STATE OF MAINE
BEFORE THE JUSTICES OF THE
SUPREME JUDICIAL COURT

DOCKET NO. OJ-23-1

In the Matter of Request for Opinion of the Justices

BRIEF OF PROTECT MAINE ELECTIONS, INC.

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Introduction

In a few short weeks, the 131st Legislature must act on four pieces of legislation initiated by the electors pursuant to article IV, part 3, section 18 of the Maine Constitution. . Those four measures are also the subject of proclamations setting each for a vote in the November election. The potential for a clash between these two constitutional processes is real and imminent.

This matter is the first occasion for the Justices to interpret the presentment clause in section 18, subsection 2. It also raises important questions about whether anything in the Maine Constitution prohibits the Legislature from continuing to consider legislation now nearing final vote.

There are compelling reasons to set aside the cursory interpretation of the presentment clause that has given rise to the questions presented. First, as text and extensive history demonstrates, "presentment" is a formal constitutional event that is not accomplished by simply dispatching an item through the outgoing mail (or equivalent ministerial acts). Presentment of a measure to the Legislature requires formally placing the item before the body duly assembled. Presentment cannot occur until an item is printed, placed on a legislative calendar, and laid before the body of legislators convened in session to conduct business. None of this occurred prior to the adjournment of the First Regular Session on March 30, 2023 and the immediate re-convening of the 131st Legislature in Special Session.

The questions presented go to the heart of the Legislature's constitutional role and its powers and prerogative to determine its business. It will also decide the rights of electors who "initiated" legislation for consideration by the 131st Legislature and for possible placement on the ballot thereafter.

The correct result is as obvious as it is fundamental to our constitutional system: the Legislature's power to consider and enact legislation according to its own processes and determinations is absolute and unconditional (except in the specific case of the people's veto), and not subject to pre-approval by the executive or judicial branches. And nothing in the Constitution bars the Legislature from continuing to consider the initiated bills in the ordinary course of its constitutional function.

Statement of Interest

Protect Maine Elections, Inc. ("PME") is a nonpartisan political organization with the purpose of supporting a "Citizen's Initiative to eliminate foreign influence and corruption in Maine elections." PME has been registered as a Maine nonprofit corporation in good standing since August 5, 2022 and has been registered as a Ballot Question Committee pursuant to 21-A M.R.S. §1052-A(1)(A-1) since September 9, 2021.

PME initiated the process that culminated in L.D. 1610 (131st Legis. 2023) ("L.D. 1610") drafted the ballot question, and organized the volunteers and professionals who submitted the signatures of over 60,000 registered Maine voters in November 2022. PME has invested a large amount of money and volunteer time to

secure enactment of L.D. 1610 during the Special Session of the 131st Legislature. A total of 43 members of the public testified on L.D. 1610 on May 8, 2023—the vast majority of whom were in favor of L.D. 1610 and were recruited by PME.

If the Legislature is allowed to continue its consideration of L.D. 1610 as the constitution provides, PME will be able to communicate to the public vital information about legislators' action—or failure to act—on this bill. If L.D. 1610 becomes law through legislative enactment, PME would conserve substantial resources otherwise required to campaign for voter approval in November.

Argument

I. Where the Legislature's Power and the Effect of the Acts of Election Officials are in Serious Doubt, there Exists a Solemn Occasion.

This matter raises important questions about the constitutional authority of the Legislature to consider matters now in its possession, the validity of proclamations issued in April to place measures on the November 2023 ballot, and the power of citizens to initiate legislation pursuant to article IV, part 3, section 18, including their power to require the Legislature to consider a matter in its ordinary course of business and before it is placed on the ballot. There can be no serious doubt whether this matter constitutes a solemn occasion.

The Justices' authority to issue advisory opinions is limited to "solemn occasions." Me. Const. art. VI, § 3. To constitute a solemn occasion, the questions referred must be "of a serious and immediate nature" and asked under circumstances

that "present[] an unusual exigency." *Opinion of the Justices*, 2012 ME 49, ¶ 5, 40 A.3d 930 (quotation marks omitted). The Justices "will not answer questions that are tentative, hypothetical and abstract," and "the matter must be of instant, not past nor future, concern." *Id.* (quotation marks omitted). An unusual exigency "exists when the body making the inquiry, having some action in view, has serious doubts as to its power and authority to take such action under the Constitution or under existing statutes." *Opinion of the Justices*, 709 A.2d 1183, 1185 (Me. 1987) (quotation marks omitted). The Justices considers whether the requesting body has an "action in view." *Opinion of the Justices*, 153 Me. 216, 220, 136 A.2d 508, 510 (1957).

The test is not whether enactment is imminent; even a measure still in committee may give rise to questions "of a serious and immediate nature." *Opinion of the Justices*, 338 A.2d 802 (Me. 1975); or of an "overwhelming magnitude as to justify the Court's consideration." *Opinion of the Justices*, 339 A.2d 483 (Me. 1975). Where the legislative branch "needs guidance" on whether a citizen-initiated bill is submitted to the voters, a solemn occasion exists. *Opinion of the Justices*, 623 A.2d 1258 (Me. 1993). This is not the case where the Legislature has voted down a citizen-initiated bill and thus no longer had an "action in view" for further consideration. *Opinion of the Justices*, 673 A.2d 693 (Me. 1996).[1]

[1] A bill similar to one of the initiated bills passed with wide margins in both the House and Senate during the 130th Legislature, suggesting that enactment by the 131st is a live possibility for the comparable initiated measure. *See* Legis. Rec. H-679-680 (1st Spec. Sess. 2021) (House Roll Call on L.D. 194 ((130th Legis. 2021)),

Here, the exigencies affect the Legislature, the Governor, and the Secretary of State in their performance of their respective duties. The Legislature is in doubt whether the initiated bills are properly before the body. The Legislature is also in doubt whether actions it might take would constitute "competing measures" within the meaning of section 18. The efficacy of the electors' certified ballot questions in compelling legislative consideration is also in doubt. The Legislature clearly has an "action in view" as L.D. 1610 and the other initiated bills are nearing final vote in the current session.[2] The Legislature's questions easily meet the standard for a solemn occasion as an "unusual exigency" and a matter of a "serious and immediate nature."

II. A Measure is Not Presented at a Session of the Legislature Until it is Formally Introduced and Not Merely Transmitted by the Secretary of State.

The Legislature's first question for the Justices of the Court hinges on the meaning of the word "presented" as it appears in article IV, part 3, section 18, subsection 2 of the Constitution of Maine. If mere transmittal of the Secretary's certification addressed to the Clerk of the Legislature is sufficient to constitute presentment, then the four initiated bills were presented at the 131st Legislature's First

Legis. Rec. S-965-968 (1st Spec. Sess. 2021) (Senate Roll Call on same). The governor vetoed the bill and the veto was sustained. Legis. Rec. S-1189-1190 (1st Spec. Sess. 2021).

[2] The statutory adjournment date for a first regular session of the Legislature is the third Wednesday in June. 3 M.R.S. § 2. When the legislature has adjourned and reconvened in special session it has no statutory adjournment date, but it ordinarily adjourns the special session on a date close to the statutory adjournment date for the regular session. *Id.*

Regular Session. If anything more than transmittal is required, then they were presented at the First Special Session.

> When interpreting provisions of the Maine Constitution, we look primarily to the language used. Because the same principles employed in the construction of statutory language hold true in the construction of a constitutional provision, we apply the plain language of the constitutional provision if the language is unambiguous. If the provision is ambiguous, we determine the meaning by examining the purpose and history surrounding the provision.

Payne v. Sec'y of State, 2020 ME 110, ¶ 17, 237 A.3d 870, 876 (quoting *Voorhees v. Sagadahoc County*, 2006 ME 79, ¶ 6, 900 A.2d 733) (quotation marks omitted).

The plain language, history, and purpose of article IV, part 3, section 18 each demonstrate that presentment to the Legislature is more involved than mere posting or even delivery to its agent. Instead, the verb "present" is a legislative term of art with a specific technical meaning. To "present" refers to the formal introduction, reception, and reading of the petitions and initiated bill by and before the full legislative body, in accordance with its own procedures—to which the Justices must defer. The Justices should answer the Legislature's first question in the negative.

A. Satisfying the constitution's plain language requires more than delivery but rather a formal showing or display for the entire legislative body.

The word "presented" conspicuously appears only once in article IV, part 3, section 18 of the Constitution of Maine. In contrast, the same section uses the similar word "filed" four times, and "proposed" or "propose" a total of six times. Within this section, each of the three broadly similar terms generally refers to the initiation of

legislation by petition. Yet, in context, the varied usage implies an intent to carry different meanings. *Fair Elections Portland, Inc. v. City of Portland*, 2021 ME 32, ¶ 29, 2021 A.3d 32 ("courts presume that when a legislature uses different words within the same statute, it intends for the words to carry different meanings.")

The original first sentence of section 18, as adopted by Maine voters in September, 1908, plainly illustrates the distinct and contrasting meanings of each of these three words:

> The electors may propose to the legislature for its consideration any bill, resolve or resolution . . . by written petition addressed to the legislature or to either branch thereof and filed in the office of the secretary of state or presented to either branch of the legislature at least thirty days before the close of its session.

1907 Resolves, c. 121; Me. Const. art. IV, pt. 3, § 18 (amended 1949, 1975). This sentence was followed immediately by the requirement that the initiated measure, "unless enacted without change by the legislature at the session at which it is presented, shall be submitted to the electors . . . ." now contained in section 18, subsection 2. It is the "normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning." *Penobscot Nation v. Frey*, 3 F.4th 484, 497 (1st Cir. 2021) (citing *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990)) (quotation marks omitted); *see also Great N. Nekoosa Corp. v. State Tax Assessor*, 675 A.2d 963, 967-68 (Me. 1996) (Clifford, J., dissenting) (citing same). Here, the Justices should assume that the 1907 drafters intended the word "presented" to

carry exactly the same meaning in the first and second sentences of section 18—a meaning distinctly different from merely "filed" or "proposed."

To "propose" means to "put[] something forward for consideration." *Proposal*, Black's Law Dictionary (11th ed. 2019). The two means by which petitioners may propose legislation are to "file[]"—meaning "to deliver a legal document to the court clerk or record custodian for placement into the official record" (*File*, Black's Law Dictionary (11th ed. 2019))—in the office of the secretary of state, or to "present[]" them to one of the branches of the Legislature—meaning to "lay[] before a court of other tribunal a formal statement about a matter to be dealt with legally." *Presentment*, Black's Law Dictionary (11th ed. 2019); *see also Present*, The American Heritage Dictionary of the English Language (5th ed. 2016) (meaning "[t]o introduce, especially with formal ceremony.").

If the intent was that petitions merely be delivered to the Clerk of the House, or another of the Legislature's officers, agents, or employees, the text would have consistently used "filed," and would have specified those who could receive the petitions. *See Allen v. Quinn*, 459 A.2d 1098, 1103 (Me. 1983) (noting the "unusual detail" with which the constitution treats the initiative process). Instead, presentment

"to either branch of Legislature"[3] "at" one of its sessions implies being formally introduced, according to the Legislature's procedures, to the body as a whole.

B. Contemporaneous records show that the drafters of the initiative and amendment regularly used the word "presented" in the context of introducing legislation and specifically offering citizen petitions to the body.

Legislative records from the 73rd Legislature and early application of the initiative and referendum process by the Legislature in the years immediately after provide context to the meaning of the constitutional text. *See Payne*, 2020 ME 110, ¶¶ 22-23, 237 A.3d 870 (reviewing contemporaneous legislative records to interpret the meaning of the word "passed" in article IV, part 3, sections 16 and 17). Here, such records confirm that early 20th century legislators would have been intimately familiar with the duties of "present[ing]" petitions from their constituents to the legislature in much the same fashion as the manner of formally introducing bills to the legislative chambers. Likewise, records from the first decades after the initiative and referendum were adopted show that communications from the Secretary of State, petitions, and initiated bills have always been formally put before the bodies as a whole in session and in conformity with the chamber rules.

1. Legislative duties in 19th and early 20th century Maine regularly included "present[ing]" petitions delivered by constituents on the chamber floor.

[3] Note that the original language allowed the petitions to be *addressed* either to the Legislature or one of its branches, but to be *presented* only to one of the two branches, implying something that could not or should not be accomplished jointly.

From the founding of the Republic through the early 20th century, the petition was the primary method for citizens to communicate with state legislatures and Congress, most following detailed procedures requiring members to *present* their constituents' petitions on the floor of the legislative chamber, refer them to committee, and the committees to then investigate and report out, in a manner similar to legislation today. *See generally* Maggie McKinley, *Petitioning and the Making of the Administrative State*, 127 Yale L.J. 1538, 1552-1579 (2018). The practice of presenting and receiving petitions, developed from the English House of Commons, was said to be "one of the most common and usual modes of introducing the subject of a bill." Luther Stearns Cushing, *Elements of the Law and Practice of Legislative Assemblies in the United States of America*—Lex Parliamentaria Americana § 2063 (9th Ed. 1907), https://books.google.com/books/download/Lex_Parliamentaria_Americana.pdf?id=HFEg3JeQZPUC&output=pdf (hereinafter *Cushing's Legislative Assemblies*").[4]

[4] The 73rd Maine Legislature primarily relied upon three external sources on parliamentary practice, *Reed's Rules*, *Cushing's Legislative Assemblies*, and *Cushing's Manual*. Me. Sen. R. 37 (73rd Legis. Jan. 2, 1907) ("The rules of parliamentary practice comprised in Reed's Rules, and Cushing's Law and Practice of Legislative Assemblies, shall govern the senate in all cases to which they are applicable, and in which they are not inconsistent with the standing rules of the senate, or of the joint rules of the two houses," referring to Thomas Brackett Reed, *A Manual of General Parliamentary Law* (1898), https://books.google.com/books/download/Reed_s_Rules.pdf?id=s-8RAAAAIAAJ&output=pdf (hereinafter "*Reed's Rules*"), the parliamentary practice guide developed and compiled by the former Speaker of the United States House of Representatives from Maine); Me. House R. 56 (73rd Legis. Jan. 2, 1907) ("Reed's Rules shall govern the house in all cases to which they are applicable, and in which they are not inconsistent with the standing rules and orders of the house, and the joint rules of the senate and house of representatives."); House Jour. 13 (73rd Legis. 1907) (ordering the Secretary of State "to deliver to the Clerk of the House . . . one copy of Cushing's Manual," referring to Luther Stearns Cushing, *Manual of Parliamentary Practice* (Albert S. Bolles ed., John C. Winston Co. 1914) https://books.google.com/books/download/Cushing_s_Manual_of_Parliamentary_Practi.pdf?id=6djX7ueV6Q0C&output=pdf (text unchanged from 1907 to 1947, inclusive) (hereinafter "*Cushing's Manual*").

Maine was no exception. At the 73rd Legislature, thousands of petitions, each bearing dozens of names "were presented and referred . . . [b]y" various legislators in house proceedings, including hundreds in favor of the initiative and referendum itself. *See e.g.* Legis. Rec. 153-157 (1907) (on February 6, 1907, roughly 60 separate petitions "in favor of the initiative and referendum" being "presented and referred" by 22 different Representatives, and dozens more on other topics, including several "remonstrances"—petitions against a certain topic.). These presentments were interspersed with those of bills and resolves being introduced, often by the same members, and sometimes on the same subject as the petitions they presented immediately after—as such presentments were treated the same under House Rules:

> All petitions, memorials and other papers addressed to the house, and all bills and resolves to be introduced in the house shall be endorsed with the name of the person *presenting* them, with the subject matter of the same, together with the name of the committee, to which the person *presenting* them desires the same to be referred, and shall be placed by the members *presenting* them in a box placed for that purpose in front of the clerk's desk. All such petitions, memorials, papers, bills and resolves which are deposited in said box before five o'clock in the afternoon of each day shall be removed therefrom by the clerk and shall be introduced and received in the house on the following day, at which time they shall be *presented* to the house by the speaker, or such other person as the speaker may request, and referred to the proper committees unless the house shall otherwise order.

Me. House R. 46 (73rd Legis. Jan. 2, 1907) (emphasis added). By Senate Rules, more concisely, "[e]very member who shall present a petition shall place his name thereon and a brief statement of its subject." Me. Sen. R. 27 (73rd Legis. Jan. 2, 1907).[5]

2. The Legislature has always presented initiated petitions—or the Secretary of State's certification thereof—before the body and in session.

Given the procedural similarity with which the pre-1909 legislatures treated standard constituent petitions and member-initiated legislation, it should come as no surprise that the earliest legislatures applying the new initiative and referendum amendments continued to treat petitions and citizen-initiated legislation, along with the Secretary of State's letters certifying receipt of such petitions and bills, as ordinary business under regular procedures. This, of course, meant that to be presented they needed to be brought before the body and read into the record.

The first successful initiative petitions were filed in the office of the Secretary of State on Feb. 3, 1911, and were then "transmit[ted]" by the Secretary of State on Feb. 6, accompanied by a letter certifying that they had been filed, addressed to the

[5] Similarly, *Reed's Rules*, which supplemented the standing rules in the legislature at that time, provided, "[a] petition should be signed by the petitioner and must be presented by a member, who rises in his place, states the contents, and moves that it be received . . . . [w]hen received it is to be acted on like any other kind of business." *Reed's Rules* § 106. *Cushing's Legislative Assemblies* devoted a lengthy chapter to petitions, includes dozens of sections on their presentation alone, because, he explains, "[i]n order to bring a petition before the house for its consideration, it must be regularly presented and read; and until this is done, no order can properly be made respecting any petition, not even for its lying on the table." *Cushing's Legislative Assemblies* § 1109; *see also id.* § 1112 ("when a petition is thus offered or presented, and brought to the knowledge of the house, the duty of the member to whom it has been entrusted is discharged . . . the petition, if received, becomes the property of the house; and any other member has as much right . . . as the member by whom it was introduced.")

President of the Senate and Speaker of the House, and received in the Senate, read, and laid on the table. Sen. Jour. 202 (75th Legis. 1911); Legis. Rec. 162 (1911); L.D. 75 (75th Legis. 1911);. On Feb. 8, the initiated bill was read and ordered printed, and then on Feb. 13 referred to the Judiciary Committee along with the petitions. Sen. Jour. 219, 242 (75th Legis. 1911); Legis. Rec. 201 (1911); L.D. 75 (75th Legis. 1911). Although the Letter was received by the Senate as a communication, the process was nearly identical to that for presenting a petition before the initiative amendment, because, "[t]he mode of proceeding upon . . . communications from persons not members . . . may be explained by that adopted on the presentation of a petition, which may be considered as the representative of the whole class to which it belongs." *Cushing's Manual* § 48; *see also Reed's Rules* § 101 (providing, "Only members have a right to present business to the assembly. The presiding officer may lay before the assembly certain kinds of business, but this is always by virtue of law.")

The second successfully initiated bill came in 1923, in the form of an act amending regulation on the labor of women and children. This initiated bill, employing the second method available under the original first sentence of section 18, was *not* filed with the Secretary of State, but rather presented directly to the Senate by a Senator on March 1, 1923. Legis. Rec. 281-282 (1923). What is especially noteworthy for these purposes is that the record shows it was presented alongside and in exactly the same manner as the other bills being introduced to the Senate—simply with a larger number of petitions accompanying it on referral to committee. *Id.*; *see also* L.D.

157 (81st Legis. 1923) (not noting having been initiated by petition, except for the request in its body to refer the bill to a special election).

3. Early 20th century legislators would have expected the Legislature to have exclusive dominion over the conduct of its own proceedings.

Maine's Constitution grants the Legislature, "the exclusive authority to set its own rules of procedure . . . ." *Opinion of the Justices*, 2015 ME 107, ¶ 26, 123 A.3d 494 (citing Me. Const. art. IV, pt. 3, §§ 1, 4); *see also Opinion of the Justices*, 7 Me. 483, 489 (1830) (suggesting that a question which, "in some measure depend[s] on the rules and regulations of the Senate, as a deliberative body," would be "more proper for the Senate than for the Judiciary to decide.") It is affirmatively the role of the House and Senate, respectively, to decide what procedures must be followed such that a citizen-initiated proposal may be presented to them by the Secretary of State. Any second guessing of that determination by the Justices would violate the fundamental principle of the separation of powers contained in article III, sections 1 and 2 of the Maine Constitution. *Id.; see Opinion of the Justices*, 2015 ME 107, ¶¶ 43-44, 123 A.3d 494.

The legislators who drafted the initiative and referendum amendment would have been familiar with these principles, both from the constitution, and from contemporary legislative practice. *See Cushing's Legislative Assemblies* § 792 (providing, "generally, that each house shall have the right to determine the rules of its own proceedings."). They would have also been well aware that "[n]o legislative assembly, therefore, can make any rules, which shall be binding upon its successors, even until

abrogated or rescinded by them."[6] *Id.* So even though the drafters of the initiative and referendum would have had specific expectations as to the procedures by which the presentment of petitions at a session of the Legislature might be achieved, they would have expected such procedures to evolve over time.

Today's rules provide for instance, that "[a]ll bills and other instruments, *including bills proposed by initiative*, must be allocated to the Maine Revised Statutes as appropriate and corrected for form, legislative style and grammar by the Revisor of Statutes before printing," (Me. Joint Legis. R. 210 (131st Legis. Dec. 3, 2022) (emphasis added)), and that "[e]very bill . . . must be printed before appearing on the Advance Journal and Calendar of either chamber" or "considered to be in the possession of the Legislature." Me. Joint Legis. R. 401 (131st Legis. Dec. 3, 2022); *see also Mason's* § 257(1) at 200 ("It is the practice to have a calendar or file that is a list or file of proposals arranged in the order in which they come up for consideration."); *id.* § 257(2) ("The order and manner in which the business of the body is considered is set out in the rules so that it follows a definite and predictable order. To vary from the plan provided for in the rules is a violation of the rules and is permissible only under

[6] Modern legislatures, too, recognize that legislative bodies have, "an inherent right to regulate," and "complete authority concerning," its own procedures, limited only by constitutional provisions. Nat'l Conference of State Legislatures, *Mason's Manual of Legislative Procedure* §§ 2(1) and (3) at 9 (2020 ed.) (hereinafter "*Mason's*"); *see also* Me. Sen. R. 520 (131st Legis. Dec. 7, 2022) ("The rules of parliamentary practice comprised in 'Mason's Manual of Legislative Procedure' or any other standard authority, govern the Senate in all cases in which they are applicable . . . ."); Me. House R. 522 (131st Legis. Dec. 7, 2022) ("Mason's Rules govern the House in all cases in which they are applicable . . . .").

suspension of the rules."); *id.* § 725(2) ("A bill is not regarded as having been introduced until is has been delivered to the chief legislative officer, given a number and read.") Today's Rules make clear that the mere transmission of a letter did not complete the "present[ment]" of the initiated proposal to the Legislature.

C. The purpose initiative provisions requires that they be liberally construed to facilitate the people's power to legislate, both through the Legislature, and at the ballot.

"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*, 459 A.2d at 1102 (citing *Rathjen v. Reorganized School District*, 365 Mo. 518, 530, 284 S.W.2d 516, 524 (1955).

> The broad purpose of the direct initiative is the encouragement of participatory democracy. By [article IV, part third, section 18] of the Maine Constitution, the people, as sovereign, have retaken unto themselves legislative power, and that constitutional provision must be liberally construed to facilitate, rather than to handicap, the people's exercise of their sovereign power to legislate. . . . [S]ection 18 cannot be said merely to permit the direct initiative of legislation upon certain conditions. Rather, it reserves to the people the right to legislate by direct initiative if the constitutional conditions are satisfied.

NECEC Transmission LLC v. Bureau of Parks & Lands, 2022 ME 48, ¶ 18, 281 A.3d 618. These rules of liberal construction are not limited to the people's power to legislate at the ballot box, but by their nature must include the Legislature's coextensive power to "enact[] . . . without change." Me. Const. art. IV, pt. 3, § 18(2).

More specifically, the purpose of the fourth sentence in section 18(2) is to guarantee that, "[n]either by action nor by inaction can the Legislature interfere with

the submission of measures as so provided by the Constitution." *Opinion of the Justices*, 680 A.2d 444, 448 (Me. 1996) (citing *Farris ex rel Dorsky v. Goss*, 143 Me. 227, 60 A.2d 908 (1948)). The Legislature cannot "interfere" by doing exactly what is requested on the face of the petitions being presented to them, namely, to "consider[] the following . . . legislation." *See* 1989 I.B., ch. 2, 1269 (showing introductory statement, also contained on the petitions that initiated L.D. 1610, providing that, "the undersigned electors . . . hereby respectfully propose to the Legislature for its consideration the following [legislation] . . . ."). In this scenario, the powers of petitioners the Legislature are not in conflict, so both must be construed liberally to allow the L.D. 1610 to be enacted without change at the Special Session. *See Opinion of the Justices*, 680 A.2d 444, 448 (Me. 1996) (action on an initiated bill allowed at a special session, "[u]nless [it] . . . directly or indirectly abridges the right of the people provided in section 18 . . . ."); *see also id.* (providing "the powers of the Legislature in matters of legislation, broadly speaking are absolute, except as restricted and limited by the Constitution.") (citing *Sawyer v. Gilmore*, 109 Me. 169, 180, 83 A. 673 (1912)).

Finally, it is impossible to square a construction that would strip the Legislature of the power to enact a citizen-initiated bill before it could even be introduced and read with the proposition that "Section 18 of [Article IV, Part Third] . . . does not in any manner encroach on the prior power of the Legislature to enact legislation." *Dorsky*, 143 Me. at 231, 60 A.2d at 911 (1948). Each of these rules of construction require the liberal interpretation of "presentment" suggested by PME herein, which

would allow the Legislature, through its rules of procedure, greater control over *when* precisely citizen petitions are presented, as long as such control is not used to *interfere* with the people's power to legislate.

III. Even if the Bills Were Presented at its Regular Session, Nothing in the Constitution Prohibits the Legislature from Acting on the Bills Now Nearing Final Passage.

If the Justices determine that the initiated bills were "presented" to the Legislature in the First Regular Session and therefore answers Question 1 in the affirmative, that does not resolve the legislative dilemma. Question 2 asks whether anything in the Maine Constitution prohibits the Legislature from continuing on the course it has adopted.

Nothing in the Maine Constitution compels that result. To the contrary, the distinct powers distributed to the Legislature by the Maine Constitution are at their zenith when considering and acting upon legislation. *Opinion of the Justices*, 2015 ME 107, ¶¶ 43, 123 A.3d 494. In the absence of a clear and direct prohibition in the Maine Constitution, the Legislature is well within its fundamental powers to accept, consider, and decide upon all measures before it, including those it determines were lawfully carried over from a previous session. *Id.*

Since early April the Legislature has been considering these initiated measures in the ordinary course of its business. In April the House and Senate accepted the measures as carried over from the First Regular Session that adjourned days earlier, gave them Legislative Document numbers, printed them and placed them on the

chambers' respective Calendars. The Presiding Officers laid the bills before the respective bodies, duly convened, and each voted to refer them to a joint standing legislative committee. The committees provided notice of public hearings and conducted those hearings in the due course of their session business. Dozens of members of the public testified. Advocates and opponents have engaged lobbyists[7] and launched letter-writing efforts, and all the elements of a legislative campaign remain in full swing to this day, as with any other citizen-initiated bill. It is hard to overstate the detrimental impact on the public—and on the Legislature itself—of now determining that these legislative actions were a charade and that the First Branch of government is powerless to proceed.

This is simply nothing in the Maine Constitution to prohibit the Legislature from proceeding to consider the measures now before it, as it has routinely done in the past with countless initiated measures. The sixth sentence of section 18(2) reads: "If the measure initiated is enacted by the Legislature without change, it shall not go to a referendum vote unless in pursuance of a [people's veto demand]." Significantly, the sixth sentence lacks the " . . . at which it is presented . . ." qualifier appearing in the fourth sentence. The change is significant. The correct reading, therefore, is that the power of the Legislature to consider an initiated bill and to "enact[] [it] . . . without

[7] Various entities have already expended enormous resources advocating for or against the initiated bills in the 131st Legislature. The large number of paid lobbyists is one gauge of the total investment--there are six working on L.D. 1610, eight on L.D. 1611, and six on L.D. 1677.

change" does not depend on the session at which it is considered. Indeed, the intentional omission of the "at which it is presented" modifier demonstrates the specific intention *not* to limit the Legislature's ability to consider the measure to the session "at which it is presented."

Since the measures at issue were never printed and made available to legislators during the First Regular Session, legislators individually or collectively—under an alternative reading—never had the opportunity to consider or adopt the initiated legislation without change. PME's reading of the "presentment" clause is the only reading that allows the Legislature in these circumstances to use its full powers.

Conclusion

The questions presented by the Legislature describe a live matter of significant gravity affecting the future course of specific pieces of legislation. There can be no doubt that this is a solemn occasion.

A cursory and flawed interpretation of the constitutional "presentment" requirement cannot be reconciled with the extensive history of the concept of "presentment" as a formal action involving placement of a printed bill on the legislative calendar and the first instance in which the matter is taken up in the course of business by the duly convened House or Senate. And nothing in the constitution diminishes the Legislature's full power to continue to consider and act upon the initiated bills. The Justices should answer both Question 1 and Question 2 in the negative.

Dated at Brunswick, Maine this May 26, 2023.

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