

MAINE STATE LEGISLATURE

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(In House, May 20, 1999, **RECEDED** and subsequently **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "B" (H-614)**, in **NON-CONCURRENCE**.)

On motion by Senator **PINGREE** of Knox, the Senate **RECEDED** and **CONCURRED**.

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 Ban Partial Birth Abortion"

I.B. 1 L.D. 1593

Majority - **Ought Not to Pass** (10 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-627)** (3 members)

Tabled - May 21, 1999, by Senator **PINGREE** of Knox.

Pending - **FURTHER CONSIDERATION**

(In House, May 20, 1999, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-627)**.)

(In Senate, May 20, 1999, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.)

(In House, May 20, 1999, that Body **ADHERED**.)

Senator **PINGREE** of Knox moved the Senate **INSIST**.

Senator **MURRAY** of Penobscot moved the Senate **RECEDE** and **CONCUR**.

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

Senator **MURRAY:** Thank you Mr. President. Men and women of the Senate, I thank you for the opportunity to speak briefly on this issue. I acknowledge from the outset, as I suspect all of you would agree, this is a very difficult issue to debate and it's one that each of us I'm sure have spent a great deal of time considering and pondering. But I do think it's important to take at least a minute to consider one or two points that I'd like to raise for your consideration because I think it is important for us to at least ponder and consider and debate that issue here, especially as opposed to perhaps some other places. The only reason why I decided to raise the issue and debate the issue here is because the Bill comes before us fairly uniquely. It's not the typical Bill. Were it just us considering it here for our up or down vote, it would be gone and the issue disposed of. As you all know, that's not what is now before us. But what is before us is an issue that will not end here no matter what we do. It will be one that if we decide not to enact it, will be one that will go on for a Referendum consideration debate and ultimately conclusion by the votes of the state of Maine. It's because of that process that I wanted to

take an opportunity to at least raise a couple of points with you, the members of the Senate, for you to consider.

I don't know and I want to say at the outset at this point that I don't intend today to debate the particular merits or demerits of the issue of partial birth abortion before us today because I am confident and I respect each of our individual opinions on that issue and I think we reflected that in our vote last night and that is recorded. However what I am concerned about is that there are two things that I know will happen if this Body fails to enact the proposal before us today. One of those things is that the issue will then move to the Referendum and campaigning in the public. What I am convinced of is that that process is going to be an ugly process and one that I fear will enrage the passions of both sides to the point where things could happen that I would hope wouldn't happen but I'm unfortunately confident will happen. It's somewhat ironic to me, I heard as this issue was beginning to be considered last night that there was concern that the debate occur in the evening in the other Body because there was concern about the sorts of things that might be said or heard and how that would be heard and handled by people that were here in the State House. Well I think, quite frankly my friends, that whatever may have been heard in the other Body last night is going to pale in comparison to what the debate may be like next fall if this Body fails to act. I think it's appropriate for this Body to at this time take the action that is necessary to avoid that kind of rancor and division and potentially even violence that could occur as a result of the actions that would be involved in the campaign in a Referendum proceeding. So that's one issue that I wanted to raise and set before you to urge you to consider as you're deciding the best means of dealing with this particular issue.

The second issue again is what I would call a process issue but it's one that I take very seriously and I would again ask you to seriously and thoughtfully ponder. One of the issues that has been raised as this Bill has come before us is that there are concerns about how it has been drafted and whether or not certain particular points that are now in the draft before us are clear, are good, are concise enough so that what is in fact proposed as a law is the best law on this issue that could be possibly made a part of our statutes. Again, because of the way this Bill has been presented to us, we don't have the luxury here and now to work the Bill like we would any other Bill and craft what we think would be the clearest, most concise, best statute that could be drafted. We don't have that option because of the way it's before us. I don't know if this matter would go to Referendum or what the outcome would be, none of us know that. But what I do know is that what will be presented to the voters is what is before us and up or down that is what will become the law of the land if it's enacted. Politically speaking, if that becomes the law of the land it becomes virtually politically impossible to then Amend it after it becomes enacted by the vote of the people. I think the better course for us to consider here today is to put this on the books now as is and if after the course of two years where people have the opportunity to look at it and determine whether there are changes that need to be made. Changes can then be made at a subsequent Legislature without the political hammer that would be upon us to refrain from making the changes that a citizen initiated law would have. Those, quite frankly, are the only two issues that I wanted us to at least pause and consider. I think we have the opportunity now as a Body, this Body, to take the correct step to avoid the harm that I think is going to come before the citizens of Maine if we have to go through the rancor that I expect would result. So I would ask you to at least, before you cast that final vote on this, think

thoughtfully and ponder those two issues and ask you to support the motion to Recede and Concur so we can deal with this issue in the best way possible.

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

Senator **BENOIT:** Thank you Mr. President. May it please the Senate, I will be brief. I am in strong opposition but hopefully respectful opposition to the pending motion to Recede and Concur. The good Senator from Penobscot, Senator Murray, says that he fears what will happen if the issue goes out to our people. That there will be language exchange. That is something we don't want to see happen. I'll tell you what I don't want to see happen. I don't want to see censorship of Democracy happen. We have a process to Referendum, to send this out to the people. That's the Democratic process. I don't think we're here to censor that process in any way. There's one other particular that will not permit me in a legal sense to support the motion. Laws like this have been enacted in nineteen other states. Seventeen of those states have struck them down for Constitutional reasons. We've taken an oath trying not to enact measures that are unconstitutional but that doesn't say that our citizens can't by initiative process come to us with a Bill that they move forward that may be illegal. They haven't taken an oath not to do it. We have and there's a difference. Thank you Mr. President.

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

Senator **GOLDTHWAIT:** Thank you Mr. President. Ladies and gentlemen of the Senate, I have as great a respect for the Senator from Penobscot, Senator Murray, as I do for any member of this Body and as usual he has made a cogent and compelling argument and I agree with many of the points that he made. However my alternative being to vote in favor of this Bill and put it on the books is really not an acceptable one. Therefore I'm urging you to oppose the pending motion to Recede and Concur. This Bill puts in statute language that is devised by the lay community rather than the medical community. It recognizes something it, the lay community, considers to be a medical procedure but it is not recognized as such by the medical community. Already those two facts lead to sufficient confusion in a place where we never want there to be confusion, that is in the operating room. It interferes with the rights of women regarding the reproductive choice but equally important is that this interferes with the physician practice of medicine. For us to be sitting in this Chamber today and thinking that it is appropriate for us to decide or to rule on a potential therapeutic intervention that could be undertaken by a physician and put that physician in the place of not only having to deal with the catastrophic situation involving two people but also have to worry about whether his or her actions could possibly be construed to be this procedure defined by a segment of the lay community and therefore cause the loss of his or her license. It is absolutely unacceptable to me to tie the hands of a physician and the more serious the situation gets the more inappropriate it is for us sitting in a State House to be saying what that person sitting in an operating room should or shouldn't do and what we think is best for the patient under that physician's care. For those reasons I would strongly urge you to Defeat the pending motion. Thank you.

Senator **LONGLEY** of Waldo requested a Division.

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

Senator **LONGLEY:** I'd just like to say we're being fed a Bill that's filled with political terms and it has to be interpreted by people in the medical profession and the legal profession. In the medical profession, where they've got to do what is medically appropriate, they have political terms. Is that sending a helpful message from the Legislature to the medical community? No. To those in the legal community, rather than words such as trimester approach and viability, neither of those two very legal terms with respect to this issue are in any way mentioned in this Bill. So we're having the Courts interpret political terms and that's why, in my opinion, court after court has come back and said this is too vague. We don't know what the drafters of legislation like this mean. They are saying it's Unconstitutional. Court after court after court after court. So for both medical and legal reasons and a few other reasons I urge you to vote Against the pending motion. Thank you.

On motion by Senator **MURRAY** of Penobscot, 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 opened the vote.

ROLL CALL (#147)

YEAS: Senators: BENNETT, CASSIDY, DAVIS, FERGUSON, KIEFFER, LAFOUNTAIN, LIBBY, MACKINNON, MICHAUD, MURRAY, O'GARA, PARADIS, RUHLIN

NAYS: Senators: ABROMSON, AMERO, BENOIT, CAREY, CATHCART, DAGGETT, DOUGLASS, GOLDTHWAIT, KILKELLY, KONTOS, LONGLEY, MILLS, NUTTING, PENDLETON, PINGREE, RAND, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senator: HARRIMAN

EXCUSED: Senators: BERUBE, MITCHELL

13 Senators having voted in the affirmative and 19 Senators having voted in the negative, with 1 Senator being absent, and 2 Senators being excused, the motion by Senator **MURRAY** of Penobscot to **RECEDE** and **CONCUR**, **FAILED**.

Senator **PINGREE** of Knox requested and received leave of the Senate to withdraw her motion to **INSIST**. On further motion by same Senator, the Senate **ADHERED**.

Off Record Remarks
