

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

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Legislature*

OF THE

STATE OF MAINE

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Index

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think, a movement away from that area so that the larger urban communities would not be paying for services which the county government might render to a town.

It also provides that no bonds be issued until there has been a referendum in the county. And there is an appeal, after the municipal review board reviews the budget and approves the budget. If some of the towns do not feel that the budget is fair, then three-fifths of those towns by number, or any town or combination of towns making up 50 percent of the valuation, or paying 50 percent of the tax, can appeal to the legislature, and the legislature would then do what it does now, go through the regular legislative review process to review the county budget. I might add they would do it under the bill which this legislature passed allowing the legislative delegation and the County Government Committee, and the legislature as a whole, to cut line items in the county budget.

I think that this amendment has been worked out with the County Commissioners Association, with the Maine Municipal Association. I think it is not perfect, but I think it is an improvement because it does involve the people in reviewing the county budget who actually are responsible for raising the taxes to pay them, that is, the municipal officials. I think it is a reasonable compromise worked out between those groups, and I would hope that the amendment would receive favorable action and that the bill could pass. Thank you, Mr. President.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Senate Amendment "C"?

Thereupon, Senate Amendment "C" was Adopted and the Bill, as Amended, Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

The President laid before the Senate the seventh tabled and specially assigned matter:

HOUSE REPORTS — from the Committee on Judiciary — Bill, "An Act Regulating Abortion Procedures." (H. P. 1195) (L. D.

1529) Majority Report — Ought Not to Pass; Minority Report — Ought to Pass in New Draft, Same Title (H. P. 1615) (L. D. 2035)

Tabled — June 18, 1973 by Senator Berry of Cumberland.

Pending — Motion by Senator Tanous of Penobscot to accept Majority Report.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President, at the present time the State of Maine has no constitutional abortion statute on the books. The Supreme Court of the United States has indicated that the states may regulate and prohibit abortions in certain instances. This bill was drafted to comply with those Supreme Court guidelines as to what the states may do, and I would like to inquire, through the Chair, of the reasons of those signing the Ought Not to Pass Report.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I assume that question was directed to me as the Chairman. You know, as I sit here and think about this subject, it is ironic that years ago all those people that were in favor of liberalized abortions in Maine, or at least removing the abortion law from our books, are now in favor of having legislation on our books speaking on abortions, regulating or attempting to regulate abortions. Really, you start to think about how does a situation change, because I know that two years ago and four years ago my good friend, Senator Berry, was in favor of liberalizing the law on abortion, or at least I assumed that from his debate, and I find now that, at least in my discussions with him and Senator Speers, that they are in favor of placing legislation on the books regulating abortions, and they felt two years ago just the opposite.

In any event, I don't mind explaining my position on this bill. I suppose many of you feel it is a religious issue and therefore I am opposed to this particular bill. Well, I will tell you that I was

opposed to abortion two years ago, not because it was a religious issue, but because the law in our state here recognized the rights of an unborn child. That was my reasoning for opposing abortions two years ago. Every lawyer is cognizant of the fact that an unborn child has certain legal rights, and I was convinced that these legal rights should not be taken away from an unborn child. That was my reason for opposing abortion.

I now find myself in a position of opposing a bill that would regulate, or since the Supreme Court has ruled that our statute is unconstitutional, I find myself opposed to a bill that seems to regulate abortion procedures in Maine. Personally, I don't think this is what it does, and I will tell you my reason why very briefly. At the hearing on another bill, which was sponsored by Representative Dunleavy, a member of the other body, which he subsequently withdrew, the sponsor of this particular L. D. 1529, on which we came out with a new draft, L. D. 2035, brought with him to the public hearing an attorney from the University of Maine Law School, a very capable attorney, to speak in opposition to Representative Dunleavy's bill, which dealt with the same subject matter in this same area. This attorney mentioned to the committee his background, and he probably is one of the most knowledgeable attorneys in this country, as far as abortions are concerned. And from listening to him, I was somewhat convinced that it was probably his philosophy that he would favor abortions, but yet he was opposed to the Dunleavy bill.

Well, it set me thinking, and at the public hearing I questioned him about this particular bill, which is sponsored by a member of the other branch as well, and I was indeed surprised that he felt this particular bill was constitutionally suspect, and I think he felt that some areas of this bill were definitely unconstitutional, specifically the area where you attempt to regulate abortions to be performed in a hospital, for instance, in the second trimester. His opinion

was that this would be unreasonable, and I can concur with him, because what if an individual, for instance, a woman who was pregnant in the second trimester was dangerously ill, and I would assume that a doctor in his opinion would find it necessary that the child be taken from her to save her life, then under this particular bill it could be done in a hospital. Otherwise than that, he would be in violation of the law. So you would have to give him permission. I suppose you could amend the bill to give him permission to do it in case of an emergency. Then again, once you have given this permission, the permission would then be unconstitutional because it added regulations to the law.

Then you go on in Section 2, under B, the reporting section in there, and these reports are called for in this particular bill. I frankly feel this is an invasion of privacy under the Constitution. And it also makes these reports available to the Attorney General. Now, why should the Attorney General have this information from these reports, I question.

In continuation of my reasoning, I have here some remarks that were prepared by this attorney, and he mentions, for instance, Dill versus Bolten, which was a citation the Supreme Court used in its decision on the abortion question. And under Dill versus Bolten, this attorney from the Law School questions this act as being unconstitutional as well.

Now, last session, at the special session we enacted legislation, incidentally, which prohibits anyone from performing an abortion, so anyone else performing an abortion, which would be practicing medicine, would be subject to a penalty. So this does not mean that it is wide open abortion, because only doctors, under the federal court's ruling, could perform an abortion, and anyone else attempting this would be in violation of our present law.

Now, hospitals and doctors are regulated presently. It is my feeling that they are sufficiently regulated. The Health and Welfare

Department has rules and regulations which hospitals must follow relative to treatment of patients and hospitalization of patients. Doctors have upon them a further imposition of their particular oath of office.

Now, in argument in opposition to this bill, name me one other area in the law where we regulate doctors. Do we tell doctors how and where to perform tonsillectomies or appendectomies? Do we tell them they must be done in a hospital? No other area in the law tells doctors how they are going to perform their practice. Now, why should we all of a sudden come up with some legislation that is going to tell them how to practice in one particular area? It seems inconsistent. It seems inconsistent and it is opening the door perhaps to future legislation in regulating how other medical practices are going to be considered, how doctors will run their practices, or how hospitals will be run. I feel that if we have as much faith in our hospitals as we do now under the present Medical Practices Act, and our doctors, who have the ability to clean their own house if they have some complaints, I am convinced that if we have enough faith in our medical profession in our doctors, to act in their discretion on everything else that they have as far as medical treatment and hospital care is concerned, then I am certainly willing to abide by their decision and their discretion in this area. And I hope you would vote with me in accepting the Majority Ought Not to Pass Report of the Committee.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Joly.

Mr. JOLY: Mr. President and Members of the Senate: I rise to support the good Senator from Penobscot, Senator Tanous. In so doing, I would like to read you a very short message. This is in the form of a petition that has been signed by 189 nurses, including six nursing supervisors. These are from Auburn, Lewiston, Portland, Sabattus, Lisbon Falls, all over the state.

"The nursing profession in Maine has always maintained high ethical standards in the performance of our duties. Accordingly, we the following Registered Nurses residing in Maine, urge our Representatives to pass L.D. 1992 to protect our professional prerogatives and request the defeat of L.D. 1529 which sanctions and implements abortion on demand. The reasons are as follows:

"1. The Supreme Court of the United States has made it legal to perform abortions up to and including the ninth month of pregnancy if a woman can prove to one physician that her life or health is endangered. Health, according to the Supreme Court of the United States, means the social and mental well-being of the woman.

"2. In L. D. 1529, which is an abortion on demand bill, the definition of abortion is as follows: 'Abortion is defined to mean the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.'

"3. This definition is in direct conflict to Sections 4 and 5 of L.D. 1992 which mandates that live born children be given immediate medical care to preserve the life and health of the child.

"As professional nurses, we will continue to place the highest possible premium on the value and dignity of human life. Therefore, we urge the passage of L.D. 1992 and the defeat of the abortion on demand bill, L.D. 1529."

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President and Members of the Senate: I, too, would like to read into the record the remarks of 47 physicians, all State of Maine residents concerning, L. D. 1529. It says, "We, the following physicians residing and practicing in the State of Maine, urge the defeat of L. D. 1529 for the following reasons:

"1. With the announcement of the Supreme Court decision, abortion is no longer a criminal procedure, that is, it is currently an ordinary medical procedure in the eyes of

the law. "2. As such the following can be reasonably said:

"(a) Abortions will only be done by physicians. State laws already exist which prevent non-physicians from practicing medicine.

"(b) By requiring that physicians perform the abortions in a hospital (after the 12th week of pregnancy) the state sets a precedent. No other medical procedure is required by law to be performed in a hospital (for example, tonsillectomies). This usurping of medical judgment is a serious step.

"(c) If a physician exercises bad judgment and attempts abortions under unsafe conditions, he is liable under civil action for negligence, malpractice and unprofessional behavior. This is now covered by Maine law.

"Finally, the Maine Legislature has in the past found itself against the destruction of children for non-compelling medical reasons.

"To enact L. D. 1529 would place the legislature in the position of endorsing the Supreme Court decision which allows abortion on demand up to birth and in fact would encourage hospitals and physicians to perform abortions.

"Clearly, if the legislature still does not sanction the destruction of children in utero, it must not pass this piece of unnecessary legislation. We urge the defeat of L. D. 1529." It is signed by 47 Maine physicians. Thank you.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President and Members of the Senate: For the record, I would also like to read a letter that has been placed on your desks already.

"To all Members of the 106th Maine Legislature:

"Once again we ask you not to forget that the ministers and rabbis in the State of Maine have a great interest in what you will debate here today. The Supreme Court, aside from its having nullified God-given rights to life of a whole class of human beings, has contributed immeasurably to the already waning power of conscientious action in America. As men of God we believe and feel compelled to tell you that all

Americans are less human for what the Supreme Court has done.

"We hereby implore you to vote No to L. D. 1529 which calls attention to and makes special and extraordinary this most inhuman action. To have what is repugnant to our sensibilities forced upon us is one thing, but to actively sanction abortions by legislation which indicates compliance with an intolerable decision will only demonstrate what we have believed from the beginning. Abortion is a very great evil. It does to the defenseless what the strong would not have done — it takes human life.

"Lastly, we challenge you in conscience as the Lord God challenged the Israelites: 'do not cause the death of the innocent and the guiltless' (Exodus 23:7). The memory of man is short and his actions are sometimes expedient, but the Lord God does not forget. We, the following ministers and rabbis urge the defeat of L. D. 1529." I am not going to read the whole list of ministers and rabbis, but I have this list here of over 60 and I have another list of over 70 that come from my own area.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Cummings.

Mrs. CUMMINGS: Mr. President and Members of the Senate: I think there is some misunderstanding. As I understand it, this bill is just to clarify what is now nothing. The Supreme Court decision rendered Maine's old law void in its entirety and wholly unenforceable. So as far as I understand it right now, there is nothing on the books to guide the procedure of hospitals and doctors.

I concur completely with the Senator from Penobscot, Senator Tanous, that of course the medical profession and the hospitals, and all those that are associated and trained to maintain health and preserve life, are going to behave in the most ethical fashion. But I think without having something on the books that we are in danger of perhaps allowing what are crudely known as abortion mills to flourish in the State of Maine. I think that this particular bill will add some regulations that will re-

quire that abortions shall be performed by physicians.

To me, and I perhaps am the only Senator that can speak knowingly on this subject, pregnancy is something that grows on you, and in the beginning its something like when you have an infection in your finger; the doctor can take care of it in your house. But as soon as it become a bone infection, or something that is major, he takes you to the hospital. Now this is something that has to happen when a doctor is going to take a woman to the hospital for an abortion of a pregnancy of any length of time, he has got to take her to the hospital, but there are the unscrupulous people who will not wait for a medical opinion and perhaps perform the abortion outside of the hospital. This I think would see to it this can happen, without the penalties that would become involved with breaking a law which we now no longer have.

After the 12th week it would have to be done in a hospital. It is now no longer a small infection in the finger; it is now a major operation. After the 24th week, it prohibits abortion except as necessary to preserve life and health. There are things besides just the life that I think should be taken into consideration of the women. It requires the consent of the husband, if the husband and wife are living together. It requires consent of the minor, in addition to that of her parent or guardian. In addition, these provisions would define abortion, would require filing of statistical data with the Department of Health and Welfare, and would repeal the invalid Maine Law.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: I think that we have seen here this morning a classic example of the kind of misinformation that can be bandied about. Particularly on such a highly emotional issue as abortion, it can be garnered into a wave of support or opposition to a position which the opponents profess they do not wish to see come about.

We have seen a virtual parade here this morning of individuals professing to be opposed to abortion, but who are actually asking this body to sanction and, by taking no action whatever, to fully sanction what will come to be true abortion on demand.

Now, I was not in this body two years ago, and I am not one of the ones Senator Tanous from Penobscot mentioned were supporting attempts to liberalize abortion laws and are now turning around and supporting a position which would limit abortion. The same could be true of the individuals who took the other side on the issue of liberalizing abortion laws. It is quite clear that those who were opposed to liberalization of abortion laws in the past are now opposed to this particular bill which has as its purpose limiting abortion procedures as much as is constitutionally in the power of the state to do.

The good Senator from Penobscot, Senator Tanous, mentioned that an individual, an attorney, appeared before the Judiciary Committee and stated that he doubts whether the state would have the power to limit or control abortion procedures. Well, the Supreme Court of the United States has stated very specifically that the states may limit the procedure, or regulate the procedure, after the first trimester, and may prohibit the procedure after the second trimester, except in cases of the life or health of the mother.

Now, there is obviously quite some discussion as to what the meaning of "life or health of the mother" would be, as to whether or not this is actually any limitation whatever. But I would submit to this body that it certainly has a far greater chance of being a limitation on the ability or the legality of one performing an abortion than doing absolutely nothing and having nothing on the books. I fail to see how having no law whatever on the books is more regulatory of abortion procedures than is having a law on the books which was fashioned and designed to be constitutional and to be upheld by the Supreme Court of the United States.

Now, all of the arguments that the good Senator from Penobscot, Senator Tanous, used against this particular law: he said this is meddling in the medical procedure, it is requiring doctors to use a particular procedure where they do not have to use any particular procedure in other cases, such as tonsillectomies, all of these arguments could very well have been used against the abortion laws as they stood before the Supreme Court decision. Yet the good Senator from Penobscot supported the abortion laws as they stood before the Supreme Court decision.

It has been said that this particular law sanctions and implements abortion on demand. This particular law, as I read it—as I said, I was not here two years ago, and I come to this issue as a fresh issue and, as it was presented to the Committee on Judiciary and presented to this legislature, it seems to me that this particular law is an honest attempt to limit abortions on demand. We now have in the State of Maine abortion on demand. We do not have any law on our books at the present time which regulates or limits this procedure. That happens to be a fact. The Supreme Court of the United States has ruled that this law that we have had in the past is unconstitutional, and it has been implemented by the decision of the District Court here in the state. So we do not have any regulation of this procedure whatever at the present time. It would be legal to perform an abortion right up to the moment of birth, the seventh, eighth, or ninth month of pregnancy.

If we do not enact legislation, this legislature is actually being more liberal than the Supreme Court of the United States, because the Supreme Court has stated that the states may regulate and may prohibit in the third trimester. So if we wish to continue the situation whereby it would be legal for an individual to have an abortion, or another individual to perform an abortion, right up to the moment of birth, then all we need to do is to accept the Ought Not to Pass Report on this bill.

I would oppose the motion, and would do so because I feel that the state should take action, as far as it is constitutionally able to do, to prohibit and regulate this procedure. I would ask for a roll call, Mr. President.

The PRESIDENT: A roll call has been requested. Under the Constitution, in order for the Chair to order a roll call, it requires the affirmative vote of at least one-fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending motion before the Senate is the motion of the Senator from Penobscot, Senator Tanous, that the Senate accept the Majority Ought Not to Pass Report of the Committee on Bill, "An Act Regulating Abortion Procedures." A "Yes" vote will be in favor of accepting the Ought Not to Pass Report; a "No" vote will be opposed.

the Secretary will call the roll.

ROLL CALL

YEAS: Senators Aldrich, Anderson, Brennan, Cianchette, Clifford, Conley, Cox, Cyr, Danton, Fortier, Graffam, Greeley, Hichens, Joly, Katz, Kelley, Marcotte, Minkowsky, Richardson, Roberts, Schulten, Tanous.

NAYS: Senators Berry, Cummings, Huber, Morrell, Peabody, Sewall, Shute, Speers, Wyman, MacLeod.

ABSENT: Senator Olfene.

A roll call was had. 22 Senators having voted in the affirmative, and 10 Senators having voted in the negative, with one Senator being absent, the motion prevailed.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I move that the Senate reconsider its action whereby it accepted the Majority Report, and I urge you to vote against my motion.

The PRESIDENT: The Senator from Penobscot, Senator Tanous, moves that the Senate reconsider its action whereby it accepted the Majority Ought Not to Pass Report

of the Committee. As many Senators as are in favor of reconsideration will please say "Yes"; those opposed "No".

A viva voce vote being taken, the motion did not prevail.

The President laid before the Senate the eighth tabled and specially assigned matter:

"An Act Reconstituting and More Effectively Coordinating the Maine Commission on Drug Abuse and the Division of Alcoholism and Providing an Alternative Sentencing for Violators of Drug Laws. (S. P. 635) (L. D. 2008)

Tabled — June 18, 1973 by Senator Conley of Cumberland.

Pending — Enactment.

On motion by Mr. Speers of Kennebec, and under suspension of the rules, the Senate voted to reconsider its action whereby the Bill was Passed to be Engrossed.

The same Senator then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-245, was Read.

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

Mr. BRENNAN: Mr. President and Members of the Senate: I don't see Senate Amendment "A", so would the good Senator from Kennebec, Senator Speers, explain what it does?

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: This particular amendment would remove the law enforcement function, or make it clear to the law enforcement function of drug prevention would not be included in the new Office of Drug Abuse and Alcoholism Services. It was done at the request of the Attorney General's Office. When they were reading down through the bill and realized the broad powers given to the Office of Drug Abuse, the proposed new office of Drug Abuse and Alcoholism Services, there was some concern that the new office would have some sort of veto power over the law enforcement functions of the Attorney General's Office. This amendment is

designed to make it clear that the Attorney General's Office will have the sole duties and responsibilities for the law enforcement of drug abuse.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Senate Amendment "A"?

Thereupon, Senate Amendment "A" was Adopted and the Bill, as Amended, Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

The President laid before the Senate the ninth tabled and specially assigned matter:

An Act to Reform the Methods of Computing Benefit Payments under Workmen's Compensation Act. (S. P. 427) (L. D. 1287)

Tabled — June 18, 1973 by Senator Berry of Cumberland.

Pending — Enactment.

On motion by Mr. Berry of Cumberland, retabled and Tomorrow Assigned, pending Enactment.

The President laid before the Senate the tenth tabled and specially assigned matter:

Bill, "An Act to Protect the Rights of Injured Persons under the Workmen's Compensation Law." (H. P. 1584) (L. D. 2011)

Tabled — June 18, 1973 by Senator Berry of Cumberland.

Pending — Passage to be Engrossed.

Mr. TANOUS of Penobscot then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-243, was Read.

The PRESIDENT: The Senator has the floor.

Mr. TANOUS: Mr. President and Members of the Senate: The amendment was prepared by Asa Richardson of the Department of Transportation, and substantially rewrites the bill in its present form. But he felt the amended version, I guess, would be a better version of the bill, so he submitted that to me to present for our consideration.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Senate Amendment "A"?

Thereupon, Senate Amendment "A" was Adopted and the Bill, as