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UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE IN JOINT SESSION.



JOURNAL OF THE SENATE IN JOINT SESSION.

Monday, March 29, 2004.

*Joint Session of the Two Houses to Consider
Specific Amendments to the Constitution.*

At five minutes past ten o'clock A.M., the two Houses met in

JOINT SESSION

and were called to order by the Honorable Robert E. Travaglini, President of the Senate.

The President, members, guests and employees then recited the pledge of allegiance to the flag.

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

Eternal God, the Ultimate Source of Compassion and Truth, during this moment of reflection and prayer, we focus our attention on You and on spiritual and human values. In carrying out our many and varied responsibilities, we depend upon You and Your assistance in our efforts to serve You faithfully and people thoughtfully. Help us to achieve the purpose for which we have been created by You. As elected leaders, in addressing and resolving complex, sensitive and emotional issues and policies, teach us to respect the dignity and the uniqueness of each individual person in our diverse communities. Let our disagreements on issues be respectful, civil and rational. During these times of possible terrorists activity, inspire us to work together in building a peaceful, caring and just society in which the common good is a common goal. May we remain faithful to our philosophical principles and religious commitments and beliefs.

Grant your blessings to the Speaker, the Senate President, the members and employees of this House and Senate and their families. Amen.

The Proposal for a Legislative Amendment to the Constitution relative to the affirmation of marriage (House, No. 3190, amended) was read a third time.

The Proposal was as follows:--

ARTICLE OF AMENDMENT.

It being the public policy of this commonwealth to protect the unique relationship of marriage, only the union of one man and one woman shall be valid or recognized as a marriage in the commonwealth. Two persons of the same sex shall have the right to form a civil union if they otherwise meet the requirements set forth by law for marriage. Civil unions for same sex persons shall

provide entirely the same benefits, protections, rights, privileges and obligations that are afforded to persons married under the law of the commonwealth. All laws applicable to marriage shall also apply to civil unions.

This Article is self-executing, but the general court may enact laws not inconsistent with anything herein contained to carry out the purpose of this Article."

Pending the question on agreeing to the amendment, Messrs. Berry and Baddour moved to amend the proposal by striking out the text and inserting in place thereof the following text:-

"Only the union of one man and one woman shall be valid or recognized as a marriage in the commonwealth.

Two persons of the same sex shall have the right to form a civil union if they meet the requirements set forth by law for marriage. Civil unions for same sex persons shall provide entirely the same benefits, protections, rights, privileges and obligations that are afforded to persons married under the law of the commonwealth. All laws applicable to marriage shall also apply to civil unions. This Article is self-executing, but the general court may enact laws not inconsistent with anything herein contained to carry out the purpose of this Article." (as corrected BTR.)

Pending the question on adoption on the amendment, Messrs. Travaglini and Lees moved to amend the amendment by striking out the text and inserting in place thereof the following text:-

"The unified purpose of this Article is both to define the institution of civil marriage and to establish civil unions to provide same-sex persons with entirely the same benefits, protections, rights, privileges and obligations as are afforded to married persons, while recognizing that under present federal law benefits same-sex persons in civil unions will be denied federal benefits available to married persons.

It being the public policy of this Commonwealth to protect the unique relationship of marriage, only the union of one man and one woman shall be valid or recognized as a marriage in the commonwealth. Two persons of the same sex shall have the right to form a civil union if they otherwise meet the requirements set forth by law for marriage. Civil unions for same sex persons are established by the Article and shall provide entirely the same benefits, protections, rights, privileges and obligations that are afforded to persons married under the law of the commonwealth. All laws applicable to marriage shall also apply to civil unions. This Article is self-executing, but the general court may enact laws not inconsistent with anything herein contained to carry out the purpose of this Article." (as corrected BTR)

Pending the question on adoption of the further amendment (Travaglini-Lees), Mr. Peterson of Grafton raised a point of order, which being stated that the amendment being debated was out of order for the reason that it was accepted in improper order.

The Chair ruled that the point of order was NOT well taken, inasmuch as the amendments were not taken improperly.

Mr. Jones of North Reading appealed the ruling of the Chair and it was seconded by Mr. Peterson of Grafton.

During consideration of the appeal, at two minutes past two o'clock P.M., Mr. Jones of North Reading doubted the presence of a quorum and asked for a call of the yeas and nays to ascertain if a quorum was present. The President, having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum at twenty-three minutes before eleven o'clock A.M., as follows to wit (Answered Present 188) [Senate Yeas and Nays No. 496] [House Yeas and Nays No. 568]:

[INSERT RC "A" Answered Present](#)

[INSERT HOUSE RC "568"](#)

The yeas and nays having been completed at nineteen minutes before eleven o'clock A.M., a quorum was declared present.

The question, "Shall the decision of the Chair stand as the judgement of the Joint Session?" was then considered; and the question thereon was determined by a call of the yeas and nays, at three minutes before eleven o'clock A.M., on motion of Mr. Peterson, as follows, to wit (yeas 148 - nays 48) [Senate Yeas and Nays No. 497] [House Yeas and Nays No. 568]:

[INSERT ROLL CALL "B"](#)

[INSERT HOUSE ROLL CALL "569"](#)

The yeas and nays having been completed at four minutes past eleven o'clock A.M., the ruling of the Chair was sustained.

Mr. Peterson of Grafton raised a point of order, which, being stated was that the further amendment (Travaglini-Lees) is out of order for the reason that the further amendment should not have been allowed to have been filed without knowing what was before the joint session.

The point of order was NOT well taken, inasmuch as the amendments were accepted in the order in which they were received.

Mr. Jones of North Reading appealed the ruling of the Chair and it was seconded by Mr. Peterson of Grafton.

The question, "Shall the decision of the Chair stand as the judgement of the Joint Session?" was sustained.

The pending further amendment (Travaglini-Lees) was adopted.

Mr. Peterson of Grafton doubted the vote and asked for a call of the yeas and nays, and sufficient number of members joining him in this request, the yeas and nays were ordered.

The question on adoption of the further amendment was determined by a call of the yeas and nays at eighteen minutes past eleven o'clock A.M. as follows to wit (yeas 116 - nays 81) [Senate Yeas and Nays No. 498] [House Yeas and Nays No. 570]:

[INSERT RC "C"](#)

[INSERT HOUSE RC "570"](#)

The yeas and nays having been completed at one minute before twelve o'clock noon, the further amendment (Travaglini-Lees) was adopted.

Mr. Lees moved that the vote on adoption of the further amendment (Travaglini-Lees) be reconsidered.

Pending the question on the motion to reconsider, at twelve o'clock noon, at the request of Mr. Lees, for the purposes of a minority party caucus, the President declared a recess; and at nineteen minutes past one o'clock P.M., the Joint Session reassembled, the President in the Chair.

The motion to reconsider the adoption of the further amendment (Travaglini-Lees) was considered; and was negatived.

At nineteen minutes past one o'clock P.M., Mr. Rogers of Norwood doubted the presence of a quorum and asked for a call of the yeas and nays to ascertain if a quorum was present. The President, having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum.

Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum at twenty-three minutes past one o'clock P.M., as follows to wit (Answered Present 197) [Senate Yeas and Nays No. 499] [House Yeas and Nays No. 571]

[INSERT RC "D" Answered Present](#)

[INSERT HOUSE RC "571"](#)

The yeas and nays having been completed at twenty-seven minutes before two o'clock P.M., a quorum was declared present.

The Proposal for a Legislative Amendment to the Constitution relative to the affirmation of marriage (House, No. 3190, amended),- was further considered, the question being substitution of the further amendment (Travaglini-Lees) for the pending amendment (Berry-Baddour).

Pending the question on substitution of the further amendment, Mr. Rogers of Norwood asked unanimous consent to further amend the amendment (Travaglini-Lees) by striking out the text and inserting in place thereof the following text:-

"It being the public policy of this Commonwealth to protect the unique relationship of marriage, only the union of one man and one woman shall be valid or recognized as a marriage in Massachusetts. Two persons of the same sex shall have the right to form a civil union if they meet the requirements set forth by law for marriage. Civil unions for same sex persons are established by the Article and shall provide entirely the same benefits, protections, rights, privileges and obligations that are afforded to persons married under the law of the commonwealth. All laws applicable to marriage shall also apply to civil unions.

No individual, acting within the free exercise of religion, or religious organization shall be required to solemnize or recognize a union between persons of the same-sex, nor shall any such individual or organization be penalized by the government in any manner for exercising either their religious beliefs or conscientious objection and refusing to solemnize or recognize a union between persons of the same-sex.

This Article is self-executing, but the general court may enact laws not inconsistent with anything herein contained to carry out the purpose of this Article."- but objection was made thereto; and the amendment was laid aside.

After debate, the question on adoption of the pending amendment (Berry-Baddour), as amended (Travaglini-Lees), was determined by a call of the yeas and nays at nineteen minutes past two o'clock P.M. as follows to wit (yeas 111 - nays 86) [Senate Yeas and Nays No. 500] [House Yeas and Nays No. 572]:

[INSERT RC "E"](#)

[INSERT HOUSE RC "572"](#)

The yeas and nays having been completed at twenty-eight minutes before three o'clock P.M., the pending amendment (Berry-Baddour), as amended (Travaglini-Lees) was adopted, as amended.

At the request of Mr. Jones of North Reading, for the purposes of a minority caucus, the President declared a recess; and at twenty-three minutes before four o'clock P.M., the Joint Session reassembled, the President in the Chair.

The Proposal for a Legislative Amendment to the Constitution relative to the affirmation of marriage (House, No. 3190, amended),- was further considered, the question being on agreeing to the amendment.

Mr. Peterson of Grafton moved to reconsider the vote on the adoption of the pending amendment (Berry-Baddour), as amended (Travaglini-Lees), but the Chair ruled that the motion was out of order in that it was not made in timely manner as prescribed by the rules.

Mr. Hynes of Marshfield moved to divide the question, but objection was made thereto.

At nineteen minutes before four o'clock P.M., Mr. Hynes of Marshfield doubted the presence of a quorum and asked for a call of the yeas and nays to ascertain if a quorum was present. The President, having determined that a quorum was not in attendance, then directed the Sergeant-at-Arms to secure the presence of a quorum. Subsequently a roll call was taken for the purpose of ascertaining the presence of a quorum at nineteen minutes before four o'clock P.M., as follows to wit (Answered Present 195) [Senate Yeas and Nays No. 501] [House Yeas and Nays No. 573]:

[INSERT RC "F" Answered Present](#)

[INSERT HOUSE RC "573"](#)

The yeas and nays having been completed at ten minutes before four o'clock P.M., a quorum was declared present. Mr. Hynes of Marshfield then moved to suspend the provisions of House Rule 74, but an objection was made thereto. After debate, the question on again agreeing to the amendment was taken by a call of the yeas and nays, as required by Article XLVIII of the Amendments to the Constitution, at one minute before six o'clock P.M., as follows, to wit (yeas 105 - nays 92) [Senate Yeas and Nays No. 502] [House Yeas and Nays No. 574]:

[INSERT RC "G"](#)

[INSERT HOUSE RC "574"](#)

The yeas and nays having been completed at eight minutes past six o'clock P.M., the amendment was agreed to. Mr. Lees moved reconsideration the vote on agreeing to the amendment; and this motion was negatived. Without further action on the matters duly and constitutionally assigned for consideration, at nine minutes past six o'clock P.M., the Joint Session was recessed until Tuesday, March 30, 2004 at one o'clock P.M.