

MAINE STATE LEGISLATURE

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The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

SENATE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Prevent Discrimination" S.P. 338 L.D. 1116

Majority - **Ought to Pass** (8 members)

Minority - **Ought Not to Pass** (5 members)

Tabled - May 7, 1997, by Senator **LONGLEY** of Waldo.

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

(In Senate, May 7, 1997, Reports **READ**.)

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

Senator **LONGLEY:** Thank you Mr. President, women and men, and in this Senate today, young and old. I speak in unqualified and heartfelt support for L.D. 1116, "An Act to Prevent Discrimination." As elected officials we are called upon to represent our constituents and our state on many issues of great importance to all of our citizens in Maine and throughout the country. Indeed, anywhere where man or woman walks, L.D. 1116 speaks to such an important issue. This is so because this act to prevent discrimination speaks to freedom, to human rights and the ability of good citizens to not be discriminated against, due to a private and personal matter, one's sexual orientation.

In our hearts we have to acknowledge that discrimination, based on sexual orientation exists. Although many of us have learned to better respect the rights of all, the jokes and the jeers and the criminal and the civil wrongs persist. Hate crimes against gays and others are reported to be on the increase. Statistics also indicate that there's a three to one chance that teen suicides are related to sexual orientation. Regardless of whether we are young or old, or gay or straight, white or black, Catholic or Jew, we want to honor ourselves in our inalienable right to be who we are, and the best each of us can be. What matters is that we all do our jobs well, that we pay our rent, that we make our monthly mortgage payments on time. And, if we do these things, we should not be fired, evicted, and or, denied credit. And, when it comes to one's private life, it's just that, private.

When we look at Maine's history, recent and not so recent, our laws and our votes, in our districts and in this Senate chamber, over time, have often reflected our principles, honoring the civil rights of all. From the 1820's to the 1860's Maine's abolitionists and members of the anti-slavery and free soil parties, all strongly stated that discrimination against racial minorities was wrong. In that we were also willing to go to war and fight to right these discrimination wrongs. A century later, throughout the 1970's, members of this same Body stated that discrimination, based on race, color, religion, ancestry, national origin, age, sex and physical handicap was also wrong. Former occupants of the same seats we sit in today, many of whom are here visiting us today, have repeatedly voted to right discrimination wrongs. In our own decade, in 1995, a majority of Maine voters, again, made a very principled statement against discrimination. They told us, Maine won't discriminate. Specifically, a majority of voters told us that Maine will not

discriminate with respect to sexual orientation. Maine citizens led then and I ask you to follow their lead today.

Today, May 7, 1997, is our historic chance to strongly reaffirm our founding principles as a state and as a nation, that discrimination in all its forms, including sexual orientation, is not to be tolerated. Today is our chance to follow the daring lead of legislators who learned to stand in this Body throughout our two centuries of history, and also to follow the lead of the vote two years ago, in a statewide election. Today is our chance to dare to do as our principled predecessors have taught us. We have to show our ability to confront the realities of discrimination in all its ugly forms and reaffirm our distaste for it. And last but not least, to honor the inalienable rights of each and every one of us, no matter who we are, gay, straight, Catholic, Jew, young, old, Native American, Franco American.

In conclusion, today, I ask you to join me in support of the pending motion, Ought to Pass on L.D. 1116, to strongly reaffirm our interest in preventing discrimination and to right our remaining wrongs. People before us, many Senators and citizens alike, have led the way. Let us show them that we have listened and learned, and we too, can stand up to honor the civil rights of all of us. Thank you.

Off Record Remarks

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President, may it please the Senate. I rise to speak in opposition to the Majority report of Ought to Pass and I want to preface my remarks by three particulars. First, I hope my record shows of public service that I am opposed to seeing discrimination against even one person in our state, for whatever reason, no matter how minuscule it may be. And second, I am in favor of the most strenuous prosecution of hate crimes under our statutes of this state.

Recently, I had occasion to confess a fact of family, with you, that I think is important. I'm the oldest of eight children. I have a brother, Jim, who is gay. Do I love him less? As I said on the floor of this chamber, "Get a life, of course not." Now having said those things, there are two particulars that guide me in my vote against this bill. And, I've been criticized for this too, but I've been criticized for things that I've done in public life before. My shoulders are fairly broad.

The first particular is, that I vote my constituents agenda. My constituents' agenda leads, my agenda follows. I've been criticized for that, here, in this chamber. There are some who have said to me, "Benoit, you've got it backwards." They've said to me, "They believe they were voted here to be a leader." I believe in representative government, that's why I follow my constituents' agenda. And you know, I've gone and run for this office twice, and in doing so I've met a lot of people, as you have. And, on sidewalks, and in homes and in places of business, this issue has come up. I can tell you that the more serious the issue, the tougher the issue, the more I try to find out what my constituents' agenda happens to be on that issue and vote it. My constituents would like to be sitting in this chair, voting this issue but they can't all be here, so we have a representative form of government. I'm here. I'm going to continue trying to find out what my constituents' agenda is and vote it. Call me what you want. That's where I'm coming from. My constituents, by vast

majority, do not support this bill. Notwithstanding, my brother, Jim, I could easily vote for the bill just for that purpose alone, but I guess there's something bigger here, and that is the representative form of government. My constituents do not want me to vote for this bill and I can't, for that reason, do so. That's the first reason.

Secondly, the second point is based upon an historical piece. In my own words, let me put it this way. Over the years we've had decisional law from the United States Supreme Court in those areas where the court recognizes categories or classifications of people, who are, or who should have, constitutional protection from discrimination. And, on the law books of the federal government and the state, we do have protections, as we should have, against discrimination on the basis of sex, race, religion, etc., but we've had them when the United States Supreme Court and other jurisdictions have determined that these reasons for protection exist and should be recognized. We do not have that kind of decisional law in this area, of sexual orientation. The United States Supreme Court, to my knowledge, and I would stand corrected on this, has not issued decisional law in this area. Why should we have decisional law, in this area, from the United States Supreme Court? We should have it for uniformity's sake. We shouldn't have a law in one state one way and in another state another way. That's why we look to the United States Supreme Court for guidance. When we find it, we rely upon it, we act upon it. We don't have it here. And, those are the two reasons why I rise as I do. It's not the easiest thing I've done here, in my second session, to take this position. Perhaps my personal position is different but I don't have a luxury, as I see, in my job, to vote my personal belief. You know, that's what I like about the work down here. It's not personal. It's the public's business. We can all debate issues in here, even heatedly, and walk out this door friends because it's not personal, it's public. I like that. I like that very much. So, my personal view is over to one side. In the front is my public duty, for my constituents, and based upon decisional law of the United States Supreme Court. Mr. President, thank you Sir.

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

Senator ABROMSON: Thank you very much Mr. President. I rise to support the adoption of the Ought to Pass report on L.D. 1116. This bill was first introduced 20 years ago, in this chamber, 1977. Then again, President Gerard Conley, who spoke to us earlier, presented this bill in 1981 and in 1983. And then, in my first term in this Body, I sat where the great Senator from Kennebec, Senator Treat, sits and I found that I was in the chair of Gerard Conley Jr.. Well actually, it wasn't his chair, it was his desk but they had been moved around, he was sitting somewhere else, but it was his desk because I opened it and it was full of notes. He introduced this bill in 1989 and 1991. I think it's time has come.

If I were to ask almost anyone, in the State of Maine, if he or she was tolerant of all people and concerned about equal rights for all people, all of our citizens, the answer, undoubtedly and unanimously, I believe, would be positive because we do think of ourselves as good and caring people. We do not always see the ugly side of ourselves. And so, we need such things as the ten commandments, the golden rule and the bill of rights to occasionally protect us from ourselves. If they work perfectly

each time and every time, we probably wouldn't need any laws of any kind to protect us, but they don't.

I know that firsthand, growing up in Maine as a young Jewish man in the 1940's, I was often labeled the dirty Jew, the Christ killer. I found myself on the receiving end of old stereotypes and falsehoods. People who didn't even know me, dredged my character solely on the fact that I worshipped in a synagogue, rather than a church. As a student at Bowdoin College, in the late 1950's, I entered a public speaking contest and my speech was entitled, "Fraternalities without Brotherhood." I wrote it because blacks and Jews were being denied invitations to join fraternities or, once invited, were blackballed before initiation. In 1973 my wife Linda and I went to Poland with the first group of American Jews to go to Poland since World War II. We went at the invitation of both the Polish and American governments to commemorate the 30th anniversary of the uprising at the Warsaw Ghetto. While in Poland, we went to the place the Poles called, Oswiecim, the Nazis called Auschwitz, and it was in that place the Jews were selected for Nazi atrocities. But, it was also there, in that place, that I learned that it was not just Jews who were being selected, it was also fatal, in that place, to be Gypsy, Slav or gay. It was fatal because in 1935 the Nuremberg laws had legitimized anti-Semitism in Germany and from that, spread a cancer of discrimination. Now, while I'm not attempting to compare Germany of the 1930's with Maine of the 1990's, but I do think it's important to recognize that what we have and have not done, as a society, to prevent the spread of intolerance and discrimination.

It's no longer legal to discriminate against a Jewish person in Maine. We have a human rights law that specifically bans discrimination based on religion. It's no longer legal in Maine to discriminate against the Gypsy because we have a human rights law that specifically bans discrimination based on race. It's no longer legal to discriminate against the Slav in Maine because we have a human rights law that specifically bans discrimination based on national origin. We have similar laws that protect us if we are male or female, old or young, black or white. Only if you are gay or lesbian can we legally discriminate against you in the State of Maine, except of course, in Portland and Long Island.

In the State Senate, in this Body, I represent the towns of Long Island, Falmouth and part of the city of Portland. And I tell that to people very proudly, for it was the Portland City Council, and I'm proud to say, including my wife, Linda, who served on that council, that voted on and passed the state's first non-discrimination ordinance in 1992. The people of Portland reaffirmed that vote in a public referendum in 1993. The legislation that I am proposing, mirrors Portland's ordinance by extending already existing civil rights protections in employment, housing, public accommodations and credit. To me, and I hope to you, the bill is simple and straightforward. It will allow all Maine's residents, for the first time, all Maine's residents, to work and live discrimination free. L.D. 1116 is a bill to end discrimination based on sexual orientation but it does one more thing. It ends forever, any similarity between the Nuremberg laws of 1930's Germany and state laws of 1990's Maine. This bill is that important and I urge you to vote by voting Ought to Pass on L.D. 1116. Thank you Mr. President.

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

Senator MACKINNON: Thank you Mr. President, women and men of the Senate. I rise today to speak in favor of 1116. When

I first came here I made a very conscious decision to sign on as a co-sponsor of that bill. In my other life, as an educator, I've always tried to be fair and consistent and I think when you look at the laws of the State of Maine, that we have to be advocates for all people. We were elected to represent all, and trying to be very simple and straightforward, I think it is my responsibility to make sure that all rights are guaranteed to all people. Therefore, I want to be fair and consistent to all. And, because of that, I hope that you will join me in voting in support of this bill. Thank you.

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

Senator **CLEVELAND:** Thank you Mr. President, and women and men of the Senate. I rise today because I want to urge you to support L.D. 1116 as well. In my fourth term in the Senate, I voted to ban discrimination every single time and I hope this has become the term in which both bodies and the Governor will, ultimately, pass into law the protections that everyone deserves. This law does four very simple and basic things, but four very important things. It says that you may not discriminate against someone because of their sexual orientation in their employment, in their public accommodations and access to credit, and housing. Four basic essentials, that every citizen in this state should have a right to enjoy and ought not to be denied. Ought not to be denied simply because of the fact of their sexual orientation.

Unfortunately, in this state right now, it is legal to discriminate against anyone because of their sexual orientation and there is no recourse for any citizen, in the courts of this state, if you are discriminated against because of sexual orientation. I believe the majority of the people of this state do not want to discriminate. They want to treat everyone fairly and they want to make sure that every citizen, their sons, their daughters, their brothers, their sisters, every member of this society has recourse, if necessary, in a court of law, to protect the rights of every citizen in this state. The reality is, we live in a diverse society. There are gay and lesbian people in our society and there have been since recorded time, and it's time that we recognized that, and it's time we honor that diversity, and it's time that we provide the same legal protection to them that we provide to every other citizen in this state. They have a right to fully participate in this society. It's part of what our democracy is about. It's fundamental provisions of our Constitution and they have the right to enjoy all aspects of citizenship in this country. All aspects of it. You cannot, in a society, have an oppression without having an oppressor.

You cannot, in a society, allow discrimination, unless you allow bigots. One cannot exist with the other. And, one exists because for far too long the majority of us have been silent. That is the only way oppressors survive. It's the only way bigots survive. It is because the rest of us remain silent as they do it. We no longer have the right, or the opportunity, really, to be silent. Now is our time to act. Now is our responsibility, as elected officials, to take on that responsibility to protect every citizen, even those who are minorities because of a particular characteristic.

I'm of French-Canadian decent. My mother is a Franco-American. Carmine Chabot immigrated here from Canada. My grandparents, her parents, were Canadian citizens. When I was a young child I remember how clearly Franco-Americans were denigrated, how they were considered to be less than full citizens, not quite as smart as the rest of the citizens in this state,

not quite as able as the rest of the citizens in this state, and often found themselves the butt of very unkind jokes.

We've grown in this society and we've matured, and we recognize that discrimination, based on one's religion or ethnic background, or sex, is not acceptable in this society. I believe we've also grown in this society to recognize that sexual orientation is no longer an acceptable basis to discriminate against anyone, that each one of us is an individual. Each one of us is born in the dignity of God. Each one of us deserves the right to be fully respected and to participate in our society, and not to be discriminated against. I urge you, in the strongest terms, do not let this continue another day. Vote for the passage of this legislation, so that we can end this discrimination in this state. And, Mr. President, when the votes are taken, I ask for the yeas and nays.

On motion by Senator **CLEVELAND** of Androscoggin, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **MILLS:** Thank you Mr. President, men and women of the Senate. Just a footnote to the discussion. I can't compete with the wonderful rhetoric we've heard in the chamber this morning. I just wanted to begin however, by stating that in many respects, on the procedure that he's employed, I agree with the Senator from Franklin, my Senator to the west, Senator Benoit. I think that it is our duty to look carefully at what our constituents have to say about important, general issues of this kind that are on their minds, that they are deeply concerned about. But, I also think that we have a duty in this chamber to go beyond listening to our constituents, interrogating them, speaking to them. I think we also have a duty to be better informed than many of them and I don't mean, by that, that we have any sense of superiority to them. That's the farthest thing from my mind, but I think we have a real deep seeded obligation to understand, in a technical way, the exact nature of the legislation that's being proposed to us, and to make sure that when we vote on a piece of legislation, that we're voting on it intelligently and with due respect to the purposes that is intended to serve.

I think many of our constituents are under the misapprehension that an affirmative vote for this bill is an endorsement, a moral endorsement, of a particular way of life or particular life style. That we are somehow, as their representatives, forcing them, against their will, to endorse a way of life that some people find abhorrent or immoral, or contrary to the teachings of Romans and Corinthians. That's not what's going on here. The law that we're amending currently prohibits discrimination against Catholics, for instance. Now, by voting for this law some years ago and making it clear that it is illegal to discriminate against Catholics, were we, at that time, endorsing Catholicism as a way or as a religion? No. Were we forcing our constituents to endorse Catholicism or being a Baptist, or a Methodist? Were we attempting to endorse one particular religion over another? Not at all. What we were seeking to do, in those days, was to make sure that you couldn't be bounced out of your apartment or bounced out of the school district, or that you wouldn't be bounced out of a job because you went to a Catholic church or a Methodist church. And by the same token, the bill that lies before you this morning is simply a bill that says that you can't be bounced out of a job or bounced out of a school

district, or discharged from a particular place in housing because of your sexual preference. That's all it is. It's not an endorsement. It is a protection, plain and simple. Thank you.

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

Senator **AMERO:** Thank you Mr. President, ladies and gentlemen of the Senate. I rise today to share with you some history of the debate on this subject. Four years ago I had an opportunity to write a paper, to be delivered to a club in the Portland area, on the issue of anti-discrimination and that paper was entitled, "Gay Rights, What's the Big Deal." In preparation for that paper I researched the years of debate that had taken place in both chambers since 1977.

This is the 20th anniversary of that debate, which began 20 years ago. Back in 1977, the bill was introduced by a representative from Portland and every two years since it's been a Portland legislator who has introduced this bill to the Maine Legislature. Back in 1977 it was certainly considered a Portland bill and I'm pleased to say that we have certainly gone far beyond that today. But, back in that first vote, when it was taken in '77, you could have counted, on one hand, the number of people who were willing to vote in favor of this very same bill, very similar. Over the years, each time, the numbers have grown, until in 1993 both bodies of this legislature passed the bill, which was then vetoed by the Governor. I am in strong hopes that this will be the year, on the 20th anniversary, that this bill will finally pass both chambers and be signed by the Governor.

I also want to say that there is certainly a great deal of difference in the type of debate that we are seeing here this year, in 1997, then the debate that was started in 1977. The debate was so acrimonious, back in those days, that the Speaker of the House had to ask people sitting, students sitting in the chamber, in the House, to leave. Things have changed. I am proud to be a member of this chamber, where the debate is so professional and of such high quality, and I am proud to be a member of the Senate, which I know will be supporting L.D. 1116 today. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President, may it please the Senate. I rise once more to speak in opposition of the bill, with a bit more specificity on the second point. The point of legality, constitutionality, call it whatever you will. I'm holding a sheet of paper that has on it, oh, 8 or 10 federal court decisions. This decisional law advances three touch stones to give attention to, in any area, where a group is seeking constitutional recognition and I want to read them, they're very brief. I make a determination first whether an entire class have suffered a history of social oppression, evidenced by lack of ability to obtain economic main income, adequate education or cultural opportunity. Has that happened yet, in this country, in this state, recognized factually?

Second, as an entire class, does it exhibit obvious, immutable or distinguishable characteristics, like race, color, gender or national origin, that define them as a particular discreet group? And third, as an entire class, do they clearly demonstrate political powerlessness? Those are the court made touch stones, not mine, that are guiding my vote.

I want to conclude by, I guess, sticking up for my constituents a bit. Am I better informed than my constituents? A few words ago, perhaps, a statement was made that maybe we could be. I'm not. Do I have a superior conscience to my constituents? Nope, not at all. Do I have more morals? I told you I was the oldest of eight children. My mother brought us up strongly Catholic. She almost went into the church and became a nun, but I guess believing in propagation of the faith, she raised a family instead. Bless her heart. I don't have morals superior to my constituents. My constituents are really no different than your constituents. They got to me. I vote for them today. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator **HALL:** Thank you Mr. President, ladies and gentlemen of the Senate. I rise today to oppose the present motion on the floor and let you know that I agree 100% with the Senator from Franklin, Senator Benoit. I couldn't say anything any better than what he has explained to you. Growing up in my area, I don't know why, but any time there was anything going on amongst us younger fellows, I'd always stand back and look at the size of the group. Whatever the issue at that time was, I always jumped in to the minority, the one with the least. I always stuck up for the underdog. I sit in the minority, here today. I probably will be in the minority outcome of this bill, but not for my childhood reasons.

I think that one's sexual orientation preference is a very private matter, as has already been mentioned and I think we ought to keep it very private. I care less how adults, consenting adults behave behind closed doors. They can do anything that they want to do, but I want to keep it right where it is, behind the closed doors. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Mr. President, ladies and gentlemen of the Senate. My constituents, as citizens, have a job to do and I, as a citizen legislator, have a job to do and I see that job as being slightly different in this regard. Generally, when my constituents contact me about an issue, they are focused on that one issue. Sometimes they are willing to take into account some of the pros and cons and some of the arguments, on the side opposing theirs, sometimes not, and certainly, it would be very rare when a constituent would look at the total range of issues in front of this, or any legislature at any given time. And, that's what's different about my job, because, as a legislator, I need to look at the whole range of issues and to see where any particular issue fits into the broader context. So, I think I have a somewhat different approach to representing my constituency than the good Senator from Franklin, Senator Benoit, and that's good. That's a healthy diversity for this Body. In this case, it happens that the large majority of contacts I've had from my constituents are in favor of my support for L.D. 1116. But, even if that were not the case, I don't believe that it would change my position on this particular issue.

The good Senator from Franklin suggested that probably many of his constituents would like to be here themselves to cast a vote on this issue, and I would submit to you that because of the discrimination that continues to pervade our society, on an official or an unofficial level, that many of his and mine, and your constituents would have a very hard time getting here to cast that

vote. Because of a number of the attitudes that are still held by our society, some people, because of inherent aspects of who they are, are not as likely to be elected to serve here.

When I first came to the legislature I don't believe there was a single person in this Body that I had known before my service here, and so, I met them all first as legislators but over time I've gotten to know them as people and I know some of them now on personal terms that allow me to know something about their backgrounds, their families, other jobs they've held, etc. There are representatives of many different kinds of people here, religions, ages, genders, sexual orientations. That is as healthy for this Body as it is for the State of Maine but it continues to be rather more difficult for some of those groups to have representation in this Body, because we still allow a certain level of official discrimination against some groups of people. When I came to the legislature it was with the hope and the promise that when I left here, I would, in some way, leave Maine a better place. And it is my absolute conviction that my support for L.D. 1116 will do just that and I hope you'll join me in voting in favor of this bill. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Pingree.

Senator **PINGREE:** Thank you Mr. President, men and women of the Senate. I rise today to tell a brief story about my own community. I think that my community got a tremendous gift, a couple of years ago, when a man retired and moved to our community, a man who had spent most of his working career in the theater and working on Broadway. And, he offered, when he came, to do some work with the students in our school. He spent a lot of time with the young people, helping them make up plays, spent a lot of time with the older kids in our school, producing plays like, "The Importance of Being Earnest," and scenes from Shakespeare and "Our Town", and all the wonderful, sort of classic plays, teaching them a lot about the theater and the things that he knew, and the things that he had worked with in his career life.

One night I was sitting at my house with my son, who had had the opportunity to take advantage of being in some of the productions, and my daughter, and some of their friends, and we were having dinner. And the talk turned to some of the educational turmoil that had been taking place in my community that I don't really need to talk about today, but had, in the course of it, stirred up a lot of bad feelings and targeted some of the teachers and the people who work in our school. And the talk turned to the director, who'd been working with our kids and who had become a favorite of all the students, and there had been a lot of nasty terms used about him. He was a homosexual. He is a homosexual and people had started calling him names, and saying that he should be kept away from our students and that he should no longer work with the kids in the school. The kids at the table started talking about this in amongst their conversation about set design and set lighting, and Hamlet, things that I'd never really heard, fourteen and fifteen year old boys talk about around the kitchen table before. In amongst that conversation was this talk about this mean spiritedness in our community and the fact that many parents, and some of our school board wanted him to no longer work with the kids in school and they thought that he should be fired. And when the kids turned to me and said, "So, can they just fire him for that? Is that okay? Can they just fire him for that?" You know, I had to look back at them and say, "Yeah, they can. That's legal in the State of Maine. They

can do that. He could be gone tomorrow and the wonderful things you've had an opportunity to learn and all the great gifts he's given to our community would be gone, and that would be the sole reason."

I hope that after this vote is taken and when we're done with this bill, in the legislature this year, I can go back to those kids and my daughter, and my son, and say, "You know what? We don't do that in the State of Maine anymore. We've changed that policy." I hope you'll all vote in favor of this bill today. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator O'Gara.

Senator **O'GARA:** Thank you Mr. President, women and men of the Senate. First of all, I want to acknowledge that although I do not happen to be a sponsor of this bill this time, I know many of you in this chamber know that I have, in the past, been a sponsor or co-sponsor of this bill in each of the five times that it came up while I was in the other Body. At least 14 of you, in this chamber, have heard me speak, at least once, if not more than once, on this piece of legislation and I don't intend to recount all of the personal incidences that I have shared with you in the past, today but you may very well share them with your seat mates over a period of time.

Secondly, as an educator, as a municipal official, as a legislator and as a citizen, I have long been aware, as many of you have, of the tremendous amount of discrimination that exists out there and the fear that I have observed over the years as a teacher, as a coach, as a municipal official and now, as a legislator of citizens, students, athletes, constituents and yes, personal friends and family members. Discrimination does exist. I just want to keep repeating that for any of you who are thinking of voting on that one issue alone, that discrimination does not exist, because it does.

I want to just recount one example, and this happens on a regular basis all over the state, and it was in the very first hearing that I attended down in room 113, during the 112th Legislature, and a very fine looking young man, or athletic looking, I would defy anybody to put a label on him, got up to speak and recounted a story where he had, right out of high school, gotten a job in a factory as a stock boy, and he worked hard and he was recognized for his work, and slowly but surely, he worked his way up to become a manager of a night shift of workers. During all that time, raving reviews, reports, regular increases in pay, was well liked by his fellow employees, contributing citizen in his community, until, unfortunately, someone noticed him expressing his affection for a friend, his partner, in a setting that they thought was private. And that was reported back to where he worked, and one day his employer called him in and told him that he was no longer going to be an employee. He didn't have to give a reason. He was just fired because someone where he worked, a fellow worker for years, now, all of a sudden, was no longer comfortable with him, much like the Senator has just related in the incident that she gave. And those examples happen on a regular basis and will continue to happen until we have the courage to carry this all the way towards fruition.

Earlier, the Senator from Franklin, for whom I know he knows I have the utmost respect for, commented as he has said before and repeated, as he has said before, that his constituents lead and he follows. At least two of his fellow Senators have expressed their comments about that and I would like to share mine with you as well. I believe it is true that every legislator has the right, the responsibility, the duty to listen to each and every

one of his constituents, consider their views along with everybody else's, listen to the debate that takes place in the committees and on the Senate floor, and articles that are read but when it finally comes time to make a decision, no legislator gives up his or her right to make the most responsible decision he or she can make, regardless of what the voters in his or her district say. He or she has been here. He or she knows what is going on out there. They listen to all the debate. They have much more information available. You do not give up your right to make that decision just because someone elected you to come here. One thought, an equal opportunity, and this is not my quote but it came from something in one of the items that we've all received, "An equal opportunity to get and keep a job or have a roof over your head is not a special right. It is a basic right." Your decision today should not be made because you don't like a particular life style. The private life of a private individual or individuals is just that, private. Your obligation and my obligation is to protect all citizens against discrimination.

The evidence is overwhelming. You cannot possibly be ignoring it. Discrimination against Maine's gay and lesbian citizens does exist and this L.D. will bring us finally to the end of a very long road. I urge you to support the majority report. Thank you Mr. President.

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

Senator **LIBBY:** Thank you Mr. President, men and women of the Senate. I rise today to ask you to defeat the pending motion. I want to tell you a couple of reasons why. I don't know that they're all as well thought out as I'd like them to be because, frankly, I was hoping that in the debate today I would be hearing a little bit more about the technical aspects of how this bill could actually work. And I want you to all understand that this is a very difficult decision for me. I really have been wavering one way to the other, back and forth, since the very beginning of this session.

I thought about a couple of things that, incidences of things of discrimination that happened in my life and would like to share a couple with you. Not against me, but people I was with, and I need to share them for a purpose. I remember driving through a small southern Maine town and I was driving on the way back from a college basketball game that I had just competed in and there were three black people in my car with me. We drove through the town and sure enough, my foot was on the throttle just a little bit too much and I was pulled over, and rightly so. That's fine, except for the fact that, there were two police officers in this local police force that stepped out of the car. They drew their guns. I had to ask myself, I had to ask myself then and I still ask the question today, why did they draw their guns? And I'm going to let you draw your own conclusion on that, but it was wrong.

So, the next question that I have, related to this bill then is, would they have drawn their guns if I was riding in the car with three people that hadn't had a different life style than I did? And so, the answer that I came up with was, no, but what does that mean? It doesn't mean that there isn't discrimination. It's clear to me that there's discrimination in the State of Maine. I could relay to you several more stories today but they're kind of sad stories of things that I've come across and I know you have.

What it does, it begs the question, can we enforce this law? Can we enforce this law? Are we going to be able to discern whether or not discrimination has actually happened. I want to

know the answer to this question. This is my responsibility, here in the Senate of Maine. If I voted for this bill and somebody came forward and said, "I was discriminated against in a housing decision, in a credit decision, in an employment decision," the question that you've got to answer for me, or somebody here has to answer for me is, how can we discern if they've been discriminated against or not? I want to know the answer to this question because I want to do what I can do to help make sure that that discrimination doesn't happen. What I'm afraid of is that in the mind of the person that feels they were discriminated against, they were discriminated against, but in the mind of the person that's being accused of discrimination, I'm just trying to do my job. And then what are you left with? You know what you're left with? It appears to me that the result of the bill then is, you're left with a court case and one side says that they were falsely accused and the other side said, I was discriminated against, with no real way to figure out who's in the right. So, that's the problem that I have. That's the difficulty that I faced, in trying to figure out which way I was going to vote on this bill and I know some of you will be disappointed that I'm not going to vote in favor of this bill but I just can't because I can't figure out a way to enforce it, and that is my responsibility. Thank you very much.

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

Senator **MILLS:** Thank you Mr. President, men and women of the Senate. I need to begin by saying that there are few Senators from whom I have learned as much over the years as the good Senator from Franklin, who is superbly well informed on all pieces of legislation that come before this Body and the remarks that he has made this morning, that have most interested me, have been those that have gone to the technical specifications of the bill and the legislation that is directly before us. I believe that he and I would both agree that we have an obligation to vote, and I think he's voting, not on the bill as it is perceived to be by many members of our respective publics, by our constituents, but on the bill as it works, on the bill as it's written. And as he correctly points out, the class of people that we seek to protect within this bill is not a constitutionally protected class. And indeed, if we pass this bill and make it become law, they will still not be a constitutionally protected class. Those other classes are people for whom the U.S. Supreme Court felt that it was necessary under the amendments to the U.S. Constitution, to protect with very special provisions. But the bill that lies before you really is just our local Maine effort to create a modest statutory class, which we have power to do. To protect a class of people that in our vision, in our experience may need the narrow and limited, mostly commercial and economic, protections that are afforded by the remedies of this statute.

I respect the question that was raised by Senator Libby from York. You know, it was the same question that was raised in 1972 when we were writing the original human rights law, when we sought to incorporate four or five, or six classes into a protective statutory scheme. When I was a law student I actually had a hand in writing part of it. I was an inascribable but I remember, vaguely, having had some hand in it and I remember the difficulties that people encountered in trying to draft it. But you know, we now have 25 years of experience in learning how to sort out claims that are legitimate from those that are not. We have superbly qualified people who administer this law. They all are very over worked but there are objective criteria and no one

would be held responsible, under this law, for merely thinking or entertaining a thought that might be adverse to the spirit of the law. The law prohibits conduct and behavior, of a sort, that results in tangible, provable harm and there are very well thought out, well honed rules in place for dealing with discrimination, generally. I assure you, I've every confidence, that the people who administer the law now would be able to incorporate this small category into their work without any conceptual difficulty. Thank you.

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

Senator **HARRIMAN:** Thank you Mr. President, good afternoon ladies and gentlemen of the Senate. I wanted to share with you my experience with this issue and it goes back to my first term here, in the Maine Senate. While campaigning for the honor of sitting in the seat that I represent here today I campaigned against, so called, gay rights law, arguing, based on mostly the rhetoric that I read in the paper, that we didn't need a special law to take care of a special class of people looking for special rights. So you can imagine my dismay when I first took my oath of office here and began to understand how the legislative process worked and the bill that was introduced in the 116th Legislature, to end discrimination. And I quickly found out that much of what I said on the campaign trail was, in fact, wrong because, indeed, as my good friend from Knox, Senator Pingree, has so eloquently pointed out, it is legal, currently, to deny someone a job, credit or housing based on their sexual orientation. So, I was in a dilemma. What should I do? I decided that the only fair thing, courageous thing, the appropriate thing to do was to co-sponsor the legislation that was introduced in the 116th Maine Legislature. You can imagine the reaction from people who helped me in my campaign. But, one by one, as I sat down and explained to them the difference between the rhetoric and reality, almost every one of them have come to understand that this law is needed. I can't tell you how many people have taken me aside, whether it's at church or a social gathering, or someone who just encounters me in the street, who asks if they can talk to me for just a minute, and as we go to a quiet place so many of them, countless numbers of them now have said to me, "Gee, I hope you will insure in some way the act to end discrimination can pass because my daughter or my son, or my nephew or my neighbor is gay." Ladies and gentlemen of the Senate, it's time. It's time for us to take the steps necessary to erase the fear that exists and rests in the hearts of our fellow citizens, who happen to be gay or lesbian and their parents and loved ones. It is the right thing to do and this is the time to do it. Thank you Mr. President.

The Chair noted the absence of the Senator from Aroostook, Senator **KIEFFER**, and further excused the same Senator from today's Roll Call votes.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: **ABROMSON, AMERO, BUTLAND, CAREY, CATHCART, CLEVELAND, DAGGETT, FERGUSON, GOLDTHWAIT, HARRIMAN, JENKINS, KILKELLY, LAFOUNTAIN, LONGLEY, MACKINNON, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

NAYS: Senators: **BENNETT, BENOIT, HALL, LIBBY, MICHAUD**

ABSENT: Senator: **CASSIDY**

EXCUSED: Senator: **KIEFFER**

28 Senators having voted in the affirmative and 5 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Majority **OUGHT TO PASS** Report, **PREVAILED.**

Which was, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED.**

Under suspension of the Rules, ordered sent down forthwith for concurrence.

On motion by Senator **PINGREE** of Knox, **RECESSED** until 4:30 in the afternoon.

After Recess

Senate called to order by the President.

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

PAPERS FROM THE HOUSE

House Paper

Bill "An Act to Implement the Recommendations of the Harness Racing Task Force" H.P. 1318 L.D. 1868

Comes from the House, referred to the Committee on **LEGAL AND VETERANS AFFAIRS** and **ORDERED PRINTED.**

Which was referred to the Committee on **LEGAL AND VETERANS AFFAIRS** and **ORDERED PRINTED,** in concurrence.

COMMITTEE REPORTS

Senate

Ought to Pass As Amended