

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Seventh
Legislature*

OF THE

STATE OF MAINE

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Wyman, that the Senate insist and ask for a second committee of conference.

The Chair recognizes the Senator from Cumberland, Senator Graham.

On motion by Mr. Graham of Cumberland, a division was had. Six having voted in the affirmative, and 23 having voted in the negative, the motion did not prevail.

Thereupon, the Senate voted to Adhere.

The President laid before the Senate the eleventh tabled and Specially Assigned matter:

SENATE REPORTS — from the Committee on Judiciary — Bill, "An Act to Remove Invaliated Language Concerning Abortion from Maine Statutes." (S. P. 484) (L. D. 1614)

MAJORITY REPORT — Ought Not to Pass; **MINORITY REPORT** — Ought to Pass.

Tabled — May 10, 1975 by Senator Conley of Cumberland.

Pending — Acceptance of Either Report.

Mr. Huber of Cumberland then moved that the Senate accept the Minority Ought to Pass Report of the Committee.

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

Mr. CLIFFORD: Mr. President and Members of the Senate: I rise to oppose the motion and to explain, I think, why the majority of the Committee on Judiciary opposes this bill, L. D. 1614.

Maine has on its statutes a law which prohibits abortion except to save the life of the mother. That law has been on for many years and the legislature has resisted attempts to change that law.

In 1973 a Supreme Court decision was handed down, and concurred by seven members of the Supreme Court. The result of that opinion was a very controversial item, and what could be called a shocking opinion in its result and its legal logic which lead them to conclude essentially that an unborn child was not a person entitled to constitutional protection, and in fact that a person, in order to be entitled to constitutional protection, had to be viable, whatever that means.

I think that reading that decision, and reading legal scholars talking and writing about that decision, brings to mind the last century's Dred Scott decision which said that a slave was not a person entitled to constitutional protection under the U.S. Constitution. I think the country is not quite over the shock of that opinion and, of course, Maine as a State previously had rejected any attempts to change its abortion law. The law remains on the books, it is unenforced, but of no harm and no threat to any person.

Now, in the country there is a great debate which is going on, specifically in Congress of the United States, to amend the Constitution to give protection to persons who are unable to care for themselves, whether they be the born or the unborn. That constitutional process to reverse the decision of the Supreme Court will take several years. I think at the very least until that process is over the Maine Legislature should not take the specific positive action of striking from the books of the Maine statutes our present abortion law. That law remains on our books and it shows that the citizens of Maine have respect for life, born or unborn, viable or unviable.

I guess there is not much that we can do as Maine legislators about the seven men on the court, but I think what we can do is reject this specific and positive attempt to wipe from our books a law which shows

Maine citizens still have respect for life of Maine citizens, whether they are born or unborn.

I hope that you would oppose the motion of the good Senator from Cumberland, Senator Huber. When the vote is taken, Mr. President, I would request a roll call.

The PRESIDENT: A roll call has been requested.

The Chair recognizes the Senator from Androscoggin, Senator Carbonneau.

Mr. CARBONNEAU: Mr. President and Members of the Senate: I too concur wholeheartedly with what the Senator Clifford said. I would like to add just a little something here, that a defeat of L. D. 1614 would indicate that the people and their elected officials feel that this important life issue should remain in the hands of the people, rather than having the court act as a super legislature.

As I understand it, the law that we have now on the books does not do anything for anyone, it doesn't hurt anyone, and I think we should leave it there. I respectfully urge you to defeat the motion.

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

Mr. HUBER: Mr. President and Members of the Senate: As has already been said, title 17, section 51, Maine's invalid abortion law, was ruled invalid in February of 1973 when the court ruled that this legislation is void and unenforceable under the 14th amendment following the Supreme Court decisions.

The court further ruled, and I quote: "The above-mentioned abortion statute in the State of Maine is declared to be unconstitutional and void in its entirety, and that it is wholly unenforceable." This bill, L. D. 1614, would simply remove this invalid language from the Maine statutes.

Because of the emotional nature of the subject, I presented this separate bill rather than suggesting to the Judiciary Committee that this be taken care of in their errors and inconsistencies omnibus bill.

To summarize, this bill only repeals language ruled to be void in its entirety, and nothing more.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President and Members of the Senate: I support the motion of the Senator from Cumberland, Senator Huber, I do not like the idea that a court should act as a super legislature, but when we serve in this body we take an oath to uphold and support the Constitution of the United States. That constitutional law has been determined for us, and I see no point in keeping on our statute books language which has clearly been invalidated.

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

Mr. CONLEY: Mr. President and Members of the Senate: I hope the Senate would vote against the motion of the good Senator from Cumberland, Senator Huber, to accept the Minority Ought to Pass Report. I believe the previous session of the legislature, the 106th, memorialized Congress as to the concern of Maine citizens dealing with the subject of abortion.

I can acknowledge the words of the good Senator from Knox, Senator Collins, in respect to court decisions, however, I believe very strongly that there are thousands of Maine citizens who were deeply shocked at the decision and have a great deal of concern to have it

overturned. There are literally hundreds of nurses within this state who are petitioning the legislature to again defeat this particular bill, as well as hundreds of physicians throughout the state. I can see no good at all that will come by the repeal of this language within the statutes. Therefore, I hope the Senate would vote to defeat this measure.

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

Mr. HICHENS: Mr. President and Members of the Senate: I appeared before the Judiciary Committee earlier in the session on a bill and the legality of that bill was questioned. I was told by the members of the committee that whenever there was any question as to the legality of a bill that it came out Ought Not to Pass. But here we have the Majority of the Committee coming out with an Ought Not to Pass Report and yet the Chairman of the Judiciary Committee, even though the Supreme Court has made a decision, does not question the legality. I do not see the reasoning of the committee but I do go along with the Majority Ought Not to Pass Report, and I would read a statement which has been given to me signed by 42 clergymen, which represents a great many clergymen throughout the state and expresses my own sentiments.

"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 right 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. 1614 which calls attention to and makes special and extraordinary this most inhuman action. We have what is repugnant to our sensibilities forced upon us as one thing, but to actively sanction abortion by legislation which indicates compliance with an intolerable decision is not worthy of our state. Abortion does to the defenseless what the strong would not have done, takes human life."

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

Mr. MERRILL: Mr. President and Members of the Senate: I would like to make a couple of points in regard to my signing the Ought Not to Pass Report on this bill. I would like to say, first of all, that the Judiciary Committee had a chance to look at a bill in this session that would have removed welfare money payments from being used in any situation to pay for abortions. We received an opinion from the Attorney General that that would not be constitutional and, therefore, it received a unanimous Ought Not to Pass Report out of the Judiciary Committee.

I believe that the bill before us is a symbolic one. I think that is why it was put in, to make a symbolic statement, and I think that is why it is opposed, and I know that is why I oppose it. The law is not enforced, and as long as the Supreme Court decision is in effect it should not be. We should uphold the constitution.

Personally, I do not believe that the case decided by the Supreme Court and subsequent cases on the subject of abortion will stand the test of time. I think if there is any classic area where the people's

representatives should decide questions, it is in the question of what is life and what will be protected as life. I think that is our duty and we shouldn't shrink from it, and we should be anxious to do it.

Therefore, I am opposed to removing this because I believe that it is an important statement for this legislature to make that we don't agree with the Supreme Court decision, and that we anticipate the decision will be eroded and changed with test cases that will come before the Court in years to come.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins:

Mr. COLLINS: Mr. President and Members of the Senate: I only want the record to show that the good Senator from York, Senator Hichens, has incorrectly interpreted the position of the Chairman of the Judiciary Committee on unconstitutional matters. I have consistently voted and still will vote against matters that appear to me to be clearly unconstitutional. I will readily admit this is not always a clear matter, but in this matter it seems to me clear and I am trying to be consistent with my stand in other cases.

The PRESIDENT: Is the Senate ready for the question? A roll call has been requested. In order for the Chair to order a roll call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators in favor of a roll call please rise in their places until counted.

Obviously more than one-fifth having arisen, a roll call is ordered.

The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President and Members of the Senate: I think it is important to keep in mind that this matter is still in a state of legal turmoil. As the Senator from Cumberland, Senator Merrill, mentioned, there are court cases pending which attempt to overturn this decision, and of course there is a very serious and substantial effort going on in the Congress to report out an amendment which would reverse the shocking effects of this decision.

I think a vote in favor of this bill is really not just a vote to clean up the statutes. It is a vote which is similar to a procedural device which we have. I think we would be saying, in effect, that we recede and concur with the decision of the Supreme Court, so I hope that you would oppose the motion and indicate that we do not in fact recede and concur with that decision. Thank you, Mr. President.

The PRESIDENT: The pending question before the Senate is the motion of the Senator from Cumberland, Senator Huber, that the Senate accept the Minority Ought to Pass Report of the Committee. A roll call has been ordered. A "Yes" vote will be in favor of accepting the minority Ought to Pass Report of the Committee; a "No" vote will be opposed.

The Secretary will call the roll.

Roll Call

YEAS: Senators — R. Berry; Collins, Corson, Cummings, Curtis, Graham, Huber, Jackson, Reeves, Roberts, Trozky, Wyman.

NAYS: Senators — E. Berry; Carbonneau, Cianchette, Clifford, Conley, Cyr, Danton, Gahagan, Graffam, Greeley, Hichens, Johnston, Katz, Marcotte, McNally, Merrill, O'Leary, Pray, Speers, Thomas.

A roll call was had. 12 Senators having voted in the affirmative, and 20 Senators

having voted in the negative, the motion did not prevail.

Thereupon, the Majority Ought Not to Pass Report of the Committee was Accepted.

Sent down for concurrence.

The President laid before the Senate the twelfth tabled and Specially Assigned matter:

Bill, "An Act to Allow Certain Nonprofit, Volunteer and Educational Organizations to Operate Games of Chance without a License from the Maine State Police." (H. P. 316) (L. D. 394)

Tabled — May 19, 1975 by Senator Hichens of York.

Pending — Passage to be Engrossed.

(In the House — Passed to be Engrossed as amended by Committee Amendment "A" (H-269).)

(In the Senate — Committee Amendment "A", adopted, in concurrence.)

On motion by Mr. Corson of Somerset, the Senate voted to reconsider its action whereby Committee Amendment "A" was Adopted.

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

Senate Amendment "A", Filing No. S-168, to Committee Amendment "A" was Read and Adopted and Committee Amendment "A", as Amended by Senate Amendment "A" Thereto, was Adopted.

Mr. Hichens of York then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-171, was Read.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Cianchette.

Mr. CIANCHETTE: Mr. President and Members of the Senate: As I read Senate Amendment "A", it really destroys the purpose of the bill. The Legal Affairs Committee worked long and hard at streamlining and straightening out some of the errors, inconsistencies and language in these laws. It also took care of a situation that very typically happened with my daughter, who is a senior in high school, where they wanted to have a raffle to help pay for their caps and gowns, whatever they do for some money. She asked me, after finding out that they have to go to the state police to get a permit to have this raffle, she asked, "Why, Dad?" Well, it is a little bit embarrassing because there is no good answer why they should do that.

This bill, L. D. 394, takes care of that situation and it exempts non-profit organizations listed like this: "Any bona fide, nonprofit, charitable, educational, political, civic, recreational, fraternal, patriotic, or religious organization or any auxiliary of that organization," are exempt from getting permits from the State Police to hold these raffles.

I think it is a little bit ridiculous to have a law on the books down here that says that the ladies auxiliary, if they want to raffle off a pillow case, that they have got to come to the state police and get a permit to raffle this off. I don't think that is the intent of the law, I don't think that is the intent of the Legislature, but it is the intent of this amendment that we are facing now. I strongly suggest and solicit your help in defeating this amendment.

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

Mr. HICHENS: Mr. President and Members of the Senate: Three years ago a

bill was passed allowing open gambling in the State of Maine. In the special session a new law was written up and passed, and the State Department of Public Safety states that the present law is working very well. L. D. 394 changes that law again, and this amendment prepared by the state police and the Attorney General's Office attempts to keep raffles controlled. The statement of fact states that this amendment deletes the present material of the bill and would allow nonprofit organizations to conduct a raffle, such as just was suggested by the good Senator, but without obtaining a license or paying a fee when the raffle is conducted on one day only and at one location only. I hope you will accept the amendment.

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

Mr. DANTON: Mr. President and Members of the Senate: I think we are making a real complicated bill out of this. Like the good Senator Cianchette earlier said, it is to allow for any bona fide, nonprofit, charitable, educational, political, civic, recreational, fraternal, patriotic or religious organization or any auxiliary of that organization to have a raffle. The original bill called for games of chance. That has been taken out.

What they are asking for in this bill and what the amendment does really ruins the bill — is that if some organization wanted to have a raffle to raise some money to paint the interior or exterior of a building the would meet, say, the 15th of the month, and say well, let's have a raffle, and we will go out and sell the tickets, and two months from now we will pull the winning number, and whoever wins will win an electric clock. Meanwhile they have raised enough money to paint the building either inside or outside.

What Senator Hichens' amendment does, it would allow for that raffle to be held on that day, which would not give the organization any time to sell tickets to raise money. I think most of us, I am sure, belong either to veterans organizations or civic organizations and the churches, and this is nothing new. All it allows is for these organizations and which it has right in the bill "nonprofit organizations", to hold a raffle to raise some money for whatever their project might be.

I think this amendment should be defeated because it really is impossible and most of you know that that belong to organizations, that you are lucky if you get a handful of people at a lot of these meetings — to hold a raffle that day and raise any kind of money. I hope that you would defeat this amendment.

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

Mr. MERRILL: Mr. President and Members of the Senate: I am going to vote to defeat this amendment, and there is one reason. I met a good friend of mine the other day. I hadn't seen in some time, and he asked me what we were doing up here in the legislature that would help anybody, and I had to think for a while. One of the things that I would like to be able to say is answer to that question is that we are taking some of the minor, petty, bureaucratic interference in people's lives away.

People have to get a permit now to almost turn around in the street, and I can't see any justifying reason to make the volunteer firemen to go to the state to get a permit if they want to raffle off a cigarette lighter so that they can put a new oxygen tank in their ambulance. I think that this type of bureaucratic interference in