

MAINE STATE LEGISLATURE

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12 Senators having voted in the affirmative and 22 Senators having voted in the negative, with 1 Senator being excused, the motion by Senator **NUTTING** of Androscoggin to **RECEDE** from **ACCEPTANCE** of the Majority **OUGHT NOT TO PASS** Report, **FAILED**.

On motion by Senator **MILLS** of Somerset the Senate **ADHERED**.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Protect Traditional Marriage and Prohibit Same Sex Marriages" I.B. 1 L.D. 1017

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-104)** (9 members).

Minority - **Ought Not to Pass** (4 members).

Tabled - March 26, 1997, by Senator **PINGREE** of Knox.

Pending - **ACCEPTANCE OF EITHER REPORT**.

(In House, March 25, 1997, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-104)**).

(In Senate, March 26, 1997, Reports **READ**.)

Senator **LONGLEY** of Waldo moved to **ACCEPT** of the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

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

Senator **LONGLEY:** Thank you Mr. President, colleagues in the Senate. I stand to speak as a citizen legislator facing and standing up to a citizen referendum. I urge you to vote Ought Not to Pass and I have put a lot of time into thinking and learning and working and listening and it's the steepest learning curve I, for one, have been on in a long time. And, as a citizen legislator, when I'm outside of the State House, my main goal in life is to become the best teacher I can become and that means that I've had to become the best student I know how to become and to find the best teachers out there that can teach me the most. So, I speak as a teacher on a steep learning curve and I refer to all my teachers in life. I begin with Senator Margaret Chase Smith and she taught me how to stand up to fear, ignorance, bigotry and smear. I think of my father, the Governor, and he happened to have been at Bowdoin College, the one person who stood up in Chapel and said, "I have a black roommate and I will keep my black roommate, because if we are the people we are, we've judged people by the content of their character." Compliments of that action in that chapel that day, blacks were then allowed to be members of fraternities at Bowdoin College. So that was a major lesson and I learned a lot from him about honoring the equal rights of people. Another teacher for me is the constitution

and I refer to the "equal protection clause" and the "full faith and credit clause" and the "privileges and immunities clause" and the fact that we will treat every person with equal rights and we will not single out any group to target them and to make them the victims of fear, ignorance, bigotry and smear. I believe this citizen referendum is filled with fear, ignorance, bigotry and smear. I refer to the Maine Constitution, Article 6A, it says discrimination against persons is prohibited. "No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of that persons civil rights or discriminate against in the exercise thereof." I rely on the constitution. In the hearing I was privileged to be at the hearing and we dignified the process, we listened to everybody and we treated everyone with equal respect. And I'm siding with those who decided to stand up, for their neighbors, their friends, their family members and themselves. As background, I'd like to shift you to what just happened on the congressional level, that makes what is happening here, not only not an issue for us, but also not necessary. On the federal level it's called DOMA, defense of marriage act, it just said exactly what those proponents of this bill are trying to get into State law. It basically says, "no state, territory or possession of the United States or Indian tribe shall be required to give effect to any public act, record or judicial proceeding of other state, territory possession. Respecting the relationship between persons of the same sex that is treated as a marriage under the laws of such other state." It says that "no state", including Maine, shall have to give effect to marriages coming from, say, Hawaii. Yet, the arguments of the proponents were largely based on the fact that we somehow had to have the symbolic gesture to target this group so that if they wanted to get married in another state, we wouldn't have to recognize them here, yet, the federal legislation does just that. I'm not supporting that federal legislation. I think that too will be proven to be unconstitutional in 3 to 5 years. Mostly I'm standing up for this, our equal protection. I'd like to tell you a lot of what I learned in this hearing and ask you to come along with me now, in this steep learning curve and I should begin also by noting that the "New York Times" editorial this summer, talked about how the issue of same sex marriage touches basic, deep, social and religious values and the question of the governments lending it's incriminator to such marriage is an enormous and profoundly convulsive one. So, we are digging very deep and we're working very hard on this issue and I thank you all, those of you who stand with me. Let me just say that this bill would say that the purpose is to nurture, sustain and protect the traditional, monogamous family unit in Maine's society, its moral imperatives, its economic function in its unique contribution to the rearing of healthy children. It tries to state that its a compelling State interest. That man meets woman and bears children and I say that traditional marriage, far be it from me to challenge it, let me just say that the definition is changing and current definition doesn't meet real life situations. A family is a diversity in structure and configuration. As we know it, children are raised by natural parents, single parents, step-parents, grandparents, adopted parents, foster parents and yes, gay and lesbian and same sex parents. Some people marry and have no children at all. This provision, as the proponents try to say, there's a compelling State interest that we honor one type of family and there are several types of families in all different forms of configuration. Next issue is children's health. The single most important factor in the development of a happy, healthy, well-adjusted child is a nurturing relationship between the child and

the parent. One where the parents are sensitive care-givers. Sexual orientation, in and of itself, is not an indicator of ones ability to be a sensitive care-giver. In fact, it's very possible that, those in same-sex couples are very good and fit and loving and successful parents and even better than some of the other situations we see out there, without a doubt. Basically, sexual orientation, in and of itself, is in my view, not an indicator of ones fitness to be a parent. Yet, we heard testimony to the opposite effect, out of fear, or ignorance, or bigotry, or smear. This act, by banning same sex marriages, in fact deprives children of the protection and benefits that come with marriage. Next piece is, why do people marry? People marry for all the reasons, children, stability, commitment, emotional closeness, intimacy, monogamy, framework for long-term happiness, recognition by society and yes, gay men and women share this mix of motives for wanting to live together and love each other in monogamous relationships. Yet, our society only gives the rights of marriage, the rights of legal union to opposite gender and that deprives gays and lesbians in a variety of ways. Hospital visitation, guardianship, other issues, taxation, torts evidence, social welfare, inheritance, adoption, all those rights and privileges come with marriage and as we have it defined in a traditional sense, it's man and woman and as we would put it as a compelling interest in our statute, it would be man and woman with the interest of bearing children. In terms of polling data, what do our constituents think? 70% support the fact that gay and lesbian people shouldn't have to be deprived of hospital visitation because they're not legally honored in any way. The same goes with guardianship, 67% say that guardianship positions should have nothing to do with sexual orientation. Again, the fitness of the person to be a parent and to help children has nothing to do with sexual orientation, has everything to do with, as Martin Luther King said, "the content of ones character and the ability to give sensitive care-giving to young children." As I close, let me just say that, I listened and I tried not to judge and I refused to judge and my entire committee gave people, dignified everyone who stepped forward and the ones I choose to stand with are not the ones who came to talk to us about gay militants in the agenda, they are not the ones who said, "I was once gay and I'm no longer and I'm happily married and here's a picture of my child and yes it is a choice. Not the ones, and I felt really badly for the mothers who came forward and talked about how their children, various ones of them were the victims of some pedophilic act, and because of that they were against, broad stroked, all same sex issues and I'm not standing with the ones who instead of in this public realm, relied on constitutions like this. Many, many, many came forward and held the bible and quoted from the bible. I instead, want to stand with the parents and the neighbors and the woman in a 25 year old relationship, who has a 12 year old daughter and, far be it from me to judge, that her inability, in fact, I think she's very able to give loving, sensitive care. I want to stand with people who are standing up for those who are being targeted. On a light note, let me just say that one woman came forward and she said, "You know, the fact that my neighbor is gay: When we had a flood, everyone helped each other. When I have to get my kids to the doctor in an emergency, I have no problem having that neighbor help me take care of the other kids. And if she and her partner or my other friends, who are gay males, if they chose to get married, it wouldn't threaten my marriage, in fact, I'd be honored, I'd be happy for them." She said, "what would really threaten my marriage," and she thought for a moment, "what would really threaten my marriage, is when my husband doesn't

take out the trash." She's basically saying, you know, loving relationships, I encourage, I encourage loving, monogamous relationships. In our culture, let's encourage loving, monogamous relationships. We don't have enough loving, monogamous relationships, as far as I can see. So, I stand with all those people who stood up. And lastly, I just refer to all my teachers, Margaret Chase Smith, this bill is filled with fear, ignorance, bigotry and smear. And, from another teacher, my Dad, who stood up in time said, "the color of ones skin doesn't matter, it's the content of character." And lastly, let me just say, I rely on myself and whenever I'm walking around this State House I'm carrying this quote with me and I'm relying on this quote, it says, "leaders, we leaders are called to stand in that lonely place, between the no longer and the not yet, and intentionally make decisions that will bind, forge, move and create history. We are not called to be popular. We are not called to be safe. We are not called to follow. We're the ones called to take risks. We're the ones called to change attitudes, to risk displeasures. We're the ones called to gamble our lives for a better world." And on that note, colleagues in the Senate, I thank you for listening and I ask you to vote Ought Not to Pass on this bill that is filled with fear, ignorance, bigotry and smear. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President, may it please the Senate. This is going to be kind of a difficult statement for me to make, in light of the motion that is before us, to accept the Minority Report. Senator Longley, from Waldo has just made a powerful and sensitive statement for one side of the issue. And, if there are any highlights in this session for me, and there are many, working with her on the Judiciary Committee is right at the top of the list. I have a lot of respect for Susan, for Senator Longley and we've got a great committee going and we've had some tough issues, and this is one of them. I will be voting in opposition to the motion because my constituents and the vast number of our constituents in the State, who have initiated this bill, want this bill to pass. And, you know, right from down here last session, I thought a lot about whether I'd vote my agenda on issues or my constituents agenda, and I soon learned, I vote my constituents agenda. And the tougher the issue, the more I go out of my way to find out what their agenda is. If the record of the public hearing means anything, and it should in this matter, more emphasis was presented in support of the bill. Now we have a couple of options, and you want to consider this please, we either pass this measure as the majority of the Judiciary Committee has suggested or we don't pass it and we send it out to referendum. Many of the committee members do not want to send this issue out to referendum. I don't want to send it out to referendum for two reasons. First, my constituents are asking that this be enacted to protect the traditional marriage and furthermore, that we not have a long hot summer, run it into the fall, to November, in a divisive referendum. Now, at the hearing, people came in with their bibles on both sides of the issue with a lot of passion, and I can just picture a summer of conflict that we don't need. We know the majority of our people want this bill enacted. That's the message I get, and I say that respectfully to the other side, and I mean that. We're not ready, we're not ready in our society, our constituents are saying, we're not ready to enact this type of legislation, to put the situation into effect, take a ban off, if you will. And, this bill, if enacted will say simply,

persons of the same sex may not contract marriage and if there is such a contract in another jurisdiction, it is not to be recognized in Maine. That's what our people want us to pass. They do not want the other result. And I say that respectfully. I don't want to see people at each others throats, over the summer, over the next many months till November hashing this out, and hashing it out, because I got the message at the hearing, people came in with plaquereds, their bibles, a lot of passion on both sides. So, when you vote on this motion, please consider, do you want to put our people through such a long hot summer as that? Thank you Mr. President.

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

Senator ABROMSON: Thank you Mr. President, men and women of the Senate. This bill, L.D. 1017, is a result of a citizen initiative by concerned Maine families of Portland. This bill is mean-spirited, it's homophobic, it's intrusive. At the same time, its defeat could mark the beginning of a long, expensive, hate-filled referendum campaign. A campaign that would cost both sides a fortune in time, treasure and talent. I wish to avoid that. However, that alone would not keep me from voting today for its defeat. You see, I firmly believe, and I've shared this belief with a U.S. District Court Judge who allowed that he felt that what I believe just may be correct. When I believe that this bill, if challenged under the "Full Faith and Credit" clause of the U.S. Constitution, might well be deemed to be unconstitutional. Ladies and gentlemen of the Senate, as abhorrent as I find this bill and the ideas behind it, I shall not support the Ought Not to Pass Report. I shall hope for acceptance of the Ought To Pass Report and I shall pray for its being declared null and void by the third branch of government. Thank you Mr. President.

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

Senator CLEVELAND: Thank you Mr. President, men and women of the Senate. I rise today because I know, like everyone of you in this Chamber, you support families, you support the marriage and you support heterosexual relationships, as I do. I'm married and I have two children and one of the greatest joys in my life has been to experience that. But, I also rise because it would be awfully easy for me to sit here quietly and it would be, often times, more convenient and less uncomfortable for me not to speak what I believe to be the truth. That this is a hurtful and meaningful bill, that its intention is not honorable and that its aim will not strengthen the State, will not strengthen families and will not strengthen the society that we live in, but it will do quite the opposite. And I think it's important that we put on the record our understanding about the purpose of this bill and reason why we may or may not support it. I have many concerns about the bill. First and foremost, I as well, share the opinion that it may well be unconstitutional. And, I think it's always problematic that simply for purposes of convenience and social conformity, that we vote for laws that we suspect do not live up to the purpose of the constitution of this State, or the constitution of this country. One need not reach too far back into history to see how often we have done that because we've had emotions of fear or intolerance because of a persons religion, a persons skin color, a persons background. We've done what is convenient and what is most comfortable rather than to stand up and say what we think is right, what we think the meaning of this constitution is

and the rights of every person within it. I also think that what this legislation does is suggest that there is only one kind of relationship that ought to be honored, that love can't be shared in many forms, that we don't encourage individuals to care for one another and to make lifetime commitments to them, in whatever form is appropriate for them, to support one another, to build strong communities, relationships of health and caring and support. And, that's not the kind of communities that we live in. This bill really promotes intolerance, it promotes hatred, it builds on fear and the lack of knowledge individuals have about this issue. It takes advantage of those fears for its own purposes. That is always unconscionable. You don't build strong families by tearing down other people. You don't support heterosexual marriage by tearing down other kinds of relationships. You don't build strong communities by tearing communities apart. You don't support the sanctity of individuals by tearing down other individuals. Those actions always diminish you, not increase the respect that you build in a community. There is no indication that there is any particular need for this bill. There's no urgent movement within this State that would suggest that heterosexual relationships in any way, or marriage in any way is being challenged. I also understand and respect and actually concur that this would be an enormously divisive issue and it would tend to tear this State apart, if it had to go out to a public referendum vote. And that at this point, because it's perhaps a lack of understanding and a lack of knowledge and a lack of appreciation in parliamentary procedure, that it might actually prevail in a referendum and the end results would be worse then if we passed it. And, I understand and appreciate that. But, when I cast my vote, I'm going to cast it no, and what I would like each and every one of you to do is to send a strong message, when the record is read, it's not being passed because of its merits, but it's being passed reluctantly because of the fear and the divisiveness. So, when the Roll Call is taken, count them carefully, and as soon as you see that it prevailed, stand up and switch your vote so individuals know that the real intention of this Body was not to pass it, but did it only under duress, and I think that that sends the proper balance that this measure should never pass this Body but by the slimmest margin. Thank you.

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

Senator PINGREE: Thank you Mr. President, men and women of the Senate. When I look at this piece of legislation before us I have to ask myself, what does this law seek to remedy? I think it's remedying something that doesn't exist and something that was never proposed by those individuals who are affected by this law. We did not have concerned citizens come before us and say, please could we have same sex marriages, no one ever asked us to do that, we're prohibiting something, in this law, that doesn't even exist. And as the good Senator from Waldo, Senator Longley said in her eloquent remarks, the federal government has already taken care of this issue for us and it does not need to be in front of us today. I have enjoyed a quote that I've heard a couple of times and again today on the floor from the good Senator from Franklin, Senator Benoit, and that is, "if it isn't broke, fix something else". Well, today we are fixing something that was never broke in the first place. I ask myself why this is before us? It was so that some organization could be in the polling places collecting signatures, that very nasty and divisive item, so that they could be before us this summer with a referendum campaign that would again be

divisive, mean-spirited, stir hate, bigotry and contentiousness amongst all of us and do us no good. I have to ask myself, what kind of people are we, when we pass this kind of a law? When we would deny equal rights to any of our citizens and I don't feel good about that, at all. I know we find ourselves in a very sorry situation today. I know that we are far better served if this passes today and is not sent out for referendum and I am deeply disappointed about that. I think we'll also find ourselves in the future, affecting things that we weren't even thinking about. This law looks at the marriages between cousins, between people who are mentally ill or mentally retarded, and it goes into a lot of domains about the State taking compelling interest in the physical and mental health of children. I don't think this bill does things that we know are going to happen or that we want to have happen. Well, I do have to say that for this reason I understand that the vote today will probably be against the Ought Not to Pass motion, but I, myself, will be voting yes, Ought Not to Pass, because I can't put my vote in a place where it just does not belong. Thank you.

Off Record Remarks

The President requested the Sergeant-at-Arms to escort the Senator from Knox, Senator **PINGREE** to the Rostrum where she assumed the duties as President Pro Tem.

The President took a seat on the Floor of the Senate.

The Senate called to Order by the President Pro Tem.

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

Senator **GOLDTHWAIT:** Thank you Madam President, ladies and gentlemen of the Senate. I will be voting in favor of the pending Ought Not to Pass motion because I believe in the right of individual self determination. My concerns about this bill go beyond the extensible issue to other issues that we have not even begun to consider. For instance, what about a widowed parent? This State will be taking a position through this bill, that if you are not married to a person of the opposite sex, you are endangering the mental health of your children. What does that say to someone who's spouse is deceased and who does not wish to remarry because of their devotion to that relationship? That's a cruel position in which to put a person. It is not the business of this State, whether you choose to remarry after a death or after a divorce. It is not the business of this State, with its increasingly diverse population, to be deciding what the moral imperatives are. The good Senator from Franklin, Senator Benoit, talked about the dilemma of every legislator who turns at that decision that we make when we're considering a vote which may go against what we're hearing in our district. The majority interests always say, "We sent you there to represent us." The minority interests always say, "We sent you there to be a leader", and so we are caught by the horns of that dilemma. If this referendum passes, I will uphold it, as I have sworn to do with all State laws, but I am not afraid to vote for the Ought Not to Pass motion, simply because this will be a divisive debate or because this may pass in referendum. The issue of marriages between people of the same sex is not currently recognized in the State of

Maine. We do not have to recognize these or other relationships other than a heterosexual marriage, according to federal law. And, that makes this bill no more than a poke in the eye with a sharp stick and I do not intend to support it. Thank you.

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

Senator **TREAT:** Thank you Madam President, men and women of the Senate. I will also be voting for the pending motion. I do so because this bill is not necessary, as has been explained by several of the members of this Body. I do so, because it is a divisive bill and a hurtful one. Although I too wish to avoid a long hot summer of increasingly divisive debate, I feel that I cannot vote in a way that my heart does not tell me is appropriate. I don't want to repeat what other people have already said here today, but I did want to encourage members of this Body to actually read the language of this bill. I hope that everyone has actually done that. I must say, that when I took a look at the actual language of this, I was somewhat disturbed by it and I have many questions. These are really rhetorical questions. I'm not asking for anyone here to give me the answer and I'm really not sure that there is any answer to these questions. I'm sure it's going to be a matter for the courts, if this bill goes into law. But, when I read that it is of a compelling State interest to maintain traditional, monogamous relationships of marriage, I have to ask what does that language mean, compelling State interest? We sometimes use terms of art in our laws and they mean certain things and I believe there is an intention here to establish that kind of strong State interest. When I read further, I see various things that are supposed to be in the State's compelling State interest. I see here that the traditional, monogamous family is supposed to be the basic building block of our society and I have to ask the question, as someone who is currently a single woman, does that mean I am a less valued person than someone who is married? I read here that we are here to support the traditional economic function of the family and I have to ask the question, when did it become traditional and what tradition are we looking at? Are we talking about the Victorian family? Are we talking about the 1950's family? Does this mean that we are supporting women staying home and men working out in the economic market place and that those who don't have that choice are less valued by the State? I don't know, but I think that one could read this to say exactly that. I see here that we are supporting the traditional family and its function of rearing healthy children. Does this mean that a childless couple, who is married, is less valued than a couple that has had children, even if it is not the choice of that couple not to have children? I mean, this is quite apart from all the issues of same sex marriage. This is, you know, language that I think we should think about before we enact it and I really do have a lot of concerns, both the stated intent of this law and also what it could be doing to our society. I think this State is a very open minded State, in general. The people of this State have a lot of common sense. I agreed with the Senator from Waldo that this is an issue that has had a steep learning curve and there hasn't been a lot of time for people to really talk about these issues and see what they think about them. As I said, I'm concerned about the referendum also, but I just can't see how I can vote for language of this nature and I will be supporting the pending motion.

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

Senator **CATHCART:** Thank you Madam President, men and women of the Senate. I just have to rise on this. This is such a dilemma for me. I've been rereading the legislation and, you know, I can quote my bible and bring my bible just as easily as those people who attended the hearing and I can give you quotes from church about the God that I believe in. But, I'm thinking seriously, you know, do I vote in favor of this legislation, which is nothing but hypocrisy and bigotry of the worst kind I have ever seen? Should I vote in favor of this to spare the citizens of this State the kind of horrible, divisive debates that would go on if we send it out to referendum? And, I just believe I cannot vote to send this to a referendum. It's just too abhorrent to me and I agree with the good Senator from Kennebec, Senator Treat, that we each should really read the language in this bill. This is talking about the traditional man and woman joined in traditional monogamous marriage and that kind of society is the one that promotes the physical and mental health of children. Well, of course we all believe in that in our hearts and I'm a married woman too. I do believe in marriage but I have to point out that this is also a State where between 1990 and 1995, 51% of all the homicides were related to families, they're domestic violence homicides. And, I would bet you, without looking at the names and actual families, that these were mostly homicides in traditional, monogamous families, men and women and that is one of the reasons, given that language in this legislation, that I just have to vote my conscience. I don't see that I'm threatened, or my marriage is threatened, by any gay people or lesbian couples who are wanting to be married. If my marriage is threatened, it would be threatened were my spouse to be unfaithful to me, nonmonogamous. It would be threatened if my spouse were to become abusive, in fact, it would end if that were the case. It would be threatened, as the good Senator from Waldo, Senator Longley, mentioned if he refused to cook my dinner some nights when I'm tired or refused to carry out the trash, but it's not being threatened by these other people who are slightly different in their sexual orientation. And, I will have to support Senator Longley on the motion. Thank you Madam President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Madam President, may it please the Senate. Let's put this in perspective. I'm the oldest of 8 children, 5 boys, 3 girls. I have a brother who is gay. Do I love him less? Get a life, of course not. Now, this is no time for labels, whether I am a leader or not, in following my constituents agenda. But I can tell you this, down here in Augusta, my constituents agenda leads, mine follows. Call me what you want. It's as simple as that. There are two things on my mind right now as I vote on this. What do my constituents want me to do, regardless of my personal view, regardless of my agenda? My agenda could be just the opposite. do my constituents, who would like to be here in this chair voting, want me to do? And, do I want to vote to put this out through summer and fall and imagine the difficulty of that for people who mean well? I can't do it. It's as simple as that. Thank you Madam President

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

Senator **RAND:** Thank you Madam President, men and women of the Senate. I will probably be voting with the good Senator from Waldo, Senator Longley. We have heard some debate here today that has been of an extremely high level and I think we all understand the predicament that we have been placed in. Not by members of the gay and lesbian community, but actually by people who are strongly opposed to members of the gay and lesbian community. We've talked about being on the horns of a dilemma here. Should we vote one way and protect the citizens of Maine from this referendum question being out there and the horrible rhetoric that Maine sue. Or should we pass this ban and protect our people from horrible debate. I personally am not sitting on those horns. I have a great deal of faith in the people of Maine. I realize that, I'm not naive, I realize the rhetoric would be severe and I realize it would be a tough long summer, as the good Senator from Franklin has noted. But, I also believe that when the people of Maine read the language in this bill, when they read the language which is exactly the same as, of course, the initiated question. I have faith that they would say no. Maybe it's my lifelong commitment to civil rights and human rights for all people. Maybe it's my strong background in labor, which moves me to vote as I will today. There's an old labor song out, "Which Side Are You On", and when I look at the proponents of this measure and I look at the opponents of this measure, I know very firmly and strongly where I stand. I know who's side I am on. So, it is with pride that I stand with the good Senator from Waldo, Senator Longley, and the other members of this Chamber who will be voting yes on the Ought Not to Pass. Thank you.

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

Senator **MILLS:** Thank you Madam President and men and women of the Senate. This bill might be one thing, if it had one sentence in it. The sentence that simply says, persons of the same sex may not contract marriage. That's probably a statement of our current common law and nothing more and in that respect it's probably unnecessary addition to title 19 or title 19A. But, as with so many of these referendum, the people that put pen to paper began to imagine themselves in the role of Thomas Jefferson, and that's not an analogy that I make with any seriousness, and they begin to hog draft, at what we lawyers call hog draft, the document. At least 85% of the language in this document has absolutely nothing to do with law. It is simply the expression of somebody's intentions, obviously the people who drafted it, and the people who drafted it are sincerely hoping that we will vote against this bill so that they will have the opportunity to stand on soap boxes this summer and fall and make the most of our refusal to pass this document. But, I think in making judgments about whether to vote for or against the document, we have to stand here as representatives of the people, not necessarily doing what a majority of them may want us to do, but doing what each one of us in his own mind knows is the right thing to do, given the text of the document that's in front of him or her. This is representative government. If people in Somerset County don't like me for voting against this document, they'll have to find somebody else who is better qualified, in their minds, to send down here, that's all there is to it. And, I have many single issue constituents who think that theirs is the most burning issue of the day and who will deeply resent, and will let me know about it, failing to support this document. But the

document is full of flaws that were generated by the hard drafting tendencies of those who put pen to paper when they wrote it. And to add to the examples that were given to you by the Senator from Hancock, I give you another. In a situation where I am representing one divorced parent, in an issue of custody against the other, will it be within the province of the other parent to say, "Well, now having run off with another member of the same sex, having gotten divorced, having remarried, I can now present a home and a lifestyle that is available to the child of the former marriage, that the legislature says is far superior to anything else. So, rubber stamp my custody decree." And, how many times have I seen, in 25 years of law practice, a marriage break up almost precisely because a third person has entered into the scene and it's not uncommon for the person who is emotionally losing in that setting to wind up with custody of the children. So, does the partner who runs off and finds another mate quickly, gain the upper hand in a custody dispute, over who will get to rear the children of the former relationship? I don't know why that should be. I don't know why we should endorse that policy, but this language has a tendency to support that view. This language may also have some bearing on adoption proceedings, on foster parent proceedings, on guardianship and conservatorship issues. It has a wide array of insidious implications and I hesitate to think about the text of legal briefs that may be written in years to come, sighting this language as support for one misguided notion or another. So, I urge you to vote yes. I realize that that puts our State into an awkward situation this summer and fall. I realize it plays into the hands of those who will enjoy taking this issue out onto the public stump and I regret that, but I think that each one of us in this Chamber has an obligation to go back to our constituents and attempt, as best we can, to education them about the deficiencies of this proposed legislation. Thank you.

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

Senator **MURRAY:** Thank you Madam President, men and women of the Senate. I'm pleased about one thing this morning, as I rise to debate this bill, and that one thing is the level of the debate that we have had this morning. It has been reasoned, it has been rational, it has been thoughtful and it has addressed the issues that are most compelling and the most important for us to decide today. I applaud the eloquence of the Senator from Waldo, Senator Longley, as she told us the reasons why she would be voting the way she will be and I share a lot of those same thoughts with her. But, the heightened nature of this debate and the eloquence we've heard this morning, over the past hour, hour and a half, whatever it has been, points out one of the dilemmas that we face, on the horns of the dilemma that we have, because of the posture of this bill. I am equally confident, unfortunately, that the level of the debate that we have heard today and the luxury we have to debate this in the manner that we have will not be repeated, were this matter to go to a referendum. And in fact, quite the contrary. I'm afraid the level of the debate in that setting would be something that none of us would be proud of and what we would be forced to deal with is a five to ten second sound bite from one side or the other, which certainly would not give this issue the justice it deserves. That is the unfortunate position we are all in. Were we here debating a mere L.D. that had the language in front of us it did, there is little doubt in my mind it would pass in the form it is in. It is fraught with problems. I agree with that. I think a lot of the issues that

have been raised by a number my good colleagues are correct, with regard to the problems this bill presents and I am confident, if this were a mere L.D., it would never pass in its present form. We do not have that luxury here today. Our options are, we pass this, as is and make it a statute of this Body and the other Body, if that were to be what happens. Or, we don't pass it as is and it goes to referendum, as it is with its problems, with its bad wording and with, obviously, the threat of the divisive debate which has already been discussed. I will be voting this morning against the pending motion because of my fear of putting forth a bill to referendum which may be adopted with all its imperfections, problems and the bloodshed, if you will, politically or otherwise, it would be created from that divisive battle and I do this for a couple of reasons. I think the better course, even though it's not a great course or one that I feel very good about, is to make this a mere statute now and I use the phrase mere statute because I think by doing so and by avoiding the referendum statute, which may come forward, we may have the opportunity in the future to deal with the many imperfections that I suspect will exist with this law, if it becomes a law. We will have the opportunity in another day, to amend a mere statute and we may have the opportunity to have the third branch of government look very carefully at the constitutional problems which I suspect and I believe exist with this document, and allow them to deal with the constitutional questions looking at this only as a mere statute. The political reality, if this bill is adopted as a referendum statute however, is that it becomes much more difficult, politically, for any future legislature to deal with the problems that a referendum initiated statute would create. That's the political reality that I believe exists. It's the one that, unfortunately, I find we are placed in today. Those are the consequences we face. I share the thoughts of my good colleague and friend from Cumberland, Senator Abromson, that I too will be voting against the pending motion. I wanted to state the reasons why. It's not a particularly attractive position for any of us to be in. It's not one that I particularly enjoy but for the reasons I've set forth, I think it's the appropriate course for this Body to take today.

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

Senator **LONGLEY:** Thank you Madam President, thank you everybody, men and women of the Senate. I hear that a few of you are voting on this issue based on the process that you don't want to see happen and others of us can't get to the process, we are focused on the substance. It's substance that we can't support and therefore we're going to vote for the Ought Not to Pass. I'd like to simply just reissue the challenge from the Senator from Androscoggin that if in fact, the process reason of not wanting a divisive debate in our constituencies is what is causing you to vote against the pending motion, I reissue the challenge that let's first vote on the substance and if, by majority vote, the Ought Not to Pass prevails, our process allows for a reconsideration and a revote where you can then get to the process question. And on that process question, far be it from me to judge, having seen civil rights battles in history and in my State, I'm aware of how messy and divisive and ugly and sad and all the above it can be. And, I'm aware that, especially for teenagers who might be gay and to subject them to that sort of possibility of the kind of discrimination or hate messages, far be it from me to want to subject any teenager in a gay situation to have to struggle through, survive that hot summer. So, I hear

what you say and I'm not judging your decisions to go with process, I would simply ask that the first vote, as Senator from Androscoggin has said, be on the substance and if necessary to protect the people from the divisive debate, then you change your vote. And I would also say that in the public hearing, it was very civil. It was very respectful. Everybody followed the rules. Everybody listened. I think Maine people are capable on this really steep Mount Everest style learning curve. I think we can rise to the occasion, but then again, do we want to subject people who are being victimized and targeted to this sort of fear, ignorance, bigotry and smear, which I realize are strong words and I understand we're at different levels on our learning curve, but for me, it comes down to honoring our constitutional obligations, which is treating everyone equally and targeting no group. So again, I ask you on the first round of votes, you vote with me on the Ought Not to Pass and do what you need to do after that. Thank you.

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

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

- YEAS: Senators: CATHCART, CLEVELAND, DAGGETT, GOLDTHWAIT, JENKINS, LONGLEY, MILLS, RAND, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE
- NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, FERGUSON, HARRIMAN, KIEFFER, KILKELLY, LAFOUNTAIN, LAWRENCE, LIBBY, MACKINNON, MICHAUD, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, RUHLIN, SMALL.

EXCUSED: Senator: HALL

10 Senators having voted in the affirmative and 24 Senators having voted in the negative, with 1 Senators being excused, the motion by Senator **LONGLEY** of Waldo, to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**, **FAILED**.

Senate at Ease

Senate called to order by the President Pro Tem.

On motion by Senator **LAFOUNTAIN** of York, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-104)** Report **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-104) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME**.

Senator **KIEFFER** of Aroostook moved to **TABLE** until Later Today, pending **PASSAGE TO BE ENGROSSED AS AMENDED**, in concurrence. Subsequently the same Senator requested and received leave of the Senate to withdraw his motion to **TABLE**.

Which was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-104)**, in concurrence.

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

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

SENATE PAPERS

Resolve, Concerning Payments to Legislators during Special Session S.P. 552 L.D. 1678

Presented by President **LAWRENCE** of York
Cosponsored by Representative **SAXL** of Portland and
Senators: **PINGREE** of Knox, **RAND** of Cumberland,
Representatives: **KONTOS** of Windham, Speaker **MITCHELL** of Vassalboro
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Committee on **STATE AND LOCAL GOVERNMENT** suggested and **ORDERED PRINTED**.

Senate at Ease

Senate called to order by the President Pro Tem.

On motion by Senator **LAWRENCE** of York, **TABLED** until Later in Today's Session, pending **REFERENCE**.

Off Record Remarks

On motion by Senator **RAND** of Cumberland, **RECESSED** until 4:00 in the afternoon.

After Recess

Senate called to order by the President

ORDERS OF THE DAY