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Volume II

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Fourth Tabled and specially assigned matter:

HOUSE REPORTS — from the Committe on Appropriations and Financial Affairs — Bill, "An Act to Provide Matching Funds to Support and Expand the Foster Grandparent Program." (H. P. 685) (L. D. 865) Majority Report — Ought Not to Pass; Minority Report — Ought to Pass

Tabled—May 21, 1979 by Senator Katz of Kennebec.

Pending—Acceptance of Either Report.

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

Senator HUBER: Mr. President, I move acceptance of the Majority Report.

The PRESIDENT: The Senator from Cumberland, Senator Huber, moves the Senate Accept the Majority Ought Not to Pass Report of the Committee.

The Chair recognizes the Senator from Cumberland, Senator Najarian.

Senator NAJARIAN: Mr. President and Members of the Senate: I realize that this bill is going no place, but I do think it's a good program and it's unfortunate that it's in this state today, but I understand the circumstances.

This is a program which allowed for grandparents who were poor to help families with their children, and they worked about half a week and received $32 a week for their efforts. We had a good hearing on the bill. Many grandparents came up and testified to the change it had made to their life, as well as the people receiving help.

It was one of the priorities of the Committee on Aging. I just think it's unfortunate that this bill is not getting more favorable consideration.

The Majority Ought Not to Pass, Report of the Committee, Accepted, in concurrence.

The President laid before the Senate the Fifth Tabled and specially assigned matter:

SENATE REPORTS — from the Committee on Labor — Bill, "An Act Permitting Binding Arbitration for Public Employees in Critical Public Services." (S. P. 197) (L. D. 464) Majority Report — Ought to Pass as Amended by Committee Amendment "A" (S-191); Minority Report — Ought Not to Pass

Tabled—May 21, 1979 by Senator Conley of Cumberland.

Pending—Motion of Senator Sutton of Oxford to Accept Minority (Ought Not to Pass) Report.

The Minority Ought Not to Pass Report of the Committee, Accepted.

Sent down for concurrence.

The President laid before the Senate the Sixth Tabled and specially assigned matter:

HOUSE REPORTS — from the Committee on Judiciary — Bill, "An Act to Limit Abortions in the Second and Third Trimesters to Certain Specified Situations." (H. P. 865) (L. D. 1061) Majority Report — Ought to Pass in New Draft and New Title of "An Act Relating to Abortions" (H. P. 1394) (L. D. 1612) Minority Report — Ought to Pass with Committee Amendment "A" (H-413)

Tabled—May 21, 1979 by Senator Conley of Cumberland.

Pending—Acceptance of Either Report.

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

Senator COLLINS: Mr. President, the Majority Report in New Draft is a rewrite of a bill that was originally offered by the Senator from Penobscot, Senator Trotzky, but which comes out in somewhat different language on a bill from the other body.

The Minority Report, in essence, would simply repeal the existing abortion language on our statutes which has been held by the Federal Court to be unconstitutional. I move the acceptance of the Minority Report this morning.

The PRESIDENT: The Senator from Knox, Senator Collins, moves that the Senate accept the Minority Ought to Pass, as amended, Report of the Committee.

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Senator DEVOE: Thank you, Mr. President. Mr. President and Members of the Senate: I rise in opposition to the motion made by the good Senator from Knox, Senator Collins. I would ask you to defeat the pending motion and instead accept the Majority Report which is now L. D. 1612.

Let me just summarize for you what I view L. D. 1612 would accomplish. As you know, in 1973, the U.S. Supreme Court held invalid the abortion laws of about forty-six States, in the decisions Roe v. Wade and Doe v. Bolton. Our existing statute concerning abortions, 17 M.R.S.A. §51 and under the decisions of the Roe V. Wade and Doe v. Bolton is clearly unconstitutional. L. D. 1612 is an attempt to replace the unconstitutional law now on the books with one that meets the standards set out in the Roe and the Doe cases.

Basically the Majority Report would do 2 things. It would require that all abortions be performed by a physician. Secondly, it would limit the right to have abortions after viability of the fetus to those instances which are required to preserve the life or the health of the pregnant woman.

Both of these policy objectives, I would point out, are explicitly allowed in the Roe v. Wade, and Doe v. Bolton cases.

Roe v. Wade proceeds on the assumption that before the fetus is viable, the State must treat the abortion as a medical procedure not a moral issue. Accordingly, the Court says that even in the first months of pregnancy, "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician."

The Court went on to say:

"The State may define the term "physician" to mean only a physician currently licensed by the State, and may proscribe any abortion by a person who is not a physician as so defined."

and this provision is found in L. D. 1612.

This is one of the two things that we are seeking to do.

Second, Roe v. Wade recognized an "important and legitimate interest in potential life," extending throughout pregnancy, and it went on to hold that after the fetus is viable, that interest was "compelling." Once the State's interest has thus become "compelling," the State "may . . . regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."

Those 2 cases were decided in 1973.

In 1976 the U.S. Supreme Court decided the Case of Planned Parenthood of Central Missouri v. Danforth, which we have discussed in earlier debates in this Senate. In that case, the court upheld a statutory definition of "viability" as "that stage of fetal development when the life of the unborn child may be continued indefinitely outside of the womb by natural or artifical life-supportive systems."

You will note on page 2 of the L. D. the definition of viability which we have used is verbatim from the Planned Parenthood v. Danforth, Supreme Court Decision.

We further propose in this L.D. to make it a Class D crime to perform an abortion after viability, except where it is necessary to preserve the life or health of the pregnant woman. In order to avoid an unconstitutional "chilling effect" on doctors who seek to perform abortions on the early side of viability, or who feel that an abortion is medically necessary after viability, we have set the level of scienter on "knowing," at the second highest in the Criminal Code. It would be difficult to prove a case against a doctor under the new law, but that is probably necessary if it is to hold up under constitutional attack in court.

We submit to you, members of the Senate, this bill is clearly within the limits of the previous U. S. Supreme Court decisions in Roe v. Wade, Dow v. Bolton, and Planned Parenthood of Central Missouri v. Danforth that the limits the Supreme Court itself has set out cannot be challenged by an attack on this bill. Thank you very much, members of the Senate.

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

Senator COLLINS: Mr. President and Members of the Senate: Considering this bill there are 2 areas of thinking. 1 is the legal area that has been described by the Senator from Penobscot, Senator Devoe. The other is a broad public policy on personal morality area.

With respect to the legal area, the Senator from Penobscot, has given you the legal history of the problem, but there is one later word that ought to be considered. The United States Supreme Court on January 9 of this year struck down a Pennsylvania Law requiring a physician who performs an abortion to try to save the life of the fetus if he believes the fetus is or may be viable.

We found in the testimony before the Judiciary Committee that there is a considerable difference of opinion among physicians. First as to when a fetus become viable, and second, as to the trend in viability. Apparently in some women, viability may happen at a much earlier point of time than with other women. So that it is not purely a time measurement of so many weeks from the date of conception.

The Pennsylvania Courts examined this problem and then it went up through the Federal Courts to the United States Supreme Court. The Court, I think, summarized the problem in this way in striking down the law. It said this. "It is uncertain whether the statute permits the physician to consider his duty to the patient to be paramount to his duty to the fetus, or whether it requires the physician to make a "trade-off" between the woman's health and additional percentage points of fetal survival."

Now it's this area of uncertainty about viability that makes a statute of this type very dangerous, because the physician is putting his career on the line as to whether he shall become a criminal or not, or whether, on the other hand, he ought to be doing what he considers the best thing for his patient.

It once again is inviting the Maine Legislature to intrude into that very specialized area of the professional judgment, where the physician is trying to do what is best for his patient.

It's interesting to note that a survey of Maine citizens done by a University of Maine sponsored polling organization found that 80% of Maine citizens think that an abortion ought to be a question to be decided between the woman and her physician; 18% disagreed with the proposal. Yet as I talk with some of my fellow Legislators I have the distinct impression that they believe that an overwhelming majority of their constituents feel the decision should not be between the woman and the physician. But that it should be decided here in this Legislature by an inflexible law.

Times have changed. Some of us are living a long time ago. I realize that emotional topics of this type are frequently not decided by legal precedents, legal shadows, or by reason or even by an overwhelming report about public opinion.

But again as I have in the past, I ask you. Does it make good common sense to have the State intrude between the patient and the doctor in this important area of personal problem? Ought Not those 2 people be the ones that make this important decision?

If you say in your own mind that the answer to that question is Yes, then you ought to vote in favor of the minority Report. If you also have concern about making a doctor a criminal with a statute that makes him choose between the health of his patient and possible criminality in an area where the topic under consideration is uncertain at best, then again you ought

to vote Yes on the pending motion. Thank you, Mr. President.

The PRESIDENT: Is the Senate ready for the question?

The Chair will order a Division.

The Chair recognizes the Senator from York, Senator Hichens.

Senator HICHENS: I request a Roll Call.

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 the 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 by the Senate from Knox, Senator Collins, that the Senate Accept the Minority Ought to Pass, as amended, Report of the Committee.

A Yes vote will be in favor of the Minority Report.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Chapman, Clark, Collins, Emerson, Juber, Katz, Lovell, Najarian, Perkins, Sutton, Trafton.

NAY — Ault, Carpenter, Conley, Cote, Devoe, Farley, Gill, Hichens, Martin, McBreairty, Minkowsky, O'Leary, Pierce, Pray, Redmond, Shute, Silverman, Teague, Trotzky, Usher.

ABSENT — Danton.

A Roll Call was had.

11 Senators having voted in the affirmative and 20 Senators in the negative, with 1 Senator being absent, the motion to Accept the Minority Report does not prevail.

The Majority Ought to Pass, in New Draft Report of the Committee, Accepted in concurrence. The Bill Read Once. The Bill, Tomorrow Assigned, for the Second Reading.

The President laid before the Senate the Seventh Tabled and specially assigned matter:

Bill, "An Act to Increase the Dollar Amount of an Accident that Must be Reported from $200 to $500." (H. P. 636) (L. D. 787)

Tabled — May 21, 1979 by Senator Chapman of Sagadahoc.

Pending — Passage to be Engrossed.

On motion by Senator Chapman of Sagadahoc, Retabled, for 1 Legislative Day.

The President laid before the Senate Bill "An Act to Improve Local Government Investment Opportunities." (S. P. 449) (L. D. 1364) tabled until later in today's session, pending Adoption of Senate Amendment "A".

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

Senator AULT: Mr. President I ask for a Division on Adoption of the Amendment. I would just remind the members of the Senate that this is a purely voluntary program, the money is always available to the towns, if they want it back. It requires no additional personnel in the State Treasurers Office, and might even provide for better relationships between the towns and their local banks if this bill is passed without the amendment. So I urge you to vote against adoption of the Amendment.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Sutton.

Senator SUTTON: Mr. President and Ladies and Gentlemen of the Senate: I would just like to remind you one more time that the Federal Government in many areas is in competition with the private sector. I am not sure how far we might be doing it in the State but this is a definite intrusion of the State in to the private sector which is in itself reason enough to not have them do this.

The good Senator is correct this amendment does gut the Bill and that is exactly what it is supposed to do. There is one good provision in there and that is to increase the bonding limit on the Treasurer, otherwise I would have moved that we Indefinitely Postpone it, so I am not playing any games with you. But I do not think that the State ought to be in it, I do not think that we ought to permit our towns to send money to the State and keep them out of the banking business. I would also like to suggest that I cannot in my wildest imagination see how it will improve their relations with their local banks, and certainly are not going to improve them with the State.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of Adoption of Senate Amendment "A", please rise in their places to be counted.

Will all those Senators opposed, please rise in their places to be counted.

15 Senators having voted in the affirmative and 14 Senators in the negative, the Motion to Adopt Senate Amendment "A" does prevail.

The Bill, as amended, Passed to be Engrossed.

Sent down for concurrence.

There being no objections, all items previously acted upon, with the exception of those items already being held were sent forthwith.

Senator Pray of Penobscot, was granted unanimous consent to address the Senate, Off the Record.

On motion by Senator Pierce of Kennebec, adjourned until 9:40 tomorrow morning.
