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March 27, 1997 - May 15, 1997

Frechette, Fuller, Gagne, Gagnon, Gamache, Goodwin, Green, Hatch, Jabar, Jones KW, Jones SL, Kane, Kerr, Kontos, LaVerdiere, Lemaire, Lemont, Mailhot, Mayo, McKee, Mitchell JE, Morgan, Muse, O'Neal, O'Neil, Paul, Perry, Pieh, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Saxl MV, Shannon, Shiah, Sirois, Skoglund, Stanley, Stevens, Tessier, Thompson, Townsend, Tripp, Tuttle, Usher, Vigue, Volenik, Watson, Wheeler GJ, Winn, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Belanger IG, Berry DP, Bragdon, Buck, Bumps, Campbell, Carleton, Chick, Cianchette, Clukey, Cross, Dexter, Donnelly, Fisk, Foster, Gerry, Gieringer, Gooley, Honey, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kneeland, Labrecque, Lane, Layton, Lemke, Lindahl, Lovett, MacDougall, Mack, Madore, Marvin, McAlevey, McElroy, Meres, Murphy, Nass, Nickerson, O'Brien, Ott, Peavey, Perkins, Pinkham RG, Pinkham WD, Plowman, Savage, Snowe-Mello, Spear, Stedman, Taylor, Tobin, Treadwell, True, Underwood, Vedral, Waterhouse, Wheeler EM, Winglass, Winsor.

ABSENT - Bodwell, Bruno, Dutremble, Pendleton.

Yes, 83; No, 64; Absent, 4; Excused, 0.

83 having voted in the affirmative and 64 voted in the negative, with 4 being absent, the bill was passed to be enacted, signed by the Speaker and sent to the Senate. Ordered sent forthwith.

By unanimous consent, all matters having been acted upon were ordered sent forthwith.

The following item was taken up out of order by unanimous consent:

REPORTS OF COMMITTEES

Divided Report

Majority Report of the Committee on **Judiciary** reporting **"Ought to Pass"** as amended by Committee Amendment "A" (H-104) on Bill "An Act to Protect Traditional Marriage and Prohibit Same Sex Marriages" (I.B. 1) (L.D. 1017)

Signed:

Senators: LaFOUNTAIN of York
BENOIT of Franklin

Representatives: THOMPSON of Naples
JABAR of Waterville
MAILHOT of Lewiston
PLOWMAN of Hampden
MADORE of Augusta
NASS of Acton
WATERHOUSE of Bridgton

Minority Report of the same Committee reporting **"Ought Not to Pass"** on same Bill.

Signed:

Senator: LONGLEY of Waldo

Representatives: WATSON of Farmingdale
ETNIER of Harpswell
POWERS of Rockport

Was read.

Representative THOMPSON of Naples moved that the House accept the Majority **"Ought to Pass"** as amended Report.

The SPEAKER: The Chair recognizes the Representative from Farmingdale, Representative Watson.

Representative WATSON: Madam Speaker, Ladies and Gentlemen of the House. I rise to oppose the current motion to accept the Majority "Ought to Pass" Report. As a returning member of the Judiciary Committee in this 118th Legislature, I feel a certain pride and honor to be part of a deliberative body that has jurisdiction over issues concerning areas of law overseeing some of our most basic of human and civil rights. We, as legislators, have the awesome responsibility of bringing forth, through legislation, some of the most heartfelt conflicts that arise between human beings especially in families. We, as thoughtful Representatives of our districts and the entire state that we all serve, are constantly reminded of how the decisions that we are asked to make impact every man, woman and child in the state.

This initiative before you, An Act to Protect Traditional Marriage and Prohibit Same-Sex Marriage, I cannot support. I can never support legislation that intends to single out and blatantly discriminate against any group of people based on a religious prejudice, in my view. History is loaded with examples of witch hunts and persecutions. Fear and hate, in my mind, have no place in rational policy making. I urge my colleagues to support my opposition to the Majority "Ought to Pass." Thank you.

Representative PLOWMAN of Hampden requested a roll call on the motion to accept the Majority **"Ought to Pass"** as amended 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 Rockport, Representative Powers.

Representative POWERS: Madam Speaker, Men and Women of the House. When I considered my choices on L.D. 1017, I find myself in a position I have never been in before. Because this is a citizen initiated bill, I have had to imagine what I would do in the voting booth. I have also, like you know, had to decide what to do as a legislator since there are different consequences of voting on this bill than the bills we usually vote on.

Finally, as a member of the committee of jurisdiction I have had to declare my position once already. I will leave it up to you what you will do as a citizen if you find this bill on the ballot in November. Concerning your roll as legislators and I may be being repetitive for you here, I will remind you that other than the fiscal note, you see no amendments on this bill because being initiated by citizen petitions it is unalterable. As legislators, we may either pass it or not. If we pass it, the process is almost complete. The bill becomes law as signed by the Governor. If we do not pass it, the bill is not killed as we are accustomed to having happen. It must go to the public for the vote. You are faced with needing to decide on what basis you will vote, the substance of the bill or the process of enactment, mainly by this body or by citizen vote. I finally made my decision on the basis of the substance of the bill. When I read the text of the bill, I am stunned. This bill is loaded with moralistic language and cultural bias. I think this has occurred because when it comes to referencing homosexuality there is enormous fear stirred up, both of sexuality and of difference. I also think the text of this bill is bias because as a culture most of us have not yet broadened our language, let alone our thinking enough to address the possibility of two people of the same gender loving each other so much that they wish to make a public statement of commitment and have that recognized as legitimate by civil law.

I am reminded of the difference between white people and the Inuits. As a white person, I have a very limited vocabulary for the concept of snow, lots of modifiers, but not much more than the word snow. The Inuits for whom the world of snow is very important and very complex have 20 or more different words for that experience of the cold, white stuff on the ground. What I am suggesting is that our society have pressed beyond the boundaries of its language to have only the word, marriage, to

describe a committed union between two people. I can think of several grounds on which this term is too narrow. The word is very suggestive of religious ceremony and that aspect of marriage is generally outside the purview of this branch of government. There are a number of denominations which offer celebrations of union or devotion between two members of the same gender and the state would not presume to interfere with this religious right. We need to separate the religious and civil aspects of unions and having only one word, marriage, doesn't help us do that.

Second, the term marriage leaves out many, many heterosexual couples who chose to live together in commitment even if they never perfumed illegal acts to demonstrate that. Eventually, after a certain period of time, the law in some states recognizes marital rights and privileges to such a couple. That is not an option available to homosexual couples.

Third, in the minds of some people and certainly the authors and supporters of this bill, the term, marriage, is linked to procreation. Can you tell me though, that couples who do not have children, for whatever the reason, who have formerly and legally declared their commitment, are not married. Be they infertile, emphatically disinclined, too old or whatever. I say that not even the authors of this bill would dare to claim that they are not married. Maybe the authors of this bill could extend their thinking to find a new term that means united without children.

Finally, as we have heard about in committee, there are same-gender partnerships which demonstrate all the best qualities, the best qualities, of what, in this bill, is called traditional marriage. Partnerships of devotion and duration, which dutifully execute all the responsibilities so elevated, but which receive none of the rights of such a union. Here is where I must tell you, my friends, I cannot support this bill. This bill denies a civil right. Civil rights such as spousal benefits, custody and medical authority of same-gender partners. This denial is not because they are not manifesting the responsibilities any other domestic partnership may demonstrate. It is solely because they are of the same gender. This is the denial of basic rights. I do not support such bias any more than I would dream of denying an inner racial or inner religious union. Remember, these were once outside the language of acceptable marriage in our culture also. I ask you to seriously consider if you wish to be known as being one to deny a basic human desire and civil right in this day and age.

In my stand for justice, I do not. I will vote no to protecting traditional marriage and prohibiting same-sex marriages. Thank you.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Dunlap.

Representative DUNLAP: Madam Speaker, Ladies and Gentlemen of the House. I have been greatly exercised as to the content and intent of this bill and intent of the strictest engine of construction of the law, as often it is that knock which we seek to diagnose. In this bill I find many strange inferences over what the intent of the writers are. All I can justifiably construct from those inferences are provisions which fully strip a segment of this population of its civil rights, not in terms of previously stated objects, such as benefits and what not, but the most fundamental of civil rights guaranteed to us under the Constitution. In these constructs I totally am blinded by the entire purpose of this bill concerning gay marriage. Instead I see more fluid the constructions which deny a group of people the right to petition their government because a prior group has gagged them. That prior group, who has presented this bill before us, through great work in a citizens petition, must have the best of intents. It is, in their view, a very moral issue. A view to save traditional marriage. I fear to say traditional marriage and I have bandied this about with my colleagues, jokingly, to bring back arranged marriages. Let us bring back forced dowries. Let us go back to the time of chaucer and outlaw what we would call clandestine marriages then, but today common law and force these people into the light of day. These are all traditional marriages. Times have changed greatly and they are changing faster than we can keep pace with our traditional concepts of marriage.

I think the purpose of the citizens referendum is truly the greatest implement of democracy. This particular vehicle, I believe, does not quite meet that test. The framers of our national Constitution drew upon a great body of historical work in their deliberation. Many of us might remember that there was talk in the 1960s and early 70s about a popular referendum, a nationwide referendum, to withdraw United States forces from the conflict in Vietnam. Guess what, you can't do it. You can't have such a referendum deciding national policy. Why not? Because those revolutionary constitutional scholars who drafted our great document recalled an instance in the 4th Century, BC or 5th Century, BC, actually to be a bit more precise, give or take 100 years. When the cradle of civilization was embroiled in a great conflict and arising was a battle that would decide the outcome of that conflict and their greatest General was in the head of the fleet, a man named Alcibiades. The Athenian General was called back to the City of Athens to face charges of immoral behavior. There was a popular referendum to bring him back in ostraka, and he was ostracized for a year. A weaker man was put in his place, the battle was lost and Greek civilization as we know it was destroyed. The lesson there is, don't put the hands of the popular vote upon matters of national importance.

I think to so do would, in the words of Madison, be the accumulation of all the powers of legislative, executive and judiciary in the same hands and may justly be pronounced the very definition of tyranny. I guess that is the summation of what this bill is. It is not a stand for morality, it is the very mask of bigotry. Thank you.

The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Cowger.

Representative COWGER: Madam Speaker, Colleagues of the House. I respect dignity and diversity and truly wish everyone did. It is unfortunate, truly, that we are faced with this issue before us here today, which does not allow flexibility in modifying the specific provisions in the bill. Having attended the public hearing for this legislation and having been contacted by many constituents on this issue, there is, obviously, a great deal of concern to extend the institution of marriage to same-sex couples. As my colleague from Rockport said, marriage means different things to different people. It is both a religious ceremony and a civil legal contract. There is, I believe, strong support throughout our great state for respect of individual rights and for the right of two people to live their lives together. I believe there is support for a legal contract between two individuals of the same gender, but because this legislation is the result of a citizen initiative, we are bound by its terms and we do not have the opportunity to initiate any changes. I think this is unfortunate. I urge this body, in the future, as we continue our deliberations in this Legislature to continue efforts to provide equal rights and opportunities to all people. As we all said the Pledge of Allegiance this morning which said, "With liberty and justice for all." I will reluctantly be voting in support of the prevailing motion in order to avoid this issue going out to a divisive state-wide referendum and to allow the identification of the word marriage with opposite gender unions. At the same time, however, I urge my colleagues to join me, as leaders in our state, to develop equal rights including legal unions for same-gender couples.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Vedral.

Representative VEDRAL: Madam Speaker, Men and Women of the House. This is a very divisive and emotional issue for just about everybody in the State of Maine. Here I am standing to show some of my libertarian routes. A lot of my colleagues may be surprised at what I am about to say. I support this legislation to prohibit same-sex marriages in order to preserve the institution of marriage that has deep, deep routes in our society and in all societies. It goes back many thousands of years. I do believe that two people, whether they are the same sex or whether they are two elderly people who decide to spend the remainder of their life together who decide to make a commitment to each other and would like the protections of law that are allowed to two people who are married in the traditional sense of the word. I believe that these people could be joined in some other manner, some other legal contracted union. I think they should have the same protections as the rest of us. I do not believe that the current institution of marriage is the proper place for this. I would support and I would be willing to sponsor legislation that would allow a contracted union that is strictly civil and has limitations upon it that are similar to the institution of marriage. I urge you to vote to support the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Hartland, Representative Stedman.

Representative STEDMAN: Madam Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative STEDMAN: Madam Speaker, Men and Women of the House. My two questions are, does this bill change anything in current law and if so, what are the new restrictions imposed by this bill?

The SPEAKER: The Representative from Hartland, Representative Stedman has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Naples, Representative Thompson.

Representative THOMPSON: Madam Speaker, Men and Women of the House. What it specifically does is to set forth a prohibition against recognizing marriages that may be recognized out of state.

The SPEAKER: The Chair recognizes the Representative from Freeport, Representative Bull.

Representative BULL: Madam Speaker, Men and Women of the House. I rise tonight in opposition to this motion to accept the Majority "Ought to Pass" Report. It is deeply disturbing that this issue had to be brought forth for discussion in this state. By banning the recognition of same-sex marriages is on par with discrimination. We are singling out a sector of society for discrimination with this act. It is disturbing that this body would condone that discrimination for all the country to see. I feel very strongly that if this body passes this law and if it is signed into law by the Governor, it will give this state a black eye for all the country to see.

I am really not sure why this issue is even upon us for discussion. This is not something that has been pushed, but it is something that has been brought up by the people who are opposed to recognizing same-sex marriages. The truly important issue here, in any marriage, in any contract between two people, is a foundation of love, caring and compassion. Ladies and gentlemen, heterosexual couples do not have a monopoly on these values. By passing this measure, we will, in fact, be saying that, yes, heterosexuals do have a monopoly on these values and that is tremendously disturbing. Ladies and gentlemen, I urge you to please vote not to accept the Majority "Ought to Pass" motion. Thank you.

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

Representative BRENNAN: Madam Speaker, Men and Women of the House. I also rise to ask you to vote against the pending motion. This is the politics of symbolism. It is not policy of substance. As Representative Bull already pointed out, there is not legislation before us not asking us to recognize same-sex marriage. Nobody has gone to court asking for that. This is not an issue before the state. Across the state though, school buildings are crumbling, children are going to sleep hungry and students are graduating from high school and cannot afford to go to college. Those are real issues. Those are real problems and that is what we should be addressing in this Legislature. Each day that we are here we make history. Some days the history that we make is more significant than other days. Today, the history in this vote is significant. I hope that all of us can look back in five years or 10 years and see that we voted for something that is probably unconstitutional, unnecessary and almost certainly discriminatory. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bar Harbor, Representative Jones.

Representative JONES: Madam Speaker, Men and Women of the House. I rise tonight because I believe I am the only attorney in the state to have ever performed a male male divorce in court. I don't do that to get a joke from someone or a laugh, but to point out that this state has legally recognized same-sex marriage in a court of law in this state. Since it has done so, to say it is illegal violates the equal protection clause of the United States Constitution in the Fourteenth Amendment. It also violates 6A of the Maine Constitution. I would ask you to vote no and support the Constitution. I know you have heard me many times rise and talk about the Constitution so let's support it tonight. Constitutional issues, not hate. Thank you.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative O'Neil.

Representative O'NEIL: Madam Speaker, Men and Women of the House. I rise also to urge you to vote no because I see this as a dead issue. There exists a federal pre-emption of sorts that would save, I think, the proponents of this bill from a lot of their anguish. The anguish, as I understand it, is partly due to a perception that we, in Maine, will have to recognize marriages performed in other states when, in fact, at the federal level, the Defense of Marriage Act, as I understand it, says that no state shall have to give effect to marriages performed in other states. That being said, I think that takes some of the wind out of the sails of this argument. I urge people to vote no against the Majority "Ought to Pass" Report.

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

Representative FARNSWORTH: Madam Speaker, Men and Women of the House. Yesterday, I received a letter that is fairly short and I think it comes right directly to the point. I thought I would share it with you because I think that it does help to zero in exactly what the problems are.

"Dear State Representative Farnsworth: I am an eighth grade student at King Middle School in Portland, Maine. I am writing to you about gay rights. I feel that this is an important issue and deserves attention. I don't feel that gays should have special rights, just equal rights. I believe that gay rights need to be enforced more strongly. One way to do this is to have stricter punishment for the offenders of discrimination. Discrimination of any sort is a major offense and should be punished severely. A way to help end discrimination is by passing more anti-discrimination laws. I know that there is a law in Maine stating that you may not discriminate in the workplace, but I feel that should be broadened to include more things such as,

extracurricular activities and housing. I have a friend who's mother wanted to be a cub scout leader but was not able to because she was a lesbian. This sort of thing should most certainly not happen and I feel it is your job to see that it doesn't." That is a rather heavy load, I might add. "In addition to discrimination, I would like to propose that gay marriages be legalized. It is not fair to give some people this right, but not others. Gays are citizens too and they deserve the same rights as everyone else. I hope you feel the same. Thank you for your time and I would appreciate your prompt response."

I think the insight of youth is somewhat refreshing. Right directly to the point. I would urge you to vote against this bill. Thank you.

The SPEAKER: The Chair recognizes the Representative from Norridgewock, Representative Meres.

Representative MERES: Madam Speaker, Ladies and Gentlemen of the House. I rise today to just mention some frustrations that I am feeling. I have listened very closely to this. My personal feeling is that this bill should not be here, period. It is frustrating to me to have deal with it, but after listening to the discussion, sometimes yes means no and no means yes. I listened very closely to our colleagues, Representative Cowger, who has explained how important it is to have a unified approach, long-term, and talked about some of the negative sides to having this debated on referendum. It really meant something to me. I can address my libertarian views too and realize that as I stand here to support a yes vote, I am also going to commit to working together on a civil bill that will protect the rights of all because I think we have to get past the negative here and get on with life. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Barth.

Representative BARTH: Madam Speaker, Men and Women of the House. Just a couple of quick comments to say there is no legislation pending before us is not quite true, because obviously, enough people across the state signed a petition to bring this before us. Therefore, we can either pass it or we can defeat it, which it will then go to public referendum. I feel, and apparently the Gay and Lesbian Alliance, because I read in the paper that they feel the same way, they would like us to pass this because they are going to take it to court, either way. My personal feeling is if we avoid a costly and divisive referendum which will give Maine a bigger black eye than the mere passage of this tonight. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Passage of the Majority "Ought to Pass" Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 60

YEA - Ahearne, Bagley, Baker JL, Barth, Belanger DJ, Belanger IG, Berry DP, Berry RL, Bigl, Bouffard, Bragdon, Bumps, Bunker, Cameron, Campbell, Carleton, Chartrand, Chick, Chizmar, Cianchette, Clukey, Colwell, Cowger, Cross, Desmond, Dexter, Donnelly, Driscoll, Fisher, Fisk, Foster, Frechette, Gagne, Gerry, Gieringer, Gooley, Honey, Jabar, Jones SL, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kerr, Kneeland, Kontos, Labrecque, Lane, LaVerdiere, Layton, Lemaire, Lemke, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Mailhot, Marvin, Mayo, McAlevey, McElroy, Meres, Morgan, Murphy, Nass, Nickerson, O'Brien, O'Neal, Ott, Paul, Peavey, Perkins, Pinkham RG, Pinkham WD, Plowman, Poulin, Richard, Samson, Sanborn, Savage, Shannon, Sirois, Snowe-Mello, Spear, Stedman, Taylor, Tessier, Thompson, Tobin, Treadwell, Tripp, True, Tuttle, Underwood, Usher, Vedral, Vigue, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winn, Winsor.

NAY - Baker CL, Brennan, Brooks, Buck, Bull, Clark, Davidson, Dunlap, Etnier, Farnsworth, Fuller, Gagnon, Gamache, Goodwin, Green, Hatch, Jones KW, Kane, McKee, Mitchell JE, O'Neil, Perry, Pieh, Povich, Powers, Quint, Rines, Rowe, Saxl JW, Saxl MV, Shiah, Skoglund, Stanley, Stevens, Townsend, Volenik, Watson, Wright, Madam Speaker.

ABSENT - Bodwell, Bolduc, Bruno, Dutremble, Muse, Pendleton.

Yes, 106; No, 39; Absent, 6; Excused, 0.

106 having voted in the affirmative and 39 voted in the negative, with 6 being absent, the Majority **"Ought to Pass"** as amended Report was accepted.

The Bill was read once. Committee Amendment "A" (H-104) was read by the Clerk and adopted

Under suspension of the rules the bill was given its second reading without reference to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules, the Bill was Passed to be Engrossed as amended by Committee Amendment "A" (H-104) and sent up for concurrence. Ordered sent forthwith.

On motion of Representative KERR of Old Orchard Beach, the House adjourned at 8:00 p.m., until 10:00 a.m., Wednesday, March 26, 1997.