

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Twelfth***

***Legislature***

OF THE

STATE OF MAINE

**VOLUME II**

**SECOND REGULAR SESSION**

April 3 - April 16, 1986

Index

**SECOND SPECIAL SESSION**

May 28 - May 30, 1986

Index

**THIRD CONFIRMATION SESSION**

July 15, 1986

Index

**FOURTH CONFIRMATION SESSION**

August 29, 1986

Index

**THIRD SPECIAL SESSION**

October 17, 1986

Index

**FIFTH CONFIRMATION SESSION**

November 24, 1986

Index

reporting "Ought Not to Pass" on Bill "An Act to Prohibit the Promotion and Wholesale Promotion of Pornographic Material in the State of Maine" (I.B. 2) (L.D. 2092)

Signed:  
Senators: CARPENTER of Aroostook  
CHALMERS of Knox  
SEWALL of Lincoln

Representatives: ALLEN of Washington  
COOPER of Windham  
PRIEST of Brunswick  
DRINKWATER of Belfast  
MacBRIDE of Presque Isle  
LEBOWITZ of Bangor  
STETSON of Damariscotta

Minority Report of the same Committee reporting "Ought to Pass" on same Bill.

Signed:  
Representatives: CARRIER of Westbrook  
PARADIS of Augusta

(Representative KANE of South Portland - Abstained)

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Washington, Representative Allen.

Representative ALLEN: Mr. Speaker, Men and Women of the House: I move that the House accept the Majority "Ought Not to Pass" Report.

As you know, L.D. 2092 was referred to the Judiciary Committee without a sponsor because it is a voter initiated referendum question. The Judiciary Committee had three choices, we could either enact the bill as it was written without any amendments whatsoever, which two members of our committee chose to do, or we could put out a competing measure which the entire Judiciary Committee chose not to do or we could pass out the "Ought Not to Pass" Report, which we did. In effect, what we are saying is that this measure should be sent to the voters in November.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Paradis.

Representative PARADIS: Mr. Speaker, Men and Women of the House: This bill comes to us this afternoon as no surprise. We have long awaited this moment so we could deal with this issue here in this chamber.

Perhaps there might have been some of us that would have wanted to amend the bill but since it is an initiated bill, we cannot do that. We must deal with the issue that is before us the way that it is.

You have heard the quote, I am sure, from the great British philosopher Edmund Burke, "All that is necessary for evil to triumph is for good people to do nothing." Well, let me put this bill in that context to you this afternoon -- that to do nothing is to send the type of message to the smut peddlers across this country that Maine is an open state to that sort of garbage. To do nothing, I think, sends the worst form of message to the parents of runaway children who are led into this type of business, if you can call it that.

Everyone agrees that there is a problem with

pornography. I commend, in a very real way, the people who have brought this initiated bill to us. All politics aside, all rhetoric aside, there are some wonderful people who have brought a very important message to us today. Today, it is before us in this chamber.

I would ask you to stand on the side of decency, send a message loud and clear that we in this House do not stand for this type of unlimited pornography, unlimited garbage, in this state, that we are against it in its forms and that we can exercise our constitutional right given to us by the people when they approved of the constitution to enact this bill here.

I would urge you to vote against the motion before us and face this issue squarely and say that we are going to enact a major anti-pornography bill and stand behind the issue of decency.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Mr. Speaker, Men and Women of the House: I confess I was very reluctant to debate what is obviously an extremely emotional issue. The question of obscenity involves deeply held religious beliefs, beliefs concerning freedom of speech, beliefs concerning the proper role of government in people's private lives.

Public debate on this issue is going to take place one way or the other. If it goes out to referendum as we recommend, there is a long educational process on this bill which will take place and the public will have to deal with the issues which are proposed by this bill.

There are, I believe, strong reasons for not enacting this particular bill. I would like to discuss a few of them with you today. The reasons, as I see them, are basically summed up under four categories. First, the bill is not needed. Second, the bill, as drafted, has problems with it. Third, the bill is unlikely to be evenly enforced and fourth, it is probably going to be very costly to enforce.

You should recall that Maine, right now, has dealt with the issue of pornography in the past and has made a concerted effort to protect minors. Minors, of course, are those who cannot protect themselves and deserve and have received legislative protection.

I would like to detail for you a few of the laws that are presently on the books concerning obscenity and minors. These are all in Title 17, which is a criminal title.

Section 2911 - prohibits the dissemination of obscene material to minors.

Section 2912 - prohibits magazines being displayed to minors if there is obscene material on the cover.

Section 2913 - prohibits exhibiting obscene motion pictures to minors at outdoor movie theaters.

Section 2922 - prohibits sexual exploitation of a minor.

Section 2923 - prohibits dissemination of sexually explicit material to minors.

These laws carry substantial penalties -- many cases up to five years or more.

Frankly, another reason this bill is not needed is the success of the Portland Ordinance. You may recall that this initiated bill is based in part, although not entirely, on the Portland Ordinance. The Portland Ordinance was drafted by some of the

best legal minds in the state and has been found to be constitutional. If, in fact, a community has problems with obscenity, they have in place now a constitutional, well drafted ordinance that can be enacted and can solve a particular local problem.

In addition, there are certain problems with the bill itself. The Portland Ordinance is a civil bill, that is, the penalties are civil penalties. This bill provides for criminal penalties. It is a much more serious bill because it affects more than just sellers of material. There is a presumption in the bill, on Page four, that a person who possesses six or more obscene articles is presumed to possess them with intent to promote them. That could be a person having for example, six copies of Playboy in his possession. The presumption would be then that he is presumed to be a pornographer engaged in the promotion of pornography. That is a very serious presumption when you are talking about a year in jail as a possible penalty.

The third problem with this bill, it seems to me, it is unlikely to be uniformly enforced. The Portland Ordinance from what we can see, after the initial constitutional test, has not been vigorously enforced. The problems with enforcement are severe. The definition of obscenity depends upon community standards. Community is not defined in this bill. Is community the town in which the sale takes place for the promotion? Is community the county or the state? The bill is unclear as to that. Obviously, what one person considers to be obscene, another person may not. What is perhaps felt not to be obscene in one community may be felt to be obscene in another.

The difficulty with this bill then is that it is likely to be enforced against people who will not be sure what is prohibited and what is not. It will be enforced, not only what is considered against so-called pornographers, but also teachers and librarians who may possess material that would be considered obscene in one area of the state and not in another.

The final reason why I have problems with this bill is that I think it will be very costly to enforce and that, as I understand, has been the preliminary Portland experience.

The issue of whether something is obscene under community standards demands expert testimony in court. That means you have to hire someone who is familiar with that type of material. That quite often is a professor or a PHD. That is a costly procedure and it has to be undergone in virtually every single prosecution taken. It is going to involve confusing testimony of experts as to whether the book is obscene under community standards and that will cost the state a considerable amount of money which could better be used, it seems to me, in other pursuits.

For all of these reasons, the bill is not needed, it has serious problems with being over-broad and overly severe, that it will be unevenly enforced and it will be costly to enforce -- I think that we ought to support the "Ought Not to Pass" Report and I urge you to do so.

The SPEAKER: The Chair recognizes the Representative from Presque Isle, Representative MacBride.

Representative MACBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: My decision to sign the "Ought Not to Pass" Report was a difficult one for I

feel that obscene material, both in printed form and on TV, is creating many problems. However, 48,474 people have signed a petition asking for the privilege to vote on this issue in November. I do not feel the legislature should take this privilege away from them. I would hope that we would not interfere with the initiated referendum process.

I urge you to accept the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Hayden.

Representative HAYDEN: Mr. Speaker, Men and Women of the House: I rise today to speak to you, not as the Assistant Majority Leader but as the Representative from District 70, on this bill. I urge you to support the motion of the gentlewoman from Washington to support the Majority "Ought Not to Pass" Report on this L.D.

The reason that I rise to join the speakers that have spoken previously is to clarify some of the discussions that have surrounded this bill, both between us, the public and in the press.

One of the issues that has been discussed is whether or not we have a right in this legislature to either pass the bill or not to pass the bill, when the bill is a publicly initiated referendum piece of legislation such as this.

There really is a special legislative process, it is one that we have had in this state since 1909. I think it is important for us to understand just exactly what it is and what it is not.

In 1909, the people gave themselves the right to initiate a piece of legislation to make it law because they have voted for it. Incidentally, they also have the right to veto anything that we do. That also occurred in 1909. The point of that process is to give the people a say. The people have a say when they vote, first by referendum signed by as much as 10 percent of the people that voted in the last gubernatorial election. In this case, 48,000 signed a petition saying that they would support this piece of legislation and there should be a vote on it.

It has been suggested that once that happens, we don't have a right to pass it ourselves. Although I am opposed to this piece of legislation, I think it is important to clarify that point. There isn't any question that we do have a right to enact this legislation now rather than have a referendum. I think it is important that it be stated clearly and that the reasons for it be stated clearly. By this process, the people have a right to have legislation. We can enact it or we can disagree with it and have the referendum process.

There has been some debate as to why some people may consider enacting it. In my opinion, if we chose to enact this legislation because we really knew in the back of our minds what the people of this state really thought, I think that would be a terrible mistake. I don't think that there is any chance that that will happen.

If we looked at this legislation, studied it, debated it and said we agreed with it, then we would be justified in voting for it. In my opinion, in the end, we will not do that.

These are the reasons why. This bill was compared at the time of the petition process and during the debates we had before the Judiciary Committee as similar to the Portland Ordinance, which basically applies the community standards of what is obscene, to the law. Well, it is not the Portland Ordinance, ladies and gentlemen. It is very

important to understand exactly what it is that we are voting on here. We are voting on a piece of legislation which, unlike the Portland Ordinance, would make it a crime to be associated to promoting pornography. It is a criminal statute. If there is a fine line as to what is pornographic and what is not pornographic, if the person that is living in that world misjudges that line, he goes to jail, ladies and gentlemen.

Pornography makes me sick. I don't want my daughter to have anything to do with it. I don't want any of the children that I represent to have anything to do with it. It makes all of us sick. We have in our state laws today, a way to do something about that. The Portland Ordinance that was passed went right up to the State Supreme Court where it was upheld. What that said is, there is a statute upholding that ordinance. There is a statute that individual towns can enact, if they choose, to control what it believes is pornography within its boundaries.

It is sort of interesting that there hasn't been a real tidal wave of support of other towns jumping on this. As a matter of fact, even the towns surrounding Portland, who you would have thought might have had the best instinct to support this legislation, have decided against it, even though they may have had the argument or the thought or the fear that, with these prohibitions in Portland, these pornographers are going to come across our borders. This is speculation on my part, but my guess is that that has something to do with this referendum process. If the Portland Ordinance was upheld and all the towns looked at it and in their wisdom said, this is the kind of legislation we want, it is the kind of legislation that my neighbors want, there wouldn't be the need for this referendum process. That didn't happen. So, now we are being asked to look at this legislation.

Let's get back to the referendum process. I think it gives us a very special invitation. It is an invitation that we didn't have in 1909. When the referendum process was first started, the people that signed that petition could force a public election, no matter what it was that was being voted on. In 1980, there were some amendments, part of the new idea that came in then was to give the legislature an opportunity to do its duty by reviewing legislation that has come through the referendum process. If it disagrees with the referenda, the people still have a right to vote but the people now are given the benefit of our thoughts on this legislation. Anyone that suggests that we are being irresponsible by tampering with the process either way is simply wrong.

If we look at the substance of this bill, a bill that makes this activity a crime, a bill that takes the decision essentially out of the hands of the local town officials, who have that authority now, that is a bad thing to do. This referenda process was passed around by people that are just as offended as you or I by pornography, by the effects it has on our communities and particularly our young people. I don't doubt their motives but if this legislation becomes the law, a fear that I have is that this is a tool in the hands of a skillful politician, a skillful minister, a skillful public citizen, to breed fear into a community, to breed the fear of accusation into someone that does something that may be against our standards. We have tools, our neighbors have tools, to deal with this problem now.

It is tempting to march into step and to follow through with this piece of legislation because maybe we could kill this beast twice. We have got the tools now to kill the beast. We can decide to do it in our own towns. It is for that reason that I think our constitutional duty is to tell the people that, although they have a right as we do to vote on this in a referendum election, we think it is a bad idea.

In spite of what people may say, our opinions collectively as a legislature, make a great deal of difference to the people who vote for us. We have been given the invitation to say whether or not we think this is a good idea or a bad idea. Collectively, we think pornography is bad. I think in the end, collectively, we will think that this bill, although well intended, doesn't serve the proper purposes of dealing with the problem. It is for that reason that I urge you to support the Majority Report in telling the people of the state, when they vote on this piece of legislation, that we think it is an unwise piece of legislation.

The SPEAKER: The Chair recognizes the Representative from Damariscotta, Representative Stetson.

Representative STETSON: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to add a couple of points to the debate, particularly that presented by the Representative from Brunswick, Representative Priest, because sitting on the Judiciary Committee with Representative Priest, I think we found ourselves in this difficult position -- that here is a piece of legislation that obviously needs an amendment to stand the test of validity. Yet, the Judiciary Committee's hands were tied, we could not amend it. It was presented as a package proposed by the people, by referendum vote, and we could not change a word of it or a line of it to improve it. We either had to take it or leave it.

In my own experience as a prosecutor in the federal system, I have handled the obscenity laws at the federal level, both for the importation of obscene material, and in the District of Columbia with laws pertaining to obscene matter. I can tell you that these are very difficult laws to enforce and, unless they are very carefully crafted, they do more harm than good because they do not accomplish what they set out to do.

I just wanted to make the point that had we been given the opportunity to amend the law and to improve it and to make it effective, possibly we could have done something effective with it. But, at this point, I would have to agree with Representative Hayden that we should urge the electorate to reject it in its present form because we don't think it is properly drafted and to enact it by referendum would be a terrible mistake as well. Therefore, I urge you to accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: I have a few questions if I may.

If this bill is drafted in such a way, which I understand, and I have read the bill, that it is almost unworkable, in my opinion, would it not be better to enact it ourselves and later on amend it after it has been enacted? If the public had the questions put before them and were they to enact it, I believe we would be hard pressed to change it, to amend it in any form. That is my opinion. Am in

correct in my assumptions?

The SPEAKER: Representative McHenry of Madawaska has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Mr. Speaker, Ladies and Gentlemen of the House: I would hope and the Judiciary Committee I am sure would agree with me, although they can speak to it if they wish, that we would not enact unworkable legislation in any case. This is going to be voted on no matter what we do unless we enact it as is. It is certainly my preference and I think the preference of the committee to let it go to a vote. It seems to me that we are able, in any case, always to change an unworkable law once it is in law and make it better if we have to.

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At this point, the Speaker appointed Representative Gwadosky to act as Speaker pro tem.

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The House was called to order by the Speaker pro tem.

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The SPEAKER PRO TEM: The Chair recognizes the Representative from Westbrook, Representative Carrier.

Representative CARRIER: Mr. Speaker, and Members of the House: I have signed the "Ought to Pass" Report and I suggest to you that when your vote comes up, you use good common sense and good judgment and support what is good for the people of this state.

I do not profess to be an expert on pornography, I know I am not and I don't want to be. I can only say to you that everybody in here knows what pornography is. We don't have to apply a test as suggested by some newspapers such as who is the average person and what does he like. We don't have to describe to anybody what prudent interests are, all of you know what it is. You know what pornography is -- whether it be in books or on film or wherever, you know what pornography is. Through the years, you have been taught that this is not a way of life. It shouldn't be a way of life and we should not promote it. We should do something or try to do something about it. Maybe this is not the best way to do it but we are trying to do something about it.

In this House a few years ago, we passed a law to let the people know that we had our children's interests in mind and that the sellers of these magazines had to cover up the magazines (up to the neck or wherever). They not only had to do that, which I think was very commendable for this House to pass, but we also put in there the fact that these magazines had to be taken off from the first or second shelf so that young children could not reach them. I think that was great too.

I really believe that if you want to promote character and discipline, this is the way to go. This bill will give us an instrument to get rid of some of this pornography. I am wise enough to know that the people who want it, will get it. If it means that much to them that they want to live by

this standard of living and want such pornographic pictures or whatever you want to call it, if that is what they want, they will get it one way or the other.

Let me confess to you, this is a very poor way to talk about pornography. I really gave some thought to ask the Speaker to shut off the microphones and I would give you a dissertation on pornography. We would talk right down to the level where it is, right down to the trash and the filthy place where it belongs. In consideration of the young people that are growing up in this state, they don't need this stuff, but they get it everywhere. That is what they go for all the time. All it leads to is trouble. It leads to young people having abortions, it leads to sterilization, it has led to these lesbians and the other nice bills that we have had in here promoted by the women's issues. The women don't want this stuff. They don't want to have their picture in such books that are around everywhere. Do they? Well, you ask some of these women lobbyists over there -- they don't want it in there but they haven't got the guts to come up here and say so. They should, but they don't.

Something was mentioned about the need, we do need this legislation, and it's drafted as properly as anybody can draft it. But, how are we going to enforce it? The enforcement part of it is very simple. It is held in the hands of all of us in this House and by all the people out there -- all you have to do is not buy the things. If there was such a process where you could say they can only charge 50 cents for such a book, you wouldn't even have a chance to buy one of those books. I don't want a chance and I know most of you don't either, you wouldn't even buy it. People spend \$8, \$10, \$20 for some of this filth. It is not good. I am sure that a husband wouldn't want his wife to ponder on that all day and the woman wouldn't want the husband to look at that all night, or all week or forever and ever.

I think that we have to do something. I don't think that we should make it so the people have access, especially the young ones, to these books which only promote a filthy minded public by a bunch of sick minded perverts. That is what they are. Is there a normal standard applied to us humans as human beings? Can you tell me of any doctor that ever prescribed to you or to any of your family or your friends to go get a book like that -- this will be your cure? Is this the way it is? Of course it isn't. You have faith in the doctor, that is why you go to him, because you want to stay alive. Well, you have to stay alive with a clean mind as well as a clean body.

I suggest to you that we take a good stand. I think the people out there, as far as I am concerned, will vote for this anyway if you send it to referendum. We have a duty here today, we can handle it right here. We can handle it right here by not making such books and such filth. I am not familiar with what is going on but I do know it is there. I can only ask you to use your good sense and vote against the present motion so we can make the motion to accept the present bill. If that doesn't do it, then it will go to referendum. I truly believe that the people of this state have enough common sense, decency, they want a good life in this world and they will only get it by getting away from some of this pornography. I submit to you that you should vote against the present motion and I ask for a roll call.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Portland, Representative Baker.

Representative BAKER: Mr. Speaker, Men and Women of the House: I just want to say a few words about this issue, primarily because I followed this issue pretty closely when it came to the vote in Portland.

I would like to refer a little bit to a statement made in the June 14, 1977 House Record in reference to the very same bill that the good Representative from Westbrook, Representative Carrier, was talking about in trying to ban nudity from being displayed in magazines. Representative Burns had stated that we purposely skirted the definition of obscenity because it is so difficult to nail down and so difficult to prove.

In 1698, Jeremy Collier wrote a short treatise on the profanity and obscenity on the English stage. It was to effectively destroy English comedy for approximately 100 years. I bring this up because there is a section of the bill which is of particular concern to me. The section of the bill deals with the term performance.

I was in a play some time ago at the University of Maine in which several people walked out when the language became somewhat strong. I suggest that even though the play itself would not be considered pornography by our standards, it may have been considered obscene by the standards of those people who chose to leave.

More specifically, I would like to point out a play which I feel could come under fire if this ordinance were to be enacted. Peter Shaffer's play *Equus*. It had a fairly successful run on Broadway and has been performed at numerous college and university theaters. The play deals with a very disturbed young man who puts the eyes out and blinds some horses. In this particular play, there is a scene that is fairly sexually explicit. It is simulated, probably in very dark light. On Broadway, it happened to be a nude scene. Other places, it is not done as a nude scene. Now, what would happen if a group of people feeling that this was obscene, a performance with a sexually explicit scene, simulated as defined by the ordinance, was to challenge the right of a group of performers to stage this play in a town or community — chances are, if it was ever brought to court, and I am not sure what the mechanism is for bringing this to court under this ordinance, it would probably be thrown out because it has artistic merit. The point is, why should somebody have to go to court to prove a play like this has artistic merit?

I was also in this particular play when we did it in Portland. In a discussion of this particular scene, one of the actresses came up to the director and said, "I am not so sure we ought to do this because of the ordinance that was recently enacted in Portland." So, what I am trying to point out here is that this ordinance will have a chilling effect on legitimate artistic performances that happen to deal with sexual issues.

Again, we are talking about contemporary community standards, the average person, whose standards are we talking about. Is there a board set up similar to the Hayes Office that for years set the standards for motion pictures in Hollywood? Is that included in this ordinance? Is the mechanism there? It is not. How would each community set up a board to determine what are contemporary community standards? If this board were to be set up, would it

be elected or appointed? Again, this is not explained or laid out in this ordinance.

Finally, I should mention that the City of Portland has had a very similar ordinance for years. Just what has it done to the dissemination of hard core pornography? Has it resulted in the wholesale closing down of these so-called adult book stores? It has not. The only way I know of that an adult book store has been closed down in Portland is when the landlord decided to raise the rent high enough to evict the tenant, which in this case was an adult book store. They are still in existence and they are still selling the magazines. So, even this particular ordinance has really not accomplished what the supporters set out to do.

Obviously, if we kill this, it will go out to a referendum and people will vote on it. I sincerely hope that those of us who are concerned about the chilling effect that this ordinance will have will also stand up and be counted when the time comes to vote on this measure.

The SPEAKER PRO TEM: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

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At this point, the Speaker resumed the Chair.

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The SPEAKER: The pending question before the House is the motion of Representative Allen of Washington that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

110 having voted in the affirmative and 32 in the negative with 9 being absent, the motion did prevail.

Sent up for concurrence.

(See Roll Call No. 277)

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PASSED TO BE ENGROSSED

Bill "An Act to Establish a Commission to Examine the Availability, Quality and Delivery of Services Provided to Children with Special Needs" (H.P. 1652) (L.D. 2330)

Was reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed, and sent up for concurrence.

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ORDERS OF THE DAY

The Chair laid before the House the first tabled and today assigned matter:

An Act to Amend the Drug Enforcement Law (S.P. 797) (L.D. 2004) (C. "A" S-440)