

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Fourteenth Legislature
OF THE
State Of Maine

VOLUME II

FIRST REGULAR SESSION

May 10, 1989 to June 14, 1989

over again. Well, you have medical waste now, you have solid waste, you have ozone, you have polystyrene, you have styrofoam with CFC's, the issues are becoming more and more complex because our world is becoming more and more complex. Whether we like it or not, the State of Maine is going into the 90's and we are going fast. Growth management was never a problem, subdivisions were never a major problem. Big large developers buying up large tracts of land and doing what they wanted to was never a problem. The pressures on our natural resources, both the live ones and the inanimate ones, were never a serious problem, but it is now. People should be prepared that, if you run for the legislature, I appreciate the fact that you have got another job but boy you have got a job right here and it is one heck of a job. If you can't make that commitment, stay home.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of Representative Joseph of Waterville that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 28

YEA - Adams, Aliberti, Allen, Anthony, Bell, Boutilier, Brewer, Burke, Carroll, D.; Carroll, J.; Carter, Cashman, Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Conley, Constantine, Cote, Crowley, Curran, Daggett, Dexter, Dipietro, Dore, Dutremble, L.; Erwin, P.; Farnsworth, Farnum, Gould, R. A.; Greenlaw, Gwadosky, Hale, Handy, Heeschen, Hichborn, Hickey, Hogle, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, LaPointe, Larrivee, Lawrence, Lebowitz, Lisnik, Look, Lord, Luther, Macomber, Mahany, Manning, Marston, Martin, H.; Mayo, McGowan, McHenry, McKeen, McSweeney, Melendy, Merrill, Michaud, Mills, Mitchell, Moholland, Murphy, Nadeau, G. G.; Nadeau, G. R.; Norton, O'Dea, O'Gara, Oliver, Paradis, E.; Paradis, J.; Paradis, P.; Parent, Paul, Pederson, Pineau, Plourde, Pouliot, Priest, Rand, Richard, Ridley, Rolde, Rotondi, Rydell, Sheltra, Simpson, Skoglund, Smith, Stevens, A.; Stevens, P.; Strout, B.; Strout, D.; Swazey, Tammaro, Tardy, Telow, Tracy, Tupper, Walker, Wentworth, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, Begley, Butland, Dellert, Donald, Farren, Foss, Foster, Garland, Hanley, Hastings, Hepburn, Higgins, Hutchins, Jackson, Libby, MacBride, Marsano, Marsh, McCormick, McPherson, Nutting, Pendleton, Pines, Reed, Richards, Seavey, Sherburne, Small, Stevenson, Webster, M.; Whitcomb.

ABSENT - Duffy, Graham, Gurney, Kilkelly, Ruhlin, Townsend.

Yes, 109; No, 35; Absent, 6; Vacant, 1; Paired, 0; Excused, 0.

109 having voted in the affirmative, 35 in the negative, with 6 absent and 1 vacant, the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

The Chair laid before the House the ninth tabled and today assigned matter:

HOUSE ORDER relative to Propounding Questions to the Justices of the Supreme Judicial Court.

TABLED - May 12, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Passage.

Representative Carter of Winslow offered House Amendment "A" (H-186) and moved its adoption.

House Amendment "A" (H-186) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, I would like to pose a question through the Chair to Representative Carter of Winslow.

Could Representative Carter please explain or just give a description of House Amendment "A"?

The SPEAKER: Representative Gwadosky of Fairfield has posed a question through the Chair to Representative Carter of Winslow who may respond if he so desires.

The Chair recognizes that Representative.

Representative CARTER: Mr. Speaker, Ladies and Gentlemen of the House: In answer to my good friend, Representative Gwadosky of Fairfield, I would be pleased to try and explain the contents of the new document that is before you.

Very simply, the Majority Report of the Judiciary Committee that is before this body changes the intent of the original document from a parental consent bill to an informed consent bill. In so doing -- and this House has heard me to allude to it several times before -- I believe that it raises several major constitutional questions. The questions now are in the form of four questions, they are much more precise than they were in the original order, along with the fact that an additional question is being posed to the Supreme Judicial Court.

The first and second questions deal with constitutional objectives along with the separation of church and state.

Question three revolves around whether it is unduly burdensome for teenagers involved in this process or not.

The fourth question raises the issue of whether passage of this bill would in fact create a violation of the First and Fourteenth Amendment for a youngster who is involved in the process of being forced to undergo an abortion by the courts.

While I am on my feet Mr. Speaker, if this body chooses to allow the Majority Report to become law without the benefit of the Supreme Court ruling, we could all be contributing to the creation of a tremendous problem and turmoil among the many organizations that now provide different types of services for many of our youngsters caught up in this process. Some of those organizations could be such organizations as Birthline, some could be St. Andre's, many that now serve under the dioceses of the Bureau of Social Services. Because of the complexity of the question, I think it is imperative upon us that before we pass any legislation that we know that might be unconstitutional that we seek the opinion and guidance of the State Supreme Court. I would hope that this body would go along and support this Order.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Conley.

Representative CONLEY: Mr. Speaker, Men and Women of the House: I would move that House Amendment "A" be indefinitely postponed.

Members of this body, I do not believe that there is a need for our Supreme Judicial Court to review this question, basically for two reasons. Number one, less restrictive measures than the one before the body have been reviewed by the courts and found to be constitutional. Number two, an opinion from

our Law Court, if it came back saying that this proposal were constitutional, would in no way bind a federal court which is exactly where this issue would go. That federal court which has been used in the past would be the body which would make the decision regarding constitutionality of our proposal. The very group which is seeking a review by our court, if our court said this proposal was constitutional, would be in the federal court the very next day. In essence, the purpose of this Order is to kill the bill which our committee worked so hard on and which this body has overwhelmingly approved.

If this question were to go to the Law Court, the court is bound in no fashion to come back with an answer to us as to whether or not they will even review the issue until after we have adjourned and the bill which we have will then die. The very young women which we have sought to help with this proposal will be left where they are today, the status quo, no guidance whatsoever. For all those reasons, I ask this body to vote against the Order.

I ask for a roll call, Mr. Speaker.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Men and Women of the House: I join with my brother of the Judiciary, Representative Conley, in asking that this body indefinitely postpone the amendment and I would hope afterwards the motion for solemn occasion as well.

I spent the weekend studying and thinking about solemn occasion. It is probably something that only a freshman legislator would bother themselves to do because it is a crazy area to look at. I want you to know though that the Supreme Court, even by our own statutes, the revised statutes annotated, and there are specific instances cited, accepted solemn occasions only five times and refused them 14 times. Well, that is about a 350 batting average -- for baseball that would be pretty good and perhaps tonight the Democrats would hope that would be their team average when they play the Republicans, but I think today, if you were a betting man, that would be terrible odds.

You have to understand that the court generally refuses solemn occasions. Why does it do so? First of all, it has no precedential value, meaning that if this matter comes back to them again, it means absolutely nothing to them. Whatever they decided in their opinion of justices to this body is out the window, you can't even talk about it.

Secondly, the court is in its busiest season right now. It has back-to-back terms.

Thirdly, this matter is primarily a federal issue and opinions of justices generally only review those of our state constitution and our state statute. If you will look at the amendment, you will see that they are attacking the federal cases, not the state cases. The one instance where the abortion law was struck down in Maine, it was attacked, not in state court but in federal court. So, it is very improbable that this matter will even be accepted by the Supreme Court.

But then, why the amendment, why the motion for solemn occasion? Consider if you will, what has gone

on in the past. We have had in this body as well as in the other body a motion to indefinitely postpone the Majority Report. That doesn't look to me like they are interested in an opinion of the justices. Secondly, they have attacked the bill on the matter of germaneness. Again, that doesn't look to me as if they are considering this bill in a favorable light. And lastly, even their own amendment, item 4, asks questions which goes to the very issue of the Minority Report, that is, a courts right to order an abortion for a minor to save her life. This is in the Minority Report as well as the Majority Report. So again, why the motion? It is simply to delay with the idea that delay will kill the bill, will prevent its passage. Think of that, the person who leaves this opposition to the Majority Report without this is quoted as saying that this Majority Report ought to be killed. Isn't that an interesting choice of words? Killed -- for someone who is for pro-life? That was what was stated in a newspaper.

I suggest to you that the very purpose of this motion and the amendment to it is simply to prevent any passage by this House of the Majority Report even though that Majority Report gives safe haven of information to the minor who seeks help in deciding whether or not to have an abortion.

You must remember what the Majority Report attempts to do, it is simply to give safe haven of information to a minor. In most cases, that is already given by a parent. Whether in this one instance, when you have somebody such as throwaway kids, minors from fractured homes, minors who are unable to communicate or are abused, and it gives to those that same type of safe haven as best as they can get it other than by having to go to a court.

I work in courts all the time and you would think that I would be most favorable to a court acting as a substitute parent -- keep in mind that courts are as frightening to appear before for all of us regardless of age when we know nothing about it. How many of us are frightened by the dark? Unless you know what is there, you are frightened by the dark. A minor going to court is like being frightened by the dark.

I urge you to support the motion to indefinitely postpone because I believe it gives us the opportunity to act on a fair consensus report arrived at, as has many times been debated, by a consensus of opinion, to give safe haven to those poor kids who are faced with a frightening decision.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Anthony.

Representative ANTHONY: Mr. Speaker, I would like to pose a question to the Chair.

Mr. Speaker, my question is, whether the issue that is before us on this vote is the form of a request for a solemn occasion and only the notion of the form of that request, if there will be one?

The SPEAKER: The Chair would ask the Representative from South Portland if he would restate his question.

Representative ANTHONY: Mr. Speaker, my question is whether the motion is indefinite postponement of House Amendment "A" which goes to the question of the form of a request rather than whether or not there will be a request.

The SPEAKER: The pending question and the amendment that is pending deals with an amendment to the original request of the request of the courts. Whether or not the motion to indefinitely postpone prevails or not, the question of the courts is still before this body. The question before the body is on indefinite postponement of the amendment. If the motion to indefinitely postpone prevails, the

question before the courts is still present, that issue not having been decided.

The pending question is indefinite postponement of House Amendment "A."

The Chair recognizes the Representative from Winslow, Representative Carter.

Representative CARTER: Mr. Speaker, Ladies and Gentlemen of the House: Representative Hastings of Fryeburg would make light of the question by indicating that it is very simple for me to kill this bill. I would like the good gentleman to know that I have been in this body for many years and it doesn't bother me to kill bad legislation but he should not try to make light of the issue before us, which is quite serious.

While I am on my feet, I would like to let this body know that the issue before us is quite serious and when I first came to serve in this body, and I do every two years when I take my oath of office I swear to uphold the Constitution of this State and of this nation and I will never knowingly vote for a piece of legislation that could be unconstitutional. I never have and I don't believe I ever will.

What we have before us deals with a constitutional question. Part of the majority amendment from the Judiciary Committee indicates that there will be neutral counseling for one thing -- I repeat the word neutral counseling -- I ask any member of this body, how can you have neutral counseling if you exclude half of the service organizations of this state and require only the other group to provide this counseling and they themselves would be in conflict? Both views are not helped equally by both groups. Obviously, there is a split right down the middle here and I am intent on doing something just as much as you are but whatever we do, let's do it right. The only way that we can do it right is by having the benefit of the Supreme Court to make our decision by and I would hope that you would not vote to indefinitely postpone this amendment but to support the amendment as suggested by Representative Hastings.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of the Representative from Portland, Representative Conley, that House Amendment "A" (H-186) be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 29

YEA - Adams, Aikman, Allen, Ault, Begley, Brewer, Burke, Butland, Carroll, D.; Cathcart, Chonko, Clark, M.; Coles, Conley, Constantine, Cote, Daggett, Donald, Dore, Erwin, P.; Farnsworth, Foss, Foster, Garland, Greenlaw, Gwadosky, Hale, Handy, Hanley, Hastings, Heeschen, Hogle, Holt, Joseph, Ketover, LaPointe, Larrivee, Lawrence, Libby, Lisnik, MacBride, Macomber, Mahany, Marsh, Marston, Mayo, McGowan, McKeen, McPherson, Melendy, Mills, Mitchell, Nadeau, G. G.; Nadeau, G. R.; Norton, O'Dea, Oliver, Pederson, Pendleton, Priest, Rand, Reed, Richards, Rolde, Rydell, Sherburne, Simpson, Skoglund, Small, Smith, Stevens, P.; Strout, B.; Swazey, Tracy, Tupper, Webster, M.

NAY - Aliberti, Anderson, Anthony, Bailey, Bell, Boutilier, Carroll, J.; Carter, Cashman, Clark, H.; Crowley, Curran, Dellert, Dexter, Dipietro,

Dutremble, L.; Farnum, Farren, Gould, R. A.; Hepburn, Hichborn, Hickey, Higgins, Hussey, Hutchins, Jackson, Jacques, Jalbert, Lebowitz, Look, Lord, Luther, Manning, Martin, H.; McCormick, McHenry, McSweeney, Merrill, Michaud, Moholland, Murphy, Nutting, O'Gara, Paradis, E.; Paradis, J.; Paradis, P.; Parent, Paul, Pineau, Pines, Plourde, Pouliot, Richard, Ridley, Rotondi, Seavey, Sheltra, Stevens, A.; Stevenson, Strout, D.; Tamaro, Tardy, Telow, Walker, Wentworth, The Speaker.

ABSENT - Duffy, Graham, Gurney, Kilkelly, Marsano, Ruhlin, Townsend, Whitcomb.

Yes, 76; No, 66; Absent, 8; Vacant, 1; Paired, 0; Excused, 0.

76 having voted in the affirmative and 66 in the negative with 8 being absent and 1 vacant, the motion did prevail.

Representative Anthony of South Portland requested a roll call on passage.

Representative Carter of Winslow withdrew House Order relative to Propounding Questions to the Justices of the Supreme Judicial Court.

The Chair laid before the House the following matter: An Act to Require Parental Consent to a Minor's Abortion (H.P. 457) (L.D. 622) (C. "A" H-127) which was tabled earlier in the day and later today assigned pending passage to be enacted.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Paradis.

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: Since I would not want to go on record as voting for this bill, I would request a roll call on enactment.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is passage to be enacted.

The Chair recognizes the Representative from Palmyra, Representative Tardy.

Representative TARDY: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with Representative Kilkelly of Wiscasset. If she were present and voting, she would be voting yea; I would be voting nay.

The SPEAKER: The pending question before the House is passage to be enacted. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 30

YEA - Adams, Aikman, Allen, Anthony, Ault, Begley, Boutilier, Brewer, Burke, Butland, Carroll, D.; Cathcart, Chonko, Clark, M.; Coles, Conley, Cote, Daggett, Dellert, Donald, Dore, Erwin, P.; Farnsworth, Foster, Garland, Gwadosky, Hale, Handy, Hanley, Hastings, Heeschen, Hepburn, Hogle, Holt, Joseph, Ketover, Larrivee, Lawrence, Libby, Lisnik, MacBride, Macomber, Mahany, Manning, Marsh, Marston, Mayo, McKeen, McPherson, McSweeney, Melendy, Mills, Mitchell, Nadeau, G. G.; Nadeau, G. R.; Norton, O'Dea, Oliver, Pederson, Priest, Rand, Richards, Rolde, Rydell, Simpson, Skoglund, Small, Smith, Stevens, P.; Stevenson, Swazey, Tracy, Tupper, Webster, M.

NAY - Aliberti, Anderson, Bailey, Bell, Carroll, J.; Carter, Cashman, Clark, H.; Constantine, Crowley, Curran, Dexter, Dipietro, Dutremble, L.; Farnum,

Farren, Foss, Gould, R. A.; Greenlaw, Hichborn, Hickey, Higgins, Hussey, Hutchins, Jackson, Jacques, Jalbert, LaPointe, Lebowitz, Look, Lord, Luther, Martin, H.; McCormick, McGowan, McHenry, Merrill, Michaud, Moholland, Murphy, Nutting, O'Gara, Paradis, E.; Paradis, J.; Paradis, P.; Parent, Paul, Pendleton, Pineau, Pines, Plourde, Pouliot, Reed, Richard, Ridley, Rotondi, Seavey, Sheltra, Sherburne, Stevens, A.; Strout, B.; Strout, D.; Tamaro, Telow, Walker, Wentworth, The Speaker.

ABSENT - Duffy, Graham, Gurney, Marsano, Ruhlin, Townsend, Whitcomb.

PAIRED - Kilkelly, Tardy.

Yes, 74; No, 67; Absent, 7; Vacant, 1; Paired, 2; Excused, 0.

74 having voted in the affirmative and 67 in the negative with 7 being absent and 1 vacant, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

The Chair laid before the House the following matter: An Act to Make Changes to the Human Resource Development Council in Order to Conform with the United States Economic Dislocation and Worker Adjustment Assistance Act of 1988 (Emergency) (S.P. 101) (L.D. 120) (C. "A" S-84) (passed to be enacted in the House on May 11, 1989) which was tabled earlier in the day and later today assigned pending further consideration.

On motion of the Representative from Madawaska, Representative McHenry, the House voted to recede from passage to be enacted.

The same Representative offered House Amendment "A" (H-187) and moved its adoption.

House Amendment "A" (H-187) was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (S-84) and House Amendment "A" (H-187) in non-concurrence and sent up for concurrence.

The Chair laid before the House the following matter: An Act to Improve the Cost-of-living Adjustment Under the Maine State Retirement System (H.P. 538) (L.D. 735) (C. "A" H-140) which was tabled earlier in the day and later today assigned pending passage to be enacted.

On motion of Representative Gwadosky of Fairfield, retabled pending passage to be enacted and specially assigned for Tuesday, May 16, 1989.

(Off Record Remarks)

On motion of Representative Manning of Portland, Adjourned until Tuesday, May 16, 1989, at twelve o'clock noon.

STATE OF MAINE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Monday
May 15, 1989

Senate called to Order by the President.

Prayer by Pastor Nolan Leavitt of the Advent Christian Church in Auburn.

PASTOR LEAVITT: Let us pray. Heavenly Father, I come to You this morning as Your child, one You have redeemed to Yourself at great cost. And again, I give You thanksgiving and praise for a beautiful day. I thank You for life, Lord, and a hope and a promise of a much greater life to come. I praise You for your mercy extended, mercy undeserved and unexpected.

Father, I ask that You wash us clean this day as we stand before You. You have said, "come let us reason together, though your sins be as scarlet they shall be as white as snow." Wash our thoughts, our hearts, our hands this day with water that reaches the very depths of our soul.

Father, I would intercede this day for these men and women gathered. I ask for wisdom on their behalf, knowing that the beginning of wisdom begins with You. I would ask that Your hand would guide them this day. Protect them, Lord, from harm's way and lead them beside still waters and guide them in paths of righteousness. Lord, quiet their hearts and bear their burden with them and for them. Some here perhaps are pressed down by the weight of life and the weight of strife. Bless their families, Lord, and their loved ones and keep them safe and ease the heartache and headache alike. Make them a blessing, Lord, first to You and to themselves and their loved ones, then, Lord, make them a blessing to this land and all who look to them this day. In Jesus' name. Amen.

Reading of the Journal of Friday, May 12, 1989.

PAPERS FROM THE HOUSE
Non-concurrent Matter

Bill "An Act to Clarify Laws Pertaining to the Enforcement of Forestry Fire Control Laws"

H.P. 88 L.D. 123

(C "B" H-135)

In Senate, May 8, 1989, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-135), in concurrence.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-135) AS AMENDED BY HOUSE AMENDMENT "B" (H-180), thereto in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

Non-concurrent Matter

Bill "An Act Relating to Confidentiality of Investigative Records of Boards and Commissions"

H.P. 232 L.D. 316

(S "A" S-51 to C "A" H-51)

In House, April 18, 1989, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-51).

In Senate, April 24, 1989, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-51) AS