

MAINE STATE LEGISLATURE

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**STATE OF MAINE
ONE HUNDRED AND TWENTY-SECOND LEGISLATURE
FIRST SPECIAL SESSION
JOURNAL OF THE SENATE**

In Senate Chamber
Monday
June 13, 2005

Senate called to order by President Beth Edmonds of Cumberland County.

Prayer by Pastor Bruce Barnard of the Augusta Church of the Nazarine.

PASTOR BARNARD: Shall we pray. Eternal God, as we gather in this great chamber, grant us the gift of humility and help us better understand that any power we possess is derived from You, our Creator. May You stimulate our minds and stir our hearts with a high sense of responsibility to serve well, respect widely, and lead boldly. May we cultivate peace and harmony with all humankind. May we renew our faith in freedom and remain devoted to democracy. May we practice coming together to stand united in tolerance and mutual respect. May we work today for the common good of the great people of the great State of Maine. As we approach Flag Day tomorrow, a national celebration of the American flag, its history and importance, let us honor that symbol by remembering those brave women and men of Maine who gave their lives for our freedom. Let us pray for the women and men of the Maine Guard, the reserves, and the active duty forces that protect and guard our freedom across this state, country, and world. Let us pray in the name of the God we serve for Your blessing upon our nation and Your protection of all the military forces and families serving across the seas and at home. Finally, in the loneliness of the deliberations our Senators will face in these closing days, let each of them listen to the still small voice of conscience within them. We offer this prayer with a firm reliance and trust in the sovereign God whom we serve. Amen.

Pledge of Allegiance led by Senator Dennis S. Damon of Hancock County.

Reading of the Journal of Friday, June 10, 2005.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act To Protect Unborn Children from Acts of Violence"
H.P. 201 L.D. 262

In House, June 8, 2005, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-647).**

In Senate, June 9, 2005, Bill and accompanying papers **COMMITTED** to the Committee on **JUDICIARY**, in **NON-CONCURRENCE**.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-682)**, in **NON-CONCURRENCE**.

Senator **HOBBS** of York moved the Senate **RECEDE** and **CONCUR**.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Plowman.

Senator **PLOWMAN:** Thank you, Madame President and men and women of the Senate. I'd like to talk to you a little bit about the bill that is before us. This bill takes pregnancy in a woman from being irrelevant to an actual crime when a woman loses her baby. That wasn't the case several years ago when the case in Old Town came along and a woman who was eight months pregnant was stabbed to death by her husband. At that time the pregnancy could not even be discussed. It was considered irrelevant. This bill moves forward and places an incredible amount of importance on the fact that a woman who is pregnant has been assaulted. What this bill doesn't do is recognize that there were two victims. You have heard in the halls and in committee that we can't afford to recognize that there are two victims, that it is dangerous because we can't recognize the rights of an unborn fetus or an unborn child while 32 states and the federal government do that. There have been significant challenges and every single challenge has been found not to be successful, that *Rowe vs. Wade* is not in conflict with any of the statutes that were passed that allowed the states to recognize that there were two victims. In fact, some states like California, that passed their unborn victims act in 1970, reviewed their laws in order to make sure they were in compliance with *Rowe vs. Wade*. They came into compliance.

You have heard that a woman in Texas was charged under this act by a rogue District Attorney. I called the District Attorney's office and found out that this is not true. It's much clearer after you speak to them to find that the woman was charged under their Health and Welfare Act with providing a controlled substance to a minor. She used crack before she delivered and delivered a baby high on crack. That's a whole different story than you were told. In Texas, where they are supposedly misinterpreting the law, a man was convicted under the fetal protection act of jumping on his girlfriend's stomach to cause her to lose her twins. She begged him to. He was convicted. She could not be charged with anything because of the way the law is written. She gets to make the decision. He gets to serve time because he wasn't smart enough to drive her to an abortion clinic. He took it upon himself. It still didn't confer any kind of crime on the woman and *Rowe vs. Wade* is upheld.

All kinds of people, including the Solicitor General in the Clinton administration, have said that the unborn victims in violence act does not conflict with *Rowe vs. Wade*. Yet, this bill has been greatly amended because the specter of *Rowe vs. Wade* was continued to be brought up and people were worried

that women would lose their ability to choose an abortion. There are 32 states that have constitutionally challenged and proven statutes that say otherwise. A woman who survives an assault but loses her child knows who the victim was. She knows she was a victim and she knows that her child died. As the woman who is no longer pregnant puts away her maternity clothes, puts the baby name book back on the shelf, and takes the pictures of her ultrasound that show, believe it or not, the outline of a face with a nose and fingers and legs and little ribs and puts it in her keepsake drawer. She knows she lost a baby. As she finds out there can be a prosecution because she lost her baby, she's also going to find out that there is no punishment for the killing of her child. Then she might go on the internet, looking to find other mothers who are grieving as she is, and she'll find out that a woman in California had her child recognized as a loss and that the person who assaulted her was actually charged with killing her unborn child. She'll talk to a woman in Arizona, Idaho, Illinois, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin, or any woman who lives on a military base or any federal installation. Their child will have been recognized as a second victim. Because the woman lives in Maine, her child will not. She will have to sit down and say that 50 states under *Rowe vs. Wade* guarantees a woman the right to an empty womb and 32 states in the United States guarantee a woman a right to a full womb. In Maine, *Rowe vs. Wade* trumped her right.

When you are sitting here feeling very satisfied with the fact that we have a new crime, please know that we didn't do what we could have done to recognize what 32 other states and all of their citizens know that when a child dies in the womb and the woman thought she had a right to choose, in those 32 states she truly did. In Maine, she didn't. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Piscataquis, Senator Davis.

Senator **DAVIS:** Thank you very much, Madame President, ladies and gentlemen of the Senate. To say the very least, this has been a very emotional and upsetting issue to many people. It started in January 2003 when a man by the name of Roscoe Sargent brutally and horribly murdered his wife, Heather Sargent. She was murdered by a man who promised to love and cherish her and to hold her close. Instead he stabbed her 47 times. He was convicted of murder, sentenced to 50 years in prison, and he gets to be released from prison after 42 or 43 years. He was not, of course, charged with the unborn son because the law in Maine did allow for it. This bill, in my mind, is much better than what the current law is. It allows for a pregnancy to be part of the sentence and elevates it and makes a new charge. It's much better. In my mind and others, perhaps it doesn't go as far as it should but in this world you do what you can do. This is much better.

I just want to be very brief. In closing I want to say that I am going to cast my vote in favor of this bill today and I am going to do it in honor of Heather and her unborn son, who they named Jonah, and I also want to do it for the gratitude that I have for their family for their tireless efforts, and I mean tireless. They went to Washington and spoke before Congress. They have spoken here. They've worked hard and I'm certain they aren't worn out yet. They will be back. I want to thank them for that, for bringing this issue to our attention.

On further motion by same Senator, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Hobbins.

Senator **HOBBS:** Thank you very much, Madame President and members of the Senate. I commend the comments that were made by the good Senator from Piscataquis, Senator Davis, and I do commend the sincerity in which the Senator from Penobscot, Senator Plowman, has made her comments about this issue. January 4, 2003 was a tragic day, a very tragic day. Fortunately, we hope at the end of today there will be something in the statutes that the family of Heather Sargent and the friends of Heather Sargent can say that passed and will directly effect, in the future, a horrible situation that occurred on January 4, 2003 and that if it would occur after this bill passes there would be recognition and acknowledgement that there was a crime of elevated aggravated assault on a pregnant woman. This bill does something that we do not have in law now and goes beyond the original bill. That is, if a woman who is pregnant, hypothetically has her significant other or boyfriend or husband and she tells that individual that she is pregnant at whatever stage in the pregnancy she is at, and he gets involved in a domestic violence situation where he brutally either seriously injures that individual or murders that spouse or girlfriend, the crime against the woman for that assault, that egregious assault on the pregnant woman, will be acknowledge in the Maine Criminal Code.

I commend the family of Heather Sargent, some of the members are sitting here listening to this debate, because but for their advocacy this bill, and the Motherhood Protection Act, would not be on the books. I realize that this issue has divided many, those who have divergent opinions about the issue of abortion. The focus of this bill should be that of domestic violence against a woman and what can occur during her pregnancy. The replacement of the bill that is before you in House Amendment "A" (H-682) has the support of the original sponsor, the Catholic Diocese of Maine, the Maine's Woman Lobby, and Planned Parenthood of Maine. I would hope that, as the good Senator from Piscataquis, Senator Davis, says, this bill will be passed and I hope everyone will say an extra prayer for Heather Sargent. Thank you.

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

Senator **MILLS:** Thank you, Madame President, men and women of the Senate. I think a couple of things need to be said for the record and there will be very brief. One is that we need to remind ourselves that the perpetrator in the Sargent case was sentenced to twice the minimum mandatory sentence for murder. There is very little doubt in my mind that the judge in that case took into account, as he should have, the fact that two lives were snuffed out in one act. I think that the bill that was brought before us, L.D. 262, does remind us that there was a hole in Maine law that I believe is filled by the draft that you have before you. I think many of us regret that the committee was not able to come to that resolution and we had to do it on the floor. That's how things work here in the legislature, particularly towards the end of session. I do also want to say that many of us were concerned that the original draft might very well have had a chilling effect on

the freedom of choice here in the State of Maine. I think I've gotten at least a hundred e-mails and phone slips trying to explain to me, or tell me, that L.D. 262 is not about abortion. It's like everything else, when they tell you it's not about money, it's about money. When they tell you it's not about abortion, I'm afraid that this bill was, in part, about abortion. I believe that as it was drafted it would have had a substantial chilling effect on the woman's right to choose here in the State of Maine. I don't think that the current draft suffers from that deficiency. I think it achieves the goal that was on the forefront and on the minds of those who brought L.D. 262 to the Judiciary Committee. That was this, why isn't there a law that specifically deals with violence which leads to the termination of pregnancy? This statute, as it is now drafted, deals with that legitimate and substantial policy concern. I'm very glad to see it made a part of our statute books. I think it is an appropriate thing for us to do. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. I just want to extend my deep gratitude and thanks to the members of the Judiciary Committee, and particular to the Senators from York, Senator Hobbins, Oxford, Senator Hastings, and Cumberland, Senator Bromley for their work on this bill. They pulled all the stakeholders together and got us to someplace last week. We're in a better place this week. I just want to congratulate that committee and the other people that helped work to bring the bill where it is now. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from York, Senator Hobbins to Recede and Concur. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#261)

YEAS: Senators: ANDREWS, BARTLETT, BRENNAN, BROMLEY, BRYANT, CLUKEY, COURTNEY, COWGER, DAMON, DAVIS, DIAMOND, DOW, GAGNON, HASTINGS, HOBBS, MARTIN, MAYO, MILLS, MITCHELL, NASS, NUTTING, PERRY, PLOWMAN, RAYE, ROSEN, ROTUNDO, SAVAGE, SCHNEIDER, SNOWE-MELLO, STRIMLING, SULLIVAN, TURNER, WESTON, WOODCOCK, THE PRESIDENT - BETH G. EDMONDS

NAYS: Senators: None

35 Senators having voted in the affirmative and no Senator having voted in the negative, the motion by Senator **HOBBS** of York to **RECEDE** and **CONCUR**, **PREVAILED**.

All matters thus acted upon were ordered sent down forthwith for concurrence.

Off Record Remarks

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Amend the Economic Development Statutes"

H.P. 1055 L.D. 1503

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-683)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-683)**.

Report **READ** and **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-683) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Acts

An Act To Make Revisions to the Laws Governing Agriculture
H.P. 167 L.D. 216
(C "A" H-671)

An Act To Improve the Collection of Restitution and Supervision Fees

H.P. 613 L.D. 862
(C "A" H-669)

PASSED TO BE ENACTED and having been signed by the President were presented by the Secretary to the Governor for his approval.

An Act To Establish the Maine-New Hampshire Cooperative Trails

S.P. 635 L.D. 1688

On motion by Senator **GAGNON** of Kennebec, **TABLED** until Later in Today's Session, pending **ENACTMENT**, in concurrence.

Resolve

Resolve, Directing the Bureau of Health To Study Additional Information about Abortions

H.P. 1057 L.D. 1512
(C "A" H-664)

FINALLY PASSED and having been signed by the President was presented by the Secretary to the Governor for his approval.

Senate at Ease.

Senate called to order by the President.

Senator **BRYANT** of Oxford was granted unanimous consent to address the Senate off the Record.

Senator **DAVIS** of Piscataquis was granted unanimous consent to address the Senate off the Record.

Senator **WOODCOCK** of Franklin was granted unanimous consent to address the Senate on the Record.

Senator **WOODCOCK**: Thank you, Madame President. In the proud tradition of the former Senator from Franklin, Senator Benoit, I have authored a verse which I would like to read to you this morning, if I might.

It's entitled

"The Senate Four"

It was a Sunday perfect for the battle royal,
the cup defenders on familiar soil,
or should I say waters of Cobbosseeconte Lake.
The Senate the task the cup to take.
Gathered before hand were the Senators few
Bryant and Woodcock the only two,
yet off in the distance the rumors abound
Damon and Strimling were soon to be found.
Via telephone from venue afar,

following each other in separate cars.
The valiant echoed across the lake,
'I'm from Portland, which road should I take?'
Came the response, 'Ethan, use the GPS,
it eliminates the need to guess.'
'Of course,' came the cry from the commanders, 'of course,
you're on the south end and I'm on the north.'
Finally assembled the Senator four did sup
and ventured forth to seize the cup.
Now imagine the trepidation for the other three
when it occurred to them that history
perched squarely on the torso of the city lad
if the cup was to be ours, the postscript glad.
But the grayness of morning and humidity dipping
couldn't daunt the spirits of the urban Strimling.
Casting was not his forte, catching even less,
how he staid in the boat was anyone's guess.
Fish everywhere, reports looked grim,
the other body was certain to win.
Alas the great overseer of fishermen had intervened,
A desperate situation it seemed,
The tally was taken, the calculator passed,
Dozens of computations, dozens of bass.
Then the announcement with appropriate pause,
The crowd was hushed, tensions galore
by the mere moment and the smallest of margins
the Senate Four had recaptured the cup and four hands
applauded,
all that remained of the Mudville Four much lauded.
For reason necessary, one had departed,
the other, by suggestion, had early started
back to the city, Portland awaited.
He was smelling of fish and spirits deflated.
It seemed that Ethan had boated but two bass
Compared to others it paled.
Alas, he was despondent as miles they flew.
Thus, Madame President, the moral of this tail
is never assume that your efforts are pale
for it is every attempt, the very attempt, that others will measure
more,
so today I am proudly a member of the Senate Four.
We overcame the odds and refused to give up
and these piscatorial pilferers brought home the cup.

Thank you, Madame President

Senator **BRENNAN** of Cumberland was granted unanimous consent to address the Senate off the Record.

On motion by Senator **BRENNAN** of Cumberland,
RECESSED until 12:00 noon.

After Recess

Senate called to order by the President.
