

MAINE SUPREME JUDICIAL COURT

DOCKET NO. OJ-15-2

In the Matter of: Request for Opinion of the Justices

REPLY 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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II. TABLE OF AUTHORITIES

A. Constitution of the State of Maine

B. Title 3 M.R.S. §2

C. Title 3 M.R.S. §162

D. The Pocket Veto Case (*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).

E. Mason's Manual of Legislative Procedure § 445(1)

Exhibit 1

NOW COME Representative Kenneth W. Fredette of Newport, Maine, the House Republican Leader, Minority Office; Representative Eleanor M. Espling of New Gloucester, Maine, the Assistant Republican Leader, Minority Office and Representative Jeffrey L. Timberlake of Turner, a member of the House Republican Caucus and offer this responsive brief for consideration.

III. DIVERSE POSITIONS OF THE MEMBERS OF THE MAINE LEGISLATURE REGARDING THIS SOLEMN OCCAISION.

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 duly elected members of the Maine Legislature do not share the position articulated in the brief submitted to this Honorable Court entitled BRIEF OF THE PRESIDENT OF THE MAINE SENATE BY AND ON BEHALF OF THE MAINE SENATE AND THE SPEAKER OF THE MAINE HOUSE ON BEHALF OF THE MAINE HOUSE OF REPRESENTATIVES. It is their position that no action was taken by the House Speaker or President of the Senate to determine the will of the Legislature in connection with this solemn occasion and further, the position taken by the Speaker and President does not represent their positon or that of certain of their colleagues.

The Legislative Council is a statutory entity (Title 3 M.R.S. § 162) with specific powers and duties. The Council consists of the ten elected members of legislative leadership: The President of the Senate, the Speaker of the House, the Democrat and Republican Floor Leaders and Assistant Floor Leaders for both the Senate and House of Representatives. The Council has significant responsibility for management of the Legislature. Representative Fredette requested a meeting of that body regarding the issues now before the court. That request was denied. The regularly scheduled Council meeting was also canceled.

The decision by the Legislature to declare the bills had become law precipitates the instant solemn occasion. The further decision, made on behalf of the Legislature, apparently by the Speaker and Senate President, (without vote of or consultation with the Legislative Council) to present a legal position as the unified position of the Legislative branch seeks to create uniformity of position and thought where none exists and further amplifies the debate. There is clearly disagreement within the Legislative Branch about how the vetoed bills should have been handled.

IV. ARGUMENT AND CONCLUSION

This Honorable Court now finds itself faced with a range of possible outcomes for 65 bills duly enacted and subsequently vetoed, each having significant import for the people of Maine and the manner in which

Constitutional protections in the legislative process are employed, now and in the future.

Non-partisan citizens of the State of Maine might hope two great co-equal branches could resolve scheduling issues in a way that would avoid such controversy. This is not such a time. The reasoned and well-briefed positions of the co-equal branches suggest careful and narrow parsing of certain actions taken by the Legislative and Executive branches, consideration of various historically interesting customs, interpretation of relevant statutes and very narrow or very broad reading of several Articles of our great Constitution. The political vellum on which this story is written is infused the machinations and motivations of individuals all elected to power by the people of Maine.

Some will view any decision in context of those people and their motivations and influence, but this decision is about process and the system of checks and balances our system provides. The people in those elected positions come and go in regularly scheduled elections, but their legislative actions remain and inform the lives of the people of this great State for generations to come.

Toward that end, the proponents of this brief ask that this Honorable Court take a very broad and accommodating view of the actions and interplay of the Legislative and Executive branches and thereby recognize the on-going need for checks and balances. This Court could find infirmity in certain narrow actions of either branch and coextensively in their arguments about those

actions. On the basis of those perceived infirmities, this Court might alter the course of legislative enactment and even inflame the political process.

By way of example, this Court could find the Legislature failed to properly extend the session beyond the statutory date of adjournment pursuant to Title 3 M.R.S. § 2. For the immediate past session of the Legislature, the statutory date for adjournment was June 17, 2015. No action was taken until June 18th to extend the session. Accordingly, the First Regular Session of the 127th Legislature extended past the statutory deadline. It could be determined the Legislature was therefore adjourned. This is consistent with Mason's Manual of Legislative Procedure § 445(1) which states, "When a state legislature is duly convened, it cannot be adjourned sine die nor be dissolved *except in the regular legal manner*, and an adjournment from day to day cannot have that effect (emphasis added). A statutory adjournment date is certainly within "the regular legal manner". Id.

Contrary to assertions made that Maine Legislative sessions have only been terminated with the use of the term "sine die" or "without day" the 115th Senate adjourned as follows: "At midnight, the First Regular Session of the 115th Maine Senate ADJOURNED upon expiration of the Second Five Day Extension, pursuant to MRSA Title 3, Sub-Section 2." Legislative Record of the One Hundred and Fifteenth Legislature of the State of Maine Volume IV First Regular Session S-1519 (See Exhibit 1). That notwithstanding, the question is

not whether the Legislature was adjourned sine die, but whether the form of adjournment prevented the return of the bills.

The Legislature failed to set a date to reconvene preventing return of the bills or at a minimum creating uncertainty. As set out in the Governor's Brief of the issue before this Honorable Court, "from the moment of the June 30 adjournment until the Legislature reconvened on July 16, neither House was "... sitting in an organized capacity for the transaction of business." The Pocket Veto Case, 279 U.S. at 683. As such, neither House had the "authority to receive the return, enter the [Chief Executive's] objections on its journal, and proceed to reconsider the bill[s]." Id. Thus, the Legislature's June 30 adjournment prevented the return of the bills, which is precisely the effect that triggers the three day procedure." Brief of Governor Paul R. LePage P. 16.

It might even be argued that by the Legislature's failure to act on the properly returned bills, all 65 vetoes are sustained as no vote to overturn the vetoes was taken prior to the Legislature adjourning that session. These Legislators do not advocate for such a ruling or even argue the point.

These House Members ask the Court to take a longer view. They ask the Court to look beyond the issue of whether the Legislature extended properly on June 18, 2015, the day after statutory adjournment. These House Members request the Court find that adjournment on June 30th without a set day for return and without an agreed-to procedure for handling the vetoed bills, prevented the return of the vetoed bills to their respective houses of origin until

the first day back in session after adjournment. These Legislators respectfully request this Court allow the constitutionally prescribed process to be carried out and to protect the essential roles of both the Legislative and the Executive Branches. The Legislators for whom this brief is submitted respectfully request a ruling of this Court that allows the Legislature to vote on the vetoed legislation in the constitutionally prescribed and time tested manner.

Dated at Turner, this 29th day of July, 2015

Respectfully submitted,



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Legislature.

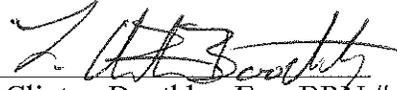
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CERTIFICATE OF SERVICE

I L. Clinton Boothby, Esq., hereby certify that I sent a copy of the foregoing to the below mentioned by e-mail to the following address:

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Bill "An Act to Allow State Government to Continue to Operate in Fiscal Years 1991-92 and 1992-93" (Emergency)

H.P. 1386 L.D. 1974

Emergency

An Act to Allow State Government to Continue to Operate in Fiscal Years 1991-92 and 1992-93 H.P. 1386 L.D. 1974 (H "C" H-754)

Committee on APPROPRIATIONS AND FINANCIAL AFFAIRS suggested and ORDERED PRINTED.

Comes from the House, under suspension of the Rules, READ TWICE and PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "C" (H-754), without reference to a Committee.

Which was, under suspension of the Rules, READ ONCE.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator BUSTIN: Thank you Mr. President. Ladies and Gentlemen of the Senate. It's really a question of inquiry. On the Bill, is this extending the Budget for only day?

THE PRESIDENT: The Chair would answer in the affirmative.

House Amendment "C" (H-754) READ and ADOPTED, in concurrence.

Which was, under suspension of the Rules, READ A SECOND TIME and PASSED TO BE ENGROSSED, as Amended, without reference to a Committee and ORDERED PRINTED, in concurrence.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

Off Record Remarks

On motion by Senator WEBSTER of Franklin, RECESSED until the sound of the bell.

After Recess

Senate called to order by the President.

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:

Senator WEBSTER of Franklin requested a Division.

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

THE PRESIDENT: The pending question before the Senate is ENACTMENT.

A vote of Yes will be in favor of ENACTMENT.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEAS: Senators BALDACCI, BOST, BRANNIGAN, BUSTIN, CLARK, CLEVELAND, CONLEY, DUTREMBLE, ESTES, ESTY, GAUVREAU, KANY, MATTHEWS, MCCORMICK, MILLS, THERIAULT, TITCOMB, TWITCHELL, VOSE, THE PRESIDENT - CHARLES P. PRAY

NAYS: Senators BRAWN, CAHILL, CARPENTER, COLLINS, EMERSON, FOSTER, GILL, GOULD, HOLLOWAY, LUDWIG, RICH, SUMMERS, WEBSTER

ABSENT: BERUBE, PEARSON

20 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 2 Senators being absent, the Bill FAILED OF ENACTMENT.

At midnight, the First Regular Session of the 115th Maine Senate ADJOURNED upon expiration of the Second Five Day Extension, pursuant to MRSA Title 3, Sub-Section 2.