

MAINE SUPREME JUDICIAL COURT

DOCKET NO. OJ-15-2

In the Matter of: Request for Opinion of the Justices

**BRIEF FOR – Representative Kenneth W. Fredette, Maine House Republican Leader,
Representative Eleanor M. Espling, Assistant Maine House Republican Leader and
Representative Jeffery L. Timberlake**

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Exhibits #1-5 attached

II. TABLE OF AUTHORITIES

A. Constitution of the State of Maine

B. Title 3 M.R.S. §2

C. *The Okanogan, Methow, San Poelis (or San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of the State of Washington v. United States.*, 279 U.S. 655, 49 S.Ct. 463, 73 L.Ed. 894 (1929).

D. *Opinion of the Justices*, 134 Me. 510, 513 (Me. 1975).

E. *Opinion of the Justices*, 437 A.2d 597 (1981).

F. *Opinion of the Justices*, 484 A.2d 999 (1984).

III. QUESTIONS PRESENTED:

A. Whether the questions propounded present a “solemn occasion within the meaning of Article VI, section 3 of the Maine Constitution.

B. What form of adjournment by the Legislature prevents the return of a bill to the Legislature as contemplated by the use of the word, adjournment, in Art. IV, pt.3 §2 of the Maine Constitution?

C. Did any action or inaction by the Legislature trigger the constitutional three-day procedure for the exercise of the Governor’s veto?

IV. STANDING

Representative Kenneth W. Fredette of Newport, Maine is the House Republican Leader, Minority Office. Representative Eleanor M. Espling of New Gloucester, Maine is the Assistant Republican Leader, Minority Office. Representative Jeffrey L. Timberlake of Turner is a member of the House Republican Caucus. These legislators, like all Maine legislators, take very seriously their constitutional roles as representatives of the people of Maine. Part and parcel of that constitutional role is voting on legislation returned to the Maine Legislature after veto by the Governor. As duly elected Representatives to the Maine House they are interested persons within the meaning of the Procedural Order of the Maine Supreme Judicial Court, Docket No. OJ-15-2, dated July 20, 2015 at 4:00 p.m. This brief is submitted on their behalf to assist the Supreme Judicial Court in its deliberations of this critical subject and to make known their position in connection with the matters before the Court to the extent their positions differ from that of other members of the Maine Legislature including the Speaker of the House and the President of the Senate.

The Legislative Council is made up of the ten elected leaders of the Legislature. Representative Fredette requested an "Emergency Meeting of the Legislative Council" to meet and discuss the veto issue. See Exhibit # 1. No meeting was called. Additionally, a regular meeting of the Legislative Council

was scheduled for July 23, 2015, and subsequently canceled. See Exhibit #2. It is the position of the Members on whose behalf this brief is submitted that decisions made by the Speaker of the House and President of the Senate on behalf of the Legislative branch concerning the issues before the Court, including the Legislature's position with respect to those issues, were not discussed by the ten elected leaders of the Legislature nor voted on by the bodies at large. Thus those positions do not represent the Legislature speaking with one voice as stated by the Speaker in a letter denying Representative Fredette's request for funding for a separate brief. See Exhibit #3 and Exhibit #4.

V. BRIEF STATEMENT OF FACTS:

The Maine Legislature, pursuant to its constitutional mandate set forth in Article IV, Part Third, Section 1 of the Maine Constitution, must establish its own date of adjournment. It is constitutionally permitted to enact legislation that determines that date of adjournment. Title 3 M.R.S. §2 provides in pertinent part, "The first regular session of the Legislature, after its convening, shall adjourn no later than the 3rd Wednesday in June and the 2nd regular session of the Legislature shall adjourn no later than the 3rd Wednesday in April." Title 3 M.R.S. §2. This year the 3rd Wednesday in June fell on June 17, 2015.

The Legislature has the power to increase the length of the session as follows:

“The Legislature, in case of emergency, may by a vote of 2/3 of the members of each House present and voting, extend the date for adjournment for the first or 2nd regular session by no more than 5 legislative days, and in case of further emergency, may by a vote of 2/3 of the members of each House present and voting, further extend the date for adjournment by 5 additional legislative days. The times for adjournment for the first and 2nd regular sessions may also be extended for one additional legislative day for the purpose of considering possible objections of the Governor to any bill or resolution presented to him by the Legislature under the Constitution, Article IV, Part Third, Section 2.” 3 M.R.S. §2.

For the immediate past session of the Legislature, the statutory date for adjournment was June 17, 2015. The initial vote to extend the session was taken on June 18, 2015, one day *after* the statutory deadline for adjournment. Notably, that vote was not timely. The Legislature then met on June 19, 22, 23 and 24. On June 24, the Legislature attempted to extend the session again and then adjourned until June 30, 2015. On June 30, the Legislature adjourned without stating a day to return. See attached Exhibit #5.

The June 30, 2015 Order set forth no time certain *when or if* the Legislature would return at the discretion of the Speaker of the House and the President of the Senate, leaving them with the sole power to determine whether or if there would be further action of the Legislature. The Speaker and Senate

President reconvened the Legislature on July 16, 2015 for one day only, a date not contemplated in their adjournment.

The Maine Constitution at Article IV, Part Third, §2 provides 10 days (Sundays excepted) for the Governor to return bills with objections to the Legislative houses from whence they originated. This is a clear constitutionally defined protocol, regularly followed throughout every session, which permits the executive and legislative branches to exercise their respective roles in the legislative process.

“If the bill or resolution shall not be returned by the Governor within 10 days (Sundays excepted) after it shall have been presented to the Governor, it shall have the same force and effect as if the Governor had signed it *unless the Legislature by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within 3 days after the next meeting of the same Legislature which enacted the bill or resolution*; if there is no such next meeting of the Legislature which enacted the bill or resolution, the bill or resolution shall not be a law.” Maine Constitution, Article IV, Part Third, §2 (emphasis added).

Because the Legislature adjourned with no day certain for return, the Governor could not return the bills for consideration or action. He therefore had no choice but to hold them until the Legislature returned, which it did on July 16, 2015. The bills in question were returned on that day, the first day the

Legislature was in session. On July 16, 2015, and without vote of the Legislature, the Speaker of House declared the bills had become law.

This Honorable Court is asked to interpret the Constitution to bring clarity to the status of the bills in question, determine whether they are now laws to be enforced by the Executive branch or whether there are steps left to be taken before they become law or do not become law. By providing clarity to the issue of adjournment, this Court will also remove any doubt as to dates on which other bills, which are not in dispute, will become law. These are issues of great import to the people of the State of Maine.

VI. ARGUMENT

A. Whether the questions propounded present a “solemn occasion within the meaning of Article VI, section 3 of the Maine Constitution.

This is a threshold question for Court. Article VI, Section 3 of the Maine Constitution states, “The Justices of the Supreme Judicial Court shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Senate or House of Representatives.” At issue in this case is the status and validity or lack thereof of a substantial number of Maine bills/laws. The issue is neither tentative, hypothetical, nor abstract, criteria set forth *in Opinion of the Justices*, 134 Me. 510, 513 (Me. 1975). It is in fact a live controversy which impacts Maine citizens directly. In the absence of an opinion of this Court, there is uncertainty

about the process and protocol, uncertainty about the role of the co-equal branches and uncertainty about the validity and status of the bills/laws.

B. What form of adjournment by the Legislature prevents the return of a bill to the Legislature as contemplated by the use of the word, adjournment, in Article IV, Part Third, Section 2 of the Maine Constitution?

1. The meaning of adjournment is critical to any analysis in this case. In the absence of collaboration between the co-equal branches about how to interpret and handle vetoed legislation at the end of a session, something that has occurred in the past, clarity is essential, especially in an era of “gotcha” partisan politics. The people of the State of Maine deserve better.

Some may assert that “adjournment sine die” is the magic language to create a bright line. The Maine Constitution does not require “adjournment sine die.” The Maine Constitution states, “If the bill or resolution shall not be returned by the Governor within 10 days (Sundays excepted) after it shall have been presented to the Governor, it shall have the same force and effect as if the Governor had signed it unless the Legislature *by their adjournment* prevent its return, in which case it shall have such force and effect, unless returned within 3 days after the next meeting of the same Legislature which enacted the bill or resolution; . . .” Maine Constitution, Article IV, Part Third, Section 2. (emphasis added)

The Legislature adjourned after its two statutory emergency extensions without establishing a specific time to return. Whether to return or not to

return or when to return is left to the discretion of Speaker of the House and the Senate President. This has the effect of adjournment without day. The date of final adjournment has other important consequences including the trigger date from which validly enacted bills become the law of the land. Should the people of the State be left to wait until the beginning of the next session to know when validly enacted legislation becomes law? This is the possible result if adjourning without a date of certain return is ruled as an interim adjournment.

It is the province of the Legislature to decide when it is session. An open ended adjournment, with no set day of return, left to the discretion of the Speaker and Senate President has the effect of ceding power to the Executive branch to control the Legislature's action and calendar impermissibly. If the Governor had returned the bills despite the legislature's absence, something he cannot do for reasons set forth below, the legislative officers would be forced to either call in the Legislature to act, not on their time table, but on the Governor's timetable or not act at all. Legislative enactment is not a game of chicken or gamesmanship, it is a deliberative process for the people and requires predictability.

The actions of the co-equal branches, regardless of agreement or disagreement should be understandable and predictable. A ruling by this Court that adjournment on June 30, 2015 occurred does nothing more than give the appropriate branch of the Legislature the opportunity to vote on returned bills.

A ruling by this Court that adjournment had not occurred as of June 30, 2015 has the practical effect of allowing the Speaker and Senate President to decide for the people of Maine, without a vote of their respective bodies, that certain bills are now law.

The June 30, 2015 Order of Adjournment made it impossible for the Governor to return the bills to the appropriate Houses. This issue has been similarly addressed by the U.S. Supreme Court. "Since the bill is to be returned to the same "House," and none other, that is to enter the President's objections on its journals and proceed to reconsider the bill -- there being only one and the same reference to such House -- it follows, in our opinion, that, under the constitutional mandate, it is to be returned to the "House" when sitting in an organized capacity for the transaction of business, and having authority to receive the return, enter the President's objections on its journal, and proceed to reconsider the bill; and that no return can be made to the House when it is not in session as a collective body, and its members are dispersed." *The Okanogan, Methow, San Poelis (or San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of the State of Washington v. United States.*, 279 U.S. 655, 49 S.Ct. 463, 73 L.Ed. 894 (1929).

Here, the Maine Legislature, after its June 30, 2015 action was no longer sitting. It was disbursed, its members returned to their lives and vocations with no calendared return. The Legislature was not in session, was not doing business, not in town, and thus was not available to receive bills with the

Governor's objections. The Governor was prevented from the returning the bills precisely as contemplated by the Maine Constitution.

It has been suggested that because Legislative Clerks were present in Augusta, bills could be returned. The absence or presence of Legislative Clerks is a feint. Legislative Clerks are not the deliberative body. Further, there is no evidence to suggest the Legislative Clerks were not in their offices when similar issues were addressed by the Justices previously in 1981 and 1984 (*Opinion of the Justices*, 437 A.2d 597 (1981) and *Opinion of the Justices*, 484 A.2d 999 (1984)).

C. Did any action or inaction by the Legislature trigger the constitutional three-day procedure for the exercise of the Governor's veto?

As set forth above, the action of the Legislature to adjourn with no set day to return is the action which triggered the three day procedure for exercise of the Governor's veto. In the interest of brevity, this brief will not reiterate those arguments already presented.

VII. CONCLUSION

The Members of the House presenting this brief urge this Honorable Court to allow the democratic process to play out. The people of this great state sent their legislators to Augusta to deliberate and cast votes. The action taken by the Speaker of the House and the President of Senate is not supported by all members of those two venerable houses. These members urge a finding that

the Legislature, by adjourning on June 30, 2015 without a date certain to return, was indeed adjourned, effectively sine die. That adjournment triggered the three day veto provisions such that the bills could not be considered until the Legislature was back in session. Setting aside the issue of whether the Legislature was actually statutorily adjourned by its failure to act in a timely manner on June 17, 2015, these Members urge a ruling of this Honorable Court finding the Legislature was adjourned without day on June 30, 2015. Such a ruling allows the rest of the constitutionally prescribed process to play out and for the members of both Houses to exercise their constitutional right and duty to vote as they were elected to do.

Dated at Turner, this 24th day of July, 2015

Respectfully submitted,



L. Clinton Boothby, Esq./BRN 8863
Attorney for Representative Kenneth W.
Fredette, Representative Eleanor M.
Espling and Representative Jeffrey L.
Timberlake, Members of the 127th Maine
Legislature.

BOOTHBY PERRY, LLC
P.O. Box 216
Turner, ME 04282
207-225-5044

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of the foregoing to Governor Paul R. LePage, the Speaker of the House, Mark Eves, and the President of the Senate Michael Thibodeau by first-class mail, postage prepaid to the following address:

Office of the Governor
Governor Paul R. LePage
1 State House Station
Augusta, Maine 04333-0001

Maine House of Representatives
Speaker of the House, Mark Eves
2 State House Station
Augusta, Maine 04333-0002

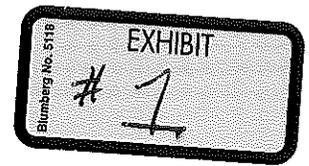
Maine State Senate
President of the Senate, Michael Thibodeau
3 State House Station
Augusta, Maine 04333-0003


L. Clinton Boothby, Esq. BRN #:8863
Attorney for Kenneth W. Fredette, House
Republican Leader, Representative Eleanor
M. Espling, Assistant Maine House
Republican Leader, and Representative
Jeffery L. Timblerlake

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
HOUSE REPUBLICAN OFFICE
AUGUSTA, MAINE 04333-0002



KENNETH WADE FREDETTE
HOUSE REPUBLICAN LEADER

Office: (207)287-1440
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RepKenneth.Fredette@legislature.maine.gov

Grant T. Pennoyer
Executive Director of the Legislative Council
115 State House Station
Augusta, ME 04333-0115

July 9, 2015

Speaker Eves, President Thibodeau, Senator Alford, Grant Pennoyer:

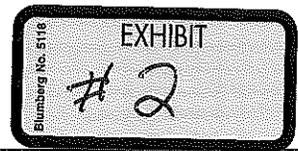
It has become obvious that the Chief Executive has voiced his intention to veto a number of bills that have recently been chaptered by the Revisor's Office. It is my understanding, that the Chief Executive had an interpretation of the Constitution, which suggests his time to veto such bills has not yet expired. Due to the serious nature of the status of these pending bills and others, it would seem obvious that the Legislative Council should hold an emergency meeting to address this important issue.

Due to the important nature of the status of these bills, it is imperative that we receive clarity on the subject. In fact, it may be likely that we will have to seek an interpretation from the Law Court on this matter, as permitted by the Constitution as a Solemn Occasion.

Thank you for your consideration. Should you have any questions, please do not hesitate to contact me.

Best,

Kenneth Fredette
House Republican Leader



Clint Boothby

From: Carey, Heather
Sent: Friday, July 17, 2015 3:30 PM
Subject: Legislative Council meeting - cancelled/postponed
Importance: High

Please be advised that the Legislative Council meeting scheduled for Thursday, July 23rd has been cancelled and will be postponed to a later date.

Heather

Heather Carey
Administrative Secretary
Office of the Executive Director
Maine State Legislature
115 State House Station
210 State Street, Room 103
Augusta, ME 04333-0115



STATE OF MAINE
HOUSE OF REPRESENTATIVES
HOUSE REPUBLICAN OFFICE
AUGUSTA, MAINE 04333-0002



KENNETH WADE FREDETTE
HOUSE REPUBLICAN LEADER

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E-Mail: RepKenFredette@gmail.com
RepKenneth.Fredette@legislature.maine.gov

Grant T. Pennoyer
Executive Director of the Legislative Council
115 State House Station
Augusta, ME 04333-0115

July 21, 2015

President Thibodeau, Speaker Eves, Senator Alford, and Grant Pennoyer:

As House Republican Leader, I would like to have the opportunity to retain separate council in order to file a legal brief with the Maine Supreme Judicial Court. As you know, the written briefs are due to the Law Court this coming Wednesday, July 29th. I would like to formally request funds from the Legislative Council.

I would also like to request a written response to this appeal no later than 24 hours after the close of business today.

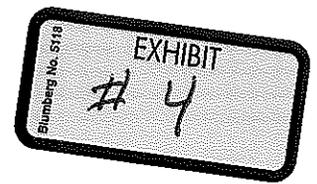
Thank you for your time. If you have any questions, please do not hesitate to contact me.

Best,

Kenneth Fredette
House Republican Leader



STATE OF MAINE
HOUSE OF REPRESENTATIVES
SPEAKER'S OFFICE
AUGUSTA, MAINE 04333-0002
(207) 287-1300



MARK WESTWOOD EVES
SPEAKER OF THE HOUSE

July 22, 2015

Honorable Kenneth W. Fredette
House Republican Leader
2 State House Station
Augusta, ME 04333-0002

Dear Representative Fredette,

This letter is to acknowledge receipt of your letter of July 21, 2015.

The Legislature will file a joint brief on behalf of the House and Senate in the veto dispute case before the Supreme Judicial Court. The Law Court has requested written and oral arguments from the legal counsels of the House, Senate, and the Governor's Office.

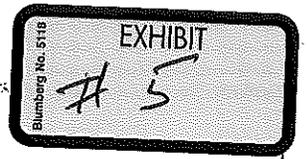
The Offices of the Speaker and Senate President will pool existing resources afforded to the Presiding Officers for outside legal counsel, minimizing the cost of legal fees to the taxpayers. As such, the Legislature will respond with one voice as an institution and as an independent branch of government.

Accordingly, the Speaker's Office respectfully declines your request for additional taxpayer dollars to pay for a legal counsel to represent you before the Supreme Judicial Court.

Sincerely,

Mark W. Eves
Speaker of the House

cc: Michael D. Thibodeau, President of the Senate
Justin L. Alfond, Senate Democratic Leader
Grant T. Pennoyer, Executive Director, Legislative Council

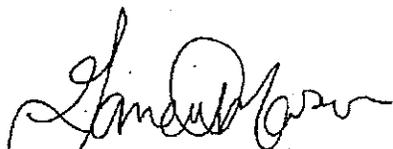


STATE OF MAINE

SP0536

In Senate June 30, 2015

Ordered, the House concurring, that when the House and Senate adjourn they do so until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business, or consider possible objections of the Governor.



Name: Senator Garrett P. Mason

County: Androscoggin

SP 556

SP 556

IN THE SENATE CHAMBER

June 30, 2015

ON MOTION BY SENATOR MASON OF ANDROSCOGGIN READ
AND PASSED.

ORDERED SENT DOWN FORTHWITH FOR CONCURRENCE.



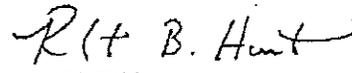
SECRETARY OF THE SENATE

HOUSE OF REPRESENTATIVES

June 30, 2015

READ AND PASSED.

IN CONCURRENCE. ORDERED SENT FORTHWITH.


CLERK