

MAINE STATE LEGISLATURE

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**STATE OF MAINE
ONE HUNDRED AND EIGHTEENTH LEGISLATURE
SECOND REGULAR SESSION
JOURNAL OF THE SENATE**

In Senate Chamber
Thursday
February 12, 1998

Senate called to order by President Mark W. Lawrence of York County.

Prayer by Reverend Marian Marks of Grace Lutheran Church in Auburn.

REVEREND MARIAN MARKS: Actually, I'm going to ask you to be seated for a moment, if I may. I once heard someone say that the two most dangerous people to yield a microphone to are preachers or politicians. But I thought it might be useful to you for me to, at least, tell you what a Lutheran is. There are less than 1% of the population of the entire states of New England that are Lutherans. In the state of Maine there are only 19 churches which bare the name Lutheran. Sixteen of them are from an association known as the Evangelical Lutheran Church in America, of which I am a part. Two are from the Lutheran Church Missouri Synod, and one is from the Wisconsin Synod. Synod is a term popular in the Lutheran Church which essentially means association.

When I moved to Maine from Connecticut, I was in a local book store and my card fell out of my wallet and the young man behind the counter picked it up and said, "Lutheran Church, are Lutherans Christian?" The answer is yes. And that will probably be evident in the words that I say as prayers. But also a lot is not known about Lutherans. I was once asked, "Oh yeah, that's the Lutheran Church. You're all from Luthermania, right?" The answer is no. If you ask even Lutheran children where the term comes from, they are most apt to say, from Martin Luther King, Jr. And we could do far worse, but it is not from Martin Luther King, Jr., but from a man who Martin Luther King, Jr.'s father was named after, Martin Luther, the 16th century reformer. Who, by the way, had a very high opinion of government. He thought, and this is what this book is, it's a little light reading. But I wanted to quote to you, his view of government.

He says, essentially, "that next to the gospel itself, there is no more precious possession that exists on earth than a government that administers and upholds justice. Government authorities are properly called gods. So great are the virtues, benefits, fruits and good works that God has placed into this estate, which is in your hands." He also knew the burdens of the office. In his day most of the politicians were princes, and he says, "Princes are reminded of their office, that they may know that they have been placed into their exalted position for the welfare of the people. For the sake of whom they should endure many things and work hard, and that their time of rule is, in truth, their day of tribulation." Which I'm sure it often feels like.

And now, I would ask you to rise. Let us pray. Gracious God, we ask Your blessing on the men and women of this chamber. We ask that You give them the wisdom of Solomon, the ability to rule, of David, the forbearance of Job, and the heart and the healing touch of Jesus Christ. So that as they contemplate the weighty decisions of life and death, of justice and equality, as well as the more mundane matters of governments, that their

decisions may in truth be a blessing to the land and the people of this great State of Maine. We ask these things humbly, and yet, confident in Your mercy and goodness this day and all days forevermore. Amen.

Reading of the Journal of Wednesday, February 11, 1998.

Off Record Remarks

Out of order and under suspension of the Rules, on motion by Senator PINGREE of Knox the following Joint Order:
S.P. 822

ORDERED, the House concurring, that when the House and Senate Adjourn they do so until Tuesday, February 17, 1998, at 10:00 in the morning.

READ and PASSED.

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

PAPERS FROM THE HOUSE

House Papers

Resolve, Regarding Legislative Review of Chapter 890: Consumer Complaint Ratios, a Major Substantive Rule of the Department of Professional and Financial Regulation (EMERGENCY) H.P. 1577 L.D. 2210

Comes from the House, **REFERRED** to the Committee on **BANKING AND INSURANCE** and ordered printed.

REFERRED to the Committee on **BANKING AND INSURANCE** and ordered printed, in concurrence.

Resolve, Regarding Legislative Review of Chapter 302: Consumer Education Program; Electric Restructuring, a Major Substantive Rule of the Public Utilities Commission (EMERGENCY) H.P. 1575 L.D. 2209

Comes from the House, **REFERRED** to the Committee on **UTILITIES AND ENERGY** and ordered printed.

REFERRED to the Committee on **UTILITIES AND ENERGY** and ordered printed, in concurrence.

Joint Order

The following Joint Order: H.P. 1579

ORDERED, the Senate concurring, that pursuant to Joint Rule 351, the Joint Select Committee on Substance Abuse, referred to in this order as the "committee," is established and consists of 10 members of the House of Representatives appointed by the Speaker of the House and 3 members of the Senate appointed by the President of the Senate. The first Senate member named is the Senate chair. The first House member named is the House chair.

The committee shall review all legislation or policy initiatives regarding substance abuse pending before the Second Regular Session of the 118th Legislature and advise the joint standing committee having jurisdiction over that legislation.

Comes from the House, **READ** and **PASSED**.

READ.

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending **PASSAGE**, in concurrence.

Joint Resolution

The following Joint Resolution: H.P. 1576

JOINT RESOLUTION RECOGNIZING THE 200TH ANNIVERSARY OF THE CITY OF EASTPORT

WHEREAS, Eastport is on the southeastern part of Moose Island in Passamaquoddy Bay and is the most eastern city in the United States and the most northeastern commercial port in the country; and

WHEREAS, the petition for incorporation as a town was granted February 24, 1798, nearly 20 years after the first settlers came for the rich fishing grounds, and in 1873 Eastport became a city; and

WHEREAS, the early industries in Eastport included fishing, trading, shipbuilding and ironworks, with the sardine industry being a major provider for the area; and

WHEREAS, Eastport has a rich and important history that includes the occupation by the British during the War of 1812. The Treaty of Ghent, which settled that war, also declared that the area around Eastport was part of the United States; and

WHEREAS, Eastport, which is near the Canadian border, has a diverse and natural beauty and, in addition to being a commercial shipping port, hosts a booming aquaculture industry and a healthy tourist trade; and

WHEREAS, 200 years after the incorporation of this beautiful city on the coast of Maine, it can still be said that "the sun rises first in Eastport"; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Eighteenth Legislature, now assembled in the Second Regular Session, take this occasion to recognize the Bicentennial of the incorporation of Eastport, to commend its inhabitants and city officials for the success that they have achieved together for 2 centuries and to extend to each our sincere hopes and best wishes for continued achievement for the future; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the city officials of this proud community in honor of this occasion.

Comes from the House, **READ** and **ADOPTED**.

READ, in concurrence.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Cassidy.

Senator **CASSIDY:** Thank you Mr. President and men and women of the Senate. I just want to take a second, before we adopt this Resolution, to say to you how pleased I am to see that the City of Eastport, this year, will be celebrating its 200th Anniversary. I think every Governor and Congressional person in the state of Maine usually tries to visit Eastport on the 4th of July. It's a real homecoming day for the entire city. I would hope, maybe, that some of you would have an opportunity to visit us down there that day to see the large parade they have and all the fun that goes on there. The other thing I'll say before I sit is that I want to congratulate them. Also, some of the nicest people in the Maine Senate were born in Eastport, Maine.

ADOPTED, in concurrence.

Off Record Remarks

SENATE PAPERS

Bill "An Act to Amend the Authority of the Adjutant General to Sell Armories, to Increase the Authorized Size of the Veterans' Memorial Cemetery and to Authorize the Department of Administrative and Financial Services to Purchase Land in Houlton for a New Public Safety Facility" S.P. 823 L.D. 2212

Presented by Senator **DAGGETT** of Kennebec. Cosponsored by Senator **MICHAUD** of Penobscot, Representative **BUNKER** of Kossuth Township.

REFERRED to the Committee on **LEGAL AND VETERANS AFFAIRS** and ordered printed.

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

REPORTS OF COMMITTEES

House

Ought to Pass

From the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act Relating to the Maine School Administrative District 49 Arts and Technology Center" (EMERGENCY) H.P. 1451 L.D. 2042

Reported that the same **Ought to Pass**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

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

READ ONCE.

TOMORROW ASSIGNED FOR SECOND READING.

Ought to Pass As Amended

From the Committee on **BANKING AND INSURANCE** on Bill "An Act Concerning Notices Given in Connection with Mortgage Foreclosures" H.P. 1376 L.D. 1929

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (H-787).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-787).**

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

READ ONCE.

Committee Amendment "A" (H-787) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

Divided Report

The Majority of the Committee on **JUDICIARY** on Bill "An Act to Allow Physician-assisted Deaths for the Terminally Ill" H.P. 663 L.D. 916

Reported that the same **Ought Not to Pass.**

Signed:

Senators:

LAFOUNTAIN of York
BENOIT of Franklin

Representatives:

THOMPSON of Naples
WATSON of Farmingdale
ETNIER of Harpswell
JABAR of Waterville
MAILHOT of Lewiston
POWERS of Rockport
PLOWMAN of Hampden
MADORE of Augusta
NASS of Acton
WATERHOUSE of Bridgton

Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-788).**

Signed:

Senator:

LONGLEY of Waldo

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED.**

Reports **READ.**

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT.**

Divided Report

The Majority of the Committee on **NATURAL RESOURCES** on Bill "An Act to Encourage the Use of Environmental Fines for Environmental Benefits" H.P. 1391 L.D. 1944

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-786).**

Signed:

Senators:

TREAT of Kennebec
NUTTING of Androscoggin
BUTLAND of Cumberland

Representatives:

ROWE of Portland
SHIAH of Bowdoinham
BULL of Freeport
COWGER of Hallowell
MCKEE of Wayne
BRYANT of Dixfield
MERES of Norridgewock
FOSTER of Gray

Minority of the same Committee on the same subject reported that the same **Ought Not to Pass.**

Signed:

Representatives:

DEXTER of Kingfield
NICKERSON of Turner

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-786).**

Reports **READ.**

On motion by Senator **TREAT** of Kennebec, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-786) **READ** and **ADOPTED**, in concurrence.

TOMORROW ASSIGNED FOR SECOND READING.

Senate

Ought to Pass

Senator PARADIS for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act Regarding Contract Procedures" S.P. 770 L.D. 2071

Reported that the same **Ought to Pass**.

Report **READ** and **ACCEPTED**.

READ ONCE.

TOMORROW ASSIGNED FOR SECOND READING.

Ought to Pass As Amended

Senator PENDLETON for the Committee on **MARINE RESOURCES** on Bill "An Act Concerning Elver Fishing" S.P. 736 L.D. 2014

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-454)**.

Report **READ** and **ACCEPTED**.

Committee Amendment "A" (S-454) **READ** and **ADOPTED**.

TOMORROW ASSIGNED FOR SECOND READING.

Off Record Remarks

SECOND READERS

The Committee on **Bills in the Second Reading** reported the following:

House

Bill "An Act to Restore the Managing General Agents Act" (EMERGENCY) H.P. 1458 L.D. 2049

READ A SECOND TIME and **PASSED TO BE ENGROSSED**, in concurrence.

Senate

Bill "An Act to Permit the Consideration of Any Location in the State for the Location of the New Criminal Justice Academy" S.P. 688 L.D. 1924

READ A SECOND TIME and **PASSED TO BE ENGROSSED**.

Sent down for concurrence.

Senate As Amended

Bill "An Act Relating to Reciprocal Insurers and Captive Insurance Companies" S.P. 693 L.D. 1928 (C "A" S-453)

READ A SECOND TIME and **PASSED TO BE ENGROSSED AS AMENDED**.

Sent down for concurrence.

ORDERS OF THE DAY

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

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Allow Physician-assisted Deaths for the Terminally Ill" H.P. 663 L.D. 916

Majority - **Ought Not to Pass** (12 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-788)** (1 member)

Tabled - February 12, 1998, by Senator **PINGREE** of Knox.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, February 11, 1998, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, February 12, 1998, Reports **READ**.)

Senator **LONGLEY** of Waldo moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-788)** Report in **NON-CONCURRENCE**.

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

Senator **LONGLEY:** Thank you Mr. President and colleagues in the Senate. This is an extremely difficult issue and I appreciate the fact that you're willing to give our colleagues and me a chance to speak on this issue. I'd like to just start on a light note that interestingly on the Death with Dignity bill, it seems like everyone who testifies wears their Sunday best, as though we're also heading to a funeral. I did the same today. Interestingly also, that during the hearing there were people saying, "patients rights." And my eyes are bad and all I could see was, I thought a woman named Patricia Riley had died. I bring that up because down the road I'll bring it up again.

You're being passed out papers right now that explain my entire reasoning to vote Ought to Pass, and to send this to the floor. I interpret it as my duty, given what the Supreme Court had

said to us, all of us in all state houses throughout the country. Us, being the laboratories of democracy on an issue as important as Death with Dignity. I'd like to just go through what the Supreme Court's saying, so you understand the trouble they're having with this issue and why they're looking to us to discuss it further. Justice Ranquist and Justice Sewter start off by saying, "Because of advances in medicine and technology, Americans today are increasingly likely to die in institutions from chronic illnesses. We can prolong life a long time. And throughout the nation, Americans are engaged in an earnest and profound debate about the morality, legality and practicality of physician assisted suicide. Our holding today, in the Washington case from the summer, permits this debate to continue as it should in a democratic society." Other case laws quoted in this case have said, and this is where it gets tricky, and it gets to why the Court's having trouble but decides to refer to the legislatures. The Supreme Court of this nation has held that every human being of adult years and sound mind has a right to determine what shall be done with his or her own body.

Secondly, there's a constitutionally recognized right to die. Cruzan was the example. When they decided that unplugging was possible.

The third point comes in a 1985 case, I believe, saying, "It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter. The decision how and when to die is one of the most intimate and personal choices a person may make in a lifetime. A choice central to personal dignity in autonomy." We realize this is the ultimate liberty issue, the right to decide the fate of one's body. And I will add, the court has had trouble rationalizing why they go to the extreme of allowing the Cruzan withdrawal of treatment to hasten death. And they've questioned, is it arbitrary to not therefore allow death with dignity, as in letting the drip go stronger and hasten the death of somebody who's terminally ill, mentally competent, and has told doctors and psychologists that this is what they want rather than to linger. And with time I'll get on to the linger point. Hospice has to be increased in its presence in this state. My point is, I think both death with dignity and hospice are two viable ways to proceed if that's the way the person chooses. The Court goes on to say, "The patients in this case sought not only an end to pain," and it goes on to say, "which they might have had at the price of stupor. But an end to their short remaining lives with the dignity they believed would be denied them by powerful pain medication." And again, it's people choosing. This is how they choose not to linger and to not be in a stupor sometimes. Another interesting point is the Maine Medical Association testified against. On the national level, according to Justice Sewter, the medical community was not as adamantly against. There was some debate equivocation. And Justice Sewter goes on to say, "While there may be no unanimity on the physicians professional obligation in such circumstances providing such patients with prescriptions for drugs that go beyond pain relief to hasten death, it would, in some circumstances, be consistent with standards of medical practice." I bring this up because on the national level there's more equivocation over whether a doctor could be allowed to do this and still follow his or her Hippocratic oath. "Legislatures", the Court goes on, "aren't as constrained as we on the Court. Judicial constraint constrains them. The experimentation is entirely proper as well as highly desirable when the legislative power addresses an emerging issue like assisted suicide." And that's why, again, I thank you for enduring this debate.

The court should allow reasonable legislative consideration. For that reason I bring it up in my point, where I come down on this, I devoted in Committee to bring it to the floor to continue the debate, to do what I thought I saw the judicial branch asking the legislative branch to do. Today I stand before you in support of the Minority report, as amended because I want to speak to our strengths as a society. And I think in terms of the alleged weak out there, the ones who feel like we ought to protect them, I say there are adequate safeguards. In Committee, the Minority report, as amended, the safeguards being two doctors go over. It's doctor authorized. The patient goes for counseling that includes counseling about death. Then speak to our strengths because 71% of the public out there is saying they want to at least have this option. They want to go into those last years, last months, knowing that if it gets really painful, if they can get two doctors to authorize and they've had counseling, they ought to be able to say this is what I want. I want to speak to our strengths and I want to honor what those 71% are saying.

For those who question this, who vote against me today, I would just say that I respect the fact that you might not agree with me. Because as a policy maker you're not just making the decision for one. It's almost as though it's the policy maker's ability to regulate that drip for everybody. That's a very different feeling than when you're doing it just for somebody you love or asking someone you love to do it for you.

We heard from a person in testimony who has a father in the Netherlands where the Dutch have experimented with this model. She spoke of Papa. Papa had a brother who died of Parkinson's. With Parkinson's, we were told, your body functions weaken and you stop digesting. You basically die by starvation. The brother had done hospice. The testifying person's father had gone for hospice for awhile and at some point he was mortified at having to be evacuated, she said. He was mortified by his inabilities. He decided he had said his good-byes sufficiently for himself and for his family, and he took the extra time because he felt his sons weren't ready. But then he chose, even though he had access to hospice and pain medication. I think it was the day after Thanksgiving. This woman spoke without a tear. Some of us wanted to cry as we listened. But she spoke powerfully about the dignity of the way her father died. We also heard of a person named Pa. And Pa decided to go without the death with dignity option. He decided to just let the flow and go with time. And that's equally respectful, whatever anyone decides is their right. And I want to speak to our strengths where we can handle this responsibility.

Since I've been that yes vote out of Committee I've received numbers of letters and calls, all in support. The most meaningful one I received was from a student who went on for pages. She left lots of messages. I left messages. She decided she needed to deliver this in hand. And I'll not show a soul or tell a soul. But I'll suffice it to say that this death with dignity is going on and we all know it. And we're turning our eyes away out of respect, and that's fine. But in a nation of laws, not of men and women, and given our abilities to confront the tough issues, and seeing the Supreme Court come real close but punt it to the states to discuss it further. And knowing that 71% of the people in Maine are saying they want this, I think we can speak to our strengths. I think we can look at that moment as policy makers and say, if you've taken the necessary precautions we will speak to your strengths and your right and your freedom. This young woman, as far as I can figure, her mother was beyond, and in, extreme pain and I don't think it was increasing the flow. I think it was somehow shoving some things down her throat that she couldn't

work out. And I'm graphic only because I don't know how to be anything else right now. Her major issue was, she loved this person and she was really sad that the doctor who was attending her mother throughout had left before helping the mother with the rest of the treatment necessary to help her mother.

Our bill basically says, the doctor should be there saying, yes, this is a terminally ill and mentally competent person. Another doctor has to agree. And then the amendment gives an opt out provision for the doctor. The doctor has that right too, to say, I can't ethically do this. In which case they can opt out and a next of kin can come in and help with the final moment, second, whatever it is.

So, in honor of this student, that was really what swayed me.

Society is asking for help in this area because medical technology is allowing us to live, what one person in the other House said, maybe even beyond what God wanted us to live.

I'd like to say an important point for those who might be voting against the motion, and that's to talk to you about hospice so you understand what we heard, which were legitimate points. Maine has one of the lowest penetrations of hospice in the nation. There's a list of things learned. If we had better hospice we'd be saving more money. They say from \$1.50 to \$1.25 down to \$1, I would say even more, those are conservative estimates. That cancer patients are the ones that are in hospice the shortest amount of time. Meaning, we'd probably have to work for flexibility in doctor referral to hospice earlier. So that people know they have an alternative to high cost, probably ineffective treatment and can just get into hospice and get their pain relieved. The pain stories sound gruesome. So out of the hospice debate, which I hope continues, we realize that hospice was initiated under a Medicare program, I think in the late 80's. It says, "Hospice regulations require that a patient be going to die within six months. The data behind hospice numbers shows a lot of late enrollment." Probably we should, on the federal level, change the wording to say, a more flexible, roughly six months. We need to work to increase the presence of hospice. And I say we need to work to have the courage to help people who want this option to not linger. At the hearing when I asked hospice what they thought if somebody said, would you choose not to linger? I didn't really get an answer. I do know that hospice does a lot of wonderful work. I do know there are people out there who do not want to linger.

I'd like to close, in speaking to our strengths, by quoting Margaret Chase Smith, the Senator. If you listen carefully I'll appreciate it. She talks about freedom and using our freedoms. She says, "The ultimate responsibility for freedom is personal. Our freedoms today are not so much in danger because people are consciously trying to take them away from us, as they are in danger because we forget to use them. Freedom unexercised may become freedom forfeited." We're the freest country in the world. My speech today is in support of supporting every individual's freedom to decide for himself and herself whether, number one, they want the option and then to take the necessary steps. And then secondly, to exercise the option. We have the safeguards to protect the vulnerable. This is an opportunity to honor everyone's individual right. Repeating what Senator Margaret Chase Smith says, "Freedom unexercised may become freedom forfeited." And I thank you for testing yourselves to make sure that we are really deciding to honor peoples freedoms as best we can. Thank you very much.

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

Senator HARRIMAN: Thank you very much Mr. President. Good afternoon ladies and gentlemen of the Senate. This bill has been one of those, I'm sure there are many for each of us, at one time in the legislative session, that touches us more deeply than we realize. And this is one of those for me. I came to my decision on this issue listening very carefully to myself and my friends, the people who have written to me and have lobbied me. Essentially it has come down to three perspectives. The perspective of a compassionate human being who doesn't want to see someone suffer in pain, to suffer needlessly over the inevitable. And at times like those I look for spiritual guidance. And coincidentally perhaps, but almost literally a year ago to the day, I was in church. My minister presented the sermon entitled, Assisted Suicide. How shall we decide? In her sermon she said something rather poignant to me that I kept with me as I left the church that February. In part she said, "if the option of assisted suicide becomes legally and readily available, then are we as a society starting down the paths of forcing vulnerable, suffering terminally ill persons to justify their reason to live rather than their reason to die? If choosing death becomes an option, will death eventually become the given against which all other options must be justified?" Those words stayed with me. We came back into this session knowing that this legislation was going to be decided. I listened, as I mentioned, very carefully to the advocates of this bill. I read their material. I empathized with them. But when I literally read the legislation, and putting aside my compassionate heart and putting on my legislative responsibilities, the bill forces us to entrust or motivate or cajole other people to get involved in this so called personal decision. We're asking doctors and witnesses and next of kin and counselors and others to render their judgment. And I guess, in the spirit of the law that's before us that seems like a pretty easy thing to do. But I think judgment also takes on some other dimensions. The judgment by what criteria will delineate the moment when the depths and lengths of human suffering renders a life no longer worth living. The judgment of the fact of terrible suffering make life, by definition, unlivable and no longer sacred. Does the liberty not to live grant us the license to choose death? And in the case of terrible suffering, is God absent and to be found only in choosing death in the eternal life promised beyond? And how shall we show the greatest love to those who suffer? And how shall we provide the greatest mercy to those who suffer?

And finally, is this ours to decide in any case, in every case? Those are the judgments that this legislation from a legal perspective would cause us to answer. I think the legislation also has some oversight. It skips over some of the steps that we have yet to take. Have we done all that we can as a community, as a compassionate society on pain management in hospice? Can we assure ourselves that this legislation will protect all people, of all backgrounds, of all regions of our state, who will have equal access? Have we taken a look at our existing laws on prescription medicines and considered the liberalization of some of the laws? So that qualified professionals can help eliminate or minimize some of the tragic stories that I'm sure you have, as I know my good friend from Waldo, Senator Longley, heard in Committee. And yes, like most pieces of legislation, it ultimately comes down to a personal decision.

For me, actually this legislation is the first time I've thought about this in many years. I struggled while I watched my 46 year old father die. And I prayed, as many of you would for a loved one, to end the suffering. I wondered why he hung on? I wanted

him to hang on because the birth of his granddaughter was just a few weeks away. But many years have passed and up until now the emotions seemed to have been put in the background. What that experience taught me, about my father and the courage that he demonstrated, was the value that he placed on hoping that each day he'd have one more chance to enjoy life. He taught me to never give up. Get up one more time. And over these years, while I'm thankful that the suffering has ended, I have learned so much from that experience that has helped me in many ways that I could never express.

I hope you'll join me in voting for the Ought Not to Pass report. And I thank you very much Mr. President.

Off Record Remarks

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

Senator **BENOIT:** Thank you Mr. President and may it please the Senate. Respectfully, I ask you to vote against the pending motion so that we may go on to accept the Majority report of the Committee that this bill Ought Not to Pass. First of all I would like to express, on behalf of my constituents, thanks to the sponsor of the bill, Representative Brooks who is in the chamber. He does my constituency and yours a positive thing in bringing this legislation forward. Because, as we all know, it is very timely. The poles show that 71% of Maine people support this hype legislation. So I thank him for bringing this forward for the debate.

I would like to address three things here as reasons why I cannot support this proposed bill. I want to address first, the poles. Yes, in a pole taken last week 71% of Maine people support this legislation. Let's look at the pole. Four hundred and fifty Maine residents make up the pole. Not one of those folks were terminally ill when they were called and voted approval of this legislation. What we have in the pole then are people who, looking down the road in anticipation perhaps of some day being terminally ill, would support having this option available. There's another pole I want to share with you that, to me, is more overriding, more weighty. At the public hearing on this measure the Judiciary Committee heard a presentation on behalf of the terminally ill. The vast majority of those terminally ill do not support this bill. They wish to hang on to life for the precious thing that it is and they do not, by and large, opt out to have death hastened. Many of these folks are in pain. That is the pole that I give great weight. The 71% pole is important but I think when you look at it, you see that it's not entitled to the great weight of the terminally ill who have spoken as well on it. The principal reason why people want this legislation enacted is that they wish to have an option some day. They wish to be able to have a choice, to select the hastening of death if there is good reason to make that choice. But I would ask you to look at the quality of the option. The option is not a clear one. Nine out of 10 doctors in Maine do not support the legislation. How good then is your option when, as this bill contemplates, there will be two physicians involved. A consulting one and an attending one and they don't like this bill. I would suggest to you that if we're going to give the people of the State of Maine an option, it had better be a clear option, not a cloudy option.

A third point and my final point. I don't want to see this legislation pass so that we take the medical community off the

hook from working further to improve the management of pain. They don't want to be taken off the hook. They want to respond to that obligation and I give them high marks for that. There's work to be done in pain management. Passing this bill will pretty much be telling them, look, stop working on pain management to improve it. We've got an alternative. We're going to hasten death of the terminally ill. I'm not really impressed with that situation.

I feel that we're not ready today to pass this bill. We may be ready in two years, four years, six years, whenever. We may be ready then. But I would suggest to you, respectfully, we're not ready today. I don't want to make light of this but I'm going to close with this remark. We have an axiom, I guess you could call it, a public axiom a postulate around the state. Maine, the way life should be. Let's not change it to read, Maine, the way death should be hastened. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Kilkelly.

Senator **KILKELLY:** Thank you Mr. President and men and women of the Senate. I've, for the last several years, been very involved with the hospice folks. I chair the advisory council for the State Hospice Committee. I sponsored the original legislation to create the Maine Hospice Council, and have also been involved with the Maine Cancer Pain Initiative. One of the things that I would let folks know at this point is that Maine is the site of a National Cancer Pain Initiative meeting this summer. I'm pleased to be working on having that happen here. The control of cancer pain is incredibly important, and it's incredibly important in the context of this issue. We hear a lot, casually spoken, about 70% or 67% or however many people saying that they are, in fact, in favor of this legislation. And that's true. But when they're asked further, would you be in favor of this option if you knew that cancer pain or the pain that you might be feeling at the end of your life could be managed? Those numbers dropped dramatically. And that's really the direction that we need to go in. We need to spend more time and energy educating people about the options that are available to them. Once we have made every single option available then, and only then, should we be discussing this legislation.

In this state we do not even provide, as a Medicaid benefit, hospice care. If you are on Medicare you have hospice as a benefit. If you have not reached an age to receive Medicare and you are on Medicaid and have the misfortune of being terminally ill, Medicaid does not pay for that benefit. I would say that we are sorely negligent in that. I would hope that that would be something that we could rectify as soon as possible and provide more options for people. I'm really concerned about people who might feel that they were a burden on their family. I'm concerned about people who would be financially stressed because Medicaid doesn't pay for hospice services. And they would feel that maybe it was their duty and obligation to end their life as quickly as possible, in order to reduce the stress that they were putting on their family. I'm also concerned about a situation that I don't think any of us would like to think about. But of a family putting pressure on that person and saying to that person, I can't handle this anymore. I can't deal with this process. I can't stay home and take care of you. I can't do this. The kind of pressure that would be put on a person to make a decision about physician assisted suicide concerns me.

I'm also concerned about what would happen to the foundation of Maine law. Currently in Maine, what we do is to

support the continuation of a quality of life through volunteer hospice programs, through other programs such as the Maine Cancer Pain Initiative. That's the basis, the basis is to continue life. My concern is that if this legislation were to pass, the basis would be the ending of life and not the continuing of life. And that takes me to the next step, which is the most frightening of all. That has to do with HMO's and insurance companies. Because if those companies see that it is financially feasible for them, that a persons life were to end rather than services to continue, services in their home, services for pain management, counseling services and a number of other services, who's to say that at some point in time they wouldn't make the decision rather than the patient making the decision about what services you might be eligible for? Now that may seem like a real stretch, but how many of us have dealt with people who are critically ill, who have called their HMO provider and have asked for a service and had that service turned down? That's happened to me twice. One of whom died, a woman who had breast cancer. I argued and argued for weeks to get services for that woman. I finally got the services for her through her HMO. She died several months later. I am absolutely convinced that the pressure that was put on her by not being able to get the services that she felt she needed, and her doctors felt that she needed, from her HMO hastened her death. I have another constituent who went many, many weeks because he could not get permission to have a test done in Massachusetts. The HMO said, "Well, we'll let you do the test in Massachusetts because that really is the best doctor. But you can't go to the hospital where that doctor usually practices. You have to go to a hospital that we've chosen," which was across town in Boston. Now how many doctors are going to go across town to service one person? And we finally argued and argued and the person was able to get those services. How many others are out there?

Those are the kinds of decisions that are being made. Literally, life and death decisions that are being made on the basis of cost containment. If we pass this legislation, my concern is this will be the basis for other decisions. I urge you not to support the pending motion. To allow us to continue in a positive, educational mode and to look at Medicaid funding for the hospice program. Thank you.

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

Senator HALL: Thank you Mr. President and men and women of the Senate. I'll be quite brief because no words that I have for you today will change anyone's mind. Everyone's mind is totally made up and you all know how you're going to vote, but it'll make me feel a little bit better if I say a few words before you show me what your vote is. I was going to ask you, Mr. President, to clear the chamber of all the young people, but I'm not going to do that now because they could just hear what I was saying out in the hallways and the offices anyway. So I'll just change my testimony a little.

We live in a society where we treat our pets better than we do each other. If any of you have had pet cats, dogs, and so on and so forth, for any period of time, I'm sure all of you have had to take them to the vet and had them laid away. And you did it because you felt they were suffering, although they couldn't tell you that they were. I've done it several times. It's not an easy task. I hope I never have to do it again but I probably will. I keep getting another pet. But you know, it's a little bit different with people because they can communicate with you. They can tell

you how they feel. And I feel that people should have a choice. We surely have taken an awful lot of choice away from people, and we continually do it. Whether it's a mandate that you wear your seat belt, or anything else that seems to come down the road that pleases us lawmakers. We have a total disregard for the people's wishes in some of these areas. We don't believe the poles, perhaps. Or the people who we talk with back home, they don't know what they're talking about. I know for a fact that many Senators in this room have put this question on questionnaires and sent them out to 35,000 people in their districts. I did the same. Two years ago I received 2,100 responses. And out of 2,100 people, 67.6% said they wanted this option. I know, for a fact, of a Senator in this room who sent one out this year from a far different part of the state from where I live. And his return was about the same or more, 70% approval of this piece of legislation. But yet, we sit here high and above our constituents apparently and go the other way. Well, we've done it on term limits. We've done it on a compact. And the public showed us this very week that they didn't want passage of legislation that we passed in this Chamber. I think you're going to chalk up another one.

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

Senator LAFOUNTAIN: Thank you Mr. President and men and women of the Senate. I rise today and ask you to vote against the pending motion. First of all I want to thank the good Senator from Waldo for continuing the tradition of civil discourse at a hearing such as this, which has a major social policy ramification. She continues a tradition that was led by her predecessors who also served in this chamber. Because this was a major social policy issue, this Committee was inundated with letters prior to the hearing. I attended a hearing that lasted approximately 4 to 5 hours and since the hearing have also received numerous letters. In viewing my file today, I came across one specific letter, which I think pretty much sums up my position and the position of a number of people who serve on the Committee. I'd like to read to you, briefly, from that letter. "There are many misconceptions about death in this death-phobic society in which we live. The largest research data base on death and dying lies at George Washington University Center, the Improved Care of the Dying. The facts state that the overwhelming majority of us will die painlessly and peacefully. The facts state that the dying are heir to all the joys of living as well as the depression we all feel contemplating our own mortality. The facts make one realize that when suicide is our best offering to those facing eminent death, we have clearly approached the final solution before ever trying to improve the care of the dying. Although I believe that the legislation proposed in L.D. 916 is well-intentioned, I would ask first, where is the legislation offering high quality end of life care to those facing eminent death?" And I think the Senator from Lincoln said it well when she compared Medicaid and Medicare coverage of hospice.

Secondly, where is the legislation to insure psychological support to those saddened and depressed about their eminent death?

Third, what kind of society do we live in where the dying think that suicide is their best alternative?

And finally, where is the shred of human compassion that would mandate legislation to improve the care of the dying and

not just offer them death as the alternative to a difficult end of life?

I ask my colleagues in the Senate to not be swayed by what we have read in the papers or we've heard here today about the recent pole conducted in the state of Maine. And I think if one was to look at the outcome of Tuesdays elections and the percentage we saw before that, poles aren't always indicative of what the public will actually do at the ballot box. And one can only point to California to demonstrate this. Voters in California rejected an assisted suicide ballot question 54% to 46% despite initial support of 75% of California voters. Thank you.

On motion by Senator **CAREY** of Kennebec, 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 Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Mr. President and ladies and gentlemen of the Senate. First, I want to thank my colleague, the Senator from Piscataquis, for his comments on the floor. Because despite the fact that with our ample opportunity to consider an issue before we come here, we often do have our minds made up. There's always me, and I would urge all of you to give it your best shot when we get in here because my ears are open.

I want to note the summary of this bill before today, which says, "it allows a mentally competent adult who is suffering from a terminal illness to request and obtain medication from a physician to end that patients own life in a humane and dignified manner with safeguards to ensure that the patients request is voluntary and based on an informed decision." To me, that's about the best summary of intent for this legislation I've ever heard. It troubles me not at all and I support it wholeheartedly. Unfortunately, that summary is the conclusion of 10 pages of rules for dying with dignity that include counseling, consultations, waiting periods, and forms to sign. As the good Senator from Franklin noted, the quality of the option is less than wonderful. In fact, the quality of the option troubles me a great deal.

Then I'd like to say a few words about the kind of input I've gotten regarding this piece of legislation. I have about an equal stack of papers from people who contacted me in support and from people who contacted me in opposition. Virtually all of the opposition came from professional organizations, which happen to be organizations that, as a healthcare giver, I'm quite familiar with and have an enormous respect for. And virtually every single piece of individual contact I had from just plain old constituents out there was in support of the bill. And I'm not sure that I've ever had a bill that had that clear a division between the organized point of view and the individual point of view. So that's caused me a great deal of trouble in terms of making up my mind. A respected body of professionals in opposition and a large volume of individual constituents in favor. As I talked with those constituents who asked me to support this legislation, I pointed out to them what I consider to be the many flaws of this proposed system of death with dignity. The fact that physicians oppose that, and as has been noted before, it's going to be difficult to implement a program without the support of the healthcare community. There are other matters that make the bill bureaucratic and cumbersome.

Probably the last piece that has helped my decision to fall into place today was my memory of Channing Washburn who is the

retired physician who, perhaps in the state of Maine, took the most public position on this issue as one of it's strongest supporters and advocates. The last time I saw Channing was at a family wedding. And as weddings are, it was a happy occasion and there were a lot of kids from his family around and a lot of kids from mine, all of whom had been friends for most of their lives. Despite the many happy images of that day, one thing that I do remember was my vision of Channing sitting on a bench outside the door of the reception. Because as he had arrived there his oxygen tank had emptied and he was so breathless that he could barely get his oxygen switch over to a fresh tank before literally losing consciousness. It was certainly a frightening moment for him. It was for all of us who witnessed that. And he survived that event, but not too long after that Channing made the decision to end his life because of his disabilities. It was not because he didn't have adequate hospice care available. We have very good hospice services in Hancock County. It was simply the fact that Channing had reached the point where he decided it was time. Certainly, as a physician, he was well-informed as to what the risks were, what his prognosis was and so on.

So, because of the statement of intent in this bill, and because of Channing's living out the intent of this legislation, and because of his great courage in taking that leap of faith, I'm willing today to take the leap of faith, a step behind him I'll admit, but to say that this could be a starting point for resolving an issue that is certainly of great concern to the people of this state. Thank you.

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

Senator **MURRAY:** Thank you Mr. President and men and women of the Senate. I hesitate to rise somewhat this afternoon at this late hour primarily because I have no profound thoughts to share with you that are any more profound than you've already heard. And quite to the contrary, I suspect they will be much less profound than much of what we've heard. However, I am compelled to stand up. Let me begin by stating a little bit of my background on this issue. We all have a degree of legislative experience that we bring to this chamber. I'm pleased to say that one of my proudest legislative achievements, when I used to serve in the other body, was to be the sponsor of Maine's first Living Will law, in 1985. It's something I felt deeply about and it's something that I sponsored along with other cosponsors. It's something that has survived to this day and affords those in the later stages of their lives important opportunities and decision-making capabilities that need to be continued. One that I'm pleased to have played a part in.

If I could beg your indulgence to speak on a personal note in another matter, and I hesitate to do that as well. Because what I want to speak about, at least briefly, involves my father and his death which occurred about 15 months ago. I'm sure some of the things I am about to say is something that he would not like to have trumpeted publicly, because he was just that type of person. But it's that experience that brings me closest to the issue we are facing today as well. The issue of dying, the profound issue that many of us have come close to, and which we are called upon to bring to this issue. My father was suffering from, and in fact, ultimately died as a result of ALS, which is better known as Lou Garretts disease. It's a disease which affects the muscular system and the brain's ability to tell the muscles what to do. That's about as simple as I can get it, and if we get too much

more beyond that, that's the extent of my medical expertise. But unfortunately, what that does is that slowly deteriorates the muscles and slowly deteriorates the ability for the individual suffering from that to control those muscles. And those muscles include almost all your voluntary muscles, which slowly rob you of the ability to walk, the ability to move your arms and legs, the ability to swallow, the ability to breathe, and everything else related to what we think of as a vital and dignified life. This in fact happened to my father as well. Despite that his journey through this process was one of the most dignified journeys that anyone, I suspect, has journeyed. That journey that he took was undoubtedly painful. But I think, in his own way, rewarding. And in message to me and those of us around him, he taught us more in those last hours of life than many will learn in a lifetime. So I am very hesitant when anyone talks about the dignity and the lack of dignity associated with the final stages of life, even when it is most unpleasant and most painful. For dignity is not measured by the level of pain one suffers. Dignity is measured by that which the individual brings to it.

So let's dispel that issue today as we move forward with our discussions of this issue in general. Not all people die with the same level of dignity and grace that my father probably brought to that task. So then why, one might ask, can't that individual make the choice to decide on his or her own when it's time to ask someone else for assistance in accelerating the death process? I don't have the profound answer. But I think the key distinction between what I have championed in the past with regard to the ability of one to determine whether or not to continue life sustaining treatment and what we are discussing today, the request of adding an outside party to accelerate the death process is a profound distinction and one which we should not cross today or any time soon. Because that is the profound difference we are talking about today. Are we, as a society, going to take on that responsibility that the good Senator from Waldo referred to? Are we ready for that responsibility? I think the answer is, no. Because that responsibility of having others assist in, and for the purpose of, accelerating the death of one other person is not a responsibility we are ready for, we are called to, or that we should endeavor to accept. Let us today continue that profound distinction that exists in our philosophy, in our moral, and I would argue to you, ought to remain in our laws. For all those reasons I thank you for your indulgence and respectfully request that we vote no on the pending motion so that we can accept the Majority report.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

Senator **NUTTING** of Androscoggin who would have voted YEA requested, pursuant to Senate Rule 401.6, leave of the Senate to pair his vote with Senator **TREAT** of Kennebec who would have voted NAY.

ROLL CALL

YEAS: Senators: ABROMSON, GOLDTHWAIT, HALL, LONGLEY, MILLS

NAYS: Senators: AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, CATHCART, CLEVELAND, DAGGETT, FERGUSON, HARRIMAN, KILKELLY, LAFOUNTAIN, LIBBY,

MICHAUD, MITCHELL, MURRAY, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: JENKINS, KIEFFER, MACKINNON

PAIRED: Senators: NUTTING, TREAT

5 Senators having voted in the affirmative and 25 Senators having voted in the negative, with 2 Senators having paired their votes and 3 Senators being absent, the motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-788)** Report in **NON-CONCURRENCE, FAILED**.

The Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

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

PAPERS FROM THE HOUSE

Joint Resolution

The following Joint Resolution: H.P. 1578

JOINT RESOLUTION RECOGNIZING THE 100TH ANNIVERSARY OF THE SINKING OF THE BATTLESHIP MAINE

WHEREAS, the battleship USS Maine was sunk in Havana harbor, Cuba on February 15, 1898 with great attendant loss of life, including seamen from the state for which the ship was named; and

WHEREAS, this is the 100th anniversary of that event, which contributed to the entry of the United States into the Spanish-American War, although the exact origin of the explosion that caused the battleship Maine's destruction has never been fully ascertained; and

WHEREAS, the State of Maine honors all members of the United States Armed Forces, especially those who died in service to their country, including the 260 men who died that day in Havana harbor; and

WHEREAS, the loss of the battleship Maine has a special significance to this State and was the origin of the famous rallying cry of "Remember the Maine"; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Eighteenth Legislature, now assembled in the Second Regular Session, take this opportunity to mark the centennial of the sinking of the first USS Maine, and we honor all those who lost their lives in that tragedy; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to Secretary of Defense William Cohen and to each member of the Maine Congressional Delegation.

Comes from the House, **READ** and **ADOPTED**.

READ and **ADOPTED**, in concurrence.

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

PAPERS FROM THE HOUSE

House Paper

Resolve, to Repeal a Prior Resolve Authorizing the Exchange of a Parcel of Land Owned by the State with One Owned by Luke Bolduc
H.P. 1581 L.D. 2211

Comes from the House, **REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT** and ordered printed.

REFERRED to the Committee on **STATE AND LOCAL GOVERNMENT** and ordered printed, in concurrence.

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

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Emergency

An Act to Provide State Matching Funds for Federal Disaster Assistance Relating to the January Ice Storms
S.P. 812 L.D. 2191

Senator **LONGLEY** of Waldo moved the Senate **SUSPEND THE RULES** for the purpose of **RECONSIDERATION**.

At the request of Senator **AMERO** of Cumberland a Division was had. 16 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **LONGLEY** of Waldo to **SUSPEND THE RULES** for the purpose of **RECONSIDERATION, FAILED**.

This being an Emergency Measure and having received the affirmative vote of 28 Members of the Senate, with 3 Senators having voted in the negative, and 28 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Off Record Remarks

On motion by Senator **PINGREE** of Knox, **ADJOURNED**, pursuant to the Joint Order, until Tuesday, February 17, 1998, at 10:00 in the morning.