad-based rate
17 reductions for all business taxpayers, but most
18 importantly, it needs to repeal the corporate income
19 tax for manufacturers.

20 In addition to tax relief, we've talked about
21 the Scaffold Law a lot here. This places absolute
22 liability on a contractor and project owner for
23 injuries occurring on a work site.

24 This law is unique to New York State. We're
25 the only state in the country that still has this on

1 the books, and it is a significant cost-driver for
2 construction projects in the state, discouraging
3 investment.

4 Much like the Scaffold Law, New York State is
5 also the only state in the country which has a
6 moratorium on the transportation and storage of LNG
7 (liquified natural gas).

8 We've heard a lot about that today.

9 You know, LNG can be used in New York and
10 stored in New York, but, currently, it can only be
11 transported in New York if it is part of an
12 interstate commerce.

13 LNG is considered one of the cleanest and
14 most economic fuel sources, and it is increasingly
15 being used in a number of applications, including
16 trucking fleets, like UPS.

17 I think we were talking about that earlier.

18 GEORGE MINER: UPS is making a \$50 million
19 investment in LNG filling stations in about
20 six states, Ohio and Pennsylvania being two of them.

21 New York not one, obviously.

22 JAMIE JOHNSON: In addition to it's
23 environmental and economic benefits, there's
24 manufacturing activity, as apparent with
25 Dresser-Rand, to advance technology to make it even

1 easier and safer to produce.

2 The current moratorium is making it
3 increasingly difficult to develop this technology
4 here, and while regulations that are being
5 promulgated right now will help with that, they
6 don't solve the problem.

7 I just received an e-mail that was forwarded
8 to me by Mr. Tranter, and he received it earlier,
9 which says, that while we may be able to store it,
10 we can't re-gasify it once it's made into LNG, under
11 the current regulations.

12 So a manufacturing operation which may not
13 have access to natural gas, could get LNG trucked to
14 them, but then they couldn't convert it back into a
15 gas form in order to use it.

16 So, it makes no sense; we can take it in a
17 gas form, put it into a liquid form, but then the
18 regulations don't allow us to take it back into a
19 gas form.

20 GEORGE MINER: So what this machine does,
21 what LNG is, is it's natural gas, which is right in
22 the pipe right here, heating and cooling this
23 building, and then it's cooled and compressed.

24 So now when it takes -- now it's -- it's
25 shrunk, so now it makes it transportable. You can

1 move a lot of natural gas to a location, and then
2 "re-gasify" it?

3 Is that what you called it?

4 It's still natural gas. It's still what we
5 have going to some of our homes.

6 I have propane.

7 But, that's all it is. It's not anything --
8 you know, it's the same gas that goes to your house,
9 to manufacturing; it's just compressed through a
10 cooling process.

11 So, I think it's 6:1, or is it 60:1?

12 JAMIE JOHNSON: 6:1 ratio.

13 GEORGE MINER: 6:1.

14 So -- so then it can be taken to a rural
15 upstate location, de-gasified, and so it's expanded
16 six times, and utilized, versus, having to run very
17 expensive natural gas lines, and things of that
18 nature.

19 Sorry.

20 JAMIE JOHNSON: Thank you.

21 GEORGE MINER: Science.

22 JAMIE JOHNSON: You know, Senator O'Mara has
23 sponsored a bill which passed in the Senate, which
24 we commend him for, but more work needs to be done
25 because the Assembly wouldn't even get it out of

1 Committee.

2 So while, you know, the Senate has passed it,
3 I think we need to work with the Assembly, on both
4 sides of the aisle, to make sure this does move
5 forward, because it is an important issue, not only
6 facing the Southern Tier, but also New York State.

7 Because as George said, there are
8 communities, like Lake Placid, which just,
9 literally, you could not build a natural gas line
10 to, but you could truck LNG to and be able to supply
11 that community with natural gas.

12 The LNG issue is just one example of
13 energy-development opportunities that are available
14 in our region, whether it's making investments in
15 infrastructure to support additional wind-energy
16 development, or finding new technologies to advance
17 solar energy, or the safe exploration of our natural
18 gas assets in New York, we should be a leader in the
19 next generation of energy development, and not
20 standing by, watching neighboring states reap the
21 benefits.

22 Steuben County has the ability to add another
23 200 wind turbines in our county alone if New York
24 can continue to make it easier through regulations,
25 like Article 10, to site these developments, and

1 find ways to invest in our energy-transportation
2 infrastructure to allow for the development of
3 resources in underdeveloped communities.

4 Right now, we have a project underway in the
5 town of Jasper, and because that project is going to
6 use up all of the capacity in the transmission line
7 that is currently in place, other projects have,
8 basically, been canceled in our community to advance
9 wind energy.

10 We invest in roads, we invest in sewer, we
11 invest in waterlines, but, you know, when it comes
12 our electric infrastructure, everybody points the
13 other way and says, Geez, we don't have any money to
14 do it.

15 The State should also immediately lift the
16 moratorium on hydrofracking and allow for the safe
17 exploration of natural gas.

18 We are now four years into the review of this
19 process with no end in sight.

20 The New York Department of Environmental
21 Conservation is considered a leader in protecting
22 the environment of our great state, yet we won't let
23 them do their jobs, and have let political politics
24 dictate this review with no clear path to bring it
25 to a conclusion.

1 While we sit back and wait for something to
2 happen, our neighbors to the south are becoming
3 leaders in energy development and leaving
4 New York State behind.

5 Because of the moratorium, Steuben County has
6 already lost \$75 million in assessed value, and it
7 expects to lose another \$25 million in the coming
8 years due to the inability to bring our gas
9 resources to market.

10 So we're actually losing assessed value
11 because we can't get the gas out of the ground and
12 ship it to market.

13 Even the New York DEC recognizes the
14 potential impact of natural gas development.

15 In 2011, they released a report outlining the
16 socioeconomic impact of drilling activities in the
17 state, and estimate that an average growth scenario
18 will result in the creation of 17,634 direct jobs,
19 and as many as 29,174 indirect jobs.

20 This could generate up to \$2.5 billion in
21 employee earnings in the state, and up to
22 1.4 million in additional local property tax
23 revenues, per well -- that's "per well" -- during
24 its projected 30-year life.

25 Many feel that this opportunity has passed us

1 by, but even a fraction of this activity would be a
2 significant impact to the region and to the state.

3 I would be remiss if I did not highlight
4 issues facing our ag industry.

5 The development and advancement of
6 opportunities in ag development, particularly in the
7 value-added markets, is a priority to the county.

8 Steuben County ranks tenth in cash receipts
9 for farm sales, and is the largest potato producer
10 in the state.

11 The Steuben County IDA supports the
12 New York Farm Bureau's priority issues for 2013, to
13 transition farms to the next generation, invest in
14 agriculture, develop a healthy farm-to-market
15 transportation system, and fuel the economy through
16 increased ag development and manufacturing.

17 I'd like to thank you for this opportunity to
18 speak to you today, and your leadership to identify
19 and eliminate unnecessarily costly regulations that
20 inhibit growth and drive up costs in our state.

21 And, I'd be happy to answer any questions.

22 Thank you.

23 SENATOR O'MARA: Good.

24 SENATOR MARCHIONE: I'm good.

25 SENATOR O'MARA: Thank you guys, for both of

1 you being here.

2 SENATOR GALLIVAN: Thank you, both.

3 If I might just note your point on
4 agriculture; we have targeted agriculture as one of
5 the industries.

6 And we had a hearing up in Watertown that was
7 very well attended, and the New York Farm Bureau did
8 testify, so, we've got a lot of information from
9 them.

10 JAMIE JOHNSON: Great.

11 SENATOR GALLIVAN: Thank you.

12 JAMIE JOHNSON: Thank you.

13 GEORGE MINER: Thank you.

14 SENATOR GALLIVAN: John Giovenco.

15 JOHN GIOVENCO: Yes, sir.

16 SENATOR GALLIVAN: Was I right?

17 JOHN GIOVENCO: You're correct.

18 SENATOR GALLIVAN: Excellent.

19 Welcome.

20 JOHN GIOVENCO: Thank you very much.

21 Distinguished members of the Senate Majority
22 Coalition, good morning -- or, actually, good
23 afternoon.

24 My name is John Giovenco. I'm the traffic
25 manager for Nucor's Vulcraft steel-fabrication

1 facility located in Chemung, New York.

2 On behalf of Vulcraft-Chemung and its parent
3 company, Nucor Steel, thank you for this opportunity
4 to speak with you today.

5 We are proud to say the Nucor Vulcraft family
6 is part of the fabric of New York State.

7 Nucor owns and operates a raw-steel
8 manufacturing facility in Auburn, New York, casting
9 over 500,000 tons of rebar and other steel products
10 used in all kinds of infrastructure and industrial
11 applications.

12 In 2001, Nucor built its Vulcraft-Chemung
13 facility where we build steel joist and steel
14 decking. Nearly half of all the raw steel we use in
15 Chemung is manufactured in Auburn.

16 And I will also note that 100 percent of it
17 is made in the United States.

18 Also, in 2008, Nucor purchased, and now
19 operates, its Harris steel-rebar fabrication and
20 installation facility in New York -- in Albany,
21 New York.

22 All told, Nucor is a huge economic-driver in
23 upstate, employing nearly 600 teammates whose
24 average annual earnings are \$70,000, not including
25 management.

1 In addition, 85 percent of the
2 1 billion pounds of scrap steel we purchase annually
3 to make the new steel in Auburn comes from dozens of
4 New York-based scrap businesses.

5 We're also proud to say that Nucor is serving
6 as the largest supplier of steel beams for the
7 Freedom Tower, 911 Memorial projects in
8 New York City, and we supply the vast majority of
9 steel used in the Citi Field and Yankee Stadium
10 projects.

11 And, again, thank you very much for allowing
12 me to speak here today.

13 I go right to one of our first points:

14 We would ask you consider a "Buy American"
15 protection to create and protect American jobs.

16 Nucor was extremely disappointed to learn
17 about the Metropolitan Transit Authority and
18 Port Authority's recent decisions to award
19 multimillion-dollar infrastructure contracts to the
20 Chinese, to supply steel for the Verrazano Bridge
21 and Bayonne Bridge re-decking contracts.

22 Sending major infrastructure projects
23 overseas flies in the face of local job creation and
24 restoring New York's economy.

25 We urge the Coalition to explore ways to

1 protect jobs and keep New York State taxpayer
2 investment at home by incorporating "Buy American"
3 provisions in New York State law.

4 I will echo the request to repeal the
5 Wage Theft Protection Act. It is onerous.

6 We support Senate 6063 and Assembly 8856 in
7 this regard.

8 We also support Governor Cuomo's bipartisan
9 efforts to cut taxes.

10 And we, you know, urge you, the
11 Majority Coalition, to work with the Governor and
12 your colleagues to reform New York's burdensome and
13 costly taxation system.

14 We also want to highlight the commercial
15 transportation industry.

16 Everyone who has spoken here today in
17 manufacturing relies on the transportation industry.

18 Easily, 85 percent of the goods and
19 services -- well, goods we buy and utilize are
20 delivered by truck.

21 The lynchpin to the continued growth and
22 success of New York State's steel and other
23 manufacturing industries is a robust and affordable
24 commercial-trucking industry able to compete on a
25 level playing field with neighboring states.

1 We recommend the following policy changes:

2 Repeal the interstate prohibition on LNG
3 hauling.

4 There is actually -- I know Senator O'Mara
5 knows this, but I would like to say for the record,
6 there's also a specific issue in the regulations
7 that does not allow a New York State producer to
8 truck it to a New York State user.

9 So, in fact, that element of the regulation
10 requires us to either export our LNG out of state,
11 if you're a producer, or, if you're a user, to buy
12 it from out of state, and have it trucked in.

13 And that's due to, you know, the interstate
14 commerce.

15 The feds, obviously, wouldn't allow us to ban
16 interstate commerce, but it's intrastate commerce
17 that's affected, really banned, by New York State
18 law -- or, regulation. Excuse me.

19 Another political hot-button I'll throw at
20 you is the Highway Use Tax.

21 It is very difficult to undo something that's
22 been done; however, as one of only four states in
23 the nation that still has a Highway Use Tax, which
24 makes us the second most-expensive transportation
25 state only second to Oregon in taxes and fees paid

1 by trucking companies, the Highway Use Tax leaves us
2 at a competitive disadvantage to New York
3 neighboring-based trucking companies: Pennsylvania,
4 New Jersey, and the like.

5 Evasion of the tax has, historically, been a
6 serious issue that results in unfair competitive
7 advantage to those out-of-state carriers. It also
8 reduces the amount of tax we collect.

9 We urge your support of Senator DeFrancisco's
10 and Assemblyman Magnarelli's legislation to repeal
11 the unfair tax and explore ways to fairly assess the
12 tax on all carriers.

13 We obviously support the tax need, or the tax
14 basis, for rebuilding/repairing our infrastructure.

15 We're not saying we don't want to support
16 that. We want to say we want pay our fair share.

17 And we feel that it's very obvious that
18 New York State-based carriers are unfairly burdened,
19 while others are not paying their share.

20 We also support enacting the Fairness In
21 Contracting legislation.

22 In the past 4 years, 38 states, including
23 Pennsylvania, Connecticut, and Massachusetts, have
24 adopted laws aimed at protecting common carriers
25 from unfair indemnification provisions in shipper

1 contracts.

2 Legislation sponsored by Senator Maziarz and
3 Assemblywoman Lupardo would reduce undue cost borne
4 by New York carriers by establishing a system of
5 fairness: the responsible party is accountable for
6 damages and liabilities.

7 This legislation, which is S1087 and A3673,
8 would not limit anyone's ability to sue someone who
9 is at fault, but simply prohibit undue liability
10 automatically being assigned to the carrier, which
11 happens in many contracts today without this law.

12 We again repeat the support of holding the
13 line on repeal of the 18-A utility tax.

14 So, I won't go into detail on that, that's
15 already been covered.

16 And, lastly, we would support adopting
17 policies to increase domestic energy supply.

18 And, again, I think that's been very well
19 covered, so I won't go into detail on that.

20 We're hopeful that our recommendations are
21 useful as the Majority Coalition continues its
22 important work in making New York a better place for
23 manufacturers to thrive and grow.

24 Of course, if you have any questions, or need
25 further information, please do not hesitate to

1 contact me.

2 SENATOR MARCHIONE: One thing I would like to
3 say is, thank you for your testimony, because,
4 between yesterday and today, we're hearing a lot of
5 reoccurring themes, and when we hear that, we
6 recognize that some of these regulations are
7 transcending to a lot of different types of jobs.

8 And so what we're hearing today, a lot we
9 heard yesterday, with insurance and banking, and we
10 appreciate hearing it from you, because we recognize
11 that regulation is really onerous to a lot of
12 different job sectors.

13 So thank you very much for your testimony.

14 JOHN GIOVENCO: You're welcome.

15 SENATOR O'MARA: John, thank you, and, thank
16 you to Nucor, for your commitment to manufacturing
17 in New York State.

18 JOHN GIOVENCO: You're welcome.

19 Thank you all.

20 SENATOR GALLIVAN: Did we miss anybody?

21 SENATOR O'MARA: Is anybody here from any
22 manufacturer that would like to add a comment before
23 we close out?

24 I want to thank you all for coming.

25 It's been very informative for us, and

1 helpful for us to get this material, some of which
2 we're familiar with, and some of it which is new to
3 us, but, to get it all on the record so we have this
4 to use in moving legislative initiatives forward in
5 our effort to eliminate the regulatory burdens in
6 New York State.

7 Thank you all.

8 SENATOR GALLIVAN: Thank you.

9 SENATOR MARCHIONE: Thank you.

10 (Whereupon, at approximately 2:30 p.m.,
11 the public forum on Manufacturing Regulatory
12 Reform held before the New York State Senate
13 Majority Coalition concluded, and adjourned.)

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1 BEFORE THE NEW YORK STATE SENATE MAJORITY COALITION

2 PUBLIC FORUM/TOWN HALL

3 BIOTECHNOLOGY REGULATORY REFORM - TO LEARN FROM
4 BUSINESSES AND INDUSTRY EXPERTS WHICH REGULATIONS
5 ARE THE LEAST USEFUL, LEAST COST-EFFECTIVE, AND,
6 THEREFORE, SHOULD BE ELIMINATED

7 Monroe County Office Building
8 Legislative Chamber - 4th Floor
9 39 West Main Street
10 Rochester, NY 14614

11
12 October 15, 2013
13 1:00 p.m. to 3:00 p.m.

14 SPONSORS PRESIDING:

15 Senator Patrick M. Gallivan
16 Deputy Conference Leader for Economic Development

17 Senator Kathleen A. Marchione
18 Chair of the Administrative Regulations Review
19 Commission

20 Senator David J. Valesky
21 Chair of the Senate Committee on Commerce,
22 Economic Development, and Small Business

23 CO-SPONSOR PRESIDING:

24 Senator Joseph E. Robach

25 ALSO IN ATTENDANCE:

Assemblyman Mark C. Johns

Jay Grasso, representing
Senator Ranzenhofer's Office

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---oOo---

1 SENATOR ROBACH: We're going to get started
2 here so we can get to, really, your important input,
3 what we're here for.

4 I want to first thank, and introduce, my
5 colleagues who have been working on this, many who
6 have participated across the state, but I appreciate
7 them all being here, especially Senator Gallivan and
8 Senator Valesky, who have been having these forums
9 all across the state, on trying to improve, both,
10 any regulatory impediments, as well as anything we
11 can come up with to try and help the biotech
12 industries.

13 And, of course, I am very pleased, being from
14 here, and, parochially, representing Rochester,
15 I think it was very, very important that we had it
16 in our region, both, to try and help existing
17 companies and emerging-growth companies, but also
18 work on our very, very fortunate synergy that we
19 have with our colleges and universities, especially
20 the U of R and the Medical Center on the medical
21 side of biotech; and, certainly, Rochester Institute
22 of Technology, on the green- and
23 sustainable-technology side, we are perfectly
24 poised.

25 We have a lot of trained employees, a lot of

1 good people.

2 We had Comptroller DiNapoli in, even talking
3 about investment and seed capital.

4 So, we really want to hear from you, and
5 compile whatever we can together, to make some
6 recommendations as we move forward, especially in
7 Rochester, I hope, but, really, across
8 Upstate New York, as to how we can grow, not only
9 this business, but every business.

10 So we thank you all for participating and
11 doing this right here in Rochester.

12 Before I get to Senator Gallivan and
13 Senator Valesky, I just also wanted to note, we are
14 joined by my colleague Kathy Marchione from the
15 Capital Region in Albany.

16 And, also I saw Jay Grasso, who is from
17 Senator Ranzenhofer's Office, in the back, who has
18 also participated in these;

19 And, Mark Johns, who certainly worked
20 together with the Assembly.

21 I will applaud Mark, who very aggressively,
22 even though he's a member of the Assembly, asked,
23 out of importance to this, wanted to hear what you
24 had to say, and we thank you for joining us today,
25 too.

1 And with that, I will pass it over to Pat and
2 David for their opening remarks.

3 SENATOR GALLIVAN: Thanks, Joe.

4 Good afternoon, everybody, and thank you all
5 for being here.

6 We've all seen, time and time again, last
7 week, I think it was the Tax Foundation in the
8 spring, U.S. Chamber of Commerce report, and many
9 other reports, consistently rank New York State as
10 having the worst, or among the worst, business
11 environment in the country, which is a terrible
12 distinction, despite some of the progress I think
13 that we've made the past few years, as we contrast
14 that with what's going on in Washington.

15 Here, where we see Democrats and Republicans
16 working together, we have put together a bipartisan
17 committee:

18 Senator Valesky, myself, Senator Marchione,
19 and Senator Carlucci from down in Rockland County --
20 Rockland-Orange county area, Hudson Valley area.

21 But the idea is, to try to do something about
22 New York having the worst, or among the worst,
23 business environment, and what causes it.

24 Time and time again, my colleagues and I hear
25 from some of you, and others, our constituents,

1 people across the state: taxes and regulations.

2 Very often, a lot of people talk about taxes
3 all the time.

4 It's not often, other than in complaints,
5 that we see regulations in the news.

6 New York State has over 140,000 pages of
7 regulations in the state.

8 We don't have quite an exact number of the
9 regulations, but that's over, when we multiply it
10 out, we're estimating over three-quarters of a
11 billion regulations, which is outrageous; and we
12 just see regulation on top of regulation on top of
13 regulation without much relief in the way, over the
14 years, of removing regulations along the way.

15 So our effort is to try to do something about
16 the regulations.

17 The way that we're doing that, is we're
18 conducting a series of industry-wide hearings across
19 the state, dealing with, here, of course, biotech,
20 but, health/medical, agricultural, manufacturing,
21 small business, and a number of others, but the idea
22 is to get past those big items, those big-ticket
23 items, that we hear about all the time, and try to
24 drill down into individual businesses, individual
25 industries, to identify the regulations that we can

1 look to get rid of.

2 Our initial goal is to identify at least a
3 thousand; but why a thousand?

4 We had to start somewhere, and we wanted to
5 take on something that was manageable.

6 We think that it is.

7 But more importantly, we hope that this is
8 the beginning of a continual look at regulations,
9 and a serious effort on behalf of the Legislature,
10 to try to make it part of our agenda; the
11 legislative agenda when we start next session, and,
12 hopefully, well into the future.

13 So I do appreciate the fact that you are all
14 here.

15 You can look for a final report.

16 It will be on the Senate website sometime
17 around the end of November, early December.

18 And then, of course, we will be trying to
19 push for as much relief as possible.

20 David.

21 SENATOR VALESKY: Thank you.

22 Well, Senator Gallivan covered it well, so
23 I just want to echo his comments.

24 I do also want to thank Senator Robach for
25 hosting this hearing.

1 This is the final hearing in the series.

2 We will be moving right into preparing our
3 report, which will be made available, and then
4 moving into, hopefully, many, many action items for
5 us as a Legislature, both, calling on executive
6 agencies to certainly do something about
7 regulations, but, also, take a look at what we can
8 continue to do legislatively, as a State Senate,
9 when we return in January for the commencement of
10 the 2014 legislative session.

11 The one thing that I would add, in terms of
12 the hearing this afternoon, those of you who have
13 signed up to testify, we would ask that you be as
14 specific as possible.

15 If there are specific regulations that are
16 impeding your growth, that are hindering and
17 hampering you being able to provide even greater
18 economic opportunity for folks here in Rochester,
19 and all across the state, that's what we're looking
20 for: as specific as possible.

21 And we'll certainly have some questions for
22 you as you finish your testimony.

23 Thank you very much.

24 SENATOR ROBACH: Kathy.

25 SENATOR MARCHIONE: Thank you.

1 It's an honor to be here with you today in
2 our final regulation hearing.

3 I'm Senator Kathy Marchione.

4 I represent the 43rd Senate District, which
5 comprises parts of Rensselaer, Saratoga, Washington
6 County, and all of Columbia County.

7 In addition to being the Senator from the
8 43rd District, I serve as the Chairman of the
9 Senate Administrative Regulations Review Commission,
10 known as "ARRC."

11 ARRC is a bipartisan committee with the
12 Senate and Assembly, and we keep our eye on about
13 107 state agencies, and they issue approximately
14 300 new regulations every year.

15 When we looked at that, if you listed
16 regulations on an 8 1/2-by-11 sheet of paper, end to
17 end, that's about 22 miles of regulations, which is,
18 like, from the State Capitol to my home in
19 Half Moon.

20 And, you know, they pose a massive financial
21 burden on our business community.

22 They stifle innovation, of course, and force
23 institutions to spend more time with regulatory
24 compliance, and less time finding the next biotech
25 breakthrough.

1 So, I'm happy to be here today.

2 The purpose, of course, of our forum is to
3 hear from experts in your field.

4 And our goal here is not to point fingers or
5 assign political blame to anyone for the
6 regulations.

7 Our one and only goal, of course, is to find
8 solutions; real solutions.

9 So, looking forward to hearing your testimony
10 today.

11 Thank you.

12 SENATOR ROBACH: Thank you, Kathy.

13 And before we get to Assemblyman Johns for
14 his opening comments, I just want to thank
15 Jeff Adair, the president of the Legislature in the
16 back.

17 Thank you for letting us use this great
18 facility, Jeff, and we appreciate that.

19 And before we get to our first speaker,
20 Assemblyman Johns.

21 ASSEMBLYMAN JOHNS: Good afternoon, everyone.

22 I'm Assemblyman Mark Johns.

23 This is my home region here.

24 I appreciate Senator Robach and the other
25 Senators for allowing me to come out.

1 You know, I had an opportunity a few months
2 ago to talk to Dr. Harold Smith, and I know there's
3 others out there that are going to speak today.

4 We have an opportunity in this area for
5 biotech companies to emerge and thrive.

6 I just want to make one point clear:

7 We're not only competing against other states
8 in the northeast; we're competing against every
9 state in this country, and we're competing at a
10 worldwide level.

11 Every country in the world -- China, Japan,
12 Korea, you name it -- they are out there backing up
13 their home-grown countries to try and -- companies
14 to make them better.

15 That's how you compete in a worldwide
16 economy.

17 And I'm here to do a small part to help our
18 home-grown businesses become world-class businesses
19 that are nationwide, and that also creates jobs in
20 this region.

21 So, thank you all for allowing me to come in
22 today.

23 SENATOR GALLIVAN: Our first speaker is
24 Joel Seligman, who is the president of the
25 University of Rochester.

1 We appreciate your being here.

2 Yep, front and center, if you could.

3 And if you'd rather sit, this microphone is
4 live, in the first seat.

5 JOEL SELGMAN: I got to tell you, it is such
6 a pleasure to stand.

7 I apologize if I appear to be hovering over
8 you, but this is so good for my lower back, so,
9 I thank you for restoring my health.

10 Senators Robach, Gallivan, Valesky, and
11 Marchione, and Assemblyman Johns, first, I want to
12 thank you for the opportunity to speak to you today
13 about what is truly an important topic.

14 As both the president of the University of
15 Rochester and the co-chair with Danny Wegman for the
16 Finger Lakes Regional Economic Development Council,
17 I want to thank the Senate Majority Coalition, more
18 generally, for their leadership and efforts to
19 reduce unnecessary regulation that limits economic
20 growth, and for their support for incentives and
21 initiatives that strengthen the biotechnology
22 industry and research institutions, including the
23 University of Rochester.

24 This is a big deal; the biotechnology
25 industry is a leading sector in the New York State

1 economy and the Finger Lakes region.

2 It's estimated that, in New York State,
3 bioscience currently supports 250,000 jobs, both
4 direct and indirect, generating \$309 million in
5 personal state income tax and approximately
6 \$6 billion in wages.

7 In the Rochester region, the biotechnology
8 industry ranges from large established firms, such
9 as CooperVision, Carestream Health,
10 Ortho-Clinical Diagnostics, to smaller companies
11 such as Vaccinex, SiMPore, OxiGen [ph.],
12 VirtualScopics, and iCardiac.

13 The creation of some of these startups was
14 driven, in fact, by the University of Rochester.

15 And for the University of Rochester, I want
16 to highlight how critical this is to our continuing
17 to be an effective institution.

18 The university currently is the region's
19 largest employer, with slightly over 22,000 jobs.

20 Indeed, it's the seventh largest private
21 employer in the state, the source of 47,000 direct
22 and indirect jobs, \$2.4 billion in direct and
23 indirect wages.

24 Over the past 5 years, the university has
25 received more than \$2 billion in external research

1 funding, most of which from federal agencies.

2 When normalized for faculty size in 2011, the
3 last year for which we have data, we ranked 15th
4 in the nation in federal research funding among the
5 176 leading funded research universities, with more
6 than \$400 million in total sponsored research during
7 the prior two years, and \$348 million last year.

8 Indeed, annually, we receive more funding
9 from the most important agency, the
10 National Institutes of Health, than institutions of
11 Buffalo, Syracuse, and Albany combined.

12 We're proud to be a national leader in
13 translating our research and discoveries into new
14 technologies and practical application.

15 Since 1996, 53 companies have been created
16 using the university-licensed technology, of which,
17 critically, 38 are still active, and 29 are located
18 in New York State.

19 For the past several years, the university
20 has been among the top institutions in terms of the
21 amount of royalty revenue received from licensed
22 technologies, according to the Association of
23 University Technology Managers.

24 Strategic investments by New York State have
25 often been pivotal in the success of our ability to

1 attract outside research funding to stimulate
2 economic development through startups or patent
3 licensing.

4 For example, the Health Science Center for
5 Computational Innovation is a partnership between
6 the university, IBM, and the State to create the
7 nation's most advanced high-performance computing
8 health-science research center.

9 To date, the center has been responsible for
10 generating over \$300 million in sponsored research
11 alone, and well over 100 faculty are critically
12 involved in these activities.

13 The upstate stem cell GMP facility at the
14 university's medical center is the upstate's only
15 university-based stem cell manufacturing facility
16 that meets the strict regulatory requirements
17 necessary to conduct clinical studies.

18 Thanks to Senator Robach, and others, the
19 Robert B. Goergen Hall for Biomedical Engineering
20 and Optics allows us to build on two of our great
21 strengths at the university, biomedical engineering
22 and optics, and presents us with the unprecedented
23 opportunity to be number one in an academic area,
24 the emerging field of biomedical optics.

25 In addition, the New York State Generating

1 Employment Through New York State Science, thank
2 goodness, more popularly known as "Genesis [ph.],"
3 is an initiative that also had a significant impact
4 on our institution's growth.

5 Thanks to the \$20 million in support that
6 Genesis received back in 2002, the university
7 expanded to add more than 400,000 square feet of
8 state-of-the-art research facilities, hired more
9 than 500 new faculty and support staff, and launched
10 the region's first biotech incubator, the Rochester
11 BioVenture Center, to promote and foster the growth
12 of early-stage life science companies on a regional
13 scale.

14 Nonetheless, the key theme of your hearings
15 today, the extent to which excessive regulation
16 impedes our efforts to be as effective as they might
17 be, is something very much on our mind.

18 State policymakers and regulators, I strongly
19 encourage them to review the cost and benefits of
20 state regulations, eliminating those that are
21 redundant, ineffective, inappropriately applied to
22 higher education, or for that matter, anyone else,
23 and biotechnology sectors with imposed costs that
24 outweigh the actual benefits to the state and
25 society.

1 Regulation and reporting requirements should
2 be consistent across agencies.

3 This is a huge issue.

4 It's not so much singling out a specific
5 regulation as wrong or inappropriate; it's, rather,
6 to harmonize reporting requirements so that, if
7 possible, you could have a "one size fits all," if
8 you will, to some degree.

9 We appreciate the intention, for example, to
10 significantly reduce costs and streamline reporting,
11 through both the New York State and grantees,
12 through the newly established Master Contract for
13 Grants and Grants Gateway, but there does need to be
14 more awareness, that while the concept of a single
15 standard, it should be applied in a way that
16 understands that educational institutions are
17 sometimes quite different than others who are filing
18 under the standard.

19 It can be more user-friendly, and, certainly,
20 you could help reduce redundancy with the
21 information already required on the New York State
22 Vendor Responsibility Questionnaire.

23 We urge the repeal of the annual-notification
24 provision of the Wage Theft Prevention Act.

25 This provision creates a significant

1 administrative burden, particularly for large
2 employers, and we've calculated the cost of
3 compliance with legislation is over \$25,000
4 annually, and we're dubious about the benefits, if
5 any, that can be achieved there.

6 As we look for ways to fuel growth in the
7 state's biotechnology commercial sectors,
8 I encourage you to continue support for existing
9 programs that have a consequential difference in our
10 ability to attract and retain top scientists and
11 impact economic growth.

12 If you want New York State to be the world's
13 leader in biotechnology, among other things you must
14 want, is the greatest scientific talent to come
15 here.

16 You've done very well with a series of
17 programs over time, some of which have been subject
18 to budgetary cutting blocks from time to time:

19 The NYSTAR Centers for Advanced Technology
20 have been a consequence;

21 The Regional Technology Development Centers;

22 The spinal chord-injury research program is a
23 particularly critical program at a time when we were
24 on the verge of great breakthroughs there;

25 NYSTEM.

1 And then I want to say a kind word, if
2 I might, for the regional economic-development
3 process which, in Rochester, has particularly
4 focused on biotechnology.

5 Our top priority project has been, for the
6 first three years of the existence of the
7 Regional Economic Development Council,
8 Eastman Business Park.

9 We've made substantial progress, if you will,
10 offstage, in helping with processes which have led
11 to the sale of the utility RED and environmental cap
12 from the state.

13 The final prize is within reach, and that
14 will be the ultimate sale of the project by the new
15 Kodak to a private developer committed to developing
16 biotechnology and other key industrial sectors in
17 what may be the nation's largest manufacturing park
18 of its kind.

19 I would also encourage you to strengthen the
20 state's ability to harness new technologies outside
21 the park that are emerging from our region's
22 universities and research centers, and transform
23 them into commercial opportunities.

24 There remains an acute demand for seed and
25 venture-capital funding.

1 While State-sponsored efforts like
2 Innovate NY have helped universities grow their
3 research and strengthen partnerships with the
4 business communities and push early-stage
5 innovations to commercialization, we encourage you
6 to expand upon these successes to mature nascent
7 technologies that help advance science, develop
8 novel technologies, and allow us to provide further
9 economic benefits to the region and New York State.

10 As you study these and related issues,
11 I would like to continue to offer the university's
12 assistance if we can provide it in any way.

13 Again, thank you for allowing me this
14 opportunity to submit my testimony for the record,
15 and to encourage you in both of your key efforts:
16 those of helping streamline our regulatory
17 structure, and those of focusing on what strategic
18 investments can best strengthen the New York State's
19 biotechnology industries.

20 Thank you.

21 SENATOR ROBACH: Thank you, Joel.

22 SENATOR GALLIVAN: Thank you, Joel.

23 I have just a couple of quick questions.

24 The Wage Theft Prevention Act is something
25 that we have heard, the notification provision, at

1 every hearing.

2 Some people testifying, they've estimated it
3 takes about five minutes per employee, but nobody
4 has actually quantified it.

5 So I'm kind of interested how you did,
6 because, clearly, that's -- that is a needless
7 provision that's out there, that's duplicative and a
8 real pain in the rear end for employers across the
9 state.

10 But, in our trying to make recommendations,
11 it's helpful if we're able to put a cost to it.

12 So how did you calculate that out?

13 So you're a little over a dollar an employee?

14 JOEL SELIGMAN: The way to do it, I believe,
15 was focusing on the person hours of the people
16 involved in preparing the information: the number of
17 employees, the number of days.

18 But we will submit to you a memorandum which
19 specifically addresses that; we'll give you the
20 basis of the calculation.

21 SENATOR GALLIVAN: That would be helpful.

22 JOEL SELIGMAN: Yes, more than happy to.

23 SENATOR GALLIVAN: And the other thing is,
24 that I have a personal interest in this, and it's
25 just, I think, a little off topic with regulation,

1 you made mention of the spinal cord-injury research
2 program.

3 JOEL SELIGMAN: Yes.

4 SENATOR GALLIVAN: I had been -- we've been
5 approached by a number of people that had indicated
6 that that funding, there's some sort of check-off,
7 I think it's -- I don't know if it's on
8 driver's licenses, or having to do with vehicle
9 registrations, but, a separate fund where some money
10 goes to that?

11 SENATOR ROBACH: On the tax form.

12 ASSEMBLYMAN JOHNS: Speeding tickets, too.

13 SENATOR GALLIVAN: Oh, on the speeding
14 ticket?

15 But the concern was, that the money was not
16 actually freed up and sent to the particular places
17 that are doing the research.

18 Have you experienced that, or is it
19 flowing --

20 JOEL SELIGMAN: We have not experienced that,
21 but what we did experience, however, was a dramatic
22 reduction in funding when the line that supports
23 this was reduced from, I believe the specific level,
24 and forgive me if my memory is wrong, but something,
25 like, \$8 million, to less.

1 I think those numbers are correct.

2 Let me highlight why this is so critical.

3 You know, we are on the verge of discoveries
4 by which spinal cord injuries -- which, among other
5 things, hit us all quite personally at the
6 University of Rochester because of the
7 chief executive officer of the medical center --
8 potentially, could reach a period in which people
9 confined to wheel chairs, people confined to
10 crippling restrictions, can get up and walk, will be
11 able to fully be restored to physical mobility.

12 This is not fanciful.

13 Some of this is based upon science, for
14 example, being conducted by Dr. Mark Noble at the
15 University of Rochester Medical Center and
16 colleagues around the country.

17 \$8 million I know is a lot of money, and
18 I don't want to in any way minimize the
19 significance, but the payoff, potentially, in terms
20 of saved or restored lives is huge, and this is a
21 time in which there are medical results coming in
22 which make very clear a modest additional or a
23 sustained investment in the sector can have a huge
24 outcome.

25 SENATOR GALLIVAN: For the sake of everybody

1 in the room, we're moving a little off topic.

2 Maybe we can talk separately about that?

3 JOEL SELIGMAN: Sure.

4 SENATOR GALLIVAN: Because I've got some
5 people that are involved, and some -- they're
6 involved in helping out some other organizations
7 that might be a good collaboration, if you don't
8 have it already.

9 But, we'll do this separate, but, thank you.

10 JOEL SELIGMAN: We like friends.

11 SENATOR ROBACH: Joel, thank you.

12 And I guess good news on the regulation:

13 I'm happy to say that, how would I say this,
14 non-partisanly, that happened at a time when this
15 coalition was not in charge in the majority of the
16 Senate, we voted to repeal it ever since.

17 And I think we're growing in the number of
18 people in the Assembly from Upstate New York who are
19 in the majority that want to repeal that as well,
20 and I hope that will go.

21 But I wanted to ask a little bit off, too,
22 because you really highlighted, greatly, I mean, the
23 collective U of R, hospital, medical center.

24 University is now the biggest employer in
25 Rochester.

1 You highlighted some of the reasons why.

2 I keep getting back to, even off regulation,
3 which they may be connected, we create so much in
4 New York, and we have so much good capacity for
5 innovation all across the state, but the
6 commercialization, oftentimes, seems to go somewhere
7 else.

8 Is there anything we can do, or you can think
9 of, to better, besides regulation, maybe get those
10 companies to stay here, or, whether it's a vaccine,
11 whether it's an innovation that's going to reduce
12 the carbon footprint, to kind of get them to do it
13 here?

14 Do you have any thoughts on that?

15 JOEL SELIGMAN: Well, this morning I visited
16 a major manufacturer in Rochester who has thousands
17 of employees in the area, and clearly wants to stay
18 in the area.

19 But, for example, they're focusing on one
20 part of the manufacturing which involves what's
21 called a "MEMS" machine, which is a microprocessing
22 device.

23 And the CEO of the company, you know,
24 explained to me that in the nation of Singapore,
25 they will make available to him, in effect,

1 MEMS equipment that operates at 30 percent less cost
2 than what we currently have in Rochester.

3 That's an illustration of a strategic
4 investment.

5 We have, second, the kind of issues that were
6 highlighted in some of the opening statements.

7 Our tax rates are higher.

8 We don't want to lose track of the fact,
9 balancing in a different direction are enormous
10 advantages we have.

11 I know people sometimes underestimate how
12 significant these advantages are, but, the cluster
13 of great universities, with state support through a
14 number of programs, helps.

15 But what also enormously helps us, candidly,
16 is our current real-estate prices.

17 When I want to talk to people at leading
18 universities around the country, you know, you can
19 say there may be some pretty snazzy universities in
20 places like, say, Boston, Chicago, San Diego, but
21 I talk a different kind of tune.

22 I can explain to them:

23 You know the 600-square-foot apartment you're
24 living in?

25 For the rent there, you can buy a

1 three-bedroom house, you can have the backyard, you
2 can have Rex the wonder dog, you can afford the
3 Volvo, and nice vacations.

4 Now will they come here?

5 The ultimate answer, for at least
6 universities, and to some extent, for the clustering
7 with sectors like biotechnology, is colleagues.

8 In other words, we need to build a critical
9 mass of top-flight scientists.

10 And so it's, on the one hand, by reducing
11 costs, creating, particularly, incentives for
12 business; on the other hand, in terms of sponsored
13 research funding, or the kind of funding that
14 Regional Economic Development Council or other
15 programs of New York State does, you have to have
16 them work hand in hand to move and have the
17 most-effective system.

18 If you just focus on costs, it's not going to
19 go far enough.

20 It's helpful, don't get me wrong.

21 You have, obviously, limited quantities of
22 money, and you have to be very strategic where you
23 invest them, but you want never to lose track, you
24 need both to compete with international competition,
25 which is the real critical competition, to some

1 degree, where subsidies, where direct support, are
2 very, very significant in attracting both businesses
3 and top-flight scientists.

4 SENATOR ROBACH: Thank you.

5 It's interesting, I never know if those
6 numbers are right, but, you know, they say that the
7 biotech jobs, both the research and the other side
8 of it, are so much more higher than regular jobs,
9 that would really raise all boats, the more we can
10 grow that here.

11 So, I guess it's a number of things we can do
12 to be more competitive.

13 Thank you.

14 JOEL SELIGMAN: My pleasure.

15 SENATOR GALLIVAN: Thanks, Joel.

16 JOEL SELGMAN: Take care.

17 SENATOR GALLIVAN: Our next speaker, or
18 presenter, is Harold Smith, professor of
19 biochemistry and biophysics, University of Rochester
20 Medical Center.

21 HAROLD SMITH: I, too, want to thank the
22 Senators for organizing this, and putting the whole
23 show together, and the Assemblyman for attending.

24 I thank the members of the university
25 community and the ladies and gentlemen of our

1 community in Rochester for attending this.

2 My name is Harold Smith.

3 I've been in Rochester for 28 years, and live
4 in Henrietta.

5 I came up through the ranks of the
6 University of Rochester to full professorship in
7 biochemistry.

8 Started a company in 2003; my experiences
9 that I relate to you start from that point.

10 And I think that my major message to bring to
11 you is that, in order for this community to really
12 realize the potential in jobs growth and economic
13 engine that biotech can bring about, it has to be a
14 collaborative effort; it has to be a collaboration
15 between the universities, the companies, and
16 venture-capital groups to come together and pull the
17 rope in the same direction.

18 This is so critical now because there has
19 been a major change on the horizon that has affected
20 the way all of us have to do business.

21 First, the federal government has, more or
22 less, pulled the rug out from underneath us.

23 Universities are suffering to support their
24 research groups and their students and businesses.

25 Biotechs are suffering as well.

1 The other issue is that a very major change
2 has happened over the past 10 to 15 years, is that,
3 big pharma, that normally trolled the waters of
4 biotech and the IP estate of universities for good
5 ideas, is now adverse to building their own
6 pipeline.

7 They will not take things early.

8 For a guy like myself looking for the next
9 cure for a disease, and particularly the cure for
10 HIV/AIDS, they are asking us to go all the way
11 through Phase II clinical trials now.

12 Fifteen years ago I would have been popped
13 out of the university technology and rewarded with
14 handsome amounts of money and lab infrastructure,
15 and stuff like that.

16 Now I carry the burden.

17 The issue here is that that is called, among
18 all of us in biotechs, as the "valley of death."

19 It is so popular now that it has its own
20 name; and that is where a university discovery,
21 which is an element that turns over rocks in the
22 right place and tells you how the natural world
23 exists, has to be complemented by biotech that
24 creates new products through innovation and
25 invention.

1 These things don't exist in nature until man
2 or woman creates them.

3 Now, between that rift, if biotech has to
4 carry the weight all the way through clinical
5 trials, this is going to be all of us in New York
6 who are requiring a sustained risk in biotech and
7 requiring support that will not necessarily come
8 from venture capital because they are risk-adverse.

9 It will not come from the federal government,
10 because now my funding in my study section for HIV
11 is at 4.5 percent.

12 When I started out as an assistant professor,
13 it was at 20.

14 So I have to compete at that level.

15 It's not that science has gotten dumber; it's
16 that we are, as a nation, choosing not to invest in
17 technology.

18 We're making a decision about the future of
19 health care.

20 So if you look at a census that I conducted
21 recently by Dunn and Brad Street, there are
22 approximately 14,000, what you could call,
23 "biotechs" across the state.

24 When I say "biotech," most people confuse
25 this with high tech.

1 Biotech is a part of high tech, but in
2 biotech, you take cells or molecules in cells and
3 manipulate them and target them with drugs in order
4 to create therapeutics.

5 It's different than a medical device, it's
6 different than putting a wind vane or a solar panel;
7 all of those are high tech.

8 But biotech has its unique problems, in that
9 the incubation period to product is longer, because
10 there's so much vetting that has to take place.

11 Technology that comes out of the university
12 is not vetted for product development.

13 It has to be vetted in the course of
14 biotechs.

15 It has to be shown to be reproducible; and
16 that is, not everything that's true is necessarily
17 is a product.

18 So this is in the hands of the biotech.

19 And I think what has to happen is that the
20 State has to help us with some kind of oversight to
21 make sure that the husbandry is there, because as
22 the universities are trying to launch companies,
23 they're finding themselves in a very unique position
24 now, and I can tell you I'm right square in the
25 middle of this; is that because I don't have a

1 pharma partner until later on, I have to have
2 fiduciary responsibility to my company for a longer
3 period of time, to navigate all the turns and
4 traverses that will happen in my company to make
5 sure it stays on track and that someone who knows
6 the technology is behind it all the way.

7 I am 100 percent committed, but because of my
8 situation of being a university faculty member,
9 I have to be careful and navigate my conflict of
10 interest.

11 I have to release my fiduciary
12 responsibilities at a time where, nowadays,
13 companies are not mature enough to launch because it
14 will take so much longer to get into clinical
15 trials.

16 So what I'm asking for is not regulation;
17 perhaps allowing people like myself and the
18 university president to adopt new language, and
19 perhaps legislation.

20 What I'm looking for is a Biotech Industry
21 Revitalization and Development Initiative.

22 I call this acronym "BIRDI"; it's because
23 it's one better.

24 It's one better than just simply throwing
25 university technology out in the field, allowing VCs

1 to be the sole gatekeeper who triage it.

2 Because I can tell you, over a cure for HIV,
3 which is nebulous, treacherous, and risky, they'll
4 choose to develop yogurt; which was, the Greek
5 yogurt happened several thousand years before the
6 birth of Christ.

7 Okay?

8 So that's the level of innovation you'll see
9 in the VC community.

10 What would help tremendously, is if the State
11 adopt this so that there was appropriate guidance,
12 mentoring, counseling, and, yes, financial support
13 in the way of grants that are milestone-driven.

14 I'm asking for a significant amount of
15 dollars to be vested, not in high tech specifically,
16 though that's a separate discussion from your other
17 meetings, but specifically in biotech itself, to
18 nurture that industry and protect fledgling
19 companies and people who need to continue to develop
20 their work during this period of time where federal
21 government is not supporting biotech, and where
22 industry, big industry, is not coming to the rescue
23 early.

24 So I think with that, I'll summarize to say
25 that, largely, I am grateful for the opportunity to

1 actually speak at such a thing.

2 It's rare that a faculty member actually gets
3 to come out like this.

4 I think that it's cooperation between
5 academics, small companies, and venture capital;
6 everyone has to pitch in and pull in the same
7 direction.

8 If we do not do that and have state money
9 supporting it, venture capital will continue to
10 restrict the amount of their total budgets of
11 available investment to 5 to 10 percent of their
12 funds, and those are the ones who are interested,
13 and we will not get the support for biotechs.

14 It is a risky proposition.

15 It is the number of opportunities on goal
16 that matter in biotech, because one of us makes it,
17 and it's a blockbuster.

18 It's tens of millions and tens of billions,
19 hundreds of millions, these things come out of the
20 door in ways you can't believe.

21 Yes, four or five will die for every one that
22 makes it, and it's not always because it's a bad
23 idea.

24 It's largely because of the economic climate
25 and the ability to find a strategic partner.

1 New York State can make sure that more of us
2 are coming out into companies, and more of us have
3 an opportunity to thrive.

4 I can guarantee, that if biotech becomes a
5 substantial rail across the state, whoever came up
6 with the idea of SUNY as a system for educating our
7 population, you merge those two concepts, the SUNY
8 creating people who are educated and looking for
9 high-paying jobs with a biotech rail that is capable
10 of providing that, you've got a New York State that
11 is going to be as competitive as California,
12 Florida, Texas, and Massachusetts.

13 So I thank everyone for allowing me to do
14 this; have this opportunity to speak, and I'll take
15 any questions.

16 SENATOR GALLIVAN: You're smarter than all of
17 us.

18 [Laughter.]

19 SENATOR GALLIVAN: But it's interesting, what
20 we have heard in most places, is get government out
21 of our way.

22 But you're articulating a need for state
23 government to be involved in this area?

24 HAROLD SMITH: In the form of grants.

25 And -- and so the hardest thing is government

1 relations and investor relations.

2 SENATOR GALLIVAN: But you mentioned
3 New York State oversight.

4 What do you mean by the "oversight"?

5 In the way of grants, or --

6 HAROLD SMITH: In the way of a grant.

7 So we were the beneficiary of the
8 Blueprint Award; the Empire State Blueprint Award,
9 which helped us out at a critical time.

10 We then picked up a Bill and Melinda Gates
11 Foundation.

12 These were in the ilk of a hundred to
13 two hundred thousand.

14 A grant that would help start a biotech move
15 from the university where it's protected and
16 seminars are taking place, and you're really not out
17 there.

18 You're not totally committed, as long as
19 you're a university professor, to create a product.

20 Okay?

21 You do great discoveries, you publish papers,
22 but you cannot actually create a product.

23 What we need is New York State to actually
24 say, We will incentivize the university and faculty;
25 understanding that there is now a protracted period

1 of time of husbandry that's necessary in order to
2 get products to market.

3 And that will require a committee at the
4 state level that understands what the denominator
5 is:

6 How many companies we have, and what is the
7 diversity of technology?

8 And what is the potential earnings if all of
9 them were maxed to a maximum intake?

10 California has commissions.

11 Massachusetts, Texas, Pennsylvania, all the
12 states that have successful biotechs have a group of
13 senators and assemblymen who are dedicated to
14 understanding, What are the needs of that community?

15 We have nothing like that.

16 SENATOR GALLIVAN: You mentioned in your
17 written testimony, you also threw out the idea of
18 low-interest loans.

19 HAROLD SMITH: Yes.

20 SENATOR GALLIVAN: Is that workable?

21 HAROLD SMITH: Yes, that will be workable.

22 For example, the Blueprint Award is a loan,
23 and if we meet all their milestones in employment,
24 then it's given to us as a grant.

25 So there is lot of carrot, but there is a

1 stick as well on that; and I think that that works
2 pretty well for us.

3 Outright gift of money, of course, is always
4 appreciated.

5 But, I think we have to look at this as
6 something that, the state has to try to understand
7 what we have in order to know where we're going.

8 And that's what this commission, whether it's
9 dissolved afterwards, or whatever, we have to come
10 together as a state and understand what it is that
11 we can build.

12 Rather than having random things happen here
13 or there, one sector decides it's stem cells, and
14 another sector decides it's cancer, how do we know
15 that that's coordinated well?

16 Everyone's competing on their own.

17 There's no unified method.

18 And the venture-capital community, largely,
19 is going to triage things based on return for their
20 investors.

21 They will go for yogurt before they go for a
22 cure for AIDS, and that's a problem for us.

23 If that's all we have as access, and the
24 federal government has abandoned us, this is going
25 to be a massive struggle.

1 Companies are going die off left and right,
2 because they get just to the point, and then they
3 can't make payroll.

4 So the State could be enormously helpful as a
5 companion in this.

6 SENATOR GALLIVAN: Thank you.

7 SENATOR ROBACH: I don't want to digress too
8 much, but, you know, because this is all really
9 about, for me anyways, is how we can make more jobs
10 in New York, and that's good.

11 And so it's sort of changed because, what we
12 sort of heard before was that, the privates, which
13 I always thought was interesting, because,
14 California, despite what you read, and
15 Massachusetts, really, you know, we're comparable in
16 costs, I would almost make the argument, in
17 Upstate New York it's cheaper to do business than it
18 is in Massachusetts or most parts of California,
19 with more reliable energy in other places, maybe not
20 Carolina, maybe not Texas.

21 But, you think it's really much, much more
22 than that, I'm hearing you say, on even the
23 investment side, which is shocking to me, because --
24 so, there's all this money in the pharmaceutical
25 industry, and that's the part we always seem to

1 miss, at least in Rochester.

2 So they've even created some vaccines, or
3 HP -- but, the vaccines are never made here.

4 The technology goes somewhere else to be
5 manufactured.

6 They're investing somewhere.

7 Maybe it has to be some kind of -- maybe if
8 we get more of a reputation, they'd be more willing,
9 private and public money, to go into it.

10 I don't know, do you have a comment on that?

11 HAROLD SMITH: We have to try to build it in
12 New York.

13 There was a point in time where downstate had
14 an enormous production facility.

15 It became too expensive to do it down there.

16 The Alexander Research Center has put
17 together -- it is the Taj Mahal.

18 Most people would give an arm in order to
19 work there, right?

20 It is the Alexander Research Center, and it's
21 set up with a lead faculty working inside of it,
22 with pharma fishing the edges for a good idea.

23 What's missing there, in my personal opinion,
24 is the lack of deliberateness.

25 If you have academics doing science, they

1 pursue it in an unfettered, unharnessed way to go
2 for discovery.

3 That is the nature of it.

4 Anything short of that is not academic
5 research and discovery.

6 And, so, if you have a group of people who
7 are not product-oriented getting a lot of resources
8 and a lot of money, what you're going to get is a
9 randomized discovery process, which someone else
10 above is pulling out and then taking out of state
11 with you.

12 SENATOR ROBACH: Right.

13 HAROLD SMITH: Right?

14 So what I'm asking for is a highly focused
15 effort by the State to understand, what it is that
16 we can create, what it is that we can do, how to
17 in -- potentiate it within New York, grow it in
18 New York, and make it in New York.

19 We have the people across the entire CUNY and
20 SUNY university system and private universities.

21 My company is staffed solely by
22 New York State graduates, and they are considered
23 among the elite in this area.

24 We are considered now a global leader towards
25 a cure.

1 How did that happen in Upstate New York?

2 Smart people working in a dedicated way.

3 I would love to be able to work with the
4 Senate and the Assembly to come up with appropriate
5 language and appropriate ideas, just from the
6 insider's point of view, to try to give that
7 perspective as a sounding board.

8 So, I really am grateful for the opportunity
9 here.

10 SENATOR ROBACH: Thank you.

11 SENATOR GALLIVAN: Thank you.

12 ASSEMBLYMAN JOHNS: Dr. Smith, one more
13 question.

14 We talked in my office many months ago.

15 I know you came with your ideas.

16 But I just wanted you to mention, you were
17 talking about California, and how much -- what was
18 the figure that they're putting into their biotech
19 industry?

20 Didn't they vote on a referendum to fund that
21 out in California?

22 HAROLD SMITH: I don't actually have the
23 number on top of my head.

24 ASSEMBLYMAN JOHNS: It was a lot.

25 HAROLD SMITH: I'm sorry --

1 ASSEMBLYMAN JOHNS: We're talking billions;
2 right?

3 HAROLD SMITH: Yeah, yeah, it was approaching
4 a billion.

5 And the point there is very good as well,
6 because if you look at what we have, if you have a
7 biotech community, and one biotech is needing to
8 hire, there's usually people in the immediate
9 vicinity who are well-trained to move in, and so
10 what you end up creating is this critical mass.

11 It's like what President Seligman was saying,
12 you need to create an intelligence critical mass.

13 And, we are scattered in New York.

14 Those 1400 technologies are all over the
15 place.

16 That's the advantage of having a commission
17 that basically says:

18 You know what?

19 What's happening in Syracuse is,
20 Dr. So-and-So has a related company, and that you
21 might benefit from having a JV (a joint venture).

22 And the State could actually facilitate
23 interactions in a way that's unparalleled by having
24 a 5-mile view of what's going on on the ground.

25 It has to come with a lot of money going into

1 it.

2 And as you'll see in my recommendation, I'm
3 recommending \$200 million a year dedicated to
4 biotech, each of five years; so, one billion total
5 going in.

6 There is a House resolution that will be
7 dropped soon.

8 You have a copy of that.

9 OyaGen's research and products are
10 specifically earmarked in that House resolution.

11 It's for \$3.2 billion, and so that money is
12 dedicated to take us through Phase III of clinical
13 trials.

14 That, with State as a matching fund, imagine
15 how we could finance out biotech.

16 It could really reach that glorious moment
17 for all of us.

18 So, again, thank you.

19 SENATOR GALLIVAN: Thank you.

20 Joanne Thompson from Welch Allyn.

21 JOANNE THOMPSON: Good afternoon.

22 Thank you so much to you all for the
23 opportunity to speak this afternoon.

24 I'm pleased to represent Welch Allyn, and we
25 welcome the opportunity to discuss some of the

1 challenges we have found with the current regulatory
2 environment here in New York State.

3 As many of you probably know, Welch Allyn is
4 a leading global health-care company that offers a
5 complete range of digital and connected diagnostic
6 solutions that help reduce risk and enhance work
7 flow in a variety of clinical settings.

8 Our company specializes in helping doctors,
9 nurses, and other frontline practitioners across the
10 globe enhance care by developing innovative
11 products, breakthrough technologies, and
12 cutting-edge solutions that improve patient
13 outcomes, safety, and satisfaction.

14 Founded in 1915, Welch Allyn is a
15 family-owned business employing nearly
16 2500 employees in 26 countries.

17 Our corporate headquarters are here in
18 New York, in Skaneateles Falls, where we have
19 approximately 1,150 employees.

20 That Skaneateles Falls location is the
21 company's largest manufacturing site producing a
22 wide variety of products, including
23 physical-assessment devices, stethoscopes,
24 cardiopulmonary devices, patient monitors,
25 blood-pressure cuffs, endoscopic devices, and

1 women's health products.

2 For nearly 100 years, we've done business
3 here in New York State, and we're committed to
4 remaining in the state.

5 That said, the current regulatory environment
6 can be complex and challenging to businesses like
7 ours.

8 To that end, we would like to discuss of
9 areas of tax reform, as well as the
10 Medicaid redesign health-technology assessment
11 process.

12 In regard to the taxation, the New York State
13 corporate income-tax system is complex and
14 burdensome, and is one of the primary reasons why,
15 as I think has already been mentioned, where the
16 state is consistently ranked as one of the most
17 challenging states for companies to do business in.

18 And this was based on the Tax Foundation's
19 annual "Business Tax Climate" rankings.

20 We urge the State to consider eliminating the
21 corporate income tax for manufacturers.

22 We also ask that the State consider revising
23 Article 9-A of that tax code to remove the multiple
24 ways to calculate the tax, as this requirement is
25 complex and burdensome.

1 The sales and use tax is also onerous and
2 overly complicated.

3 We believe that the State would have a
4 competitive advantage over other states for New York
5 to consider making the sales and use tax less so.

6 We'd also like to draw your attention to the
7 health-technology assessments that are part of the
8 Medicaid redesign.

9 Health-technology assessments are the process
10 whereby the department reviews certain medical
11 technologies and procedures in order to determine if
12 those technologies and procedures should be covered
13 under the Medicaid program.

14 To date, such reviews in New York have
15 included, among others, certain treatments for
16 lower-back pain, implantable infusion pumps for
17 non-cancer pain, and percutaneous coronary
18 intervention in certain circumstances.

19 It should be noted that medical technologies
20 like these are extensively reviewed at the federal
21 level by the FDA, the Agency for Healthcare Research
22 and Quality, the Center for Medicare and Medicaid
23 Services, and the Patient Centered Outcomes Research
24 Center.

25 We feel that similar reviews at the state

1 level are unnecessarily burdensome and duplicative.

2 While we understand the Department of
3 Health's need to systematically review such
4 technologies and procedures to ensure that the
5 covered medical benefits are both cost-effective and
6 medically effective, but, in each of the above
7 decisions, the department did not provide an
8 opportunity for public comment or participation in
9 that assessment and decision-making process.

10 We would really ask for a transparent and
11 well-informed decision-making process that is -- and
12 feel that that's essential to making fair and
13 equitable decisions regarding health-care coverage.

14 To that end, we ask that the State consider
15 the creation of a health-technology assessment
16 committee.

17 The legislation creating such a
18 health-technology assessment committee has been
19 introduced by Senator Kemp Hannon and
20 Assemblyman Joseph Morelle.

21 We applaud the efforts of these lawmakers,
22 and urge their fellow lawmakers to pass
23 Senate Bill 4509 and Assembly Bill 7528.

24 The health-technology assessment committee
25 proposed in this legislation would provide advice

1 and make recommendations regarding coverage of
2 health technology for purposes of the State Medicaid
3 program.

4 This committee would be comprised of
5 individuals appointed by the commissioner, and would
6 be a cross-section of those who are licensed to
7 practice medicine, nurses, the medical-device
8 health-technology industry, individuals with
9 expertise in health-technology assessment,
10 consumers, and a chair person who is a member of the
11 Health Department.

12 Such a group would meet regularly.

13 Notice of meetings and potential coverage
14 decisions would be made public and interested
15 parties would be allowed to provide public comment
16 as to health-technology decisions that are up for
17 review.

18 Decisions made by this health-technology
19 assessment committee would be based on patient
20 safety and clinical effectiveness, and the
21 commissioner would provide public notice of the
22 final determinations.

23 Again, we'd like to thank you all for the
24 opportunity to speak this afternoon, as well as
25 Senator Hannon and Assemblyman Morelle for their

1 responsiveness and advocacy, and urge their fellow
2 lawmakers to join them in passing these bills.

3 Thank you again for your time this afternoon.

4 SENATOR GALLIVAN: Thanks.

5 Who makes those decisions right now?

6 JOANNE THOMPSON: It's actually hard for me
7 to say because -- I mean, our understanding is,
8 because there is no transparency into that process,
9 they have been, you know, within the Department of
10 Health, but there's no notice that a certain
11 decision will be made or opportunity to participate
12 in that process.

13 SENATOR GALLIVAN: You gave examples, the
14 certain treatment for low-back pain and a few
15 others.

16 Were those treatments or technologies
17 excluded from being reimbursed?

18 JOANNE THOMPSON: I believe so.

19 I mean, I don't know if it's excluded
20 100 percent across the board, or if there are
21 opportunity for exceptions; but, yes, I believe they
22 are excluded.

23 SENATOR GALLIVAN: And the bill that you
24 mentioned, the Hannon-Morelle Bill, essentially,
25 solves the problem?

1 JOANNE THOMPSON: Well, I think those
2 decisions will still be made.

3 And I -- you know, I can absolutely
4 understand --

5 SENATOR GALLIVAN: All right, but it solves
6 the problems of --

7 JOANNE THOMPSON: Of the closed door.

8 SENATOR GALLIVAN: -- being well-informed --

9 JOANNE THOMPSON: Yes.

10 SENATOR GALLIVAN: -- done in the public
11 venue --

12 JOANNE THOMPSON: Right, absolutely.

13 SENATOR GALLIVAN: -- and an opportunity for
14 all sides to present --

15 JOANNE THOMPSON: Right, consumer groups
16 and --

17 SENATOR GALLIVAN: -- why treatments are
18 beneficial?

19 JOANNE THOMPSON: Yeah, absolutely.

20 SENATOR GALLIVAN: Thanks.

21 JOANNE THOMPSON: Yeah, thank you.

22 SENATOR VALESKY: Thank you, Joanne.

23 And I just wanted to point out, I think the
24 Senate has passed that bill already.

25 JOANNE THOMPSON: Okay.

1 SENATOR VALESKY: Hopefully, when we return
2 to session, the Assembly will follow that lead as
3 well.

4 JOANNE THOMPSON: Excellent.

5 That is great momentum.

6 Thank you so much.

7 SENATOR MARCHIONE: You know, I find it --
8 thank you very much for your testimony, because
9 I would look at that bill as putting more
10 regulations on an industry --

11 JOANNE THOMPSON: Right.

12 SENATOR MARCHIONE: -- and probably would not
13 support it.

14 I'm going to go back and see whether
15 I actually did support it or not, because I'm very
16 careful to try not to add additional regulations.

17 JOANNE THOMPSON: Sure.

18 SENATOR MARCHIONE: But you did talk about,
19 some of the regulations are duplicative.

20 Does that mean that, on the federal level,
21 are they more stringent?

22 Are New York State more stringent?

23 Are they -- do -- you know, are they more
24 than just duplicative?

25 Are they separate and distinct?

1 JOANNE THOMPSON: I don't know if I would say
2 they're more stringent.

3 I think, you know, the FDA looks at medical
4 devices and treatments from a certain perspective,
5 and the -- you know, in terms of safety and
6 efficacy.

7 And the Agency for Healthcare Research and
8 Quality looks at things from more of a
9 clinical-practice perspective.

10 But, in the Patient Centered Outcomes
11 Research Agency is really starting, you know, under
12 health-care reform, to do that comparative
13 effectiveness research in terms of, Is this,
14 you know, the right procedure and treatment for the
15 money?

16 So -- and that is very similar to what,
17 again, I believe is happening in New York under the
18 Medicaid redesign.

19 And, you know, it may be duplicative.

20 It's something that insurance companies do,
21 too.

22 So I -- you know, it's being done across the
23 board, and I understand the value in doing it, but,
24 it certainly isn't the same exact process in
25 either -- or in, pardon me, any of the agencies.

1 SENATOR MARCHIONE: And not being the same
2 process, though, perhaps we could get rid of one of
3 the processes so you're not doing two?

4 JOANNE THOMPSON: That's fair, yeah.

5 Or, you know, make sure that there --
6 you know, each has a distinct objective.

7 SENATOR MARCHIONE: Could you give us some
8 specific examples of that?

9 Not here now, but could you provide us with
10 some specific examples of that?

11 JOANNE THOMPSON: Of what the different
12 federal agencies are doing?

13 SENATOR MARCHIONE: Of the duplicative
14 regulations that you're under.

15 JOANNE THOMPSON: Sure, absolutely.

16 Yeah, we will.

17 SENATOR GALLIVAN: That would be very helpful
18 for us in trying to review them.

19 JOANNE THOMPSON: Sure, we will follow up on
20 that.

21 SENATOR MARCHIONE: Thank you.

22 JOANNE THOMPSON: Wonderful.

23 Thank you.

24 SENATOR GALLIVAN: And we actually have an
25 e-mail address that you can send it to, out back.

1 Annie, is Keith somewhere?

2 Can you grab it?

3 Okay, thanks.

4 If you just see the beautiful lady in the
5 back, with the glasses.

6 JOANNE THOMPSON: Wonderful.

7 Thank you so much.

8 SENATOR GALLIVAN: Thank you very much.

9 Mel Kurtz, President of Quasar Energy Group.

10 MEL KURTZ: Good afternoon, and thank you for
11 allowing me to present testimony to the
12 New York Senate Majority Coalition.

13 This is one statement that everybody in here
14 is probably going to agree with:

15 Communicating with decision-makers is
16 critical because innovation always precedes
17 regulation and legislation.

18 Without this type of open dialogue, how would
19 our leaders know what innovation has come to
20 fruition and where it can improve our quality of
21 life?

22 I'm honored to be part of the state's
23 concerted effort to identify and eliminate cost and
24 regulations that strangle business and job growth in
25 the biotechnology industry.

1 My comments will specifically address
2 regulatory and legislative changes that will
3 accelerate the development of the
4 anaerobic-digestion industry.

5 Quasar Energy Group is a Cleveland-based
6 anaerobic-digestion and renewable-energy company.

7 Anaerobic digestion is a natural process in
8 which microorganisms break down organic waste in the
9 absence of oxygen.

10 The process includes receiving organic
11 residuals and reducing their volume through
12 conversion to renewable energy and nutrient-rich
13 fertilizer.

14 Quasar recently completed the construction of
15 two digesters in the Buffalo Niagara region, and we
16 have 14 other facilities operating across Ohio, and
17 one facility in Massachusetts.

18 We are in the predevelopment stage for
19 four additional projects in New York, one is
20 Rochester.

21 Anaerobic digestion is the starting point for
22 sustainable solutions with economic benefits that
23 will affect every New Yorker.

24 The technology presents an immediate
25 waste-management solution for the Greek yogurt

1 industry and all processors of dairy products.

2 From 2007 to 2013, New York's Greek yogurt
3 industry has tripled in size, and for every ounce of
4 yogurt produced, almost three ounces of acid whey is
5 produced and other byproducts that must be managed.

6 It's estimated that approximately
7 150 million gallons of acid whey are being produced
8 each year in the northeast, led by New York.

9 Anaerobic digestion is a solution for
10 managing this waste while generating clean renewable
11 energy that can be sold to adjacent businesses in
12 the form of combined heat and power added to the
13 utility grid, or sold as less-expensive, lower-cost
14 motor-vehicle fuel.

15 Since 2006, Quasar has demonstrated that
16 anaerobic digestion is an economic-development and
17 job-creation reality.

18 Most notable in the process is, every case,
19 it is less expensive than traditional
20 waste-management processes.

21 Our recommended changes, is that anaerobic
22 digestion should not be considered exclusively for
23 on farms.

24 It's a mistake to legislatively pigeonhole
25 anaerobic digestion as a farm-based technology.

1 Excessive interconnection fees and
2 restrictive virtual net metering policies stifle the
3 anaerobic-digestion industry by constraining the
4 development of farm-based applications.

5 New York State Consolidated Laws,
6 Public Service Law, Article 4, caps the
7 interconnection rate for customer generators who own
8 or operate farm-waste electric-generating equipment
9 at \$5,000.

10 Under this rule, electricity generated from
11 biogas is capped at 1 megawatt, and must be derived
12 via anaerobic digestion of agricultural waste that
13 is at least 50 percent animal manure.

14 Interconnection fees for digestive projects
15 that do not fall under this rule are not capped,
16 resulting in a disparity of rates between utilities.

17 For instance, the interconnect 1-megawatt
18 digester in West Seneca, New York, NYSEG charged
19 more than \$80,000, but, to interconnect a similar
20 1-megawatt facility in Wheatfield, New York,
21 National Grid charged more than \$300,000.

22 Whether located on a farm processing manure
23 and milk byproducts or at a merchant site processing
24 similar waste streams and sewage sludge, all
25 same-sized generators should be charged similar

1 predictable fees to interconnect to the electric
2 utility grid.

3 All digester projects should also be afforded
4 the opportunity to benefit from New York's virtual
5 net metering policy.

6 The policy is currently restricted to
7 customer-generated operating farm waste-based
8 electric-generator equipment using biogas produced
9 from at least 50 percent manure.

10 It's important to understand that a digester
11 cannot operate on a diet of 100 percent acid whey.

12 A consistent baseload of material, such as
13 manure or sewage sludge, is required to stabilize
14 the biology.

15 Sewage sludge also improves the economics of
16 anaerobic-digestion projects because of the tipping
17 fees, while sustainably diverting waste from
18 landfills, chemical process, and incinerators.

19 The New York State Department of Economic
20 Development Environmental Investment Program offers
21 grants up to \$500,000 towards a project that leads
22 to measurable recycling, pollution prevention,
23 sustainable economic-development results.

24 A program like this has the potential to
25 encourage construction of anaerobic digesters across

1 the state, except, that it specifically excludes
2 waste-to-energy projects and projects that include
3 sewage sludge.

4 To promote an industry that offers lower-cost
5 waste-management solutions while contributing to
6 regional economic-development initiatives and
7 environmental-improvements needs, the program should
8 be revised to include recycling projects that
9 convert waste to energy and sewage sludge as an
10 approved organic material.

11 In conclusion, New York's legislators and
12 regulatory agencies can encourage continued job
13 growth and economic development in the biotech
14 industry and the Greek yogurt industry
15 simultaneously, by extending the interconnection cap
16 and virtual net metering to all digester projects,
17 and by expanding the environmental-investment
18 program to include waste-to-energy projects with
19 sewage sludge.

20 If this public hearing encourages legislators
21 and regulators to consider the bigger opportunity
22 for anaerobic digestion, on or off farm, they could
23 set in motion a transformation that will be truly
24 meaningful in New York, its residents, and business
25 owners.

1 And I can tell you --

2 Thank you for inviting us.

3 I can tell you that some of the things that
4 you're doing today, being from Ohio, you can do
5 this.

6 We had 18-month permit process, our first
7 digester.

8 Now it's two weeks.

9 Same permitting --

10 SENATOR GALLIVAN: In Ohio?

11 MEL KURTZ: In Ohio.

12 And some of the interconnect as well.

13 We would love to build these numerous
14 digesters right along the 90 Corridor, all the way,
15 frankly, to New York City, with our partner that
16 some of you might know, Forest City Enterprises.

17 And some of these things, it's not just the
18 money; it's the time for them to do.

19 So one caveat to what I'm suggesting is, give
20 me performance criteria.

21 It took over a year and a half for them to do
22 an interconnect in our Buffalo facility.

23 It still isn't done.

24 The complete plant is built, everything's
25 sitting there, and we still have to wait for their

1 test criteria.

2 So, that's what I have to say.

3 Thank you very much.

4 Any questions?

5 SENATOR GALLIVAN: Thanks.

6 Yes.

7 I think your statement at the beginning, that
8 the innovation always precedes the legislation and
9 regulation, probably has something to do with the
10 focus on the anaerobic digesters on the farms in
11 New York State.

12 While I don't know it, I think it's probably
13 an educated guess that that's where they first
14 started, and that's where -- that's where they first
15 started, and that's where regulations and/or laws
16 were developed.

17 And there's been some change to catch up to
18 that.

19 MEL KURTZ: Yeah, I can't -- I can't answer
20 where it started.

21 I can tell you that there's a half a dozen
22 digesters in the state of New York that are merchant
23 facilities, and there's 4,000 in Germany.

24 Germany's the size of Montana.

25 SENATOR GALLIVAN: I'm aware of that.

1 But there was some recent change in the
2 requirement of 50 percent -- at least 50 percent --

3 MEL KURTZ: Manure.

4 SENATOR GALLIVAN: -- in farm waste?

5 MEL KURTZ: Yeah.

6 SENATOR GALLIVAN: I think that was just
7 reduced from 75 percent.

8 MEL KURTZ: Could be.

9 SENATOR GALLIVAN: So there was some
10 recognition of that.

11 But that aside --

12 MEL KURTZ: Going in the right direction,
13 then, Senator.

14 SENATOR GALLIVAN: Yeah, no, no,
15 I understand, but I get your point, overall.

16 Here's the question that I have:

17 The waste-to-energy projects and projects
18 that include sewage sludge, what do you do -- of
19 course, I understand the renewable energy, but now
20 you have that other liquid byproduct that comes out.

21 What do you do with it?

22 MEL KURTZ: That's the challenge.

23 Until we educate the populace, until we
24 convince them that it's not some of the -- it was
25 really a surprise to our company, in this area of

1 the state, the volatile nature of the responses
2 based on misinformation.

3 So we did a bad job of educating the
4 populace, collaborating with the Legislature, and
5 even endearing ourselves to Cornell and other farm
6 enterprises.

7 We're on the mend.

8 We're -- that's a very high priority for us.

9 And the reality of it is, it's, certainly, no
10 one would argue that it's better than -- that it
11 isn't much better than incineration; that it isn't
12 much better than chemical processes, quicklime and
13 other; and, I guess there's some debate about, if
14 it's better than going to a landfill.

15 But the reality is, farmers that are applying
16 chemical fertilizers instead, are doing no better
17 job than what's already gone through the food-chain
18 process and goes back to the farm fields.

19 SENATOR GALLIVAN: Well, the
20 anaerobic digesters that I'm familiar with that are
21 on farms, they're applauded in the agriculture
22 community.

23 MEL KURTZ: Of course.

24 SENATOR GALLIVAN: And I'm aware of some of
25 the challenges that you're facing.

1 Where does the difference in the byproduct --

2 MEL KURTZ: There is none.

3 SENATOR GALLIVAN: -- the end results from
4 the process?

5 Not the energy part of it; the liquid that --

6 MEL KURTZ: There really is none, because any
7 of the volatile is converted.

8 The volatile organic compounds are converted
9 in the process, so what's left is, the nutrients;
10 and the nutrient that come in is the nutrient that
11 leaves these digesters.

12 So what we do then is coordinate -- is
13 calibrate the nutrient to the corresponding chemical
14 fertilizer so we know what the application rates are
15 for our farm.

16 Test the soils, work with their crop analysis
17 for the rotations, and so forth.

18 So it's probably the first time in a long
19 time that there's really been science attributed to
20 the process, as opposed to, I spent \$200,000, but
21 oil price went up so I'm going to spend \$250,000 for
22 chemical fertilizers and apply the same amount.

23 At least with this process, and it's a big
24 deal in Ohio, where we're now looking at nutrient
25 management, not just land application and runoff and

1 some of the bad things that you all are familiar
2 with, is testing soils before, testing soils after,
3 having stream monitoring, and a bunch of associated
4 things, as well as confirming that the application
5 matches their farming structure and their crop
6 rotations.

7 So it's really -- it really makes one and one
8 equal three.

9 It's a really good thing.

10 And we just have to get rid of some of the
11 emotion, and I hope that education allows us to do
12 that, and calmer responses will prevail.

13 SENATOR GALLIVAN: I do know Quasar has met
14 with some people on our staff --

15 MEL KURTZ: And thank you.

16 SENATOR GALLIVAN: -- to help educate our
17 office about the process, so, we appreciate it.

18 MEL KURTZ: Thank you.

19 SENATOR ROBACH: I just wanted to ask a
20 question.

21 I know we had worked, and you had mentioned
22 this, Senator Maziarz and myself and others on that
23 net metering bill, which really was an incentive to
24 have people use solar, and, really, wind, even on
25 their farm or their own home if they were in the

1 right areas --

2 MEL KURTZ: Sure.

3 SENATOR ROBACH: -- and then made it
4 financially beneficial for them, if they produced
5 more than they used, to sell it back for almost what
6 they would buy it for from the energy company.

7 Is that what they -- how did they -- is that
8 what they did in Ohio to get this going?

9 Because you --

10 MEL KURTZ: Well, we don't have net metering,
11 so New York is ahead of us.

12 Pennsylvania has it, New York has it, and
13 there's another state that does.

14 But, the significant difference is that the
15 cost of per kW is a fraction.

16 I mean, we get paid to make energy.

17 We don't -- our coal, it comes in the form of
18 tip fees for all these waste streams, so, nobody
19 makes energy for less than an anaerobic digester
20 does.

21 The problem is, it's so efficient, we make
22 much more than can be consumed in that typical
23 location.

24 So the virtual net metering allows us, for
25 example, to earn 8 cents a kW, or 9 cents, than what

1 we get when we put it on the grid, which is 4 cents,
2 and that reduces substantially the economic payback
3 for -- in Ohio, in most of our applications, our
4 payback could be 4 or 5 years.

5 In New York, right now, it's six or seven.

6 Change that net metering, that virtual net
7 metering, we drop six months in our payback.

8 SENATOR ROBACH: I was curious, and I don't
9 know if this is fair question, or you know it, so,
10 let's say, if we started utilizing this for every
11 aspect, from energy, or you even almost talked about
12 having a pipeline to New York City, which always
13 needs, New York City and that, for energy, which may
14 sound funny coming from me, the big promoter of
15 New York City --

16 I'm being sarcastic.

17 MEL KURTZ: I'm just glad to be here,
18 Senator.

19 SENATOR ROBACH: -- and you're from Ohio,
20 but, seriously, how many jobs, like, to run one of
21 these?

22 Does it depend on what the size is?

23 What would be the employment and construction
24 and operation of a facility like this if it became a
25 fairly major energy source?

1 I mean, obviously, they're doing it in
2 Europe, where they don't have the space.

3 MEL KURTZ: Sure.

4 Here is the downside of an anaerobic
5 digester:

6 The jobs are primarily during construction.

7 Operations would be trucks and ag
8 opportunities.

9 That's the bad side.

10 But everybody talks jobs, and I don't --
11 I wouldn't pretend to know what you're doing more
12 than you do, but I would offer this:

13 I think some of the jobs that have been
14 created are part of the reason for the dilemma we're
15 in, economically.

16 Productivity should be the objective, from
17 our standpoint.

18 So when we can take a wastewater treatment
19 plant and convert to it twenty-first-century
20 technology and we need three people, where they're
21 presently using 43 --

22 And we just did that in Ohio, at a -- in the
23 city of Wooster, Ohio.

24 -- I think we win.

25 Now, what are we gonna do with those other

1 people?

2 That's where the training and the creativity,
3 and all the other things, but at least we have the
4 money, the savings, and the opportunity to decide,
5 as opposed to it being jammed down somebody's throat
6 and saying, Hey, just work there.

7 And it's kind of like the reincarnation
8 story:

9 4:30 on Friday night, the dead come back to
10 life at a lot of facilities; it's quitting time.

11 Okay, thanks.

12 That was my attempt at a joke, everybody.

13 SENATOR GALLIVAN: I got them both.

14 MEL KURTZ: Thank you.

15 So thank you very much.

16 SENATOR GALLIVAN: We're good.

17 Thank you.

18 Tom Fitzgerald, president of OyaGen.

19 You guys together?

20 TOM FITZGERALD: Yes, we are.

21 We spend a lot of time together, as a matter
22 of fact.

23 SENATOR GALLIVAN: I pronounced the company
24 correct, didn't I?

25 TOM FITZGERALD: OyaGen, yes.

1 There's a prize we give out for correct
2 pronunciation.

3 SENATOR GALLIVAN: When you're ready.

4 Thanks for being here.

5 TOM FITZGERALD: Good afternoon, Senators and
6 Assemblyman.

7 My name is Tom Fitzgerald, and I would like
8 to thank you for this opportunity to share some
9 thoughts on biotech regarding the opportunities and
10 challenges that face us in the Upstate New York
11 area.

12 I've been involved in the development and
13 regulation and marketing of pharmaceuticals for the
14 past 25 years.

15 I've worked for a number of large and small
16 U.S. and European biopharma companies, including
17 SmithKline Beecham, Pfizer, here in Rochester, and
18 ADVANTIS.

19 During the time I've worked with or led --
20 have worked with, led, or advised a range of
21 businesses in the development of regulation,
22 commercialization of therapeutics, drug-delivery
23 systems, and medical devices.

24 Over the past few years, I've had the
25 opportunity to work with a number of early-stage

1 companies in the life science area, including
2 several located in our region.

3 I've also advised various
4 economic-development authorities in the U.S. and
5 Europe on their efforts to generate and attract
6 early-stage businesses in life science.

7 My perspective reflects those experiences.

8 I'm currently the president and
9 chief operating officer of OyaGen, a University of
10 Rochester spinout founded by Dr. Harold Smith, who
11 you heard from earlier.

12 OyaGen is engaged in the discovery and
13 development of a range of promising drug candidates
14 for the treatment and functional cure of HIV.

15 I'm also involved with several other
16 early-stage life science companies.

17 Based on my personal experience, New York has
18 the potential to and should be a leader in
19 biosciences, not only in the academic sense, but as
20 a key driver in making available the drug products,
21 devices, and diagnostics that improve our health and
22 quality of life.

23 In my opinion, Upstate New York has the real
24 potential to emerge as a biotech hub.

25 It has much that is essential to attract and

1 foster the development of biotechnology.

2 We have world-class research institutions,
3 colleges, and hospitals driven by faculty and
4 researchers with the skills and creativity to
5 generate innovative approaches to the diagnosis and
6 treatment of important diseases.

7 The region's history speaks to the
8 entrepreneurial spirit in our people, and the
9 evidence is their skill in innovation and the
10 generation of intellectual property which is the
11 lifeblood of biotech.

12 Our people are remarkably well-educated in
13 life science and the ancillary disciplines, and
14 skills necessary to develop and grow biotech
15 businesses.

16 This notably includes the graduates of our
17 many universities and colleges who have and will
18 commit to staying in the region if meaningful career
19 opportunities, such as those offered by the
20 life science companies, were available to them.

21 Beyond our local human resources, the region
22 offers quality of life and style of life that enable
23 young scientists and executives access to affordable
24 housing in a cultural environment that easily
25 outweighs our, at times, challenging winters.

1 However, biotechnology in New York,
2 particularly in Upstate New York, is not thriving,
3 and the small victories of individual localities are
4 too often the result of the individual skills and
5 luck of the local entrepreneur rather than the
6 result of the comprehensive plan to develop biotech
7 as an engine of economic growth.

8 Biotech has particular needs to flourish that
9 require understanding and nuance that is known
10 within the biotech industry, but is often difficult
11 to grasp by those not engaged in it on a day-to-day
12 basis.

13 The time to market, required capital
14 investment, the importance of intellectual property,
15 the rigors of the regulatory path to market, and the
16 international competitive environment require a
17 sophisticated understanding that cannot be fully
18 appreciated from the periphery.

19 Too often you see public monies intended to
20 support advanced biotech yield too little or no
21 result because it is spread too thin across
22 competing local companies loosely grouped as
23 high tech.

24 Often money is committed to public and
25 private institutions with interest and focus that

1 are not primarily biotech.

2 Seed-stage investment and early-stage
3 financing are too often only available outside
4 New York State, which puts immediate pressure on the
5 founders to locate closer to the funding, or to go
6 through the time and expense of fundraising away
7 from home.

8 Responsibility for many of the current
9 efforts to encourage local biotechs are entrusted to
10 entities that have investment portfolios too
11 broad-based in scope and geographically diffused to
12 significantly alter the current situation.

13 As a result, most of our biotechs are running
14 in place or becoming dormant for lack of meaningful
15 funding, inadequate equipment, and services in the
16 exodus of experienced biotech professionals from the
17 state.

18 Early-stage biotechs face a number of
19 challenges to success.

20 Some of these challenges are true to all
21 early-stage life science businesses, not just those
22 in New York.

23 We are familiar with companies that have
24 experienced clinical failure or unanticipated
25 adverse events in the development process.

1 However, these fledgling biotech businesses
2 thrive best when they have access to experienced
3 management, experienced scientific talent,
4 increasingly sophisticated equipment, and specialty
5 and expertise of services to provide them support.

6 They need access to these things without
7 unnecessarily stripping away the limited and
8 difficult-to-get cash resources that drive product
9 development.

10 There are several challenges and
11 opportunities to our biotechs which New York State
12 government is in a position to address.

13 New York's lack of a concentrated, integrated
14 biotech infrastructure limits New York's ability to
15 efficiently and effectively tie it to the global
16 biotech -- bioscience community in the way that
17 New York and San Francisco do -- does.

18 Exploited by -- upstate is financially
19 manageable and livable, and this isn't exploited by
20 the State.

21 New York State government could play a
22 pivotal role in creating a biotech hub, or several
23 hubs, which build on the existing but scattered
24 local efforts in infrastructure that now exist.

25 In the establishment of these biotech hubs,

1 New York could implement a coordinated support
2 system for biotechs to enable shared access to
3 biotech-appropriate facilities, state-of-the-art
4 equipment, subject experts and service providers, to
5 encourage and incentivize biotechs to locate their
6 operations in proximity to these centers and other
7 biotechs.

8 By encouraging collaboration, including cost
9 sharing, for some of the employees, management, and
10 technical experts, and support service in the
11 early-development stages, the drain on the biotechs'
12 vital capital will be reduced.

13 This capital could enable biotechs to
14 experience a gradual and manageable growth process
15 unburdened by institutional overhead and the whims
16 of venture capital.

17 In doing this, the state will begin to grow
18 the infrastructure and develop the critical mass
19 necessary to sustain long-term growth in the sector.

20 New York lacks a coordinated effective public
21 advocacy for the distinct needs of biotech.

22 Perhaps a commission or working group, as has
23 been suggested, of industry experts and executives
24 would be useful to give focus to this initiative.

25 States that have been successful in

1 establishing biotech hubs do not do so by accident.

2 Each recognize the potential value of biotech
3 and committed the resources that enabled them to
4 become a dynamic economic-driver for their state's
5 economy.

6 In recent years, Europe has also begun to
7 aggressively recruit existing U.S. biotechs and
8 their personnel with an attractive range of
9 incentives to relocate or establish research and
10 development activities offshore.

11 Both the states and the European countries
12 have offered examples of programs and approaches
13 which New York could select and model after.

14 I believe there is an opportunity for
15 New York to emerge as a significant force in
16 biotech, but it requires commitment and
17 follow-through.

18 The increasing number of biotechs emerging
19 across the state indicates that something is going
20 on here and needs the encouragement of state
21 government.

22 I thank you for the opportunity to share my
23 thoughts.

24

25

1 SENATOR GALLIVAN: Are there other states,
2 besides California and Massachusetts, that have
3 focused on this?

4 TOM FITZGERALD: Yes.

5 Obviously, Research Triangle Park in
6 North Carolina is a significant hub, but, we've seen
7 activity in the Philadelphia area.

8 And in, particularly, Florida, in the
9 Gainesville area, has a very active program that's
10 the early staging, and could be the basis for
11 modeling on how they've created the resources and
12 the infrastructure, physical infrastructure, that
13 has become an attracting force for these emerging
14 companies.

15 SENATOR GALLIVAN: Great, thanks.

16 TOM FITZGERALD: Thank you.

17 SENATOR GALLIVAN: Thank you.

18 Dr. Larry Buckley from the School of
19 Life Sciences, Rochester Institute of Technology.

20 DR. LARRY BUCKLEY: Thank you.

21 Good afternoon, Senators and Assemblyman.

22 Thanks very much for allowing me to speak
23 with you today concerning biotechnology in
24 Upstate New York.

25 Your initiative in calling for hearings

1 related to the health of biotechnology in the region
2 is very timely.

3 I'm happy to provide you with an update on
4 the role that RIT has played, and will continue to
5 play, with New York State, preparing a biotechnology
6 workforce, and impediments to that endeavor as well.

7 Identifying some of those I know is a key
8 component of what you all want.

9 Just a brief history of our shared work
10 together:

11 The Rochester Institute of Technology in
12 New York State have had a long and productive
13 relationship working together to promote
14 biotechnology and bioscience in Upstate New York.

15 The New York State Senate-supported
16 1999 workforce study at RIT found that levels of
17 workforce training, up to that point, were
18 insufficient to meet the demands of a growing
19 biotech and bioscience industry in the region.

20 The study also identified that the
21 upstate region lacks sufficient advanced biotech
22 training for the professional-development needs of
23 existing biotech professionals in the area.

24 So, both, we needed more workforce, and we
25 needed professional development for people who were

1 already in the workforce, and neither one of those
2 were sufficient a decade ago.

3 So, in 2003, New York State Senate and
4 Assembly partnered again with RIT to fund the
5 RIT Center for Biotechnology Education and Training,
6 which is a 38,000-square-foot state-of-the-art
7 facility dedicated to providing education and
8 training for the type of workforce that was needed
9 to support the projected growth in the biotechnology
10 and bioscience industries.

11 The facility continues today to provide
12 industry support and K-through-12 partners with the
13 essential training and consulting services for the
14 promotion of biotechnology and bioscience.

15 The RIT biotechnology program itself is
16 enjoying its 30th anniversary this year.

17 We had the very first biotechnology program
18 in the nation at RIT; we're very proud of that.

19 During its history, the program has grown
20 steadily and provides extensive hands-on laboratory
21 study.

22 We have over 1500 graduates out of that
23 program in the last 30 years, and more coming every
24 year.

25 The enrollment and support for biotech and

1 bioscience at RIT goes beyond, though, just our
2 biotechnology program.

3 It extends into 350 students in the entire
4 college of science, but, also, new bioscience
5 programs at RIT include:

6 In 2007, a biomedical sciences program that
7 now has over 250 students in it;

8 And a brand new program -- we call it brand
9 new -- in 2010, in biomedical engineering, that also
10 supports workforce-development students; another
11 250 to 300 students in that program.

12 So, right now, all the biotech and bioscience
13 programs combined at RIT are pushing 850 to
14 1,000 students currently enrolled, and that number
15 goes up every year.

16 So we're looking at somewhere in the order of
17 150 to 200 graduates a year of biotech and
18 bioscience professionals that are available for the
19 workforce.

20 So, it's getting better.

21 The CBET (The Center for Biotechnology
22 Education and Training) also provides the resources
23 in the form of professional-development
24 opportunities for local K-through-12 districts,
25 administrators, and instructors.

1 These services can be very customized, and
2 districts can set up workshops, and learn the
3 state-of-the-art biotechnology procedures with PIs
4 at RIT.

5 The workforce skill-set needs, and how bio --
6 and how bachelor's degrees and master's degree can
7 help that, is a part that I wanted to speak with you
8 about, because it's become apparent to us at RIT
9 that the growth of bio-related disciplines on our
10 campus, and the interest in them, has quadrupled in
11 the last 10 years such that we're seeing a need for
12 graduate programs.

13 So what we have found, is that the
14 traditional biotechnology foundations, which are the
15 ones I listed -- they're, microbiology, which is
16 working with the organisms we've been hearing about
17 today, [unintelligible], bacteria; molecular
18 biology, which is DNA technologies; and tissue
19 culture, which is working with the non-bacterial
20 cells, like ours -- those are the foundational areas
21 of biotechnology, and those always will be, and they
22 have become enhanced and they've flourished as
23 technologies, and even increased to the point where
24 whole genome sequencing; that's sequencing every
25 gene in the body, has gotten to the point where

1 we've gotten, under \$1,000, genomes sequenced, all
2 right, and those costs are coming down every year.

3 What we're finding now is that the needs of
4 the biotech and bioscience industry are not only in
5 students that can do those three traditional things,
6 but also in students that can do the analytical end.

7 And, that includes things like
8 bioinformatics; so, they need to be able to handle
9 big data.

10 And those types of challenges are things
11 we're now ramping up to provide.

12 The biomedical engineering program, which is
13 our newest program, provides students with that --
14 those foundational STEM discipline principles; they
15 learn all of the basic principles, but then they
16 learn, through undergraduate research, how to turn
17 those principles into innovative discovery and the
18 translational science that institutions, like the
19 U of R, provide for us.

20 What we've seen in the sense of additional
21 analytical necessity, is that so much data is coming
22 out now from tissue-engineering studies and the
23 genomics projects today that -- and, just to give
24 you a scale:

25 When I did my dissertation many years ago,

1 the amount of data that came out would probably take
2 one of my students about a week to produce now.

3 So my students can work a summer and produce
4 10 times more data, in terms of DNA sequencing, just
5 because of the costs and productivity increases in
6 those fields.

7 And that's only gonna get bigger; at least
8 the people that I go to meetings and talk to now say
9 that that the cost per data is going down every
10 year.

11 What this has led us to do is to perform a
12 study of all of our programs, to discover, with
13 external advisory boards, whether or not we need to
14 ramp up and go to additional programs besides just
15 our BS programs.

16 Perhaps MS programs, and maybe even in the
17 future, Ph.D. programs, and the reason for that is
18 twofold:

19 First, the traditional disciplines of
20 biotechnology, which are molecular biology tissue
21 culture, those have advanced tremendously.

22 We now have tissue engineering going on in
23 labs at RIT in which there are real answers for
24 therapeutic needs in tissue engineering, such as
25 burn repair, and many, many others, such that the

1 traditional skills of a biotechnologist that were
2 wet-bench skills are now so far advanced, that it
3 may be the case that students, in addition to
4 undergraduate research, actually need a graduate
5 degree, just to have the wet-lab bench experience to
6 do those things.

7 Secondly, they need to be kind of nerdy, like
8 our kids are at RIT.

9 [Laughter.]

10 DR. LARRY BUCKLEY: They need to be computer
11 geeks; they really do.

12 These kids -- and most of them coming in know
13 that ahead of time.

14 They need to be comfortable with big data, so
15 that when we say to a student, We're going to do
16 some DNA sequencing and 3 billion base pairs are
17 going to come at you on a DVD, they need to say,
18 "What?"

19 They don't need to say, Gosh, I can't do
20 that.

21 They need to say, Oh, yeah, we do that all
22 the time. I downloaded that last night.

23 Which is what they say about other things;
24 right?

25 So new -- students training for biotech now

1 are different than they were a decade ago, and we're
2 recognizing that and we're attempting to respond to
3 that.

4 Okay, so, now, to get to your specific
5 questions about things that we can do, because RIT
6 is a little bit different than the other presenters
7 here today, in that we're on the end of the pipeline
8 that's producing the workforce. We're not really on
9 the regulatory end of the pipeline.

10 However, that doesn't mean that we're okay
11 with all the regulations that are out there.

12 It just means that, you know, we're at the
13 beginning of the pipeline; we're attempting to
14 provide the workforce.

15 The folks who, in the past decade, have built
16 up the strong biotech and bioscience curricula at
17 RIT, and the buildings as well, have told me, and
18 companies in the area that I've spoken with, have
19 let us know that available workforce, high-quality,
20 high-trained professionals, is one of the most
21 attractive components of a decision to bring a
22 biotech company to a region.

23 And so that's why RIT is so passionate about
24 producing those individuals.

25 And right now, yes, a lot of them go away

1 from Rochester, but some stay.

2 When they go away, it is not because of the
3 region; it's because the jobs are either here or not
4 here.

5 That's the only reason.

6 The region has lots of high-quality-of-life
7 reasons to stay in the Western New York region.

8 So the first thing that we would recommend,
9 is that we reassess and update the 1999 Workforce
10 Study to find out three things:

11 What progress have we made since 1999?

12 I think that's the easiest one to do, because
13 we can just do the numbers.

14 The second one is, what areas need
15 improvement?

16 We know, for instance, the next-generation
17 sequencing is producing, orders of magnitude, more
18 data than it was, and 10 years ago, we weren't
19 training students to deal with that much data.

20 We need to do that now or they're not going
21 to be that high-trained workforce that companies are
22 gonna want when they come to the region.

23 The third is, we need students to also be
24 updated in their wet-bench skills.

25 Those wet-bench skills that were cutting-edge

1 10 years ago aren't as cutting-edge now.

2 The basics are still there, but they've been
3 built upon, such as tissue engineering.

4 We also need studies compiled from our
5 graduates to assess their success; right?

6 And we're reaching out to our graduates all
7 the time to ask them the question:

8 Were you successful?

9 How were you successful?

10 How could we improve our program so that it's
11 more successful?

12 And then an assessment, an examination of
13 biotech and bioscience programs, with advisory
14 boards, are things that we're doing internally.

15 The next thing that I'd like to address is
16 this controlling of costs to both students of
17 biotech and bioscience education.

18 RIT has one of the lowest tuitions of private
19 schools, and we've gone to great pains, and we're
20 very proud of that.

21 I looked at colleges with my daughter last
22 year, and RIT looks real good.

23 Of course, she wouldn't go to RIT because her
24 father lives in this city, right, and our Rochester
25 schools are off the list.

1 But, nonetheless, RIT looked really good, and
2 we're very proud of that, as a faculty at RIT, that
3 we can say we are giving a top-quality education
4 and, for a private school, it's one of the lowest.

5 Right?

6 Keep the student-loan rates low; right?

7 That's another way, it's kind of an obvious
8 one.

9 We need to control costs to both educators
10 and to industry, and one of those ways might be to
11 leverage buying power between university, state, and
12 federal labs.

13 What I hear from presidents of companies and
14 biotech companies that want our graduates, is the
15 key impediments to them, in addition to the
16 regulatory impediments, are of the costs that those
17 regulatory impediments impose on them, and the cost,
18 for instance, of just hiring a co-op.

19 So, our students do a lot of undergraduate
20 research projects that they get credit for, but what
21 employers would really like is to offer them a
22 co-op.

23 And when employers get enough money, they do
24 that, and that's what they prefer, because they get
25 more buy-in from the student when they do that.

1 So making those things more possible and
2 controlling costs, so that more of that money is
3 avail available for co-ops, is a good thing.

4 We need to also streamline the process and
5 set up a maintenance of animal-care facilities.

6 These right now are so costly to do, that we
7 don't -- we have the floor space for animal
8 facilities, but we don't set it up, because,
9 primarily, I have to say, these are federal
10 problems, federal regulations, for doing so, and
11 they're prohibitively expensive.

12 To give you an example:

13 It used to be the case that, to set up an
14 animal facility, you simply had to have it
15 NIH-assured through a process working with OLAW.

16 Right?

17 Now, you can't just go to OLAW and get your
18 animal facility NIH-assured.

19 You, at the same time, have to have an
20 R01 NIH grant funded simultaneously in order to get
21 that animal facility assured. Both have to happen
22 at the same time.

23 Consequently, I think we only have
24 three areas in the entire Rochester region -- the
25 entire neighboring region that even have NIH-assured

1 labs.

2 And guess what all of our PIs that we want to
3 bring in as interviewees say to us?

4 "Do you have an animal facility?"

5 "Can we use mice models here?"

6 Right?

7 These are just white mice. We're not talking
8 about anything fancy.

9 Right?

10 And so that's a huge area where I think maybe
11 we can help one another to understand how to lower
12 those impediments.

13 A big one here is keeping principle
14 investigators and their students in their labs.

15 The only way RIT can continue to produce a
16 competitive workforce, students that are valuable to
17 employers, is if they get that hands-on wet-lab
18 experience, and now dry-lab experience with big
19 data, while they're as -- while they are an
20 undergraduate.

21 They primarily, most valuably, do that
22 through an undergraduate research experience, so we
23 need to keep state and federal funding levels
24 consistent.

25 We also need to fund the types of activities

1 that universities -- that allow universities to get
2 students into labs.

3 These are undergraduate research co-op
4 programs in summertime, and then stipends for
5 graduate students.

6 Lastly there, I'd like to make a play -- make
7 a play for really pushing on STEM education.

8 We really need to get the message out there
9 to K through 12 that "STEM" is cool; science, tech,
10 engineering, and math are cool, they should go into
11 it, students should go into it.

12 We can do that by summer camps, which CBET
13 already does.

14 We can do it by supporting teacher-led school
15 initiatives; what the Rochester City School District
16 is trying to do right now.

17 We can do it through charter schools; which
18 RIT is partnering with the Rochester City School
19 District right now to do.

20 The reason for that --

21 And I'll tell you this as a side note. I was
22 writing some notes while I was listening to
23 everyone.

24 -- we've seen thru interviews with students
25 in our enrollment numbers, a shift in our biotech

1 and bioscience enrollments at RIT away from the word
2 "biotechnology" into biomedical engineering and
3 biomedicine.

4 Now, these programs and these students share
5 many of the same classes.

6 Our students take many of the same core
7 courses, but the perception to 18-year-olds, when
8 they're looking at programs at RIT, are that,
9 there's something not quite as attractive about
10 biotechnology than there was 10 years ago.

11 But bioengineering, or biomedical science,
12 even when the curricula might only differ in six or
13 eight courses, to them, that word is so important.

14 So I want to make the play today, and no one
15 has mentioned it, there isn't the same perception in
16 young adults today about biotechnology, and it's
17 potential as a fruitful career, that there was
18 10 and 15 years ago, when I got there to RIT.

19 So that's most of my presentation.

20 Take any questions?

21 SENATOR GALLIVAN: Just one.

22 If you go back to that 1999 workforce study,
23 was that funded by the State?

24 DR. LARRY BUCKLEY: Yes, I believe it was
25 Senator Alesi, that -- yes, with Doug Merrill [ph.]

1 and then-president Al Simone at RIT, and they got
2 together.

3 SENATOR GALLIVAN: Do you know what the level
4 of funding was?

5 DR. LARRY BUCKLEY: I want to think -- I want
6 to say Doug once told me it was maybe in the
7 hundreds of -- low hundreds -- maybe two or
8 three hundred thousand.

9 I can get the figure.

10 Doug --

11 SENATOR GALLIVAN: No, we can look it up.

12 DR. LARRY BUCKLEY: Okay.

13 SENATOR GALLIVAN: I was just curious --

14 DR. LARRY BUCKLEY: I'm guessing.

15 Yeah, I'm guessing it was in that region.

16 And what they did was, they sent letters out.

17 I think Doug told me there were several
18 hundred biotech companies in the region, and just
19 said: What do you need? How can we provide it?
20 What levels of training do you need your workforce
21 to have? And here's how our curriculum can provide
22 it.

23 You know, just basic information-gathering.

24 And from what we're hearing from local
25 companies, and regional companies, is we may need to

1 redo that, because I'm not certain that, uhm -- I'm
2 not certain that we're getting the message out to,
3 both, students, 18-years-olds, who are looking at
4 programs, judging from the shift in their move to
5 more what they consider, probably more profitable
6 careers, and, what companies are saying about what's
7 coming out.

8 They like our graduates.

9 They wish they could hire more of them, they
10 with they could put more of them in co-ops, if they
11 had the money to do so.

12 SENATOR GALLIVAN: Thank you very much.

13 SENATOR ROBACH: Thank you.

14 DR. LARRY BUCKLEY: Thank you very much.

15 SENATOR GALLIVAN: Appreciate your time.

16 Have we missed anybody?

17 Is that a yes or no?

18 Come on right up.

19 We apologize, first of all.

20 DR. DOUG SCHWARZ: No problem.

21 Dr. Edward Schwarz.

22 I'm a professor of orthopaedics, the director
23 at the Center for Muscular Skeletal Research at the
24 University of Rochester.

25 I'm also the president of LAGeT, which was

1 founded here in Rochester as a spin-off in 2001.

2 I'm the chief scientific officer of
3 Telefis [ph.] that started this year to develop the
4 MRCR vaccine.

5 SENATOR ROBACH: What do you do in your free
6 time?

7 DR. DOUG SCHWARZ: I come here.

8 [Laughter.]

9 DR. DOUG SCHWARZ: Rather than give
10 testimony, really, I'd rather ask you questions,
11 because, really, you know, the specific question
12 about the legislation and the regulations, whether
13 it's state or it's federal, it's really our problem
14 to fix.

15 And the two that I would want to specifically
16 focus on, is the first is the Sunshine Law, and the
17 perspective of this question is, really, not
18 changing the law, but, where is the safe harbor?

19 So, in order to develop the biotechnology and
20 the biomedical engineering that we have in campus,
21 we have a very, very rare -- I know this, because
22 I go all over nationally -- interactions between
23 clinicians and scientists.

24 That's really what makes the medical centers
25 special versus other places.

1 And large pharma manufacturers, the critical
2 question they want to know, particularly now with
3 health-care reform is, Will a doctor use it?

4 So there has to be a meeting between the
5 pharmaceutical company, the manufacturer, the
6 science, and the physician.

7 And the Sunshine Law has changed things
8 dramatically, in that, nobody knows what's allowed.

9 Can we go and sit down together and figure
10 this out?

11 This is a disruptive technology that's going
12 to replace total joint replacements with artificial
13 cartilage.

14 The companies, like, Wow, the science is
15 amazing.

16 The business people have the models all
17 created on how many jobs, what the profits are going
18 to be, but they want to know from the surgeon,
19 "Would you use this product?"

20 And we don't know where we stand with all of
21 that; Where is the safe harbor?

22 The second one is, we talked about crowned
23 jewels in this environment that we have here; one of
24 them is the cGMP facility.

25 I'll go a step beyond what President Seligman

1 said; that's not only the Auling [ph.] stem cell
2 facility; it's actually the Auling cGMP facility in
3 all of Western New York. It's on a non-for-profit
4 campus.

5 Where is the safe harbor to allow
6 pharmaceutical biotech spin-offs for profits to
7 interact with some of these key resources?

8 It could be the cGMP facility, it could be
9 the animal facilities we have, it could be some of
10 the super-computers we have.

11 Right now, we have to tell them you can't
12 touch these.

13 You're a for-profit, we're a not-for-profit;
14 we have no way to figure this out.

15 Where is the safe harbor for this interaction
16 between for-profit and the non-for-profit?

17 That's really the critical feedback in the
18 guidance that we need really to leverage the unique
19 resources we have in the medical center in
20 Western New York.

21 So, thank you.

22 SENATOR GALLIVAN: What prevents the
23 interaction?

24 DR. DOUG SCHWARZ: Right now?

25 So, going to the safe harbor, for the first

1 part, is the doctor -- the physicians and the
2 surgeons that I speak to say, "If I go to this
3 meeting with Zimmer, are they going to put my name
4 on the website?"

5 Because what happened with the Department of
6 Justice, and I know this, because I ended up on the
7 front page of the D&C; my wife got very upset.

8 [Laughter.]

9 DR. DOUG SCHWARZ: But in order to --

10 JOANNE THOMPSON: You get used to it.

11 DR. DOUG SCHWARZ: I know, exactly. It wears
12 off.

13 [Laughter.]

14 DR. DOUG SCHWARZ: They say, "Am I going to
15 go on that national website?"

16 Because the website doesn't distinguish
17 between a doctor who, basically, is just answering
18 the question, "Would you consider using this in your
19 practice?" and the doctor who's getting \$10 million
20 a year in payola just to use a specific implant.

21 There's no distinction in that website.

22 So the first question they want to know is,
23 "If I go to this meeting, do I go on the website?"

24 And I have to say, "I don't know."

25 Just what you said, there's 10 miles of

1 words, of language in there.

2 There's no way for me to say "no."

3 If we have some kind of document that we
4 sign, that we are only discussing this one thing, or
5 some objective criteria, to establish a safe harbor.

6 For example, the safe harbor exists, very
7 important legislation for drug development with
8 respect to patents.

9 So, if you're developing a new drug and
10 you -- and the FDA says, "You need to show us this
11 data," you are allowed to infringe on another
12 company's patents in order to provide that data.

13 You don't necessarily have to have that
14 technology in your portfolio if you're going to --
15 that is what they call the "safe harbor."

16 So, if you're in the pre-commercialization
17 stage and you're doing an experiment for regulatory
18 reasons, you can't be sued, period; you're in the
19 safe harbor.

20 That's kind of what we're looking for.

21 SENATOR ROBACH: These are hard, and I don't
22 claim to be an expert, but, you know, going back to
23 everything we said and asked, you know, clearly, the
24 purpose for that was based more on informing the
25 public if there was bad performance, and, really,

1 almost secondarily, if there was a financial vested
2 interest, whether it was public or private money
3 going to that for the decision-makers, in both the
4 medical field and otherwise, on the Sunshine Law.

5 But, you know this kind of, I won't say scary
6 part, the interesting part is, off that website now,
7 you cannot control what's on the Internet or what
8 somebody puts out there.

9 DR. DOUG SCHWARZ: Exactly, once you're on,
10 you're on.

11 Doctors don't want to be on there.

12 SENATOR ROBACH: So I always thought, you
13 know, these are the conversations we certainly had
14 with Joel and the other people, or
15 Dr. Dessler [ph.], can't there be another entity?

16 DR. DOUG SCHWARZ: Right.

17 SENATOR ROBACH: Because I wanted to focus
18 that.

19 I want the commercialization.

20 I want them to take your expertise and your
21 knowledge and say, Yes, if you make that, I know
22 that will work for patients.

23 We will all make money.

24 And if we can do it in Rochester, we'll have
25 those jobs, and those students can stay here, and

1 your students can stay here, and they'll buy cars,
2 and all those good things, right here in Rochester.

3 So, if there's something you have, maybe this
4 is the opposite of regulation, where you think we
5 can fine-tune it, or create something that would be
6 still protective --

7 DR. DOUG SCHWARZ: Create the safe harbor.

8 SENATOR ROBACH: Yes.

9 DR. DOUG SCHWARZ: That's what we want:
10 create the safe harbor.

11 These behaviors are in --

12 SENATOR ROBACH: But, clearly, encourage and
13 protect good activity for that purpose --

14 DR. DOUG SCHWARZ: Correct.

15 SENATOR ROBACH: -- I'd certainly be willing
16 to look at that, and at least put something in
17 a print so we could have some dialogue.

18 DR. DOUG SCHWARZ: Right.

19 In terms of the -- using a core technology,
20 or a core facility, in a non-for-profit, again,
21 let's just use the cGMP facility, the specific
22 challenge we have there with a company wanting to
23 use our facility, is that it comes down -- it's even
24 too complicated for me -- but, the bonds, basically.

25 So, when we are allowed to use only 3 percent

1 of all of the University of Rochester property for
2 for-profit activities, how is that regulated?

3 How do we give assurances to the university
4 that we're not going over the 3 percent? -- and so
5 forth.

6 And, so, I think, again, there should be a
7 way to say, Okay, the cGMP facility was
8 State-funded. This is an Empire Zone, and you don't
9 need to -- it will be -- it will obviously be run in
10 a manner that you can see the finances, and so
11 forth, and that for-profit entities would be able to
12 use that in a more easier fee-for-service manner.

13 And, again -- again, it speaks directly with
14 what Dr. Smith said, because the burden on us in
15 biotech is not just to find the answer, but actually
16 complete the Phase II trial.

17 And that crown jewel in our environment is
18 the most important thing we have in order to gain
19 access to the Phase I and Phase II trials, where we
20 will manufacture the drugs here in Rochester, but it
21 has to involve for-profit entities, at some level,
22 using a non-for-profit facility.

23 And we don't have a safe harbor for that.

24 SENATOR ROBACH: I don't want to put you on
25 the spot --

1 DR. DOUG SCHWARZ: Go ahead.

2 SENATOR ROBACH: -- this is fascinating to
3 me.

4 Do other states have something more
5 protective?

6 DR. DOUG SCHWARZ: So, basically, they
7 don't -- they built them not on the school campus,
8 so they built them, actually, in the incubator
9 space.

10 SENATOR ROBACH: Right, and we do that, too,
11 here, so that's why I don't understand why -- I
12 mean --

13 DR. DOUG SCHWARZ: But it comes down to
14 the -- what makes these facilities so special and
15 expensive, is the people that run them.

16 So, you can't turn the lights off in the
17 cGMP facility. It has to -- it has to be run all
18 the time, and it's run by U of R personnel.

19 So, I don't know how that works.

20 SENATOR ROBACH: Thank you.

21 DR. DOUG SCHWARZ: I appreciate the
22 opportunity.

23 Thank you.

24 SENATOR GALLIVAN: Well, we appreciate
25 everybody's time, and the fact that you -- I mean

1 you took the time, not just today, but to prepare
2 your testimony.

3 Yes, sir, did we miss you?

4 FRED BUGIN: Accept a walk-on?

5 SENATOR GALLIVAN: Pardon me?

6 FRED BUGIN: Do you accept a walk-on?

7 SENATOR GALLIVAN: Come on right up.

8 FRED BUGIN: Thank you very much.

9 Pass that right on up front.

10 My name is Fred Bugin [ph.].

11 Senator Robach, we had a chance to talk
12 before.

13 SENATOR ROBACH: Yeah.

14 FRED BUGIN: What I have here is a picture of
15 taking blood pressure with a cuff.

16 On this side, you have a blood pressure taken
17 without a cuff.

18 There is a \$300,000 study going on at
19 Western University of Medicine Dentistry up in
20 London, Ontario, of which the key that we're looking
21 for is the wireless, like you got with this little
22 CVS device, so that when you put this device on your
23 palm, it transmits temperature, which is a
24 non-dimensional parameter, and we have to accept it
25 wherever we're at, and a change in barometric

1 pressure.

2 Now, I'm going to ask you a question.

3 When do you want to take your blood pressure
4 the conventional way: on a rainy day or a sunny day?

5 SENATOR ROBACH: You pick.

6 SENATOR GALLIVAN: Why don't you tell us.

7 DR. DOUG SCHWARZ: Now, every doctor should
8 know this, because you want to take it on a rainy
9 day when the atmospheric pressure is low. It's
10 below 14.7, one bar.

11 And if you take the blood pressure and you go
12 up to Colorado, where my cousin went, had a heart
13 problem, and died of a heart attack up there,
14 because you only have one-half the pressure, so you
15 go lower oxygen.

16 So what I'm saying is, with this tiny little
17 bead --

18 [Inaudible.]

19 -- there's the capability of putting a band
20 on you, and what they're looking at, for radio
21 frequency, is to be able to walk into the hospital,
22 put the band on you, give you an RF by
23 identification, and you will now be identified with
24 your blood pressure, pulse, and temperature taken
25 without anybody having to monitor you 24/7.

1 That means, when you walk in, they know how
2 you're doing.

3 You're transmitted to the front desk, and
4 we're looking at a range of 300 feet for each cell
5 up at the hospital up at Western University.

6 And from the standpoint of here in Rochester,
7 I've sat down with RIT, presented the technology;
8 haven't had a right time of day.

9 I was, matter of fact, walked off of campus.

10 I've also introduced it to
11 Dr. Deworski [ph.], from the standpoint of, when he
12 came back and was proposing master's programs, in
13 which they take 100 ideas, filter them down to 6,
14 and then launch somebody on a master's program, with
15 the hopes that that master's program is going to
16 lead this individual into a company where he will be
17 acknowledged as one of the experts.

18 But, unfortunately, when you start talking
19 about generating an idea, and that same little bead
20 can also measure impact.

21 We just got through the program, where we had
22 two in the side temple and one on the chin of a
23 helmet.

24 The ball was fired at at 52 miles an hour,
25 and the registration of the impact was hit,

1 compression on this side, spike up, decompression on
2 this side, and I little blip right where the chin
3 is.

4 Major need for athletics.

5 Looking at it for Rochester, and I just got
6 through with a gentleman who [unintelligible] who
7 says, I'd like to be involved with this for the
8 boxing industry.

9 So from the standpoint of that simple little
10 sensor, which cost cents, I need to be able to, and
11 how we work our business, is I have the sensors that
12 I have the patents on, delivered from a sole source,
13 which is Martech Controls in Syracuse.

14 If you want to generate a product of which
15 you want to use the sensor, you buy our sensors; you
16 now own our technology from the standpoint, you can
17 only get them from us.

18 You put a 1 or 2 percent license on top of
19 the product that you're selling.

20 We get the licensing back. We don't have to
21 worry about confidential agreements, non-disclosure,
22 and all the rest of the business.

23 And the same type of thing can be done
24 because, when it comes time for RIT, I wrote to the
25 provost, Institute of Health, Science, and

1 Technology.

2 I have never had a reply.

3 And that's where I offered to put the sensor
4 in with the students that are Institute of Health,
5 Science, and Technology to say, "Knock yourself
6 out."

7 Find a place for that product, launch the
8 product, put it in.

9 I'm selling sensors, fat, dumb, and happy,
10 and you're gonna be out there in your own
11 independent business.

12 Different concept:

13 Now, when we talk about people generating
14 ideas, it's like me walking up to you and saying,
15 Invent me something.

16 Everybody has their forte, everybody has
17 their areas of interest, and I'm still looking for
18 support out of Rochester, out of Strong, or out of
19 RIT, or out of a place to where we can talk about
20 manufacturing these things to be able to put on the
21 band, because, commercially, they can be sold in a
22 drug store.

23 So what you put on it is, number one, a radio
24 frequency identification. It will transmit over a
25 range, wireless, and you put your birthdate.

1 So now when you have a disaster, and in
2 Spencerport, they already have an emergency
3 department to where, within 10 minutes, they have to
4 decide your state, to find out whether they can send
5 you into Rochester, or whether you just lay there
6 and they go after the ones who you'd be looking at a
7 green, orange, red.

8 So it says, I know how much time I got left
9 to be able to deal with the people that are green or
10 orange, and just forget the rest, because you can't
11 get them back to Rochester or any major city at any
12 time.

13 That's my product; that's my problem; and
14 that's my solutions to some other problems.

15 So I thank you for your day, and your time.

16 Oh, and by the way, I had a 2:00 appointment
17 for my extension for my income tax; my wife had been
18 in some serious problems.

19 I went to H&R Block. They said it was gonna
20 be the one at where your office was.

21 So I said, fat, dumb and happy, I'll get
22 there at 1:00, and then I'll be able to get it
23 extended.

24 I canceled it, just said, "Forget about it."
25 I'm coming here and I'll get a chance to talk to

1 you.

2 So not only, I'm tax-delinquent, and I'm
3 sitting here to make a proposal.

4 [Laughter.]

5 SENATOR ROBACH: Who's having more fun than
6 you? Nobody.

7 FRED BUGIN: Thank you.

8 SENATOR GALLIVAN: Thank you.

9 We do appreciate everybody's time.

10 And you can look for a report on the Senate
11 website, late November, early December.

12 Thank you all.

13 (Whereupon, at approximately 2:57 p.m.,
14 the public forum on Biotechnology Regulatory
15 Reform held before the New York State Senate
16 Majority Coalition concluded, and adjourned.)

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