

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Eighteenth Legislature
State of Maine

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Pages 1 - 980

Committee Amendment "A" (H-162) **READ** and **ADOPTED**, in concurrence.

The Bill as Amended, **TOMORROW ASSIGNED FOR SECOND READING.**

Divided Report

Seven Members of the Committee on **JUDICIARY** on Bill "An Act to Ban Partial Birth Abortions" H.P. 390 L.D. 535

Reported in Report "A" that the same **Ought Not to Pass.**

Signed:

Senators:

LONGLEY of Waldo
BENOIT of Franklin

Representatives:

THOMPSON of Naples
WATSON of Farmingdale
ETNIER of Harpswell
MAILHOT of Lewiston
POWERS of Rockport

Three Members of the same Committee on the same subject reported in Report "B" that the same **Ought to Pass as Amended by Committee Amendment "A" (H-163).**

Signed:

Senator:

LAFOUNTAIN III of York

Representatives:

JABAR, SR. of Waterville
NASS of Acton

Three Members of the same Committee on the same subject reported in Report "C" that the same **Ought to Pass as Amended by Committee Amendment "B" (H-164).**

Signed:

Representatives:

WATERHOUSE of Bridgton
PLOWMAN of Hampden
MADORE of Augusta

Comes from the House with Report "C", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (H-164) READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "B" (H-164).**

Which Reports were **READ.**

Senator **LONGLEY** of Waldo moved the Senate **ACCEPT** Report "A" - **OUGHT NOT TO PASS** in **NON-CONCURRENCE.**

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Mr. President, colleagues of the Senate. We're here today to discuss a very important matter concerning health care decisions made by women and their families with their attending physician and it's probably the most difficult decision this family and this woman, and this physician will ever have to make in their personal and professional life. My message to all of you is, having listened and learned and thought long and hard my conclusion is, far be it from me, a legislator, to look at this woman and her family and the physician and say, "I know best for you when you're facing the toughest decision in your life." And for that reason I promote the Ought Not to Pass report. There's lots of things we can say. I choose not to focus on the opposition. I choose to focus on the women and the families, and the physician.

The public hearing, for me what was most helpful, were two things. We heard something about the legal and the unconstitutional provisions, and I'll briefly say, the court law basically talks about substantial obstacles respecting the medical judgment. In all court decisions from the Supreme Court they talk about undue burdens on the decision making process that we cannot put on families and women. They talk about honoring medical judgment, and I'm not a doctor and I can imagine it's a horrific decision they're having to make in these times. And I point out, in Maine it has happened twice in the last thirteen years. I hope and I pray it never has to happen again but far be it from me, a legislator, to think I know best when I haven't been in the situation as a woman.

No one in my family's been in this situation and furthermore, I don't know, I don't understand medical procedure. I have heard from the medical world, and I have heard that, of all the horrific options as they discover, later in a pregnancy they discover problems that they couldn't discover earlier, and the graphic details, I think on both sides of this argument, we'd just as soon be spared but suffice it to say that there are horrible medical decisions being made that have to be made because they're less horrible than other decisions. To make my point, I've heard two people, one was a young woman who, we didn't have one in Maine, we had to go out of state, and she came forward. She would far have preferred to stay home, to stay in her job, she worked with disabled children. She had one child, wanted another, was excited about the pregnancy, she heard at one point that her blood tests were coming back odd and then, within a few days, she learned that those blood tests meant that the child was genetically deformed. The husband and wife said, "That's fine. This is our skill. We can work with a child who is disabled. If it's God's will, let's do it." Another day in this five day process of worse and worse information coming forward, they realized that this child would be born, and I want to spare us the details but, with no skull and no brains. It was a horrific decision, suffice it to say, and this woman came and talked to us about how she pulled together her parents, she pulled in her husband. She had said, on the delivery of the first child, that if it came between her and the child's health, the child's life, she would choose to give her life first. So, this is a woman who obviously wanted this second child and was willing and able. She was a lawyer who, advocating for the disabled, she dedicated her professional life to working with disabled children. When she told the story, tears were appearing on the sides of her eyes and for

me, it was compelling testimony that these women in these families often want this fetus to develop into a child and the information they get is worse than anything any of us have ever had to process. Again, I come back to the point, far be it from me to tell the doctor and the woman, and the family. She had her mother and father present and she told of families where priests were even present and said, "Of all the options, this is the least bad option and it's horrific." And again, I came dragging into work today, I found myself, tears appearing in my eyes too, just thinking, how do you make decisions in these tough situations? I rely, I trust the woman and her family, and her doctor and for that reason I am promoting the Ought Not to Pass on this bill, which doesn't mean that I support this procedure. It means I know I'm not in the best position to make this very tough decision. I trust the woman. I trust the family. I trust the doctors. Again, I pray that it doesn't have to happen one more time in the next thirteen years, but I do not think that we know best. Far be it from us legislators in Augusta, to make decisions for these families outside of Augusta, in a time when they are most in need. Thank you for listening.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Kennebec, Senator Carey.

Senator **CAREY:** Thank you Mr. President, men and women of the Senate. I really feel for the good Senator from Waldo, Senator Longley and the position that she's been put in. I don't think that this bill should ever have come before any legislative body to begin with, but unfortunately it is here. I would like to mention something out of the September 19th, '96 Wall Street Journal on partial birth abortion and the heading is, "It's Bad Medicine", written by two women, including two men and a portion of it says, "Since the debate on this issue began, those whose real agenda is to keep all types of abortion legal at any stage of pregnancy and for any reason have waged, what could only be called, an orchestrated misinformation campaign." For the National Abortion Federation, and other pro-abortion groups, claim the procedure didn't exist. That's when they first came out. And when a paper written by the doctor who invented the procedure was produced, abortion proponents changed their story, claiming the procedure was only done when a woman's life was in danger and then the same doctor, the nation's main practitioner of the technique, was caught on tape admitting that 80% of his partial birth abortions were purely elective. I would ask for a Roll Call, Mr. President. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Aroostook, Senator Paradis.

Senator **PARADIS:** Thank you Mr. President, men and women of the Chamber. Over half of the budget is being used for education. Dozens of bills have been introduced across the spectrum regarding children's issues. The Health and Human Services is working intensely, day after day, in a bipartisan way, to insure a safety net for the State's children, as we did yesterday with the bills dealing with temporary assistance to children and their families. We take our governmental role very seriously, to protect the helpless and protect human dignity and so do the people we represent. We place children first and I treasure that quality in Maine people. Therefore, are we surprised that this bill is in front of us? Are we surprised that people from all over the state have voiced their opinion on this issue to us? This type of

intervention has hit a nerve because we all believe in protecting children. It violates people's sense of what is right, decent and appropriate. I happen to know a great majority of the people who wrote to me and I was surprised that most of them didn't seem to know my position on these issues. However, to a person, and I know most of them personally, their pro-life stance is from conception until death and they conduct their life like that.

We are in an interesting season in my fake community. We are giving the sacraments of initiation, and I was part of such a celebration Sunday, and I was so impressed with the way that, over and over again we're telling the candidates, the children before us, that they were of value, that God lived in them and they were precious to us.

This procedure is sending a very different message to these young people and that is very troubling to people. We, in Maine, have a healthy society because we have healthy families, institutions, churches and schools. We have great responsibilities and values, and those values and responsibilities are lived out every day in this chamber by you, my fellow Senators. We want everyone to thrive and survive in this State and we go through great lengths to make that possible, whether for the poorest individual to the richest individual. Are we surprised that the people, the very citizens that we depend on to keep our society healthy, are being asked to look the other way regarding this procedure? We are often reminded that the procedure under discussion today is very rare. We are told that only one or two were performed in Maine, and bravo to that because it reflects the consistency of life we see in Maine and how we were taught throughout our lives. More and more technology and science has produced instruments of early detection but what we've heard over and over is the tremendous length of time between the time a test is performed and when the results are received. As referred to by my esteemed colleague, Senator Longley, who spoke to us about that experience with that procedure. She did a great job articulating the joys and the sorrow that went with what happened to her pregnancy. It seemed that she and her physician were moving on this issue as fast as they could after the first detection of trouble with the fetus. The scenario that emerged was that after every exam, though, there were lengthy delays in getting lab results, seven days, fourteen days or lots of time mentioned over and over. We all express concerns with deeply personal decisions being removed from a woman and her physician however, it's very apparent to me that in this case the medical labs are dictating the time lines that are totally inappropriate to all involved. Why are the time lines the same, whether you're going for a routine test or for a life and death struggle that we're speaking about here? Women and men of the Senate, I urge your voting against the Ought Not to Pass motion. Thank you very much.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Amero.

Senator **AMERO:** Thank you Mr. President, ladies and gentlemen of the Senate. The proposed bill, L.D. 535, purports to ban a procedure that was used once in the year 1995. I want to tell you about that one case because the procedure was used in my District on a daughter of a very good friend of mine. A young woman, recently married, into her eighteenth week of pregnancy, happy about the prospect of having a family, developed a serious infection in her amniotic fluid, her water broke, the fetus was in distress. If this operation had not been

available, this woman would have been left sterile at the age of 25, never would have had a family. That's the one time this procedure was used in Maine, in 1995. I'm happy to say that this same young couple is expecting a child within the next few weeks. I hope that you will support the pending motion and allow this procedure, used so rarely, and in such extraordinarily rare cases, to be used at the discretion of a doctor, a woman and her physician, and their minister or priest, or rabbi. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Michaud.

Senator **MICHAUD:** Thank you Mr. President, men and women of the Senate. I hesitate to rise today, having been in the legislature for over seventeen years, dealing with abortion bills, however, I must rise on this particular one. It's been stated that we should not say what's best for you. Well, ladies and gentlemen of the Senate, the legislature regulates the people of the State of Maine severely and in a lot of areas, a lot less severe than what we currently have here. It's been also stated this only happened twice in thirteen years. Well, I think that's twice too many. I asked, "What is the procedure on this type of operation?" And the more I look at that procedure, I think it's wrong. It's absolutely wrong. The procedure is, you forcibly turn the child into a breech position, then you pull the living baby, by the legs, out of the mother until the only thing that's left is the head. You stab the child at the base of the skull. You suck out the brains with a vacuum and then you pull the whole child out of the mother. I think that's absolutely wrong. I cannot, and will not, in good conscience vote to kill this bill. I hope that this Body will vote against this motion so we can move forward and vote for a Not to Pass report. Thank you Mr. President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Aroostook, Senator Kieffer.

Senator **KIEFFER:** Thank you Mr. President, ladies and gentlemen of the Senate. The good Senator from Kennebec, Senator Carey, I believe, summed up my feelings on this bill quite well when he said we should not be here being asked to legislate morality. Whether that's correct or not, it is before us and it certainly has to be dealt with. The fact that this is a procedure that is seldom done certainly is good news however, it doesn't make me feel very warm and fuzzy all over to know that it ever occurs. I believe that whether we are pro-life or pro-choice, I believe there comes a time when we have to draw the line and I think this line has to be drawn, not only for our own satisfaction, but for the benefit of the mother and the child and I believe this is about the place where this line must be drawn. The difference between this procedure being legal and murder is about a three inch span. Now, murder doesn't occur very often in Maine either and I'm certainly thankful for that. I certainly will vote to oppose the pending motion and I would ask you to do the same. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Mr. President, ladies and gentlemen of the Senate. When I started hearing the discussion that was happening on the late term abortion bill, I turned to my usual source of information for health care issues, and those

were my professional colleagues, and the first thing I found out about this issue was that not only had none of them done this procedure, none of them that I could locate had ever even seen one done. And so the first difficulty in this debate for me was to find someone who actually had some direct experience and I must tell you that in my area I could not. I did have one person who told me that in her training, which happened some years ago, her only experience in another part of the state was in the one case where this procedure had been deemed to be necessary. They had had to send the woman out of state because they could not find a practitioner who was able or willing, in Maine, to do that.

There have been a number of comments made, and when we get into trying to describe a very technical medical procedure in lay terms that we're more familiar and comfortable with there are a lot of inaccuracies that develop because we're using a lay vocabulary that is quite different than the medical vocabulary. The best example being the name of this bill. It has been called a partial birth abortion. A birth is a birth. When a fetus, baby, whatever term you want to use, moves from inside to outside, that's a birth. It could be a vaginal birth. It could be a cesarean birth. It could be a breech birth. It could be a still birth. It's a birth. So, the first issue, vocabulary wise is the term, partial birth abortion, and that's why medical people will say it's a meaningless term. Elective, is the next term I want to discuss. An elective procedure is not a procedure that's done because you can do it if you want to, and if you choose not to, you don't have to do it. An elective procedure is a procedure where you have the luxury of the time to schedule it. You may need an amputation because you're a diabetic. It is scheduled four days ahead. That's elective surgery. You don't have a choice. You have to have it done to save your life but it's elective. So, I think the way some of my colleagues who are looking at this who are not in the health care arena have may be a bit of a misunderstanding about what we mean when we say elective.

It is not possible to compare abortion to any other medical procedure because, although, we could say that any surgery, when described in detail, would be terrible. That any decision made that actually injures a person to heal them, as in the case of an amputation, is not the same as an abortion because in an abortion we're talking about two people, and one of those people is a very tiny, very defenseless person. It is the normal practice in medicine to save everybody. We don't routinely make choices to sacrifice one person to save another person and that is why this debate is so unique because it comes down, sometimes, to a choice between sacrificing one person to save the other. And that is the context, ladies and gentlemen, in which this procedure in the State of Maine, to the best of my ability to determine, is done. There are several different medical procedures which can accomplish this in a case that is that drastic. The one that has been described here today is one that is used when time is more urgent than anything else. It is the primary consideration and I would submit that if you are going to call it murder, to perform this procedure, you would then have to call it murder of the mother to not perform it because it is done in those circumstances that are that drastic. When a woman's blood pressure is catastrophically elevated or when there are other medical circumstances that dictate that one of these two people is not going to survive. How do you make that choice? How do you decide which one it will be? And, I believe, that our society supports the life of the adult, the person who has other relationships established, the person who has other dependent children to care for, the person who is

depended on by other people in her life and that that is the priority of our society and has been. So, in this terrible situation, where a decision must be made and where the knowledge is that one of these people will not survive, those are the circumstances under which this procedure is performed.

Until relatively recently we were not able to detect certain fetal abnormalities in utero. The first we knew that a woman had an anencephalic baby was when that baby was delivered. It was immediately obvious those children do not usually survive more than an hour or two, if that. It is totally incompatible with life, there is no question about that. Now we have the ability to know that, when that child is in utero and so, what you would be doing, by passing this ban, would be consigning a woman who knows that she is carrying an anencephalic fetus to several more months of pregnancy. She will not die. That is not a cause of maternal death, but she will be out, perhaps at her job, on the street, in Gena's case, dealing with a four year old child that she loved, knowing that that baby will die when it's born and yet, having, as we do in our society, people walk up to her all day, every day, and say, "Ah, how wonderful, you're pregnant. You must be so happy. When's your baby due? Is it a boy or a girl? Have you picked a name?" And you know that that child is doomed to immediate death when it is delivered. I don't feel comfortable deciding for that woman that she is going to have to live through those months where the societal image of what's happening in her life is in direct opposition to the reality. I don't believe it's fair. I don't believe I have the right to make that judgment. Thank you very much.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator CLEVELAND: Thank you Mr. President, men and women of the Senate. I rise because I know that all of us, here in this Chamber, have thought deeply about this question, have agonized over our vote and have come to some conclusions on what we think is best. I'd like to take this opportunity to share with you my thoughts on this issue. It is always very difficult when you have an issue presented to you in a very emotional way, in very graphic detail, with conflicting needs of individuals and it's sometimes very easy to be driven by the emotional aspect of what you're doing rather than the rational aspect and reflect carefully on the consequences of your public policy and I'd like to talk to you a moment about looking at what this bill suggests.

This bill suggests that we are going to determine that a procedure cannot be used in this State of Maine, even if it is in the best interest of the woman to use that and to use other procedures would not be in her best interest and may well jeopardize her, may jeopardize her health, may jeopardize that woman's opportunity to give birth to any further children because we choose to jeopardize that one procedure. The decision to terminate a pregnancy is always a difficult one. It's an agonizing decision and the end result of that termination is the same, that you end a pregnancy, often times a pregnancy that you wanted and the fetus is no longer able to develop, perhaps because of a serious illness or a serious deformity but the end result is the same. The fetus is a threat to the mother's life or health and it would be inappropriate to continue. It seems to me that simply to say that this one procedure ought not to be used and force the women to choose one of two other procedures that may make her infertile, that may risk her life, simply because you don't like

this kind of a procedure or it's somewhat more onerous to you. It is not an appropriate public policy decision, nor is it one that is medically based, but emotionally driven.

I'm very fortunate in that I have two wonderful children, the joys of my life. We had a very healthy pregnancy, we were very fortunate. We were not so fortunate in our first child. It was not a healthy pregnancy and my wife had a miscarriage during the course of the pregnancy. It's a child that we still miss and love, even though we didn't get to know it. I don't think it's appropriate for this state to tell myself or my wife, or any other couple to decide what we should have done if we would have had to wait until later in that pregnancy to make that decision. It was an agonizing experience for us and a loss we deeply felt.

This legislation would not, in any way, make those decisions more appropriately, or make those decisions less burdensome on the individuals who have to make them. I think this is really an issue that determines between a mother and her medical advisors and the family on the decision that ought to be made and what's appropriate for that family and in their particular circumstances. I would suggest to you today that it is not possible for us to decide in every circumstance, in every medical condition what medical procedure ought to be used. We are not that all knowing. There are many circumstances in which this procedure may be the best procedure available, the most appropriate procedure available. It is not in our purview to decide what medical procedures ought to be used when the decision has been made that for the health and life of that woman, the pregnancy can't continue. That decision rightfully belongs to those individuals and rightfully belongs with their judgment, their spiritual advisement and medical advisement and the circumstances with that family. I urge you to support the motion currently before you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Somerset, Senator Mills.

Senator MILLS: Thank you Mr. President, men and women of the Senate. As I understand it, this procedure, by its very nature, applies only to a late term abortion. I think we all recognize that Maine already has a criminal law that forbids any late term or post-viable abortion except when it is strictly necessary to preserve the life or the health of the mother. Now to violate this law, at present, is a class D crime. It is potentially punishable by up to a year in jail or a fine of up to \$2,000 or both. And the violation may also subject the health care providers who are involved in professional disciplinary action. It might also result in suspension or loss of license for violating our criminal laws. As far as I know, this law that we have in place and have had in place for some time, restricts all late term abortions as completely as the constitution permits. The present law is respected. The records that we have kept, the public records reflect that only two late term abortions were performed in Maine during 13 years, from 1984 through 1996. For all that we know, both of these appear to have been done out of necessity and strictly in accordance with the law. There's no need for a separate criminal law for one procedure when our present Maine law has practically eliminated all forms of late term abortion no matter what procedure might be employed.

My concern is that abortion, at this time in our society much like prohibition a hundred years ago, is one of those issues that comes back and back. It is a deeply divisive and inflammatory issue. It has divided many people of good will on both sides who

would otherwise be joining together to serve some common purposes. For instance, to reduce the incidence of abortion. To afford meaningful alternatives to anguished women and to indulge our own feelings of empathy for the unborn. And I regret that there has been such an overflow of emotion devoted to this very narrow and unnecessary issue. There are little kids in my district that are going to bed at night without a decent meal. They're coming to school in the morning without boots on in the middle of the winter, or jackets or coats. They live in trailers where the wind blows through in January and the rain leaks in March and April. If the people of good will on both sides of this issue would devote half the energy to taking care of those kids our society would be the better off for it. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Murray.

Senator **MURRAY:** Thank you Mr. President, men and women of the Senate. The fortunate thing about this procedure we've all recognized is that it's one that occurs very infrequently, and that is good news because I am sure that no one, I know no one in this Body, likes to talk about this procedure. I'm sure that those people who are involved with this decision find it a horrific one and it's lucky that we are not faced with it in this state very often. However, it is the procedure itself that, despite its infrequency, we still have to focus on, and it's still a legitimate issue for our consideration today. It involves, as I think we all know, a balancing of interests. It's a balancing between the interests of society and the interests of primarily the woman who is pregnant. But that balancing of interest is one that we have recognized and one that has been acknowledged and recognized by the U.S. Supreme Court in *Roe vs. Wade*, since *Roe vs. Wade* in all of the decisions that have come after *Roe vs. Wade*. We are called upon in *Roe vs. Wade* to make those balancing decisions between the interests and rights of the woman, and the interests and obligations and duty of society. That balancing occurs, and has occurred, since *Roe vs. Wade* was decided. And *Roe vs. Wade* and the decisions since then tell us that society's interests continue to become more compelling the later we proceed in a woman's pregnancy.

This measure we're discussing today, by its very nature, deals with that issue of a late term pregnancy and by definition therefore, reaches society's interests in a much more compelling way. So why then is this issue, this one issue that only deals with one, two, five, ten abortions in a course of years, why is it before us? Why is it so compelling? Why does it reach that level? Ladies and gentlemen of the Senate, I would suggest to you it reaches that level because it touches upon the very issue of humanity, definition of humanity, measure of humanity that we are called upon. Not only the humanity of the fetus, the unborn child, but the humanity of all of us. There is something in this procedure itself that has touched a cord, not only in this Body and the other Body but touched a cord throughout our state and beyond. So, how do we look at and how do we define, and how do we measure this question of humanity, as it relates initially to the unborn child or the fetus? Well, one thing we can do is look at our current law because our current law, in part, does address this issue of humanity and when we have it, and when perhaps, we don't.

Current law tells us, Maine law, "That we have a live birth when a live birth shall mean, a product of conception, after complete expulsion or extraction from its mother, irrespective of

the duration of pregnancy, which breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord or definitive movement of voluntary muscles." That's how current Maine law defines a live birth and human life. And it says to us further, "Each product of such a birth is considered live born and fully recognized as a human person", under Maine law. And what does that mean, to have a live birth? Well, it means that, under another section of Maine law, "Whenever an abortion procedure results in a live birth, failure to take all reasonable steps and keeping with good medical practice to preserve the life and health of the live born mother, subjects that individual to all the other protections that we give any other human person." So, we can look to Maine law now to address this question of, what are the signs that we look to in finding humanity or not finding humanity? And those signs are ones, I think, intuitively, instinctively all of us kind of know. The statute talks about them but we know them instinctively. A beating heart, the ability to breathe, the ability to move your voluntary muscles and those same signs are the signs that the victims of a partial birth abortion already have. We are told that the nature of this procedure occurs in the stages of fetal development, where those signs of life are already occurring, a beating heart, moving of voluntary muscles, the ability to potentially breathe. Those things occur at earlier stages than what we are talking about. So, if that's the question, what is it then that distinguishes the humanity in one place versus the non-humanity in another place? It's not these signs of life. The only distinction now is, was this fetus fully extracted? That's the only separation under current law. I would suggest to you, ladies and gentlemen of the Senate, that's not the appropriate decision or the appropriate factor to make that decision of the humanity of that fetus that we need to focus on here because if we do, we are denying the humanity of that person or fetus based on the signs we've already acknowledged. That humanity should not be based upon the three or four inches that would separate that person from humanity clearly under our statute. It should not be based upon whether that fetus or human unborn child came out of the birth canal feet first, as opposed to head first. That isn't what should define and measure what our humanity is in this circumstance. This procedure, because it comes so close to the edge of defining humanity as we already do by statute and by intuition is why this is before us today, and why it is so troubling, and perhaps repulsive, to many in our society. And it is for that reason that it is appropriate for society to say we are balancing and we are taking a balancing approach in suggesting that this procedure, because of its very nature and because of this issue, is appropriate for us to deal with legislatively, to say, "No, that is not the type of procedure we are willing to accept in our society today." Does it effect some options? Yes it does. But, we are told that those options still exist. There are other means available to deal with the tragedies and the tragic situations that have been described to us today. Those options are not going to be eliminated by today's legislation, if it were to pass. This issue, obviously, is one that rips at the heart of all of us but it is one, ladies and gentlemen, that is properly before us today and it's properly before us because we are called upon to make this balancing decision and to avoid passing this legislation that so strikes that cord of the issue of humanity and where society's role is. In my opinion, it denies the humanity of that fetus or unborn child, and were we to refuse to accept this proposal, I believe, diminishes the humanity of all of us. And for that reason I would urge you to vote against

the pending motion so that we can move on to accept this legislation.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Knox, Senator Pingree.

Senator **PINGREE:** Thank you Mr. President, men and women of the Senate. I wanted to speak briefly to this issue because I am particularly troubled about one sentiment that I see us looking at. I don't believe that this is before us to focus on the procedure, in spite of the fact that that's what we've been talking an awful lot about. I have a troubling notion that part of what we're doing today is looking for a way to reverse some very difficult decisions that were already made.

When Roe vs. Wade was decided, and in legislatures, in fact, across the country for a long time, that was to decide who made these difficult decisions. The decision was made that this should be a choice that was decided by families, by their doctors, by women, by their partners, and I feel that this is one way to bring us back to a time that we've forgotten about. That was a time when mothers died. When people who had children at home died. When women died by the thousands because of inappropriate procedures to perform abortions.

It is very clear from the testimony that we've heard, from all we've read, that this procedure is rarely used. That there's a law on the books that covers what we're discussing today. For that reason I feel that this is before us for a totally different debate and that's what I said earlier, that this is being done to take those steps to reverse some of the decisions it has taken us a long time to come to make and go back to a time that none of us want to see again. For that reason I urge your support of the Ought Not to Pass motion.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Thank you Mr. President. I rise, men and women of the Senate to urge your support for the Ought Not to Pass motion. I have some joyous news that I'd like to share with you. Sometime early in August I'm going to become a grandmother for the first time and I get emotional when I speak about this because it's the most wonderful thing I can imagine and I am so grateful to God every day because my daughter has a perfectly normal, healthy pregnancy. She and her husband are delighted that they're going to have a child and so are we. She told me on Saturday. We like to sit together on the sofa and keep my hand on her belly so I can feel the little movements of the fetus and I ask her, "How many weeks is it?" It was 23 weeks and I said, "Well, how big is this grandchild to be? How big is it now?" Well, at 23 weeks, and she's read all the books on the subject and there's so much more information than I had twenty something years ago when I was carrying her. But the fetus at that age is about eight inches long and weighs about one pound. I couldn't believe it was so small. Sometime later this week she's going to enter her third trimester of pregnancy.

Current Maine law restricts abortion in late term. Even if I believed that there was one woman who was late in pregnancy who would frivolously have an abortion she couldn't do it under Maine law. It is restricted and there are penalties, as has already been pointed out. Naturally, my daughter would not want to do that in any case. She prays, just as I do, to have a healthy birth in August. But let me tell you, men and women of the Senate, if

my daughter faced a tragic circumstance, where her baby would be unable to sustain life, would be so deformed, so flawed, I want her to have every medical option that is available in this world and I urge you not to tie the hands of our doctors. Let's trust our young women. My daughter and all the other young women in this state, when it comes to that tragic decision, should have every medical procedure that is available to us to preserve her health and her life, and her ability to try again and have a baby in the future. Thank you Mr. President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Penobscot, Senator Mitchell.

Senator **MITCHELL:** Thank you Mr. President, women and men of the Senate. I speak to you this morning, not only as a fellow Senator, but as a mother and a grandmother. First, as a Senator, I would say to you, in listening to all of the testimony that we've listened to today, it's very obvious that we have existing law that protects the unborn child and the mother, unless in cases of health or life. We are here as legislators. We were sent here to decide on policy that is best for the governing of our state's welfare, to keep it environmentally and economically sound. We were not sent here as physicians. We were not sent to pass judgment in God's behalf on a woman's decision.

As a mother I would say to you, I've been very blessed. God has been good to me. I have experienced the joy, as many other women in this room have, of having life in my body and being able to give birth to that life.

I've also had the privilege of being a mother-in-law, as I have all sons, to be in a room and to give support and guidance along with the pastor of our church, and to hold the hand of my son and my daughter-in-law, when after they had given birth to two healthy children they had a decision to make, that the child she was carrying was determined in trimester that the brain was not there but the cavity was filled with fluid, not a brain, and they had to make a decision that was probably the most difficult and emotional decision. It's the same feeling as if you had a child that was alive and you were going to lose it. Believe me, I know that feeling. And this woman and my son had to make a decision with God's help and with the guidance of the Bible, and her pastor there to have this partial abortion made so that she could continue to be a mother to the two children she had and she now has had a third child after that, so they have three healthy children. But with God's help she came through that and was able to sustain the emotionalism of that occurrence, as we all were.

So I ask you, not only as a fellow Senator, but as a mother and grandmother, let's not play God's role. Let's leave that to the women and the men who have to face these unfortunate decisions in their lives and who are tested, for one reason or another, to have to make a decision. Let's not us make that decision for these people and let's remember our role as legislators in enacting policy for what's best for the government and stay away from that decision. I encourage you to join me in voting on the bill that is presented this morning. Thank you.

On motion by Senator **CAREY** of Kennebec, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: ABROMSON, AMERO, BUTLAND, CATHCART, CLEVELAND, DAGGETT, GOLDTHWAIT, HARRIMAN, KILKELLY, LAWRENCE, LONGLEY, MILLS, MITCHELL, PENDLETON, PINGREE, RAND, SMALL, TREAT

NAYS: Senators: CAREY, CASSIDY, FERGUSON, JENKINS, KIEFFER, LAFOUNTAIN, LIBBY, MACKINNON, MICHAUD, MURRAY, NUTTING, O'GARA, PARADIS, RUHLIN, THE PRESIDENT PRO TEM - RICHARD A. BENNETT

ABSENT: Senators: BENOIT, HALL

Senator **SMALL** of Sagadahoc requested and received leave of the Senate to change her vote from NAY to YEA.

18 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 2 Senators being absent, the motion by Senator **LONGLEY** of Waldo to **ACCEPT** Report "A", **OUGHT NOT TO PASS** in **NON-CONCURRENCE**, **PREVAILED**.

Sent down for concurrence.

Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

Divided Report

The Majority of the Committee on **JUDICIARY** on Bill "An Act to Require a 24-hour Waiting Period before an Abortion May Be Performed" H.P. 490 L.D. 661

Reported that the same **Ought Not to Pass**.

Signed:

Senators:

LONGLEY of Waldo
LAFOUNTAIN III of York
BENOIT of Franklin

Representatives:

THOMPSON of Naples
WATSON of Farmingdale
ETNIER of Harpswell
MAILHOT of Lewiston
JABAR, SR. of Waterville
POWERS of Rockport
NASS of Acton

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-165)**.

Signed:

Representatives:

PLOWMAN of Hampden
MADORE of Augusta
WATERHOUSE of Bridgton

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Which Reports were **READ**.

Senator **MICHAUD** of Penobscot moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-165)** Report in **NON-CONCURRENCE**.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Cumberland, Senator Rand.

Senator **RAND:** Thank you Mr. President, ladies and gentlemen of the Senate. I move that we reject the minority Ought to Pass report so that we can go on to accept the majority Ought Not to Pass. This is a bill that would require a 24 hour waiting period for a woman before she can have an abortion. I believe that we should put our faith and trust in the women of this state. They have thought long and hard before they came to this very difficult decision and we should not be imposing further restrictions and further upsetting them in this very difficult time period that they are going through. I would urge you to reject the Ought to Pass as proposed.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President, men and women of the Senate. This issue of a waiting period has been one that has been debated within these bodies on several occasions. Maine law currently is structured, and is a model for the country as a matter of fact, in the process that it uses for women and their families in making those decisions about terminating a pregnancy. Unfortunately, this is one of those circumstances where this 24 hour period is not a process by which it facilitates making that decision. Current law currently requires a process that requires some reflection and counseling. This is always a difficult decision, on whether or not to continue with the pregnancy or not. It's a decision that is not easily come by. It's a decision that's not done overnight. It's a decision that takes a period of time. To require a 24 hour waiting period would mean that women in more rural areas, more distant from health care, more distant from their doctors, would find it much more difficult in making that decision.

When a decision has been reached by a woman and her family that the termination of the pregnancy early on is the most appropriate action for them, that's a decision that's been thought over for a long period of time, and all of the options have been looked at and considered. This is a measure not to improve public policy, but one of those measures, once again, by those who find that decision to be made by an individual to be inappropriate. A decision in which they look for every opportunity to intrude in that decision, to make it more difficult, to create more