STATE OF MAINE
SUPREME JUDICIAL COURT

DOCKET NO. OJ-15-2

IN THE MATTER OF
REQUEST FOR OPINION OF THE JUSTICES

UNDER THE PROVISION OF
ARTICLE VI, SECTION 3 OF THE MAINE CONSTITUTION

ON REFERRAL OF THREE QUESTIONS
FROM GOVERNOR PAUL R. LEPAGE

BRIEF OF INTERESTED PARTIES PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND, MAINE FAMILY PLANNING, MABEL WADSWORTH WOMEN'S HEALTH CENTER, MAINE PRIMARY CARE ASSOCIATION and MAINE NURSE PRACTITIONER ASSOCIATION

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STATEMENT OF INTEREST

Planned Parenthood of Northern New England, Maine Family Planning, and Mabel Wadsworth Women's Health Center, are Maine's leading organizations with regard to the provision of reproductive health care and family planning services to low-income individuals. Each is an independent 501(c)(3) non-profit corporation. Maine Primary Care Associates and Maine Nurse Practitioner Association are membership organizations whose members are health care providers. These non-profit organizations promote the provision of health care services state-wide, including to rural areas and low-income individuals. Collectively, these organizations are referred to as the "Interested Parties."

Planned Parenthood of Northern New England is the largest reproductive health care and sexuality education provider and advocate in northern New England. Maine Family Planning administers Maine's federal and state family planning programs and is the largest reproductive health care provider in Maine, providing direct services, funding, technical support and quality assurance in 45 health centers statewide, annually serving nearly 30,000 women and teens. Mabel

Wadsworth Women's Health Center provides educational and clinical services in sexual and reproductive health care to women of northern and eastern Maine regardless of age, ability, race or ethnicity, sexual orientation, or economic resources.

Maine Primary Care Association's members include all 19 of Maine's Federally Qualified Health Centers which collectively provide medical services, including family planning and reproductive health services, to over 200,000 individuals at 70 sites primarily in rural or medically underserved areas. The mission of Maine Primary Care Association is to provide equal access to affordable, high quality primary care services to all, regardless of insurance status or ability to pay.

The Maine Nurse Practitioner Association represents over a 1000 nurse practitioners with a long tradition of supporting health care for all Mainers. The Maine Nurse Practitioner Association promotes access to reproductive health care as essential to women and their families' health and economic well-being. Nurse practitioners provide reproductive health care to thousands of patients especially in the more rural parts of the state.

The Interested Parties actively worked in support of one of the 65 laws referenced in Question 3 that give rise to the issue underlying all three questions referred to this Court by Governor Paul R. LePage. Specifically, the Interested Parties supported L.D. 319 (127th Legis. 2015), "An Act to Strengthen the Economic Stability of Qualified Maine Citizens by Expanding Coverage of Reproductive Health Care and Family Services." It directs the Maine Department of Health and Human Services to prepare and submit a Medicaid state plan amendment to the United States Department of Health and Human which would provide publicly funded preventative health care for low-income adults and adolescents who have incomes less than 209% of the federal poverty level (an income level consistent with the current Medicaid coverage for pregnancy services). This law thus ensures access to critical disease prevention and essential reproductive health care for low-income, uninsured and underinsured women and men in the State of Maine.

Given the legislative mandate contained in L.D. 319 that an executive agency of this State, the Maine Department of Health and Human Services, take specific action, the current disagreement between

the State's executive and legislative branches over the three questions before this Court is especially acute. On behalf of the thousands of Maine citizens who would benefit from the law, the Interested Parties thus have a substantial interest in ensuring that the executive branch faithfully executes the legislature's mandate to expand Medicaid coverage for reproductive health care and family planning services to low-income adults and adolescents. The Interested Parties believe that their perspective will help the Court understand the negative impacts of the current uncertainty surrounding this particular law (among the 65 laws referenced in the Governor's third question) and the reasons why the Governor's novel Constitutional interpretation and proposed departure from the long-standing practices of the Legislature and former governors is an incorrect interpretation of the Constitution and is bad policy for the State of Maine.

The Interested Parties therefore submit this Brief pursuant to the Court's Procedural Order dated July 20, 2015.

INTRODUCTION

Governor Paul R. LePage has invoked Article VI, Section 3 of the Maine Constitution to ask the Justices of this Court to adopt his novel

interpretation of Article IV, Part Third, Section 2 of the Maine Constitution. The Governor's newly minted interpretation was first announced on July 10, 2015 in a memorandum from his chief legal counsel[1] which candidly admits to the novelty of its interpretation within the State of Maine: "this is the way legal issues are raised and, ultimately, addressed: someone begins by challenging the *status quo*," *id.* at 2, while "some may also argue that the Governor's position is inconsistent with standing practice[;] [i]f there's one thing this Governor is known for, it is not doing things a certain way just because 'that's the way we've always done it.'" *Id.* at 6.

In regard to the issues before the Justices, "the way we've always done it" in Maine fully complies with Article IV, Part Third, Section 2 of our Constitution, and comports with the overwhelming majority interpretation of similar state constitutional provisions across the country and of the federal Constitution. *See* Annotation, *What amounts to an adjournment within constitutional provision that bill shall become a law if not returned by executive within specified time, unless*

[1] A copy of that memorandum is attached hereto as Addendum A.

adjournment prevents its return, 64 A.L.R. 1446 (1930) (collecting cases through the present).

The Justices should decline the Governor's invitation to upset the *status quo* that has worked well for Maine since at least the late 1850s by his suggestion that the standing practice of this State's legislature and all past governors is constitutionally infirm. The longstanding interpretation of Article IV, Part Third, Section 2, which has, until now, been consistently adhered to by all branches of Maine's government for over 150 years, is the correct interpretation. It is also the best policy for the State of Maine.

Given the Governor's professed intention to change the *status quo* and his reliance on this novel constitutional interpretation to veto bills that have already become law, this Court should exercise its jurisdiction under Article VI, Section 3 and make clear that the 65 bills returned to the Legislature on July 16 are duly passed laws. This would lay to rest any concerns that the longstanding practice of all branches of government to date has been constitutionally suspect, and would make clear that the Governor must now faithfully execute these laws.

The three questions asked by the Governor may not completely establish a "solemn occasion" required by Article VI, Section 3 of the Maine Constitution, because they (1) are asked by the Executive, but are phrased regarding the power, duty, or authority of another branch of government, the Legislative branch; and (2) are broadly worded and not narrowly limited to issues of "instant, not past nor future concern." *Opinion of the Justices*, 134 Me. 510, 191 A. 487 488 (1936). The Justices should nonetheless exercise their discretion to restate the questions consistent with the underlying issue, but in a manner that comports with Article VI, Section 3 of the Maine Constitution. *See Opinion of the Justices*, 484 A.2d 999, 1001 (Me. 1984); *Opinion of the Justices*, 709 A.2d 1183, 1186 (Me. 1997). All three questions can be restated as one question that addresses the single issue of live gravity that directly and immediately implicates the powers, duty, or authority of the Executive: namely, whether the Governor's veto messages on the 65 bills returned to the Legislature on July 16 were presented to the Legislature in an untimely manner so that the Governor now has a constitutional obligation to faithfully execute those duly passed laws.

Compare Opinion of the Justices, 484 A.2d at 1001. The Justices of this Court should answer that question, as restated, in the affirmative.

ARGUMENT

Governor Paul R. LePage invokes Article VI, Section 3 of the Maine Constitution to ask the Justices of this Court to answer the following question[s]:

1. What form of adjournment 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?

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

3. Are the bills I returned to the Legislature on July 16 properly before that body for reconsideration?

In response, this Court issued a Procedural Order dated July 20, 2015 at 4:00 p.m. inviting briefs of interested persons or entities addressing two issues:

1. Whether the Questions propounded present a "solemn occasion," pursuant to Article VI, Section 3 of the Maine Constitution; and

2. The law regarding the Questions propounded.

The Interested Parties address each in turn.

I. The Questions, If Restated By The Justices, Would Present a "Solemn Occasion" Pursuant to Article VI, Section 3 of the Maine Constitution.

Each of the three questions propounded by the Governor give rise to two potentially problematic issues regarding whether they present a "solemn occasion" to invoke this Court's advisory jurisdiction under Article VI, Section 3 of the Maine Constitution: 1) the questions are asked by the Executive, but are phrased regarding the power, duty, or authority of another branch of government, the Legislative branch, *see Opinion of the Justices*, 709 A.2d at 1186; and 2) the questions are broadly worded to encompass both issues of past or future concern, when they should be narrowly limited to "things of live gravity," *see Opinion of the Justices*, 673 A.2d 1291, 1297 (Me. 1996).

The Justices should decline to answer any part of the Governor's questions that address only the power, duty, or authority of Legislature. Specifically, the Maine Constitution delegates to the Legislature the authority to "enact appropriate statutory limits on the length" of the first and second regular sessions. Article IV, Part Third, Section 1. The Legislature has done so be enacting 3 M.R.S. § 2. It is exclusively the Legislature—not another branch of government—that decides when it

is in session and when and how it adjourns. *See* Article III, Section 2 of the Maine Constitution. In addition to enacting 3 M.R.S. § 2, each house of the Legislature has adopted rules that address their methods of adjournment. *See e.g.* Me. House R. 201(1), 502, 503 (127th Legis. 2014); Me. Sen. R. 201(1), 301(4), 501, 502, 506, 516 (127th Legis. 2014); *see also* Me. House R. 522 (127th Legis. 2014)("The rules of parliamentary practice comprised in Mason's Rules govern the House in all cases in which they are applicable and in which they are not inconsistent with the standing rules"); Me. Sen. R. 520 (127th Legis. 2014)(same); *each incorporating* P. MASON, MANUAL OF LEGISLATIVE PROCEDURE 295, § 445 (2010) ("Motion to Adjourn Sine Die: "1. 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.").

When the issue of a "solemn occasion" might be a close one, there is precedent for the Justices to restate the questions in a manner that is consistent with the issues generated by those questions, but that better comports with the "solemn occasion" requirements of Article VI, Section 3 of the Maine Constitution. For example, in *Opinion of the Justices*,

484 A.2d 999 (Me. 1984), the House of Representative asked two questions very similar to the ones now being asked by the Governor:

> QUESTION NO. 1: Did Legislative Document No. 992 properly become law on September 6, 1984 at 11:59 p.m., as it had not been returned by the Governor to the Legislature by the end of the 3rd calendar day of the special session, as provided under the Constitution of Maine, Article IV, Part 3, Section 2?
>
> QUESTION NO. 2: Are the Governor's objections to Legislative Document No. 992 properly before the House of Representatives for its consideration?

Id. at 1000-01. The Justices answering those questions responded as follows:

> We understand both questions as generating the same issue: namely, whether the Governor's veto message was presented to the House of Representatives in a timely manner and whether it was properly before that body for its consideration. Because it is our opinion that the first day of a meeting of the Legislature is excluded from the computation of the three days provided by Me.Const. art. IV, pt. 3, § 2, we answer the question, as restated, in the affirmative.

Id. at 1001.

The Justices on this Court should similarly restate the Governor's three questions into one question that addresses the single issue they generate: the timeliness of the Governor's purported veto messages delivered to the Legislature on July 16, 2015. In restating the questions, the Justices should also consider that, because the

Governor—and not the Legislature—is invoking the Justices' advisory jurisdiction, the restated question should comport with the concerns raised in *Opinion of the Justices*, 709 A.2d 1183 (Me. 1997). Specifically, the Justices must decline requests "made by one branch of government for an advisory opinion regarding the power, duty, or authority of another branch" even when "the questions pose important issues of law," so that responses to questions from the Executive are limited to issues that "directly and immediately implicate the powers, duty, or authority of the Executive." *Id.* at 1186.

Although the Justices could wait to address the issue in response to a specific case or controversy under a particular law,[2] *see, e.g.*, *Hequembourg v. City of Dunkirk*, 2 N.Y.S. 447, 449 (Sup. Ct. 1888), the Justices should instead exercise their advisory authority to answer the restated question. In the absence of an advisory opinion, and given the large number of laws in question, if the Executive were to press his position and decline to enforce the 65 laws at issue (particularly laws like L.D. 319 that contain a legislative mandate directed at an executive

[2] An advisory opinion under Article VI, Section 3 represents the views of the individual Justices and is not a decision of the Supreme Judicial Court sitting as the Law Court. *Opinion of the Justices*, 437 A.2d 597, 610 (Me.1981).

agency), there would be significant uncertainty in Maine's legal landscape.

Moreover, there is precedent for an advisory opinion when similar questions come from the Legislature. *See Opinion of the Justices*, 484 at 1001; *see also In re Opinion of Justices*, 45 N.H. 607, 610 (1864) ("The adjournment referred to in this provision of the constitution is not, we think, the ordinary recess or adjournment from time to time during the continuance of the session, but the final adjournment at the close of the session. In fact, this is the only adjournment, we think, which could prevent a return of the bill within the time limited.").

Because the three Questions propounded by the Governor all generate the same issue, the Justices could restate them as a single question that directly and immediately implicates the powers, duty, or authority of the Executive: namely, whether the Governor's veto messages on the 65 bills returned to the Legislature on July 16 were presented to the Legislature in an untimely manner such that the Governor now has a constitutional obligation to faithfully execute those duly passed laws.

Restated in that manner, this single question presents a "solemn occasion" under Article VI, Section 3 of the Maine Constitution, and the Justices should answer this single restated question in the affirmative.

II. When the House and Senate Temporarily Adjourned Until Called Back to "Consider Possible Objections of the Governor" Their Adjournment Specifically Invited and Did Not "Prevent" the Governor's Return of Any Bill "with Objections to the House in which It Shall Have Originated"

In interpreting the Maine Constitution, the Justices "look primarily to the language used...." *Farris ex rel. Dorsky v. Goss*, 143 Me. 227, 230 (1948). "Constitutional provisions are accorded a liberal interpretation in order to carry out their broad purpose, because they are expected to last over time and are cumbersome to amend." *Allen v. Quinn*, 459 A.2d 1098, 1102 (Me.1983).

Pursuant to Article IV, Part Third, Section 2 of the Maine Constitution, every bill passed by both Houses "shall be presented to the Governor, and if the Governor approves, the Governor shall sign it; if not, the Governor shall return it with objections to the House in which it shall have originated" which shall proceed to reconsider it. It further provides as follows:

> 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.

Me. Const. Art. IV, Pt. 3, § 2. The dispositive issue on the instant questions before the Justices is whether a temporary adjournment of one or both houses prior to the final adjournment of the legislative session "prevent[s]" the Governor's return of any bill "with objections to the House in which it shall have originated." In Maine, the longstanding answer both as a matter of Constitutional interpretation and as a matter of fact is that it does not.

Other provisions of the Maine Constitution recognize temporary adjournments, such as when one house of the Legislature "adjourns for more than 2 days" with the permission of the other house (or for less than 2 days without such permission). *See* Me. Const. art. IV, pt. 3, § 12. Other times, "adjournment" refers to the end of a legislative session, such as the "adjournment" that defines a "recess of the Legislature" for purposes of determining the timing of People's Veto measures. *See* Me Const. art. IV, pt. 3, §§ 17-20. The best interpretation of when the

Legislature "by their adjournment prevent [a bill's] return" in Me. Const. Art. IV, Pt. 3, § 2, is to include the latter but exclude the former.

In propounding his questions, the Governor suggests that "July 16 was the very first opportunity after the Legislature's June 30 adjournment when I could return the bills" Letter of Governor Paul R. LePage to the Honorable Justices of the Supreme Court (July 17, 2015) at p. 3. But Maine, like most other jurisdictions, has always allowed the Governor to return bills to the respective House even when the house is not physically present in the capitol. *See* Me. Const. art. IV, pt. 3, § 2 (allowing return of bills on Saturdays and holidays).

The Governor's interpretation would mean that if, for example, the Maine House had temporarily adjourned (with the permission of the Senate) but the Maine Senate had not, then the Governor would need to return the bills originating in the Senate within 10 days, but could hold the bills originating in the House until 3 days after they returned. Nothing in Maine's Constitution, or in its longstanding practice requires that result. Indeed, the Maine House and Senate designate individuals to receive such returned bills. *See* Me. House R. 301 (127th

Legis. 2014)(Duties of the Clerk) and Me. Sen. R. 301 (127th Legis. 2014)(Duties of the Secretary).

The Legislature's June 30 adjournment was a temporary adjournment of each house with the permission of the other, consistent with the provisions of Me. Const. art. IV, pt. 3, § 12. The purpose of that adjournment was specifically to accommodate the time period for the Governor to return bills so that the respective houses could act on them.

In interpreting a similar provision in the federal constitution, the U.S. Supreme Court was guided by the following principles:

> The constitutional provisions have two fundamental purposes; (1) That the President shall have suitable opportunity to consider the bills presented to him; and (2) that the Congress shall have suitable opportunity to consider his objections to bills and on such consideration to pass them over his veto provided there are the requisite votes. [ ]We should not adopt a construction which would frustrate either of these purposes.

Wright v. United States, 302 U.S. 583, 596, (1938)(internal citation omitted). Adopting an interpretation that would prevent the Legislature from temporarily adjourning to address the Governor's objections would frustrate the second purpose.

A. The Longstanding Practice in Maine is Consistent with the Best Interpretation of Me. Const. art. IV, pt. 3, § 2

When construing the Executive's veto authority, the U.S. Supreme Court has said that "[l]ong settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions of this character." *Okanogan, Methow Tribes v. United* States, 279 U.S. 655, 678 (1929); *accord N.L.R.B. v. Noel Canning*, 134 S. Ct. 2550, 2559 (2014).

Temporary breaks within a legislative session have never prevented the Governor from returning vetoed bills to the Legislature. To the contrary, governors (including the current Governor) have returned bills to the Legislature while the Legislature was in session but temporarily adjourned. For example, on May 17, 2012, the 125th Legislature adjourned "Till The Call of The President and the Speaker". *See* Joint Order, Senate Paper 689 (125th Maine Legislature, May 17, 2012). On May 25, 2012, Governor LePage returned three bills with objections to their house of origin (while the Legislature was adjourned). The Legislature returned to Augusta on May 31, 2012, and held veto override votes on these bills. All the vetoes were sustained.

Similarly, on June 27, 2013, the 126th Maine Legislature adjourned until July 9, 2013. *See* Joint Order, Senate Paper 616 (126th Maine Legislature, June 27, 2013). While the Legislature was adjourned, Governor LePage returned four bills to the Legislature with objections. On July 9, 2013, the Legislature sustained the Governor's vetoes of LD 890, LD 1103, and LD 1129; the Legislature overrode the Governor's veto of LD 415, which was subsequently chaptered as P.L. 2013, ch. 409, and codified as 16 M.R.S. §§ 641 *et seq*.

These examples demonstrate that returning bills with objections to their house of origin is possible when one or both houses of the Legislature are temporarily adjourned (whether that adjournment is until a specific date, or "till the call of the President and the Speaker"). The Governor's attempt to depart from the long-standing *status quo* in advancing a novel constitutional theory should be rejected.

B. Other jurisdictions overwhelmingly agree that temporary adjournments of one or both House do not "prevent [a bills] return"

The majority of jurisdictions which have construed similar constitutional provisions concur with Maine's longstanding practice and have adopted the view that only an adjournment *sine die* prevents the

delivery of the Governor's veto message. *See*, *e.g.*, *State ex rel, Gilmore v. Brown*, 451 N.E. 2d 235 (Ohio 1983); *Redmond v. Ray*, 268 N.W. 2d 849 (Iowa 1978); *Hawaiian Airlines v. Pub. Util. Comm'n*, 43 Haw. 216 (1959); *Wright v. United States*, 302 U.S. 583, 598 (1938); *State v. Holm*, 215 N.W. 200 (Minn. 1927); *Johnson City v. Tenn. E. Elec. Co.*, 182 S.W. 587 (Tenn. 1916); *State v. Joseph*, 57 So. 942 (Ala. 1911); *State ex rel. State Pharm. Ass'n v. Michel*, 27 So. 565 (La. 1900); *Hequembourg v. City of Dunkirk*, 2 N.Y.S. 447 (1888); *Miller v. Huford*, 9 N.W. 477 (Neb. 1881); *Corwin v. Comptroller Gen.*, 6 S.C. 390 (1875); *Harpending v. Haight*, 39 Cal. 189 (1870); *In re Opinion of the Justices*, 45 N.H. 607 (1864); *see also* Annotation, *What amounts to an adjournment within constitutional provision that bill shall become a law if not returned by executive within specified time, unless adjournment prevents its return*, 64 A.L.R. 1446 (1930) (collecting cases through the present).

III. The Longstanding Interpretation Is Constitutionally Correct and the Best Policy for Maine

The longstanding interpretation under which Maine has been operating for over 150 years, provides predictability and uniformity with regard to when and how bills become law. The Governor's proposed

interpretation would allow the Governor to hold onto bills he wished to veto any time that the Legislature was even temporarily adjourned. If each temporary adjournment of each house stopped the clock for returning vetoes and restarted the clock only when the particular house was back in session for three continuous days (without adjournment of any kind), then the clock for returning vetoes would almost never restart, and would be nearly impossible to calculate. It would confound the constitutional process by which a bill becomes a law, and frustrate the principal purposes of this section of the Constitution.

Maine's longstanding process is constitutionally sound, and is the best policy for an orderly legislative process in this state.

CONCLUSION

The enactment of L.D. 319 will have a profound positive effect on thousands of Maine women, men and families and the same is true of other of the 65 laws at issue here. The people of Maine have a right to rely on those constitutionally enacted laws. Therefore, the Justices should restate the Governor's question as a single question that directly and immediately implicates the powers, duty, or authority of the Executive: namely, whether the Governor's veto messages on the 65

bills returned to the Legislature on July 16 were presented to the Legislature in an untimely manner such that the Governor now has a constitutional obligation to faithfully execute those duly passed laws. Restated in that manner, this single question presents a "solemn occasion" under Article VI, Section 3 of the Maine Constitution, and the Justices should answer this single restated question in the affirmative.

Dated: July 24, 2015

_____

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Procedural Order of this Court dated July 20, 2015 at 4:00 p.m., I have, on July 24, 2015, filed the original and two copies of this Brief of Interested Parties Planned Parenthood of Northern New England, Maine Family Planning and Mabel Wadsworth Women's Health Center with the Clerk of the Supreme Judicial and simultaneously emailed in the form of a single text-based pdf file to: lawcourt.clerk@courts.maine.gov.

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ADDENDUM A

MEMORANDUM

TO: GOVERNOR LEPAGE

FROM: CYNTHIA L. MONTGOMERY, CHIEF LEGAL COUNSEL
HANK FENTON, DEPUTY LEGAL COUNSEL

SUBJECT: GOVERNOR'S VETO POWER AND ADJOURNMENT

DATE: 7/10/2015

Governor, the following is my analysis of the current situation concerning a number of bills you are holding. This memo has been prepared for release to the Legislative leadership and the media.

First and foremost, the Governor is not exercising what is known as the "pocket veto." The Governor has not even considered using the "pocket veto" because it is not available to him during the first regular session. Any claims to the contrary by media or political bloggers are nothing but attempts to create a long line of ill-informed, one-sided and unfair news stories that are not helpful to anyone in the resolution of the dispute over the meaning of the relevant Maine Constitutional language.

Secondly, the Governor is not holding these bills as a result of a misstep or mistake. He is deliberately holding them based on his reading of the Maine Constitution. The analysis of his decision to hold these bills follows.

The Governor is holding a number of bills he has been prevented from returning to their legislative houses of origin due to the Legislature's adjournment. In situations like this, the Constitution provides that the Governor must exercise his veto power within 3 days after the reconvening of that same Legislature. In essence, the Governor is waiting for the Legislature to reconvene for 4 consecutive days (the first day does not count), at which point, he will act.

FACTS

Pursuant to 3 M.R.S. §2, the statutory adjournment date for the 127th Legislature was June 17, 2015. It is not totally clear but it appears that on June 17, the Legislature attempted to exercise its statutory option to extend the adjournment deadline for 5 legislative days, and it also appears it did so again on June 24. In any event, it appears that these acts (or at least one of them) carried the session to June 30. In session on June 30, 2015, the Legislature presented a number of bills to the Governor for his consideration. On that same day, June 30, the Legislature adjourned pursuant to a Joint Order "Adjourning until the Call of the Speaker and President" (SP 556). The Legislature has not returned from that adjournment.

LEGAL ANALYSIS

The Governor is holding these bills, waiting on the Legislature to reconvene for 3 days, because he has been deprived by the Legislature's adjournment of the opportunity to return these bills to their houses of origin. He has the right to hold these bills until "3 days after the next meeting of the same Legislature which enacted the bill[s]" Me. Const. Art. IV, §2. In their zeal to play "gotcha" with the Governor, the Democrats and their many friends in the media have failed to do their research, have misread the law or simply don't understand that this is the way legal issues are raised and, ultimately, addressed: someone begins by challenging the status quo.

The Maine Constitution provides limitations on both the Legislature's and the Governor's action with respect to the enactment of laws and thereby balances the powers of government between three branches. The Legislature is restricted in the number of days it has to enact laws and, of course, its enactments are subject to the Governor's veto power. The Governor, in turn, also has time limits within which he must exercise his veto power, a power that is subject to potential override by the Legislature. In the case at hand, the Legislature chose to act in such a way as to trigger the Constitutional grant of a different procedure, which gives the Governor 3 consecutive days after the Legislature reconvenes to exercise his veto power. There is no requirement in either the Constitution or state law mandating the Legislature to adjourn for longer than the Constitutional grant of 10 days for the Governor to exercise his veto power. Once it chose to adjourn and not return within 10 days, however, the Legislature triggered the 3-day procedure.

Restrictions on the Legislature's enactment authority

The Maine Constitution provides, "The Legislature shall enact appropriate statutory limits on the length of the first regular session ... The Legislature may convene at such other times on the call of the President of the Senate and Speaker of the House, with the consent of the majority of the Members of the Legislature of each political party, all Members of the Legislature having been first polled." Me. Const. Art. IV, Part Third, §2. Accordingly, Maine law provides, "... The first regular session of the Legislature, after its convening, shall adjourn no later than the 3rd Wednesday in June" 3 MRS §2. Maine law further provides,

> [t]he Legislature ... may by a vote of 2/3 of the members of each House present and voting, extend the date for adjournment for the first ... regular session by no more than 5 legislative days, and ... 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 time[] for adjournment for the first ... regular session[] may also be extended for one additional legislative day ..."

The essence of these provisions is that "adjournment" has legal significance in the Constitution and it operates to trigger particular deadlines.

Restrictions on the exercise of the Governor's veto power

With respect to the Governor's general veto power, the Maine Constitution provides,

> ... If the bill ... shall not be returned by the Governor [to the bill's house of origin] 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 ... [emphasis added] Me. Const. Art. IV, Part Third, §2.

The essence of this provision is to answer the question, "What happens if the Legislature presents bills to the Governor, then adjourns, and does not reconvene within the 10 days the Governor is constitutionally given to exercise his veto power?" The answer is that the Legislature must reconvene for 3 full consecutive days, giving the Governor the opportunity to return the bills to their house(s) of origin and giving the Legislature time to reconsider the vetoed bills and vote on sustaining or overriding them.

The Supreme Court has already opined on and answered some of the questions at hand.

In 1981, Governor Joseph Brennan submitted a series of legal questions to the Justices of the Maine Supreme Court concerning the State's trust responsibility with respect to submerged lands because of a newly enacted law pending the Governor's action. In that case, the bill was presented to Governor Brennan on June 19, 1981. On that same day, the Legislature adjourned *sine die*. Ordinarily, the bill would have become law when not acted on by the Governor within 10 days. "However," the Justices said in their August 27, 1981 answer, "the adjournment of the Legislature tolled that period, and the Governor has until three days after the next meeting of the 110th Legislature to act on the bill." The Justices further noted that the Governor was entitled to the 3 days even though "the Legislature met in special session for one day on August 3, 1981." The Justices stated, "We are of opinion, however, that article IV, pt. 3, §2 requires that the same Legislature must be continuously in session for three days before the period in which the Governor may act on the pending bill expires. That is so because article IV, pt. 3 §2 also provides that the Governor, if he disapproves a bill, shall return it to the Legislature, obviously for the purpose of the Legislature's reconsideration. The Legislature would have no opportunity to do that unless it is still in session." The Justices concluded that the bill had not yet become law as of August 27 and was still awaiting the Governor's signature. *Opinion of the Justices*, 437 A.2d 597 (1981).

How to count the 3 days was a subsequent question answered by the Justices in 1984. In that case, a bill was presented to Governor Brennan on May 7, 1984, following adjournment of the Legislature on April 25, 1984. Governor Brennan did not return his objections to the House until September 7, 1984, the fourth calendar day of Special Session, which commenced on September 4, 1984. The Justices opined that the Governor's objections were timely filed because the day of the triggering event is excluded from computation of the 3 days. *Opinion of the Justices*, 484 A.2d 999 (1984).

The Governor has until after the Legislature is in session for 3 consecutive days to deliver his veto message(s) to the bills' house(s) of origin.

As it did in the situation Governor Brennan faced, the Legislature's adjournment on June 30, 2015 has prevented the Governor from returning his objections to the bill(s)'s house(s) of origin within the 10 days he is constitutionally granted for the exercise of his veto power. In essence, the Legislature's

adjournment has tolled the 10-day period. Consequently, the Governor has until 3 days *after* the triggering event, which is the reconvening of the Legislature.

In fact, the Maine Legislature has faced this situation before. In 2003, LD 1361 was enacted on June 11 and sent to Governor Baldacci. On June 14, the Legislature adjourned *sine die*. The Governor held the bill—which had been enacted by both houses with "veto-proof" margins—as of June 26. The Legislature was in special session from August 21 to 23, 2003 but did not deal with the bill. On January 13, 2004, the bill was recalled from the Governor's desk and eventually "died."

Likewise, LD 1690 was enacted on June 16, 2005 and delivered to Governor Baldacci. Though that Legislature came back for a one-day special session on July 29, 2005, the bill sat until the Legislature reconvened in January 2006. Governor Baldacci then delivered his objections on January 10, 2006 and his veto was sustained.

Others may argue that in these cases and the ones before the Justices, the adjournment was *sine die*, and therefore they are inapposite to the question at hand. That argument must fail, however, for two reasons: 1) the Constitution does not require "adjournment *sine die*" to trigger the 3-day procedure and 2) even if it does, the Legislature has in essence and effect, adjourned *sine die*.

The Maine Constitution does not require adjournment *sine die* to trigger the 3-day procedure. First, the plain language in Article IV, Pt. 3, §2 unambiguously provides that when "adjournment" – not "adjournment *sine die*" – prevents the Governor's return to the bill's House of origin, he gets 3 days after the Legislature reconvenes to exercise his veto power. Moreover, the Constitution, in another, unrelated provision refers to "adjournment without day" (i.e., adjournment *sine die*), which indicates that the Constitution contemplates the distinction between adjournment and "adjournment without day." Since the triggering event in this provision is adjournment and because the Legislature is currently adjourned, the Governor has been unable to return his objections to the bill(s)' house(s) of origin. Rejecting the argument that the word "adjourn" in the veto provision of the Pennsylvania Constitution meant "adjournment *sine die*," the Commonwealth Court of Pennsylvania said, "... if we were to accept ... [the] interpretation [that adjournment meant adjournment *sine die*] ... then the General Assembly could prevent the Governor's veto, and thereby subvert the checks and balances of the Pennsylvania Constitution, by passing a bill, presenting it to the Governor and adjourning for a period longer than ten days." *Jubelirer v. Pennsylvania Dept. of State*, 859 A.2d 874, 877 (2004), ftnt 2.

In addition, some may argue that – as has been asserted by Democratic Majority Leader Jeff McCabe – that the Legislature is not adjourned; it is in "recess." Hence, the argument goes, the bills on the Governor's desk have become law because they were presented to the Governor more than 10 days ago and the Legislature is not adjourned. This argument ignores its own fatal flaw. The Legislature has indisputably been adjourned for the purposes of Art. IV, Part Third, Section 2, since June 30, 2015. The Legislative record clearly shows that Senate Paper 556 titled "Adjourn Until the Call of the Speaker and President" was passed on the evening of June 30, 2015. Because the Legislature adjourned and has not reconvened since the passage of SP 556, these bills have not become law without signature. The Legislature must meet for 3 full consecutive days in order for the bills to either be vetoed by the Governor or become law.

In the alternative, even if the word "adjournment" in the Constitutional provision at issue is construed to mean "adjournment *sine die*," the facts suggest that while no one used the phrase, "*sine die*," the Legislature has actually done just that – adjourned "without day." On June 30, 2015, the Legislature

adjourned "Until the call of the Speaker and President." While many claim that the Legislature will reconvene on July 16, it will not be done pursuant to a duly raised, considered and voted on motion that can be found in the Legislative database. Rather, the June 30 joint order makes clear that the Legislature is adjourning until some unspecified future day—or not, if the Speaker and President do not call them back. Likewise, according to Mason's, "When no provision has been made as to the time for reconvening, and the adoption of the motion to adjourn would have the effect of dissolving the body, the motion is, in fact, a motion to ... adjourn *sine die* ..." Mason, Paul, *Mason's Manual of Legislative Procedure*, Eagan, MN: West, 2010, §201, p. 162. In this case, the Legislature did not provide a time for reconvening and the motion did dissolve the body. Finally, once the bills being held by the Governor became the subject of intense media scrutiny on July 8, 2015, the Maine Office of the Revisor of Statutes notified legislative leadership that it was "chaptering" the bills as law. Pursuant to Title 3 MRS §163-A, sub-§§ 3 and 4, the legislative staff (which includes the Revisor's Office) chapters laws "after the adjournment of each session ..." In essence and effect, the Joint Order to adjourn until the call of the Speaker and President constituted an adjournment without day and the conduct of the Legislature subsequent to that adjournment confirms that.

Others may also maintain that because the Legislative clerks remain in the State House when the legislators are gone, the adjournment does not prevent the return of the bill to its house of origin. The weakness in this claim is that the clerks were presumably present in 1981 and 1984 when the Justices issued their opinions and they were likely present when Governor Baldacci did not return LD 1361 in 2003 or LD 1690 in 2005. Clearly, returning a bill to its house of origin must be more than simply dropping it off in a clerk's office. If simply delivering the bill to the clerk satisfies the Constitutional requirement of returning a bill to its house of origin, then there would never be a need for the 3-day procedure.

Some may also claim that if the Governor's position is correct, then 3 MRS §2, which allows the Legislature to extend the statutory adjournment date by two 5-legislative-day periods and one more day, known as "veto day," would be invalid. Such an argument is short-sighted. As the law currently stands, the Legislature's "remedy" is simple. When the Legislature adjourns as it did on June 30, 2015, it must do so knowing that under the Constitution, it will be required to deal with the bill(s) at issue at a time when it is in session for 3 consecutive days. Among other possible options, it can schedule "veto day" on the eleventh day after it presents the bill(s) to the Governor; it can call a special session at any time after its adjournment to deal with the Governor's objections; or it can wait to deal with the Governor's objections during the second regular session in January. In all of those cases, 3 MRS §2 is valid and operating consistently with the Constitution.

Some may also contend that strictly construing the word "adjournment" as used in the Constitution would wreak havoc during future sessions because each temporary adjournment would subject the Legislature to uncertainty as to the legal significance of that adjournment and would increase the risk of repeatedly triggering the 3-day procedure. These fears are unwarranted because this dispute did not arise during the regular session. Rather, it arose after the statutory adjournment date. As mandated by the Constitution, the Maine Legislature has a very specific, statutorily created period of time in which to conduct its business. It cannot drag things out forever – the legislative session must end. That same statute allows the Legislature to extend the period in which it may conduct business by 11 additional days – 10 days for the Governor to exercise his veto power and one more day for the Legislature to reconsider the bill once it is returned by the Governor. It is reasonable and consistent with the rules of statutory construction to treat the period of time beginning with the statutory adjournment date to the end of the statutorily allowed 11 days or to adjournment *sine die*, whichever comes first, differently

than the regular session. This is so because in the vast majority of instances during the regular session, the Governor is allowed 10 days in which to exercise his veto power and temporary adjournments do not prevent the return of the bill to its house of origin. This is so because adjournments fix a date and/or time of return. Moreover, should the Constitution be so construed, the Legislature can handle any uncertainty or sense of risk by simply adjourning to a date certain or paying attention to the timing of when bills are presented in relation to when they must be returned so that the Governor is allowed 10 days to exercise his veto power and can return the bills when the Legislature is not adjourned.

Finally, some may also argue that the Governor's position is inconsistent with standing practice. If there's one thing this Governor is known for, it is not doing things a certain way just because "that's the way we've always done it." While it may have been the practice to schedule "veto day" outside of the 10 days that the Governor is granted to exercise his veto power, the Legislature cannot insist that its practice and/or interpretation of its statute trump the plain language of the Maine Constitution. Moreover, this is not the first time a bill has been held because the Legislature's adjournment prevented its return. In fact, it happened at least twice during the Baldacci administration. The Legislature can continue its practice as long as it desires, but if it chooses to adjourn after the statutory adjournment date and within the 10-day period the Governor has to exercise his veto power, then it must then follow the Constitution and understand that the Governor's veto message is not due until "3 days after the next meeting of the same Legislature which enacted the bill."

CONCLUSION

By adjourning on June 30, 2015 after presenting to the Governor a large number of bills, the Legislature deprived the Governor of the opportunity to return them to their house(s) of origin within 10 days of their presentment. Fortunately, the Constitution contemplates just such a scenario and offers a very simple remedy. It grants the Governor the right to hold these bills until "3 days after the next meeting of the same Legislature which enacted the bill[s]" Me. Const. Art. IV, §2. The Justices of the Maine Supreme Judicial Court have also shed light on the application of this Constitutional provision. In 1981, they opined that when the Legislature's adjournment prevents the Governor from returning the bill to its house of origin, the Governor is not required to return the bill until 3 days after the same Legislature reconvenes, and they have to convene for 3 consecutive days. Convening for just one day is insufficient to trigger the 3 days. In 1984, the Justices said that because the Legislature reconvening is the triggering event, the date that they first reconvene does not count when computing the 3 days. Hence, they must convene for four days.

Approximately 20 years later, in 2003, Governor Baldacci did exactly what Governor LePage is doing. After the Legislature had adjourned, a bill sat on his desk until the following January when it was actually recalled by the Legislature and later killed. A couple of years after that, in 2005, Governor Baldacci held another bill after the Legislature had adjourned, and he vetoed it the following January.

While there are a number of arguments on both sides of the issue of whether the 127th Legislature's June 30 adjournment prevented the Governor from returning the bills to their House(s) of origin, this is clearly not a settled question of law. That said, the Constitution's plain language, the opinions of the Justices and the conduct of the previous Governor all strongly suggest that once the 127th Legislature reconvenes for 3 consecutive days, the 3 day-procedure is triggered.