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The House recessed until 4:00 p.m.

(After Recess)

The House was called to order by the Speaker.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Fredette, who wishes to address the House on the record.

Representative **FREDETTE**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. It has come to my attention that I was a little less than artful in my prior comments on the floor and I certainly want to apologize to the body, in the sense that if I was making a bad analogy, I apologize for that, because I certainly would never intend to make such a bad analogy. To that extent, I would apologize. Thank you, Mr. Speaker.

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

HOUSE DIVIDED REPORT - Majority (7) Ought Not to Pass - Minority (6) Ought to Pass as Amended by Committee Amendment "A" (H-447) - Committee on JUDICIARY on Bill "An Act To Allow a Wrongful Death Cause of Action for the Death of an Unborn Child"

(H.P. 837) (L.D. 1193)

Which was **TABLED** by Representative BERRY of Bowdoinham pending his motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative **PRIEST**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. This bill provides for a cause of action in probate court for the wrongful death of an unborn viable fetus. The fetus must have reached the 12th week of gestation or beyond. The bill says that you can't sue the mother for a wrongful death situation and you can't sue the health care provider which who provides the abortion. The bill says that it does not affect any criminal statute, so it does not affect a murderer, if the murderer tries to kill a fetus in the mother's womb. So what is the problem that the majority sought with this or found with this bill? The problem is very simple. It treats the fetus as a person separate from the mother, ignoring the umbilical cord connecting the two. It opens the door to treating the mother as a vessel for the unborn viable fetus, which can lead to laws which hold the mother responsible for causing any harm to the fetus. Now I know this is only a wrongful death statute, but it opens that door. For example, if the mother drank alcohol and that was deemed to have hurt the fetus. If the mother smoked. If the mother engaged in a risky sport, such as downhill skiing. It's easy, if this law is passed, to remove the exception from the mother which could lead her to be liable for a wrongful death of a fetus, if that were found to be the situation. If she had an abortion, that could also be held to be a wrongful death that she's responsible for. Maine law now has a provision that allows for damages to the mother, if there is proof of a death or injury to the fetus. Maine law, in this case, is perfectly adequate. It has not been shown to be a problem that has existed and the bill itself could lead to problems in the future by treating the fetus as a legal person, apart from the mother, even

at the age of 12 weeks of pregnancy, which is pretty small when you look at the number of weeks for a normal pregnancy. Therefore, the majority of the committee felt that this bill ought to get an Ought Not to Pass, and I would urge you to support that Ought Not to Pass Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Volk.

Representative **VOLK**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to the pending motion. I am an independent-minded Christian conservative woman and I believe we all saw a little bit of that independent streak last night. A close look at my voting record reveals how independent I am. I have disagreed with some of the Christian Civic League's positions on gambling and I supported the original bullying bill before talking them into sitting at the table with Equality Maine to rewrite a bill everyone could support. I am personally pro-life and have supported most, if not all, pro-life bills in the last two sessions. I believe abortion should be very rare and only after the mother has been well educated about fetal development. However, if I were to sit on the Supreme Court and had to decide whether or not to completely overthrow *Roe v. Wade*, it would be a tough decision for me.

The fact is LD 1193 is not an abortion bill. It is not a bill to restrict abortion. It is not a bill giving rights to an unborn child. What does that even mean? LD 1193 is a family bill and a bill that supports parents who may suffer a tremendous loss in losing the child they expect to be welcoming into the world. This bipartisan bill also brings Maine law into line with the rest of New England and 40 other states, which grant parents the right to sue civilly if a miscarriage occurs due to a negligent accident or an act of violence. This bill does nothing more than that. You may hear that 1193, and I believe you already did, establishes personhood for a fetus because of lines 8 and 9. Legal experts have assured me that "estates of unborn viable fetuses, including determination of heirs, is necessary to direct these suits to probate court and grant the right to sue to the parents." This isn't giving a right to a fetus. Without this language in Maine law, there is little civil recourse if a pregnant mother miscarries as a result of a negligent accident or an assault. This bill does not seek any criminal penalties. It simply asserts that such a loss should be recognized and possibly compensated civilly. My intent for this bill is simply to provide the opportunity for civil action. I just want Maine women to have access to justice.

The other issue some may have with this bill is the use of the word "viable," which I chose to define. Had I not defined viable, legally, this bill could have been interpreted to apply all the way back to conception. I choose to define viable. Viable, in the legal world, doesn't mean that the child could be born and survive. That's not what it means in legal terminology. I'm not a lawyer, but I have been assured by attorneys that this is the case. Had I left that term undefined, viable would have meant at any point in the pregnancy. The Minority Report defines viable at 24 weeks. Twenty-four weeks is the age at which many babies who are born do in fact survive, which is why the Minority Report made that change.

Finally, please note that there cannot be cause of action against a mother or a health care practitioner. LD 1193 respects a choice that has already been made, a choice all of us with children here in this room made. So what you have before you is a bill which would bring Maine into line with the rest of New England and 40 other states. It does not affect a woman's right to choose or a health care practitioner's right to perform or facilitate an abortion. It does not grant a fetus any rights whatsoever. Think about it. That makes no sense. To suggest that I'm trying to bestow rights on an unborn child is actually

pretty insulting. This bill allows a grieving parent to be compensated in some small way for a devastating loss. Nothing more, nothing less. I urge you to listen to your conscience and follow my light. Show the State of Maine that you, too, have an independent streak. Mr. Speaker, I request a roll call.

The same Representative **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The **SPEAKER**: The Chair recognizes the Representative from Cape Elizabeth, Representative Monaghan-Derrig.

Representative **MONAGHAN-DERRIG**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Maine current laws work. These laws work to protect women, women who are pregnant and women's rights. This bill threatens the economy of pregnant women and undermines the legal protections established in *Roe v. Wade* by seeking to convey certain rights to the fetus as a separate legal entity from the mother. If adopted, the bill would alter 193 years of Maine law as to the interpretation of who may recover for injuries. Maine's criminal law already provides special treatment for those who knowingly commit crimes against pregnant women. The crime of elevated/aggravated assault on a pregnant person in which the perpetrator knew or should have known that the victim was pregnant is a Class A felony punishable by up to 30 years in prison. In sentencing for all other crimes in which the perpetrator knew or reasonably should have known that the victim was pregnant, judges must assign special weight to this objective fact in determining the sentence. These laws appropriately focus on the woman as the victim of the crime, balancing the public interest in punishing offenders with a public interest in protecting a woman's right to autonomy and privacy in health decisions. I ask you to please accept the Majority Ought Not to Pass Report. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Farmington, Representative Harvell.

Representative **HARVELL**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Two years ago, I voted against this bill because it had the word "crime" in it. I made this a crime and I found that objectionable on a number of levels. One is that, theoretically, because of the way the bill was written, a man could be guilty of something that the woman herself could not be. I had biblical objections to it and I had historical objections to it. But this year, the bill contains the words "civil action." There is no constitutional problem now where you are actually potentially backing up into the womb what birth means and what the Fourteenth Amendment defines birth as citizenship with, and it allows a woman or a family the just cause opening they need to have a civil suit. Now, we may argue in this body about whether and when a child begins to be alive, both legally and constitutionally, but can we at least say that they have the same standing that anybody's property has? I urge you to vote against the pending motion.

The **SPEAKER**: The Chair recognizes the Representative from Calais, Representative Maker.

Representative **MAKER**: Mr. Speaker, may I pose a question through the Chair?

The **SPEAKER**: The Representative may pose her question.

Representative **MAKER**: If my granddaughter was eight months pregnant, was abused by her boyfriend resulting in a miscarriage, why shouldn't she have the exact same access to a civil suit against the perpetrator as any other woman does in Massachusetts and Rhode Island?

The **SPEAKER**: The Representative from Calais, Representative Maker, has posed a question through the Chair to

anyone who may care to respond. The Chair recognizes the Representative from Raymond, Representative McClellan.

Representative **McCLELLAN**: Thank you, Mr. Speaker. I don't rise to answer that question, but thank you, Mr. Speaker. I also am in the Ought Not to Pass category on this and I just want to reflect back on my experience in this body over the last two and a half years. Two plus years ago, we had another bill that was kind of contentious. It was the bullying bill. It was a bill that wasn't my bill, but one that I was very involved with. As I reflect now in the future, as opposed to when I was living it at that moment, I realized the sponsor of that bill had a great idea but there were a lot of issues that were hard for some of us to swallow. The bill was held over, it went to second year and many hands got involved with that bill, Mr. Speaker. People went to work on it from all sides. Ultimately, this good idea the sponsor had become a law and it was because the bill was allowed to accommodate both sides. My point, Mr. Speaker, in this is I believe this bill being presented today by the Representative from Scarborough is that bill as well. It was crafted to work for both sides, as the Representative has already described in her talk today. You might have just gotten on your desk a paper that has a picture of the country on it and Maine is one of only 10 states that does not allow this situation to occur, does not allow this protection to a woman and a potential mother. I guess, in closing, Mr. Speaker, I would just pose the thought that there is 151 or so of us and actually other people in here as well, and it's very likely one of us is going to be confronted with this situation where somebody is going to be in a car accident or somebody is going to be in a wrongful death situation and they are going to have to deal with this situation. So each of us is going to need to consider, as we vote today, what are you going to say to that family when they ask you about your support for this bill? Are you going to say, yes, I sided with the ACLU and Planned Parenthood in their lobbying efforts or are you going to say that you supported parents in their rights? Thank you, Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Houlton, Representative Fitzpatrick.

Representative **FITZPATRICK**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I like to look at this from my background as an insurance agent. We had insurance companies that gave testimony at the hearing. This is not involving the criminal actions. This is the civil suit action for wrongful death which insurance companies are typically responsible for paying. Patriot Insurance Company was one of the companies that testified. We also had insurance agencies in Maine. Down East Insurance, Cross Insurance, Insurance Trust, and Equinox, Blackwell Insurance supported this effort to bring forth this bill to make us the same as the other New England states, so that when we cross the bridge into New Hampshire, we don't have a different statute that we're working under. The concern, if there is a concern that this will cause more insurance cost, I'd like to dispel that because Patriot has said that they do business in New Hampshire and Vermont and it has added nothing to their rates in those states with that exposure, and they believe the number of claims is very small countrywide, but it does give that option to those parents or families that have this unfortunate thing happen to them when they lose a planned for child and wish to seek civil action against the person who caused the damages. Thank you, Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Mapleton, Representative Willette.

Representative **WILLETTE**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. One of the arguments used against LD 1193 is the assertion that the bill creates or expands personhood in an unborn viable fetus. This is absolutely

untrue. I am going to read from the testimony offered to the Judiciary Committee in support of LD 1193 by Dan Mitchell. Attorney Mitchell is a partner at Bernstein Shur and a current member of the Board of Directors of the Maine Trial Lawyers Association. "As the Law Court pointed out in *Shaw v. Jendzejec* ... the wrongful death statute provides a cause of action only to the living relatives or heirs of the deceased. [This] would not be changed one iota by this bill. This legislation would not somehow grant rights to an unborn fetus that it did not have otherwise. It simply endorses the principle that the mother of an unborn viable fetus is deserving of the same treatment as other family members under Maine's wrongful death statute."

It should also be noted that attorneys all across Maine signed on an agreement to Attorney Mitchell's legal opinion, which included such major firms as Preti Flaherty, Pierce Atwood, and Lanham Blackwell. It should also be noted that among those signers was Sam Lanham, past president of Maine Trial Lawyers Association.

I want to finish with another quote from Attorney Mitchell. "There is no persuasive reason for Maine to remain out-of-step with the rest of New England and most of the rest of the country when it comes to this access-to-justice issue. If Massachusetts, Vermont, Connecticut, New Hampshire and Rhode Island have managed successfully to integrate this cause of action into their civil justice systems, then certainly we can do so as well. This bill is crafted carefully to avoid negative effects on the legal rights of pregnant women and the healthcare profession. The only people that will be negatively impacted by this bill are tortfeasors, who now enjoy a free pass in Maine if they cause the death of an unborn viable fetus." Thank you, Mr. Speaker, and I urge you all to vote against the pending motion.

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative Moriarty.

Representative **MORIARTY**: Thank you, Mr. Speaker. Good afternoon, Fellow Members of the House. I rise to speak in support of the motion. Currently, only a living person may have an estate. The estate may be real in terms of tangible assets, it may be more abstract, but everyone, in theory, who is alive, has an estate. If one is killed in circumstances giving rise to a wrongful death action, that person's estate may bring an action to recover from the tortfeasor of the wrongdoer for the loss of life of the decedent. To convey to an unborn fetus an estate, in whose name a legal action can be brought by unavoidable implication, conveys living personhood to that unborn fetus who has never known a moment of life outside its mother's body or detached from the umbilical cord connected to its mother.

In addition to those legal implications, let's consider some practical implications as well. We know that if a mother is injured by a wrongdoer and is pregnant and the fetus dies, the mother has her own cause of action against the individual who injured her. One of the elements of damage, undoubtedly, will be her claim for emotional suffering for the loss of the fetus. If the mother is killed by a wrongdoer, she also, or her estate, has the opportunity under the wrongful death statute to bring an action to recover damages against the wrongdoer, and if estate prevails, the estate will be fully compensated to the benefit of her family members. What is the estate of a fetus? We're speaking about an entity, if you will, which has never been born, never been educated, never acquired a job, never established an earning capacity, has never acquired assets of any type. I submit to you it would be a legal nightmare to establish the value of an estate of a fetus, and would necessarily lead to lengthy and protracted and very expensive litigation.

One of the key witnesses who spoke before the committee in opposition to this bill was a leading personal injury attorney from

central Maine, and he spoke in a very animated and passionate way and indicated what damage this could cause to the legal system and what complications and unintended consequences the bill, if enacted, could bring about. It could vastly increase the complexity of lawsuits, as well as the number of lawsuits, and would inevitably increase the cost of medical care to be passed on to the consumer, to the extent that this implicates death resulting from medical treatment. You have to be very, very careful and very, very cautious about conveying personhood to any biological entity which has not yet been born, has not yet acquired legal identity, has not yet acquired any of the attributes that all of us, as living men and women, know and enjoy. But rest assured, that given the criminal statute to which Representative Monaghan-Derrig referred to, given the mother's own rights or her estate's own rights to pursue the wrongdoer, that no one will go unpunished in these circumstances.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Grant.

Representative **GRANT**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I doubt that anyone in this chamber questions whether or not this bill is well intentioned and I don't think anyone in this House believes that this isn't about abortion. But setting that aside for now, when you have a bill that talks about wrongful death, heirs, estates of viable fetuses, I think it's clear that personhood is absolutely declared in this bill.

I would like to just tell you a quick story because I suspect that many of you already have your minds made up, but I speak because there are some women in my church who expanded my view of this issue and I'm going to share that with you now. Some years ago, there was an attempt at my church to place a monument to the unborn. Many of you have seen these monuments. Many of you have maybe contributed to these monuments. Some of us women in the church, and men, were very offended by this attempt and we had a church meeting. In addition to the usual arguments about what does it mean to be pro-life, there were three women who shared their personal stories about having lost pregnancies to miscarriage. These were older women. They were not women that I would consider the most liberal women in the church. But this issue touched a chord with them. In this meeting, they shared that they had carried, for many years, guilt and shame over the loss of these pregnancies to miscarriage. One of them said, "Did I cause the wrongful loss of my pregnancy because I rode a horse the day before my miscarriage?" "Did I cause that horrible event because I didn't take my vitamins, because I did something wrong?" They felt incredibly guilty and ashamed, and this monument, they said, would have exacerbated that pain. The bill before you talks about wrongful death of an unborn fetus and I submit to you that there are women out there who have gone through such painful experiences, and for us to judge that and to say in this bill that this personhood, this wrongful death is not about choice, is not about guilt, it begs credulity to me. So I ask you to think of those women and the thousands of other women out there who feel very personally about this issue, and I ask you to please follow my light and accept the Majority Ought Not to Pass Report. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Chelsea, Representative Sanderson.

Representative **SANDERSON**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Opponents of this legislation say it erodes into a woman's right to choose and this is the first step toward overturning *Roe v. Wade*. They argue it could infringe upon a woman's right to choose by establishing a fetus as personhood. In spite of these arguments, our Federal

Government and many other states in our nation have passed laws concerning crimes, both criminal and civil, against an unborn child. There is case after case concerning this debate, but such claims against this legislation have been found to be patently false. Time and time again, prominent legal scholars who strongly support *Roe v. Wade*, such as Professor Walter Dellinger of Duke University Law School, Richard Parker of Harvard and Sherry Clove of Rutgers Law School have all written that fetal homicide laws do not conflict with *Roe v. Wade*. Certainly, civil action won't either. Walter Dellinger, who is a former solicitor general with the Clinton Administration, says that although he is a strong abortion advocate, he sees no problem with fetal homicide laws. Again, if this is the opinion on fetal homicide laws, then a civil action is certainly a reasonable step back and request. "I don't think they undermine *Roe v. Wade*," he said. "The Legislatures can decide that fetuses are deserving of protection without having to make any judgment that the entity being protected has any freestanding constitutional rights."

In the wake of *Roe*, courts have been willing to tailor constitutional rights to choice and to permit governments to make certain value judgments – value judgments – on the personhood status of fetuses, which have been upheld time and time. The signature case in this regard is *Webster v. Reproductive Health Services*. The State of Missouri passed a law which, in its preamble, stated that "The life of each human being begins at conception." It also says, "Unborn children have protectable interests in life, health, and well-being." In *Webster*, the Supreme Court reviewed the constitutionality of the preamble and upheld it on the grounds that the preamble does not by its terms regulate abortion. Neither does this bill. *Webster* made it clear that a woman's constitutional right to choose does not preclude the government from defining the fetus in her womb as a person. It has no impact. "Maternal liberty" is a very important word and it's clearly protected under these laws and has been affirmed on numerous occasions in the past 38 years with safe harbor provisions in fetal homicide laws protecting women, and again, we aren't even talking about anything as strict as that. It's civil.

When opponents speak of this type of legislation as eroding into a woman's right to choose, also known as maternal liberty, they are usually referring to a woman's right to choose to terminate her pregnancy. But let's not forget, there is also another very important choice that a woman can make. Maternal liberty also means she can choose to carry her child to term. This bill addresses when a woman's right to choose to carry her child to term is denied by an act of violence. I hope you will join me in supporting this legislation. Stronger versions have withstood constitutional scrutiny in other states across our nation. This bill is as pro-choice as it gets. It protects a woman's right to choose, but it also acknowledges the loss families suffer when a woman's right to choose to bear her child is taken away. It reaffirms maternal liberty on all levels and gives value to a life, which would have brought joy into a family on the day of its birth. Mr. Speaker, I would like to pose a question through the Chair please.

The SPEAKER: The Representative may pose her question.

Representative **SANDERSON**: If my son or daughter-in-law, who is nine months pregnant, were hit by a drunk driver on their way home from dinner, resulting in a miscarriage and the loss of that child, shouldn't they have the exact same access to a civil suit against the perpetrator as individuals in the same situation as our neighbors, neighboring New England states, New Hampshire and Vermont?

The SPEAKER: The Representative from Chelsea, Representative Sanderson, has posed a question through the

Chair to anyone who may care to respond. The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative **PRIEST**: Thank you, Mr. Speaker. They have a right to bring a civil action on behalf of the mother against the person who caused the harm of the fetus. I would note that, in this bill, the mother is not bringing the action. The action is being brought by the estate of the fetus and if it goes to probate court, interestingly enough, it's not going to superior court where normally a case like this would be decided. It's going to probate court. Why? Because we're talking about the estate of an unborn fetus. We're not talking about anything else. We're not talking about the mother here. We're talking about the estate of the unborn fetus. The probate court has to decide who the heirs of the fetus are. Maine law makes it very clear that the mother has the right to bring a civil action on behalf of injuries to her unborn fetus. It has worked well and it should continue to work well. I urge you to not give a separate legal fiction to the fetus, but rather consider the fetus a part of the mother and allow the mother to continue to be able to bring an action on her behalf for death or damage to her fetus. Thank you.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Sirocki.

Representative **SIROCKI**: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose her question.

Representative **SIROCKI**: If my granddaughter, who was eight and a half months pregnant, was involved in a car accident on her way home from work, resulting in the miscarriage of her soon to be born child, her viable fetus, why shouldn't she have the same exact access to a civil suit against the wrongdoer as women living in Illinois, Michigan or the 38 other states with similar laws? Thank you.

The SPEAKER: The Representative from Scarborough, Representative Sirocki, has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Amherst, Representative Lockman.

Representative **LOCKMAN**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to the pending motion. Maine is an outlier when it comes to our wrongful death statutes. We are literally litigating from the 1940s. As has been mentioned previously, over 40 states presently allow a family to sue on behalf of a miscarriage caused by a negligent act. Of those states who do allow this access to justice for women, 13 of them actually consider viability at a lower threshold than the 24 weeks that Representative Volk's bill is recommending. Most of those 13 states use 12 weeks as a benchmark. Interestingly, 11 of those states have embraced those definitions since the *Roe v. Wade* decision. In other words, the change LD 1193 is suggesting is in line with the direction of the rest of the courts throughout the United States. I say it's time that we should update our statutes and bring Maine law into line with the rest of New England. I urge you to follow Representative Volk's light. Thank you.

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Duprey.

Representative **DUPREY**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. In the 122nd Maine Legislature, I introduced a bill, LD 262, which was entitled, "An Act to Protect a Pregnant Woman from Acts of Violence." The bill said that if you commit an act of violence against a pregnant woman at any stage of fetal development and the unborn child dies, you will be charged with aggravated assault against a pregnant woman, a Class A crime punishable by 25 years in prison. This bill was strongly opposed by all of the pro-choice groups as a bad bill; actually, a lot of the arguments I am hearing

tonight from the other side of the aisle are the same arguments I heard that night in 2005. It was a common sense bill that actually had nothing to do with abortion, but it got tied in with that. I, along with my colleagues on both sides of the aisle, worked very hard to find common ground on a bill which had nothing to do with abortion and had everything to do with choice and fairness. I had a Democrat House and Senate and a Democrat Governor and my bill passed with strong bi-partisan support in both chambers and was signed into law by Governor Baldacci. At last, we were able to come together on a bill that made sense because it was clear we weren't trying to overturn *Roe v. Wade*. We were trying to protect a woman who had made a choice and that she happened to choose life. That pro-choice decision of choosing life should have rights associated with it and if someone causes the death of an unborn child, it only makes sense that the parents be allowed to seek compensation for that loss. LD 1193 is not about abortion, it is about fairness. The Representative from Scarborough, Representative Volk, is not trying to elevate a fetus to personhood status, or give the fetus rights. The bill tries to compensate for the loss, similar to the compensation of 25 years of confinement that my bill did in 2005. Please don't let the slippery slope argument win this evening. It is time to say no to the extremes, time to say no to the slippery slope, time to do right for Maine women denied the chance to hold that baby in their arms due to the reckless actions of another. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Burlington, Representative Turner.

Representative **TURNER**: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose her question.

Representative **TURNER**: If my daughter, who was seven months pregnant, was the victim of a domestic violence resulting in a miscarriage, why shouldn't she have the same exact access to a civil suit against her attacker as women in the same situation in the State of Connecticut?

The SPEAKER: The Representative from Burlington, Representative Turner, has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Scarborough, Representative Volk.

Representative **VOLK**: Thank you, Mr. Speaker. I'd like to answer the question posed by my colleague from Cumberland, Representative Moriarty. I guess that the way I would answer that is let's look at the records of cases brought in the 27 other states and the District of Columbia that permit a wrongful death action if an unborn child was viable at the time of his or her death, or we could look at the 13 states which allow suits for a previable unborn child. I really don't recall ever hearing any information or any testimony whatsoever presented at the hearing about how these states are so crippled with lawsuits. I'd also like to mention that 10 states, including Maine, require live birth and borrow cause of action for the death of an unborn child, unless the child is born alive and dies afterwards. In other words, as long as you give birth to that baby and that baby lives one or two seconds, is declared alive before it dies, you have a cause of action in the State of Maine. That child has not gone to school. That child has not even learned to talk. That child may or may not have even ever breathed on its own, yet that child would be determined to have an estate. What is the difference between whether that child is killed in utero or whether it is born, declared to be alive and dies immediately thereafter? Thank you.

The SPEAKER: The Chair recognizes the Representative from Gorham, Representative Sanborn.

Representative **SANBORN**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I'm going to

present some speeches today that were part of the testimony of Dr. Judy Chamberlain. I'm a good friend of Judy Chamberlain. We're about the same age. We started practice at about the same time in Maine and we both had practices that were heavily weighted towards obstetrics. I feel that we've had many of the same experiences and discussions with women, and Judy just happens to be a better writer than I am and I find her testimony very helpful in regards to these issues. In regards to LD 1193, this creates a separate legal status for the fetus as distinct from the mother and, as originally written, it established a legal definition of viability at 12 weeks, a gestational stage at which no baby has ever been delivered and survived. Although this has now changed to 24 weeks, that does not solve the problem with this legislation. While the language is drafted in such a way as to suggest that abortion providers would be exempt from a lawsuit, a closer look at the language reveals that this is not so. Under LD 1193, a doctor could still be sued for wrongful death and then would have to go to court to defend the legality of an abortion and the legality of the informed consent process. Dr. Chamberlain says, as a practicing physician I would also fear repercussions and potential lawsuits under this law, not just for performing illegal abortion but for any treatment at any time during pregnancy, no matter how medically necessary for the mother and no matter how careful the informed consent, if it was later perceived, that such treatment...

The SPEAKER: Will the Representative defer? The Chair recognizes the Representative from Chelsea, Representative Sanderson.

Representative **SANDERSON**: May I pose a question as to which bill that Representative Sanborn is testifying on? It sounds like the informed consent bill, which is not what's before the body at this time.

The SPEAKER: The Chair would remind all members to focus their remarks on what is before us and that's the Majority Ought Not to Pass on LD 1193. The Representative may proceed.

Representative **SANBORN**: Thank you. I understand well the pain of losing a child by miscarriage, whether due to an accident or physical abuse, and when in fact, when I read this bill, my first thought was that it was aimed at the loss of a fetus due to physical abuse. If this is a concern to you, I hope that you will not pass this bill but will continue to work with our Chief Executive and many others around the state to reduce violence against all women, pregnant or not. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Carmel, Representative Reed.

Representative **REED**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I, too, rise in opposition to this bill. I most certainly agree that the unborn child in the womb of the mother has a right to be protected against the death caused by a drunken driver or from negligence on the part of a physician who has been entrusted with its life or any other negligence as far as that goes. Not too many years ago, McDonald's paid out a huge sum of money when a woman spilled a hot cup of coffee in her lap, sustaining some very serious burns to her body. It was brought forth in a civil case that the coffee at McDonald's was heated to 190 degrees, much hotter than what was considered safe for consumption. It was also noted in the case that a number of complaints about the coffee being too hot had been made on a number of occasions, yet nothing was done about it. McDonald's was found guilty in this civil case of negligence and the woman received compensation for her hospital costs and her loss of work.

If I may, I would like to punctuate my statements with an admission of my own negligence. Once, as a young lad of 16,

being in high school, playing sports and engaging in other extracurricular activities that most red-blooded 16-year-olds participate in, I found myself driving home at around 2 o'clock in the morning. I, like a lot of others my age, had been burning the candle at both ends and I was about to pay for it. As I traveled down the road on my way home I was very tired, but I had to get home because I had school the next day. I was guilty of neglect. I had deprived my body of a necessity of sleep. The last thing I remember was that Fats Domino and I were singing his big hit of the '50s, "Blueberry Hill." Fats had had his thrill and I was about to have mine. This was just moments before my 1947 forest green Chevrolet left the road, straddled a stonewall for 178 feet and came to rest with an electric light pole firmly implanted in the center of my grill. By the way, a little sidelight here. That Chevrolet had my name and my girlfriend's name emblazed in big white letters across the truck. We did those cool things back in those days too. That girl has long since been my wife for 53 years. This was also a time in my life when I came to understand what my father had met, when he warned me numerous times that if I was going to dance, I had to pay the fiddler. Well, the fiddler called about two days later, and he had informed that I was now responsible for the purchase of a new light bulb and the cost of digging the hole. I suddenly became very much aware of the penalty for my negligence. It was going to cost me money and, well, it should, because one's negligence quite often results in heartache for someone else. That's what this is really all about, isn't it? How much more should we be concerned when negligence on the part of a drunken driver, negligence on part of a physician or negligence on the part of anyone results in the death of an unborn child?

Incidentally, you know, I grew up on a farm for a good part of my life and during all those years on the farm, I found that dogs had puppies, cats had kittens, cows had calves, and people had babies. I now find that we have fetuses. But I remind us that the Bible says – and this touched real contrary to a Bible believing Baptist – the Bible says when Mary and Joseph had to go into a far country to pay their taxes, that she was great with child. You know, that's good enough for me and that's the story that we read every Christmas before we open a present in our home. The Christmas Story. I'm going to ask you, how much more should we be concerned with negligence on the part of a drunken driver or negligence by a physician results in a death of an unborn child? Where does that once hopeful mother now go for help? What if this was to be her only child? It is my understanding that 43 states have passed laws that allow for compensation in the cases of wrongful death. I believe also that Maine is the only New England state that has not passed such a law. If this is so, and Maine's motto is "Dirigo," we've heard a lot about that lately, the Latin word for "I direct" or "I lead," then I suggest that we stop dragging our feet and join the rest of the New England states, or perhaps we should adopt another motto because we certainly aren't leading. In fact, we are woefully bringing up the rear in this matter and I ask you to vote against the pending motion. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Arundel, Representative Parry.

Representative **PARRY**: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **PARRY**: Maybe this is probably directed to our doctors in the room, when a woman comes into your office and asks "Am I having a boy or a girl?", do you answer them "Boy" or "Girl" or do you say, "No, you have a fetus."

The SPEAKER: The Representative from Arundel, Representative Parry, has posed a question through the Chair to

anyone who may care to respond. The Chair recognizes the Representative from Gardiner, Representative Grant.

Representative **GRANT**: Thank you, Mr. Speaker. Being new, I often have questions about procedures in the House, and it is my understanding that when one poses a question through the Chair, that one is seeking actual information from a member in the body or seeking to clarify information about a motion or a proposition before the body. Are rhetorical questions allowed?

On **POINT OF ORDER**, Representative GRANT of Gardiner asked the Chair if rhetorical questions are allowed in debate.

The SPEAKER: Unfortunately, rhetorical questions are allowed, but we have had a series of questions that are similar. I did get some notes asking if that was proper. I would just let folks know that we have two members in the queue. These are emotional issues and I feel like we should have a good debate, take our vote and move forward.

The Chair advised all members that rhetorical questions are allowed in debates.

The SPEAKER: The Chair recognizes the Representative from Winthrop, Representative Hickman.

Representative **HICKMAN**: Thank you, Mr. Speaker. Emotional indeed are these issues. Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **HICKMAN**: Thank you, Mr. Speaker. Can anyone tell me if there is any other way for a family to receive any award or compensation for perhaps pain and suffering in the event that something should happen violently to an unborn fetus currently in the State of Maine, or is this bill the only way for such a thing to occur?

The SPEAKER: The Representative from Winthrop, Representative Hickman, has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Waterville, Representative Beck.

Representative **BECK**: Thank you, Mr. Speaker. In response to the Representative's question, a party or a family could bring an action for negligent infliction of emotional distress perhaps. It's a civil action. I am quite pleased to hear our friends on the other side of the aisle talking positively about civil justice and remedies in court. Thank you, Mr. Speaker.

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

Representative **KUSIAK**: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose her question.

Representative **KUSIAK**: I am also new here, just like the fine Representative of Gardiner, and my question, similar to hers, is it proper to direct a question to particular members of the House through you?

The SPEAKER: The Chair would answer in the affirmative. A roll call has been ordered. The pending question before the House is Acceptance of the Majority Ought Not to Pass Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 294

YEA - Beavers, Beck, Berry, Boland, Bolduc, Brooks, Campbell J, Carey, Cassidy, Chapman, Chenette, Chipman, Cooper, Daughtry, DeChant, Devin, Dickerson, Dill, Dion, Dorney, Evangelos, Farnsworth, Fowle, Frey, Gattine, Gideon, Gilbert, Goode, Graham, Grant, Hamann, Harlow, Hayes, Hobbins, Hubbell, Jones, Jorgensen, Kaenrath, Kent, Kornfield, Kumiega, Kusiak, Lajoie, Libby N, Longstaff, Luchini, MacDonald W, Marks, Mason, Mastraccio, McCabe, McLean, Monaghan-Derrig, Moonen, Moriarty, Morrison, Nadeau C, Nelson, Noon, Peoples, Plante, Powers, Priest, Pringle, Rankin, Rochelo, Rotundo, Russell, Rykerson, Sanborn, Saucier, Saxton,

Schneck, Shaw, Short, Stuckey, Tipping-Spitz, Treat, Villa, Welsh, Werts, Mr. Speaker.

NAY - Ayotte, Beaulieu, Bennett, Black, Campbell R, Casavant, Chase, Clark, Cotta, Crafts, Cray, Davis, Doak, Dunphy, Duprey, Espling, Fitzpatrick, Fredette, Gifford, Gillway, Guerin, Harvell, Jackson, Johnson D, Johnson P, Keschl, Kinney, Knight, Libby A, Lockman, Long, MacDonald S, Maker, Malaby, Marean, McClellan, McElwee, Nadeau A, Newendyke, Nutting, Parry, Pease, Peavey Haskell, Pouliot, Reed, Sanderson, Sirocki, Stanley, Timberlake, Turner, Tyler, Verow, Volk, Wallace, Weaver, Willette, Wilson, Winchenbach, Winsor, Wood.

ABSENT - Beaudoin, Briggs, Crockett, Herbig, Hickman, Kruger, McGowan, Peterson, Theriault.

Yes, 82; No, 60; Absent, 9; Excused, 0.

82 having voted in the affirmative and 60 voted in the negative, with 9 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

HOUSE DIVIDED REPORT - Majority (8) **Ought Not to Pass** - Minority (5) **Ought to Pass** - Committee on **JUDICIARY** on Bill "An Act Regarding Informed Consent to an Abortion"

(H.P. 511) (L.D. 760)

Which was **TABLED** by Representative BERRY of Bowdoinham pending his motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

The **SPEAKER**: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative **PRIEST**: Thank you, Mr. Speaker. There is no question that we are now dealing with a bill that is an abortion bill. This bill requires the attending physician before a woman seeking an abortion, this physician must say, orally and in writing, a number of things. The new things that they must say let me read them to you. You have to tell the name of the physician who has performed the abortion, a description of the procedure to be used, scientifically accurate information about the fetus, probable availability of medical benefits for the woman during and after the pregnancy if the woman carries the fetus to term, and the woman's undeniable right to see an ultrasound if an ultrasound was taken and the woman requests to see it, and the father's liability for support. How in the world does a physician know on the possible availability of medical benefits for the patient if she carries the fetus to term? Does the physician have to be an expert in the insurance that the patient has? How in the world does the physician know what the father's availability for support is? What if, in fact, the father is accompanying the woman or counseling by the physician and is right then and there? Under this bill, I presume the attending physician has got to tell them what the father's availability for support is. The purpose of this bill is to make it more difficult, unfortunately, to get an abortion and it interferes with the doctor/patient relationship. Doctors know what's best, in general, for their patients. They've gone through medical school, they've gone through residency and an internship. They know what the patient needs to know and what they don't, they know what constitutes reasonable consent. This bill, unfortunately, is not needed and the majority of the committee recommends that it get an Ought Not to Pass, and I urge you to support that recommendation.

The **SPEAKER**: The Chair recognizes the Representative from New Gloucester, Representative Espling.

Representative **ESPLING**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise to speak

against the pending motion and in support of the bill that I sponsored. Now, I think we all know how this vote will go and the likelihood that minds, and more importantly hearts, will be changed is very slim. That being said I do appreciate the opportunity to speak and hope that you will listen and, at least, consider what I have to say. I was born in 1973. Now you would expect me to be longwinded and go into my life story but no worries, I won't do that to you. Nineteen seventy-three was the year of *Roe v. Wade*. In my lifetime, I have only known legalized abortion. With the ruling of *Roe v. Wade*, it was thought that abortion would finally be legal, safe and rare. Abortion is indeed legal, that is a fact. However, this legality does not happen in a void of consumer protection. Many states require that doctors perform abortions, many require abortion to be performed before viability, some require information on the risks of an abortion be given to the patient, and some have waiting periods prior to abortion. All of these consumer protections have been deemed legal and constitutional by the Supreme Court.

Safe, one could argue that abortion is safer than it used to be. To be honest you would think that this day in age with our medical advances and what is suggested by abortion advocates, that having an abortion is a minor procedure and totally safe. We only need to look at the recent Gosnell case and this man's shop of horrors to understand that legalized abortion does not guarantee safety. Common sense, consumer protection must be in place even in this era of legalized abortion. I contend that abortion is not rare. Since *Roe v Wade*, approximately 54 million abortions have taken place in the United States. In Maine alone, over 2,000 abortions occur yearly. Americans are just about evenly split on this issue. According to recent Gallup polling, 45 percent call themselves pro-choice and 48 percent of Americans consider themselves to be pro-life.

This bill, LD 760, would strengthen Maine's law for informed consent for abortion. Maine has stronger protections in its statutes for informed consent for breast cancer, including a mandated brochure given to the patient and that information be given to her orally and in writing. Why is it that a woman deserves full disclosure of information for one women's health issue but not for the other?

A woman testified before the Judiciary Committee last session on her experience at a local clinic. When an ultrasound was taken and she asked to see it, she was denied. This is, to me, the most important part of LD 760. This would not mandate ultrasounds be done. This would not mandate ultrasounds be viewed. LD 760 merely provides for a patient to be able to see her own ultrasound if one is taken and she asks to see it. I was willing to give up everything in this bill except for this one piece, but the majority members of the Judiciary Committee did not work the bill nor even discuss it. The majority members made it clear they were not willing to work the bill at all. To show my sincerity in how important this piece of the bill is I have had an amendment drafted to delete all of the bill except this one piece.

This bill is all about right to know. We, in this body, have submitted bills like GMO labeling, cell phone warning labels, vaccine right to know, and BPA labeling/right to know, all aimed at consumer protection and the consumer's right to know. It is clear to me now that ideology dictates that right to know is not allowed in the realm of abortion. Due to this ideology, some members of this body are afraid that if we adopt consumer and patient protections in other areas like Lyme disease, then we are on a sure path to outlawing abortion. Really? Mr. Speaker, I argue that the great debate tactic of a slippery slope argument holds no water here. The argument used in this body recently of "we don't want women to have all of the information prior to an abortion so we better make sure that patients with other diseases