



Derek M. Grant
Secretary of the Senate

THE MAINE SENATE
131st Legislature

3 State House Station
Augusta, Maine 04333

May 11, 2023

The Honorable Valerie Stanfill
Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, Maine 04101-4125

Dear Chief Justice Stanfill,

I am pleased to transmit herewith a copy of Senate Paper 768, Joint Order, Regarding the Legislature's Ability to Act on Certain Direct Initiatives, which was passed by the Maine Senate on May 4, 2023 and the Maine House of Representatives on May 11, 2023.

Members of the 131st Maine Legislature await the opinions of the Justices with interest.

Best Regards,

A handwritten signature in blue ink, appearing to read 'Derek M. Grant'.

Derek M. Grant
Secretary of the Senate

cc: The Honorable Robert B. Hunt, Clerk of the House

STATE OF MAINE

See
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In Senate 5/4/2023

WHEREAS, the Constitution of Maine, Article VI, Section 3 provides for the Justices of the Supreme Judicial Court to render their opinion on important questions of law and upon solemn occasions; and

WHEREAS, it appears to the 131st Legislature that the following are important questions of law and that this is a solemn occasion; and

WHEREAS, the Constitution of Maine, Article IV, Part Third, Section 18 provides the ability of electors to initiate and propose to the Legislature any bill, resolve or resolution and further provides the procedures to be followed by the initiators, including filing the petition for a direct initiative of legislation, addressed to the Legislature, with the Secretary of State within a specified number of days after the convening of a regular session; and

WHEREAS, the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2 provides that the Legislature must be given the opportunity to act on the measure: "The measure thus proposed, *unless enacted without change by the Legislature at the session at which it is presented*, shall be submitted to the electors together with any...recommendation of the Legislature" [emphasis added]; and further that "[i]f the measure initiated *is enacted by the Legislature without change*, it shall not go to a referendum vote" [emphasis added]; and

WHEREAS, the Constitution of Maine, Article IV, Part Third, Sections 1 and 4 grant the Legislature the exclusive authority to set its own rules of procedure, including such rules establishing the manner in which initiated bills may be presented to the Legislature for consideration; and

WHEREAS, between the convening of the 131st Legislature and March 22, 2023, the Secretary of State certified as valid 4 measures proposed by electors; and

WHEREAS, on February 16, 2023, the Secretary of State transmitted 2 of the measures to the Legislature to be produced by the Office of the Revisor of Statutes as legislative documents for consideration by the Legislature; and

WHEREAS, on March 22, 2023, the Secretary of State transmitted the other 2 measures to the Legislature to be produced by the Office of the Revisor of Statutes as legislative documents for consideration by the Legislature; and

WHEREAS, before any measure thus transmitted was produced as a legislative document and presented to the Legislature, the First Regular Session of the 131st Legislature adjourned on March 30, 2023; and

WHEREAS, prior to its adjournment, the First Regular Session of the 131st Legislature passed a joint order carrying over to a subsequent session of the 131st Legislature "...all matters not finally disposed of at the time of adjournment...in the possession of the Legislature, including working papers and drafts in the possession of nonpartisan staff offices"; and

WHEREAS, among the working papers and drafts in the possession of the nonpartisan staff office the Office of the Revisor of Statutes at the time of adjournment were the 4 measures not yet prepared as legislative documents; and

WHEREAS, the 131st Legislature convened in special session on April 5, 2023; and

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WHEREAS, on April 10, 2023, 2 of the measures, as prepared by the Office of the Revisor of Statutes, were transmitted to the Clerk of the House, given Legislative Document numbers, L.D. 1610 and L.D. 1611, and ordered printed by the Clerk of the House with the following statement "Transmitted to the Clerk of the 131st Maine Legislature by the Secretary of State on April 10, 2023 and ordered printed."; and

WHEREAS, these 2 measures were placed on the Advance Journal and Calendar of the House of Representatives and presented to the Legislature on April 11, 2023; and

WHEREAS, those 2 measures had not previously been printed and presented to the Legislature in either the First Regular Session or the First Special Session of the 131st Legislature; and

WHEREAS, Rule 401 of the Joint Rules of the 131st Legislature provides that a bill or resolve is not considered to be "in the possession of the Legislature" until "after it is printed"; and

WHEREAS, on April 11, 2023, the Secretary of State issued 4 proclamations of the Governor proclaiming that an election be held for all 4 measures, calling into question the ability of the Legislature to thereafter consider these measures as provided by the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2; and

WHEREAS, there are now questions before the Legislature regarding the constitutionality of those proclamations and the efficacy of any actions the Legislature may take to enact the measures; and

WHEREAS, as it considers action on the initiated bills, it is important that the Legislature be informed as to the legal questions raised in this order; now, therefore, be it

ORDERED, the House concurring, that, in accordance with the provisions of the Constitution of Maine, the Senate and the House of Representatives respectfully request the Justices of the Supreme Judicial Court to give their opinion to the Senate and the House of Representatives on the following questions of law:

Question 1. Is the mere transmittal of a measure by the Secretary of State sufficient to constitute "present[ation] to the Legislature" within the meaning of the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2, notwithstanding that at the time it was transmitted the measure did not exist as a legislative document, had not been printed pursuant to Joint Rule 401, had not appeared on any legislative calendar, and that neither the full House nor full Senate were made aware that the measure was in possession of the Legislature until approximately 53 days after transmittal?

Question 2. If the answer to Question 1 is in the affirmative, did the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2 preclude the 131st Legislature, as assembled in the First Regular Session, from carrying the measure over for consideration in the First Special Session?

Question 3. If the answer to Question 2 is in the negative, does the Legislature's Constitutional power enumerated in Article IV, Part Third, Section 1 to "make and establish all reasonable laws and regulations for the defense and benefit of the people of this State" include the power to consider and enact the measure into law during the First Special Session?

Question 4. If the answer to Question 3 is in the affirmative and a measure is thus enacted by the First Special Session of the Legislature without change, must the identical measure identified in a Proclamation executed by the Governor on April 7, 2023 "not go to a referendum vote" pursuant to the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2?

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Question 5. If the answer to Question 4 is in the negative, is a bill thus enacted by the First Special Session of the Legislature a competing measure to an identical measure placed on the ballot by proclamation of the Governor on April 7, 2023, as described in the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2?

SPONSORED BY: 

(President JACKSON, T.)

COUNTY: Aroostook

Cosponsored By

Representative Mana ABDI of Lewiston
Representative Daniel ANKELES of Brunswick
Representative Poppy ARFORD of Brunswick
Senator Donna BAILEY of York
Senator Joseph BALDACCI of Penobscot
Senator Pinny BEEBE-CENTER of Knox
Representative Arthur BELL of Yarmouth
Senator Richard BENNETT of Oxford
Senator Russell BLACK of Franklin
Representative James BOYLE of Gorham
Senator Eric BRAKEY of Androscoggin
Representative Michael BRENNAN of Portland
Senator Stacy BRENNER of Cumberland
Representative William BRIDGEO of Augusta
Senator Anne CARNEY of Cumberland
Senator Benjamin CHIPMAN of Cumberland
Representative Kristen CLOUTIER of Lewiston
Representative Sally CLUCHEY of Bowdoinham
Representative Benjamin COLLINGS of Portland
Representative Lynn COPELAND of Saco
Representative Lydia CRAFTS of Newcastle
Representative Margaret CRAVEN of Lewiston
Representative W. CROCKETT of Portland
Senator Glenn CURRY of Waldo
Representative Aaron DANA of the Passamaquoddy Tribe
Senator Matthea DAUGHTRY of Cumberland
Representative Deqa DHALAC of South Portland
Representative James DILL of Old Town
Representative Janice DODGE of Belfast
Representative Victoria DOUDERA of Camden
Senator Jill DUSON of Cumberland
Representative Holly EATON of Deer Isle
Senator Bradlee FARRIN of Somerset
Representative Jessica FAY of Raymond
Representative Drew GATTINE of Westbrook
Representative Valli GEIGER of Rockland
Representative Traci GERE of Kennebunkport
Representative Cheryl GOLEK of Harpswell
Representative Anne GRAHAM of North Yarmouth
Representative Lori GRAMLICH of Old Orchard Beach
Senator Nicole GROHOSKI of Hancock
Senator Stacey GUERIN of Penobscot
Senator Matthew HARRINGTON of York
Representative Tavis HASENFUS of Readfield
Representative Allison HEPLER of Woolwich
Senator Craig HICKMAN of Kennebec
Representative Daniel HOBBS of Wells
Senator Henry INGWERSEN of York
Representative Rebecca JAUCH of Topsham
Senator Lisa KEIM of Oxford
Representative Christopher KESSLER of South Portland
Representative Amy KUHN of Falmouth
Senator David LAFOUNTAIN of Kennebec
Representative Michel LAJOIE of Lewiston
Representative H. LANDRY of Farmington
Representative Raegan LaROCHELLE of Augusta
Senator Mark LAWRENCE of York
Representative Adam LEE of Auburn
Senator James LIBBY of Cumberland

Representative Grayson LOOKNER of Portland
Senator Peter LYFORD of Penobscot
Representative Colleen MADIGAN of Waterville
Representative Marc MALON of Biddeford
Representative Anne-Marie MASTRACCIO of Sanford
Representative Kristi MATHIESON of Kittery
Representative Ann MATLACK of St. George
Representative Michele MEYER of Eliot
Representative Rebecca MILLETT of Cape Elizabeth
Representative Nina MILLIKEN of Blue Hill
Representative Karen MONTELLI of Gardiner
Representative Matthew MOONEN of Portland
Senator Marianne MOORE of Washington
Representative Stephen MORIARTY of Cumberland
Representative Kelly MURPHY of Scarborough
Senator Timothy NANGLE of Cumberland
Representative Kevin O'CONNELL of Brewer
Representative Margaret O'NEIL of Saco
Representative Laurie OSHER of Orono
Representative Sean PAULIUS of Bath
Representative Anne PERRY of Calais
Representative Joseph PERRY of Bangor
Senator Feresa PIERCE of Cumberland
Representative William PLUECKER of Warren
Senator Matthew POULIOT of Kennebec
Representative Jane PRINGLIE of Windham
Senator Joseph RAFFERTY of York
Representative Ambureen RANA of Bangor
Representative Lois RECKITT of South Portland
Senator Cameron RENY of Lincoln
Representative Morgan RIELLY of Westbrook
Representative Walter RISEMAN of Harrison
Representative Tiffany ROBERTS of South Berwick
Representative Amy ROEDER of Bangor
Senator Margaret ROTUNDO of Androscoggin
Representative Walter RUNTE of York
Representative Ronald RUSSELL of Verona Island
Representative Melanie SACHS of Freeport
Representative Suzanne SALISBURY of Westbrook
Representative Holly SARGENT of York
Representative Daniel SAYRE of Kennebunk
Representative Daniel SHAGOURY of Hallowell
Representative Kathy SHAW of Auburn
Representative Erin SHEEHAN of Biddeford
Representative Charles SKOLD of Portland
Senator Harold STEWART of Aroostook
Representative Holly STOVER of Boothbay
Representative Laura SUPICA of Bangor
Speaker Rachel TALBOT ROSS of Portland
Representative Maureen TERRY of Gorham
Senator Jeffrey TIMBERLAKE of Androscoggin
Senator Michael TIPPING of Penobscot
Senator Floise VITELLI of Sagadahoc
Representative Sophia WARREN of Scarborough
Representative Bruce WHITE of Waterville
Representative Lynne WILLIAMS of Bar Harbor
Representative J. WORTH of Ellsworth
Representative Samuel ZAGER of Portland
Representative Stanley ZEIGLER of Montville

IN THE SENATE CHAMBER

May 4, 2023

On motion by Senator JACKSON of Aroostook **READ** and **PASSED**

Ordered sent down forthwith for concurrence



SECRETARY OF THE SENATE

HOUSE OF REPRESENTATIVES

May 9, 2023

READ.

On motion of Speaker TALBOT ROSS of Portland, **TABLED** pending **PASSAGE** pursuant to House Rule 513.

Specially Assigned for May 11, 2023.



CLERK

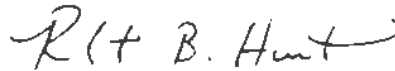
HOUSE OF REPRESENTATIVES

May 11, 2023

Speaker laid before the House

Subsequently, the Joint Order was **PASSED.**

In concurrence. **ORDERED SENT FORTHWITH.**



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