

MAINE STATE LEGISLATURE

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

Senator **SCHNEIDER:** Thank you Mr. President. I would just say what I said at the rostrum just moments ago so you will all have it for the record. I chose not to flippity floppity on this issue and, therefore, I will be sticking and staying consistent with my original intention, which is to pass this bill regardless of what others may want to flippity floppity on this issue. Thank you very much, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Courtney.

Senator **COURTNEY:** Thank you Mr. President. Men and women of the Senate, with regards to the flippity floppity, I just wanted to address that. I believe it was the sponsor's intention to have another Resolve to go parallel and I believe that has been achieved. That is why the sponsor was no longer interested in this bill. I hope that explains the flippity floppity.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Franklin, Senator Saviello to Indefinitely Postpone the Bill and accompanying papers. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#172)

YEAS: Senators: COLLINS, COURTNEY, CRAVEN, FARNHAM, HASTINGS, KATZ, MARTIN, MASON, MCCORMICK, PLOWMAN, RECTOR, ROSEN, SAVIELLO, TRAHAN, WHITTEMORE, THE PRESIDENT - KEVIN L. RAYE

NAYS: Senators: ALFOND, BRANNIGAN, DIAMOND, DILL, GERZOFISKY, HILL, HOBBS, JACKSON, LANGLEY, PATRICK, SCHNEIDER, SHERMAN, SNOWE-MELLO, THIBODEAU, THOMAS, WOODBURY

ABSENT: Senator: BARTLETT

EXCUSED: Senators: GOODALL, SULLIVAN

16 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 1 Senator being absent and 2 Senators being excused, the motion by Senator **SAVIELLO** of Franklin to **INDEFINITELY POSTPONE** the Bill and accompanying papers, in concurrence, **FAILED**.

On motion by Senator **SCHNEIDER** of Penobscot, **TABLED** until Later in Today's Session, pending **FINAL PASSAGE**, in **NON-CONCURRENCE**.

On motion by Senator **ROSEN** of Hancock, the Senate removed from the **SPECIAL APPROPRIATIONS TABLE** the following:

Emergency

An Act To Ensure Regulatory Fairness and Reform
S.P. 10 L.D. 1
(C "A" S-87)

Tabled - May 18, 2011, by Senator **ROSEN** of Hancock
Pending - **ENACTMENT**, in concurrence

(In Senate, May 12, 2011, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-87).**)

(In House, May 18, 2011, **PASSED TO BE ENACTED.**)

On further motion by same Senator, **TABLED** until Later in Today's Session, pending **ENACTMENT**, in concurrence.

The Chair laid before the Senate the following Tabled and Later (6/1/11) Assigned matter:

SENATE REPORTS - from the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act Regarding Offenses against an Unborn Child"
S.P. 454 L.D. 1463

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-207)** (7 members)

Minority - **Ought Not to Pass** (6 members)

Tabled - June 1, 2011, by Senator **MASON** of Androscoggin

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report

(In Senate, June 1, 2011, Reports **READ.**)

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

Senator **PLOWMAN:** Thank you Mr. President. Men and women of the Senate, I urge you to vote to accept the Majority Ought to Pass as Amended Report. This bill, at the federal level, is called the Laci and Conner Peterson Act. As you all remember, the headlines were all about how Mr. Peterson killed his wife and his unborn child. In their state they actually had a law that said that the prosecutor could bring charges for the loss of the unborn child. This law is law in the United States of America and in 36 other states in the United States. The law, except for one point, tracks the federal law. It protects unborn children from bodily injury or death by providing criminal penalties for acts committed against the unborn child. So does the federal law. An unborn child is defined as an individual of the human species from the state of fetal development when the life of the fetus may be continued indefinitely outside of the womb by natural or artificial life supportive systems until birth. The federal definition is much

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broader. It essentially protects the baby, the unborn child, from the time of implantation. It does not limit access to abortions. Neither does the federal law. There are exceptions to prosecution. The mother of the unborn child cannot be charged, state or federal. Persons providing medical treatment cannot be charged, state or federal. Persons providing an abortion may not be charged, this law or federal. We added in the state of Maine persons performing public functions or responding to an emergency just in case. That would be good Samaritans. It provides the same penalties that would be provided if a woman was attacked at the Federal Building just down on Western Avenue. In Maine, when she walks across the street to the Dunkin Donut's parking lot, her pregnancy becomes a condition recognized by the State of Maine that allows for the judge to give a longer sentence because she happened to be pregnant. Across the street, in the Federal Building, and in 36 other states, the law says her unborn child is considered an offense worthy of its own sentence. In the states where this law has been challenged, the constitutional challenges to unborn victim laws, all challenges were unsuccessful. All challenges we based, at least in part, on Roe versus Wade and on denial of equal protection. California, Georgia, Illinois. I'm saying this because a lot of people think this is just a deep South kind of issue or just where there is a lot of conservative thinking. The last state, by the way, that passed this was Massachusetts. North Carolina was last before that. Missouri, Pennsylvania, Minnesota, Texas, and Utah. All of these places the constitutionality was challenged and the constitutionality was upheld. It was specifically found not to contravene the decision of Roe versus Wade. In Texas actually the court noted that, "Indeed we have found no case from any State Supreme Court or federal court that has struck down a statute that provides for prohibiting the murder of an unborn victim." In Utah the court ruled that this law was properly applied to an unborn victim and was consistent with the U.S. Constitution. That takes care of the constitutionality question.

The justice question, is there justice for a family when a woman loses her unborn child and the family loses their unborn child? Is a longer sentence adequate? A lot of us think no. We have crimes in the state of Maine where you can add to the length of a sentence, specifically hate crimes. The first assault, battery, or murder, the first charge is based on the injury to the person. The sentence that's lengthened is because there was a condition recognized that began the assault. That means the victim and the condition warranted a longer sentence. Makes it very serious. So did the last look at what we did for offenses against pregnant women. It says that the judge can look and make the sentence that much longer. It never said when the family or the woman, herself, steps up to give her victim impact statement that she can give a victim impact statement on behalf of her unborn child. It never said that the unborn child will be recognized in court and our society as another victim. It says to women in the state of Maine that their baby, because that is what women call their unborn children, their babies. Whether you want to convey personhood or not, unborn child doesn't but when a mother loses her child she mourns her unborn child, she doesn't mourn the loss of a pregnancy, the termination of a pregnancy. She mourns her loss. In 36 other states and on any federal property her loss and the family loss is recognized. This doesn't undo what we did before. This puts another arrow in the tool of the quiver of the prosecutor to say that something so heinous happened that it merits this. Heinous is what happened to Mrs. Sargent in Old Town when her husband killed her and her 8-month old unborn

child that lived 24 hours beyond her death in her womb, slowly suffocating to death. The aggravating condition in that case was the gentleman also killed four cats. We didn't have the law that you will hear about that adds for aggravating conditions. Seriously, the aggravating conditions for the cats are now the aggravating conditions for the loss of the pregnancy. Can I say that again? Because you can add to a heinous crime and you can add a longer sentence because you killed a cat. You can also add a longer sentence because you kill an unborn child. In my mind an unborn child and a cat aren't the same thing. That's how it looks when a judge goes through the list of how he comes up with the sentence. He looks at the first victim and then he looks at the aggravating conditions.

You are going to hear in a little bit that this law has been misused in other states. First of all, the committee directly asked, on mike, the Assistant Attorney General Bill Stokes if he could charge a woman, a pregnant woman, with any of the crimes encompassed in this bill; murder, manslaughter, and aggravated assault. He said no. No. Not maybe, no. When I met with the Attorney General William Schneider he reviewed the whole thing and reviewed the federal law. He said that they were nearly identical except for what I pointed out to you. When asked if he would charge the mother he said no. In a follow up half-hour conversation with Assistant Attorney General William Stokes I asked him again if there was any way a mother could be charged under this. He said no. I'll show you why by reading to you the definitions in the Offenses Against Unborn Child. The abortion has the same meaning as set forth in Title 22 Section 1598, subsection 2, paragraph 8. That's in there so you know it's not going to effect abortion. It's the definition. The first thing that a prosecutor would go to. The second thing he would look at is the person who can be charged. The person does not include the pregnant woman whose unborn child is killed or injured. If you look through every section of the bill each section starts with "a person is guilty". A person is guilty. A person is guilty through every section. A person is guilty. First the person cannot be the pregnant woman. Definition number two is that unborn child meets every definition that's been upheld federally and state in every court where it's been challenged.

When you vote today Maine women are either going to be able to seek the same justice for their unborn children and their family, should the woman no longer be with us, as anyone on a federal piece of property or as the women in 36 other states. I ask you to think about it. Thank you.

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

Senator MASON: Thank you Mr. President. Men and women of the Senate, I am a little hesitant to go after the Senator from Penobscot, Senator Plowman, as she has eloquently described this bill. I will just point out a few things that I believe that merits this bill's passage. I believe that this is the ultimate choice bill. In any instance that you see in this law a choice has been taken away from the family of that unborn child. As I looked through this bill I don't think that a woman would want to participate because she is the carrier of the unborn child and murder or manslaughter or assault or elevated aggravated assault, I don't think that she would want to be a participant in any of these crimes because she would have to be a participant because she's the one carrying the unborn child. They have chosen to carry this child to viability. You don't build an addition for a nursery for a

fetus. You don't buy clothes. You don't do these things for a fetus. You do them for a child. We had a lot of testimony the day of the public hearing and I think the quote from the Roman Catholic Diocese says it all. I'll close with this. "Should a pregnant woman lose her child as the result of an assault we find it difficult to believe that she would mourn the termination of her pregnancy. What she would mourn is the loss of her child, a child not currently protected under Maine law." Ladies and gentlemen of the Senate and Mr. President, I request that we move towards justice for those whose choice has been taken away from them. Thank you very much.

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

Senator **GERZOFSKY:** Thank you Mr. President. Ladies and gentlemen of the Senate, I'll be quiet and calm. This bill takes great passion but I'll try to be a little more subdued today because this bill is just not necessary. No one in this Senate would disagree. Someone who targets a pregnant woman is committing a horrific act which deserves special attention and specific serious consequences. Fortunately for this Legislature, Maine already has laws that appropriately address this heinous crime of violence against a pregnant woman. I know that. I sat on the Judiciary Committee six years ago when we debated this, when we crafted it, and when we passed it. We should be proud of these laws that we already have. They provide accountability and clarity without pulling some lawmakers into the debate about abortion and fetal viability and they protect pregnant women without taking the risk that the laws supposedly passed to protect them will be used to jail and prosecute them for the choices they make while pregnant. In 2005, after much discussion by stakeholders and lawmakers, the Motherhood Protection Act was passed into law. We created a new crime of elevated aggravated assault on a pregnant woman. A Class A felony punishable by up to 30 years in prison. Second, in all other crimes in which the victim was pregnant judges must assign special weight to the objective fact in determining the sentence. We don't take these things frivolously. This is extremely serious. Current statute recognizes that pregnancy is a particular condition that deserves recognition and ensures the perpetuation of appropriately serious consequences. Perpetrators are not going to attack our pregnant women in the state of Maine without being held accountable by the most serious sentences that we have on our books. Our laws punish offenders while still protecting a woman's privacy and confidentiality in personal health decisions. They provide clear tools for law enforcement, prosecutors, and judges that cannot be misinterpreted or misused against the very victims they claim to protect. In testimony at the hearing in Criminal Justice and Public Safety there was no suggestion by the Judiciary, by the prosecutors, by the advocates for domestic violence, or victims that current law is inadequate in either their instruction or level of punishment.

You know there is an old saying here in Maine; if it ain't broke, don't fix it. I haven't heard anything to tell me in committee and in hearings, talking to DAs and talking to prosecuting attorneys, or talking to anybody in the Judicial Branch that something's broken here. We should leave this law as it is because it works. It's plain and simple. If nothing is broken, don't fix it. If it was broken I would have heard about it. You would have heard about it. We would all have heard about it. No DAs or prosecuting attorneys have come to me, nor have they come to

the Criminal Justice Committee, to testify that something is broken and that we needed to do something more. It works without creating separate legal rights for a fetus that could be used to promote religious beliefs about abortion and it works without dragging lawmakers or law enforcement into the quagmire of debating when life really begins. I am a Catholic. My church says one thing. As John Kennedy said many, many years ago, he wasn't being elected to represent his religion; he was being elected to represent the people. I stand here today representing the people. Not only the people of my district but, I believe, the majority of people in the state of Maine. There is nothing broke. There is nothing that needs to be fixed. This bill certainly doesn't do it. When law enforcement, prosecutors, and judges tell us, all of us, that there is something broken then we will fix it. Today that is not the case. Ladies and gentlemen, I hope we will all be representing the people of the state of Maine, doing what the prosecutors have asked of us, doing what the judges have told us is working, do what we find necessary and vote Ought Not to Pass on this motion. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Snowe-Mello.

Senator **SNOWE-MELLO:** Thank you Mr. President. Ladies and gentlemen of the Senate, I stand here today to speak in support of L.D. 1463, An Act Regarding Offenses Against an Unborn Child. The law is critical in allowing justice its rightful place. In my opinion, and the opinion of many others, current law is not perfect. If it was perfect I would not be standing here testifying in support of L.D. 1463. Under the current law, An Act to Protect Motherhood, a judge is allowed to take into consideration the death of an unborn child as an aggravated condition. Therefore, a judge is given discretion to lengthen a sentence. The current law does not allow a judge to acknowledge two crimes and, thus, two victims. This law is weak because it marginalizes the relevance of concurrent sentences. Lengthening sentences is punishment. Concurrent sentences recognizing multiple victims is justice. Punishment should accompany justice, not replace it. There is already a federal law that was passed in 2004, Unborn Victims of Violent Acts, that does recognize the unborn as a crime victim for purposes of homicide or feticide. This law was passed in the Senate by a 61 to 38 vote and supported by pro-choice Senators Collins, Daschle, Landrieu, Reid, and Rockefeller. All of these Senators have consistently and aggressively defended a woman's Constitutional right to choose. Yes, they recognize that securing justice for unborn victims and their families in no way compromised or threatened Roe versus Wade. As the good Senator from Penobscot, Senator Plowman, said some opponents of this bill may try to argue that it will conflict with Roe versus Wade. However, there are 36 other states, as was mentioned before, the two most recent being Massachusetts and New York, that also recognize the human fetus as a legal victim of homicide and they often recognize other violent crimes such as assault and manslaughter. Both federal and state courts, including the Supreme Courts of California, Pennsylvania, and Minnesota, have rejected the arguments that this law violates Roe versus Wade. I urge my fellow Senators to vote in favor of justice for the unborn victims of violence. Please vote to pass L.D. 1463. Let's join the other 36 states. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Thomas.

Senator **THOMAS**: Thank you Mr. President. Ladies and gentlemen of the Senate, as a just society we have an obligation to those who are defenseless and those who are innocent. There is no one who is more innocent or more defenseless than an unborn child.

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

Senator **THIBODEAU**: Thank you Mr. President. I would like to pose a question through the Chair to anyone who may answer.

THE PRESIDENT: The Senator may pose his question.

Senator **THIBODEAU**: Thank you Mr. President. In December 2004, in northwest Missouri, we all remember there was a heinous crime committed on a pregnant lady. The perpetrator actually attacked the lady and removed the baby, the unborn baby, from this lady's womb. I'm curious, for anybody that could help me understand, if this crime had happened in the state of Maine and during this attack this unborn child, I don't want to say died, died, what would have happened? Are there laws to protect this unborn child in the case of this attack? What is the sentencing?

THE PRESIDENT: The Senator from Waldo, Senator Thibodeau poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Penobscot, Senator Plowman.

Senator **PLOWMAN**: Thank you Mr. President. I'd like to try to respond to the question. An unborn child is not a child until they draw their first breath. If the child had drawn his or her, I don't remember which, first breath than that child would have all the full protections of the U.S. Constitution and the penal code. If that child was killed during the removal, in the state of Maine, then that action would probably get an aggravated sentence and it probably would have been weighed heavily. The difference between that child being removed and taking a breath and that child being removed and having been killed in the process means, in the state of Maine, there would be no second victim. There would be an aggravated sentence for killing the woman. If the mother didn't die there would be an aggravated assault or attempted murder charge. If the baby died, that's a good question. I don't see that there would be any way of accounting for that unborn child.

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

Senator **GERZOFSKY**: Thank you Mr. President. In 2005 we passed a law, the Motherhood Protection Act, which would have mandated the most serious punishment in the state of Maine. A person would be charged with a Class A crime. That person would have been sentenced to a minimum of 30 years, the same as murder of anything else. Fetus or, in my mind, a baby is what I hold in my arms, but that person in 2004, would it have happened in Maine in 2005, would have come under our Motherhood Protection Act and would have gotten the most serious punishment that the state of Maine has to hand out. A Class A crime. You don't get any higher than an A. We don't have A plus.

When you don't have something higher than A, A is where to go. The sentence for A will take in meditating circumstances. If you want to talk about cutting open somebody's belly and taking a fetus out of it, that's going to aggravate the judge, the jury, and everybody else in the state of Maine and we're going to have an aggravated sentence. We passed the law in 2005 that would have handled this. The person would never have seen the streets of Maine again. Thank you very much.

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

Senator **DILL**: Thank you Mr. President. May I ask a question through the Chair?

THE PRESIDENT: The Senator may pose her question.

Senator **DILL**: Thank you Mr. President. We all were given a gift, apparently at the behest of Senator Mason, The Biology of Prenatal Development cd, which I checked on line. It costs about \$30. I'm sure, like all my colleagues, we'd like to thank the appropriate person. I'd like to know who bought us these videos?

THE PRESIDENT: The Senator from Cumberland, Senator Dill poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Penobscot, Senator Plowman.

Senator **PLOWMAN**: Thank you Mr. President. First of all, Mr. President, using a prop is not appropriate.

THE PRESIDENT: The Senator is correct. The use of props is prohibited in the Senate. The Chair recognizes the Senator from Lincoln, Senator Trahan.

Senator **TRAHAN**: Thank you Mr. President. Ladies and gentlemen of the Senate, I don't rise to have a debate about abortion because to me this has nothing to do with abortion. I just wanted to put on the record what my concerns are. I was here when we passed the law that was referenced earlier in the discussions around aggravated assault. I had a problem with it then, although I did support it, and the problem exists today. I do not find my position in religion or any other area. I find it just in commonsense. I'm going to propose to the Senate, if they could answer for me a simple concern. If an individual attacks a woman who is obviously pregnant and they kill the child, it is in my mind illogical that this is an assault. It is illogical that somehow that is a beating or something that you go to the hospital to get repaired. An assault, I don't believe it's an assault. I believe it's a killing when the child dies. My problem is that there is no recognition of the fact that a life was lost. For me, my concerns are not around abortion because when I brought my concerns to people that were lobbying against this bill because of their concerns around abortion my first words were that we have brilliant legal minds that can write a law that recognizes this separate killing, not an assault. Why don't we try to craft something so that we can all feel comfortable, so that there is recognition that a life was lost in the assault? All I got was a blank stare. My question for this Chamber and for those on the other side of the issue is, if we can get past this concern around this impacting a woman's right to choose, shouldn't each and every one of us be looking at what

actually happened to that fetus inside the womb? For me, I can never swallow the concept that a killing is an assault.

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

Senator **MASON:** Thank you Mr. President. May I pose a question through the Chair?

THE PRESIDENT: The Senator may pose his question.

Senator **MASON:** Thank you Mr. President. I'd like to know if anybody in the Body could answer a question. Is it legal to execute a pregnant woman in the United States?

THE PRESIDENT: The Senator from Androscoggin, Senator Mason poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Penobscot, Senator Plowman.

Senator **PLOWMAN:** Thank you Mr. President. The answer to that question is no. A woman who has received the death sentence and is pregnant, under federal and state law, the execution cannot be carried out while she is pregnant. There is no point of view taken by Congress when they passed this law as to whether abortion was appropriate or not. What they decided was a child in utero is not responsible for the crimes of the mother. We've gone the extra step to make sure that when we, as a society, take a life we only take one. Thank you, Mr. President.

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

Senator **DILL:** Thank you Mr. President. Men and women of the Senate, this bill is an assault on a woman's right to autonomy and privacy in medical decisions. I think everyone here would agree that domestic violence, heinous crimes against women and children, and the criminal interference of bearing a child should be punished and punished severely. Maine, as we know and as we've heard, has in the recent past met this challenge of balancing our goals of punishing perpetrators with the privacy and autonomy of a woman making medical decisions by passing the statute that makes it an aggravated elevated assault and also enhancing sentencing when there is a pregnant woman involved. We have a law. The law is sufficient. What this bill attempts to do is to drive a wedge between a woman and her fetus. I use the term fetus because that's the term. The proposed bill is essentially codifying a very highly charged political term. I don't think that's appropriate. I don't think it's a good idea. No where in the scientific evidence is the word unborn child defined. This bill not only is an assault on a woman's autonomy and right to privacy but it's highly offensive, in my view, that a woman isn't even included in the definition of person. I don't think we want to go down the road of politicizing a woman, driving a wedge between her and her fetus. In the states that have passed these laws, while there are exceptions, women have been charged, arrested, and brought up on charges for exercising her right to have a cesarean section, for falling down the stairs, or for seeking treatment from their healthcare provider for substance abuse. Mr. President, by threatening pregnant women with criminal prosecution for their choices, L.D. 1463 subjects a pregnant

woman to unprecedented level of government intrusion. I urge you to reject the pending motion. Thank you.

The President requested the Sergeant-At-Arms escort the Senator from York, Senator **COURTNEY** to the rostrum where he assumed the duties as President Pro Tem.

The President took a seat on the floor.

The Senate called to order by President Pro Tem **JONATHAN T.E. COURTNEY** of York County.

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

Senator **WHITTEMORE:** Thank you Mr. President. I don't think I have to remind the ladies and gentlemen of the Senate that this is a serious issue. I will make it brief. I would like for us all to open our minds up for just a second and consider ourselves as an expecting parent. The glorious day is about a month away. You leave for work and your wife experiences a home invasion. She, of course, is assaulted and in the process your child, your expected child, is murdered. The invader is going to be prosecuted for the invasion, but your unborn child who has been murdered, as the Senator from Cumberland said, the judge would certainly take into consideration the brutality of the invasion, but the murder of the child would not be acknowledged as such. That's what this bill intends to acknowledge. I strongly urge you to vote in favor of L.D. 1463. Thank you.

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

Senator **ALFOND:** Thank you Mr. President. Ladies and gentlemen of the Senate, L.D. 1463 is about abortion, but I also have concerns that this bill is more than just abortion. You've heard from the good Senator from Penobscot that the AG's Office says that these kinds of attacks on pregnant woman won't happen in Maine, that there is specific language in the proposal to assure that this doesn't happen. However, looking across the country, these were the same arguments that supported the passage of similar laws throughout the country, laws that regardless of their explicit exceptions for pregnant woman have been used to go after the very women these laws claim to protect. These laws have been used to justify doctors violating pregnant women's confidential doctor/patient relationships to report them to the police. That's because this bill would create separate legal rights for a fetus. In doing so, it creates the potential for a conflict between the rights of a fetus and those of a pregnant woman. The result is that women have been arrested, imprisoned, and prosecuted for violating newly created rights of vaguely and non-medically defined "unborn child". Tragically, there has been case after case of women around the country arrested or prosecuted for engaging in, or being perceived to have engaged in, actions that may have harmed the fetus she carries. Yet it is actually those women engaging in high risk behaviors during pregnancy who need reassurance that they may seek medical care without risk. If L.D. 1463 passes the message to pregnant women will be

very clear. They should be wary of disclosing drug or alcohol abuse, domestic violence, or even suicidal thoughts. They should hide these behaviors from their healthcare professionals and possibly even hide domestic violence or abuse from police for fear that these behaviors or relationships will be used against them and the result could be tragic. Their choices, these pregnant women, have been taken away from them. Pregnant women that are most in need of confidential medical care will be afraid to speak to their doctors. If this bill passes we will be sanctioning an unwarranted and unnecessary government intrusion into the patient/physician relationship that will harm a doctor's ability to provide good medical care to pregnant women. This would, consequently, put the health of a woman and her pregnancy in danger, exactly the opposite of what this bill seeks to do. By legally separating a woman from her fetus, this bill creates an unworkable conflict and sets up a pathway for criminalizing abortion and overturning the crucial Constitutional protects of Roe versus Wade. We should not undo today all of the careful consensus laws enacted less than a decade ago by our predecessors. Our laws are balanced. They protect a woman's privacy and autonomy with the state's interest in punishing those who target pregnant women with violence. Finally, Mr. President, the good Senator from Somerset asked us to think about having a pregnancy and think about your wife being a month away. Well my wife is two months away with our first child. I have thought a lot about this bill and I will not be voting to accept the Majority Report. Thank you, Mr. President.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Craven.

Senator **CRAVEN:** Thank you Mr. President. Men and women of the Senate, I also stand in opposition to this motion. I think this bill is designed specifically to politicize pregnant women. I'm the mother of two grown children and the grandmother of three children. They are their children. Pregnancy and waiting for a child, no matter the joy it brings, is an intense and emotional time. However, if a pregnant woman is in an abusive relationship it causes stress, danger, and uncertainty for the woman. The Motherhood Protection Act, passed in 2005, addresses the crime that a pregnant woman faces from the violent crimes. Maine recognizes, as a Class A crime, elevated aggravated assault on a pregnant woman and it is punishable by up to 30 years in prison. I lost a pregnancy once in the third trimester. It's a most painful and emotionally rehabilitating experience. I can't imagine any family having gone through this loss and pain and then having the wounds opened up again by going through it the second time through the court process and their devastating pain and awfulness of their situation. I ask you not to add another layer of needless pain for families who are suffering mightily already. Thank you, Mr. President.

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

Senator **GERZOFSKY:** Thank you Mr. President. Ladies and gentlemen of the Senate, I don't often read from prepared statements. I'm not going to this time. I think it's important to read the current law, Title 17A, section 208C. Elevated aggravated assault on a pregnant person is a Class A crime which specifies that a person is guilty of the crime if that person intentionally or knowingly causes serious bodily injury to a person

that person knows or has reason to know is pregnant. For the purpose of this subsection, serious bodily injury includes bodily injury that results in the termination of a pregnancy. That's the way the law is written. I was on the Judiciary Committee, as I mentioned earlier, when that was written. Here's something else. The definition of an unborn child is a political definition instead of one crafted by medical experts based on science and fact. The definition is vague and could be used to suit individual biases. The question of when life begins will never be resolved because it depends on ones religious beliefs. It's also law. When we talk about unborn children, or an unborn child, that is not in law. Fetus is in law. We're not debating religion, then let's not use those terms because I don't believe that's what we're here to do today, debate ones religious beliefs. I think we're here today to craft good law. As I have said before, I haven't heard from anybody that practices that good Maine law or that hands out the sentences for those good Maine laws or tries and convicts people of those good Maine laws that this law that we currently have on the books isn't sufficient. Yet I've heard from those same people, those very same people, that this bill we're talking about today will not create good Maine law. It will create good Maine dissension and will be in court forever trying to figure out what words mean. Ladies and gentlemen, please vote Ought Not to Pass on this bill in front of us today because it really isn't going to do us the good that the bill sponsor would intend it to do.

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

Senator **DILL:** Thank you Mr. President. Men and women of the Senate, I just want to reiterate that this bill is in fact about abortion and that's why the lead proponents of this bill include the Catholic Church and Maine's Right to Life Committee and the Christian Civic League. We've heard some hypotheticals that are clearly disturbing and I would just like to present to this Body another hypothetical. Imagine you are a young girl or a woman and you are perusing the landscape and you see that in Saudi Arabia women can't drive, in Egypt women are being subjected to virginity tests, in Afghanistan women are not allowed to go to school, and in the Congo and other parts of Africa mass political rapes are taking place. Here in the United States women have rights. We have Constitutional rights. Nonetheless, there is a high degree of violence against women. There is a high and heinous level of domestic violence and women, to this day, make roughly 70¢ on the dollar. In our struggle as women it's incredibly important that the politicization of making our pregnancies political is extremely dangerous and will erode our autonomy and our rights to make private medical decisions. When you think about this law, think of it in the context of not just a heinous crime against a woman and her fetus, but in a woman's constant struggle to protect what rights she has to autonomy and to making private medical decisions. Thank you.

THE PRESIDENT PRO TEM: The Chair recognizes the Senator from Androscoggin, Senator Mason.

Senator **MASON:** Thank you Mr. President. Men and women of the Senate, I just wanted to stand up one more time because I think this bears repeating. This bill specifically exempts the pregnant mother from any prosecution. The option of a woman having an abortion, that plays no part in this bill. That option is still available to her. Also, previous speakers have said that this

is a debate between those who have religious convictions and those who do not. I think that this is incredibly disingenuous because there are many people out there who are of no faith that see an unborn child as just that, an unborn child. That is just something that I think is very unfairly categorizes it as a pigeonhole of religious against non-religious. This bill is very simple. Other speakers have also said that the reason that we shouldn't do anything is because the DAs didn't testify for it and all this and that and whatever. I can tell you who did testify for it. The person who helped present this bill, Mrs. Sargent's sister, the sister of the woman who was brutally murdered and the unborn child who lived for 24 hours after that woman died. She was there and she absolutely, 100% said in the Criminal Justice and Public Safety Committee that she is pro-choice. More than once, actually. In this Body we sometimes think the reason that people don't show up for public hearings is because they don't care. I would say it's because of the timing of our public hearings. Some of them are at 10 o'clock in the morning. People are working. I would just caution this Body to know that just because someone didn't show up doesn't mean they don't care. Thank you, Mr. President.

On motion by Senator **ALFOND** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **BARTLETT:** Thank you Mr. President. Make no mistake that L.D. 1463 is part of a battle over Roe versus Wade and woman's fundamental right to choose. When Roe versus Wade was decided it specifically stated in the opinion that if the suggestion of personhood is established the appellant's case of course collapses for the fetus' right to life would then be guaranteed specifically by the amendment. Since Roe versus Wade many states around the country have worked to separately define the personhood of an unborn child to go to that argument in Roe versus Wade. When we talk about this legislation this is clearly part of an effort to undermine a woman's fundamental right to choose. That is what we are debating today. L.D. 1463 provides specific language that would protect a woman from prosecution for conduct that may affect their unborn child. The problem, however, is that around the country other states have tried providing this protection and it hasn't worked. In South Carolina, for example, a woman who suffered a miscarriage was arrested and charged with homicide by child abuse even though the prosecutor admitted there was no evidence of drug use or other inappropriate behavior. In California a woman was charged with second degree murder under their fetal homicide law after suffering a stillbirth. In Texas, immediately following enactment of a similar law, one local prosecutor issued a letter to all physicians in her county notifying them that based on the prosecutor's clear reading of the statute, despite its explicit protection of women for their conduct towards their unborn child, it was now legal for anyone to report a pregnant woman who was using or had used illegal narcotics during pregnancy for potential prosecution under this law. Make no mistake; there is no legitimate protection for a woman once you go down this road. We have a good law in place that balances the rights of everybody involved and makes sure that if somebody harms a pregnant woman that there is a heightened penalty for that because of the harm caused. Going

down this road opens the door for prosecution of women when they ought to be getting treatment. It is a step towards undermining Roe versus Wade, both at the national level and here within the state of Maine. This is the wrong thing to do. It's the wrong time to do it. I hope you'll join me in voting no. Thank you.

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

Senator **PLOWMAN:** Thank you Mr. President. Men and women of the Senate, I'd just like to reiterate that in all of the states where the statutes were challenged every one of them rejected the claim that it overturned Roe versus Wade and granted personhood. Our law is the only law that our Attorney Generals can comment on. I asked them where things might have gone wrong in the other states and they said it was not something that they could review because they would have to know the criminal statutes that apply. With our laws and this proposed statute the woman could not be charged. The definition of the person who may be charged cannot include the woman. Currently in Maine women are brought to the attention of authorities, typically DHS, who will work with the woman to make sure that she is trying to be as healthy as possible. I don't know, that's administrative. All of the things that we talked about where there is intervention in the state of Maine are administrative, not criminal. The only thing that the AG could comment on is our proposal, not others. I'm willing to read all of the court decisions and find that there are protections there. I'm willing to look at the law as written because I think that it was very well written. I'm willing to bet that even agnostics mourn the life of their child, their unborn child. Justice for one does not equal justice for others. Women who mourn the loss of their unborn child will not be able to get the kind of justice that they will in states where this has been upheld. As for an attack on Roe versus Wade, that does happen every day all over the place. Those are turned back consistently. Consistently any law that is found to be unconstitutional does not go forward. I imagine this law would be challenged as well, but when you are looking for justice the Motherhood Protection Act didn't do it. As for a 30 year sentence, if you've ever heard of good time you know that good time means one-third of the sentence goes away. That's only 20 years. It's not the length of the sentence that women are looking for. It's the acknowledgement, the acknowledgement by society that pregnancy is more than a condition and it deserves more attention than becoming an aggravated sentencing factor. Thank you, Mr. President.

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

Senator **BRANNIGAN:** Thank you Mr. President. In listening to this whole debate, it just becomes obvious that it is hypocritical. If you are determining this term unborn child, I believe somebody said back to implantation. I've studied this because I had to years ago when implantation versus fallopian tube pregnancies and so forth. If you are saying that this unborn child is a person then why shouldn't the mother be prosecuted? I've dealt with this. I had a woman who killed three of her children. I've dealt with this. If she is exempt then why? If she tries to fall down stairs or beat herself or do all the things that some people in desperation do, then why not? You're trying to define what this zygote, this protoplasm, or this growing, wonderful infant is then you are saying that if

something happens to this, whatever you want to call it at various stages, you are saying it is a person, then you are saying that anyone who harms it is guilty. I don't understand this exemption for the mother before birth but not after birth. There's something wrong here. This is an effort that should not be done in this Body. I was going to vote against it before, but I'm going to vote with enthusiasm now.

THE PRESIDENT PRO TEM: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Mason to Accept the Majority Ought to Pass Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#173)

YEAS: Senators: COLLINS, JACKSON, MARTIN, MASON, MCCORMICK, PLOWMAN, RAYE, SAVIELLO, SHERMAN, SNOWE-MELLO, THIBODEAU, THOMAS, TRAHAN, WHITEMORE, THE PRESIDENT PRO TEM - JONATHAN T.E. COURTNEY

NAYS: Senators: ALFOND, BARTLETT, BRANNIGAN, CRAVEN, DIAMOND, DILL, FARNHAM, GERZOFSKY, HASTINGS, HILL, HOBBS, KATZ, LANGLEY, PATRICK, RECTOR, ROSEN, SCHNEIDER, WOODBURY

EXCUSED: Senators: GOODALL, SULLIVAN

15 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 2 Senators being excused, motion by Senator **MASON** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **FAILED**.

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED**.

Sent down for concurrence.

Senator **PLOWMAN** of Penobscot was granted unanimous consent to address the Senate off the Record.

Senator **ALFOND** of Cumberland was granted unanimous consent to address the Senate off the Record.

RECESSED until 2:00 in the afternoon.

After Recess

Senate called to order by President Pro Tem **JONATHAN T.E. COURTNEY** of York County.

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:

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act To Help Maine's Employers To Recruit Skilled Workers by Expanding the Availability of the Educational Opportunity Tax Credit"

H.P. 872 L.D. 1174
(C "A" H-267)

In House, May 26, 2011, **PASSED TO BE ENACTED**.

In Senate, May 26, 2011, Bill and accompanying papers **COMMITTED** to the Committee on **TAXATION**, in **NON-CONCURRENCE**.

Comes from the House, Bill and accompanying papers **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

On motion by Senator **TRAHAN** of Lincoln, Bill and accompanying papers **INDEFINITELY POSTPONED**, in concurrence.

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

PAPERS FROM THE HOUSE

**Pursuant to Statute
Department of Health and Human Services**

Representative **STRANG BURGESS** submitted the Report of the **Department of Health and Human Services**, pursuant to the Maine Revised Statutes, Title 5, section 8072 asked leave to report that the accompanying Resolve, Regarding Legislative Review of Portions of Chapter 101, MaineCare Benefits Manual, Chapter III, Section 50: Principles of Reimbursement for Intermediate Care Facilities for the Mentally Retarded, a Major Substantive Rule of the DHHS (EMERGENCY)

H.P. 1164 L.D. 1581

Be **REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and ordered printed pursuant to Joint Rule 218.

Comes from the House with the Report **READ** and **ACCEPTED** and the Resolve **REFERRED** to the Committee on **HEALTH AND HUMAN SERVICES** and ordered printed pursuant to Joint Rule 218.

Report **READ** and **ACCEPTED**, in concurrence.