

STATE OF MAINE  
SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

Docket No. Ken-20-169

July 2, 2020

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CLARE HUDSON PAYNE, et al.,

Plaintiffs/Appellants,

vs.

SECRETARY OF STATE, et al.,

Defendants/Appellees.

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On report from the Kennebec County Superior Court  
Docket No. AUGSC-CV-2020-50

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**BRIEF OF APPELLANTS**

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## STATEMENT OF FACTS, INCLUDING PROCEDURAL HISTORY

“An Act to Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine” (L.D. 1083) was introduced and debated during the 129th Legislature’s First Regular Session in the spring of 2019. A. 18 ¶ 1. The Maine House of Representatives enacted L.D. 1083, as amended by Committee Amendment “A” (S-313), on June 19, 2019 during the First Regular Session. A. 18 ¶ 2. The Maine Senate enacted L.D. 1083 in concurrence with the House during the First Special Session held on August 26, 2019. A. 18 ¶ 4. The 129th Legislature’s First Special Session adjourned *sine die* on August 26, 2019.

A. 18 ¶ 5. Although L.D. 1083 was presented to the Governor on August 26, 2019, the Governor did not sign or return L.D. 1083 to the Legislature. A. 18 ¶¶ 6-7. On September 6, 2019, the Governor announced her intention to allow L.D. 1083 to become law without her signature. A. 18 ¶ 8. November 25, 2019 was the date 90 days after adjournment *sine die* of the Legislature’s First Special Session.

A. 19 ¶ 11.

The next meeting of the 129th Legislature occurred when the Legislature convened its Second Regular Session on January 8, 2020. A. 19 ¶ 12. The Governor did not return L.D. 1083 to the Legislature within three days after January 8, 2020. A. 19 ¶ 13. L.D. 1083 was chaptered as P.L. 2019, ch. 539 on January 12, 2020. A. 19 ¶ 14. Hereinafter, L.D. 1083 and P.L. 2019, ch. 539 are

collectively and interchangeably referenced as the “Ranked-Choice Voting Law” or the “Law.” The Legislature neither acted on, nor amended the Ranked-Choice Voting Law during the Second Regular Session. A. 19 ¶ 15. The 129th Legislature’s Second Regular Session adjourned *sine die* on March 17, 2020. A. 19 ¶ 20.

Prior to adjournment of the 129th Legislature’s Second Regular Session, proponents of a People’s Veto referendum of the Ranked-Choice Voting Law, on January 16, 2020, filed an application with the Secretary of State’s Office for a People’s Veto of the Ranked-Choice Voting Law. A. 19 ¶ 16; A. 26-27. The Secretary of State approved that referendum application on February 3, 2020 and provided proponents with referendum petition forms on which to collect petition signatures. A. 19 ¶ 17. Referendum proponents engaged in signature collection efforts between February 3 and March 17, 2020, as well as thereafter. A. 19 ¶ 19.

No application for a People’s Veto referendum pertaining to the Ranked-Choice Voting Law was filed with the Secretary of State between March 17 and the date 10 business days after adjournment *sine die* of Second Regular Session of the 129th Legislature on March 31, 2020. A. 19 ¶¶ 21-22.

Appellants filed this action in the Kennebec County Superior Court on April 15, 2020. On June 15, 2020, the Superior Court reported the matter to the Law court for resolution pursuant to M.R. Civ. P. 24(a).

## STATEMENT OF THE ISSUES

- I. Which session of the 129<sup>th</sup> Legislature was the session at which L.D. 1083, An Act to Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine, was passed for purposes of Me. Const. Art. IV, Pt. 3, §§ 16 and 17?

Answer: The First Special Session of the 129<sup>th</sup> Legislature, which adjourned August 26, 2019, was the session of the Legislature at which L.D. 1083 was passed.

- II. Was P.L. 2019, Ch. 539 effective January 12, 2020?

Answer: Yes, the Ranked-Choice Voting Law took effect January 12, 2020 upon the Governor's failure to take any action within the first three days of the Legislature's Second Regular Session.

- III. Does 21-A M.R.S.A. § 901(1) permit filing of a people's veto application with the Department of the Secretary of State prior to adjournment of the legislative session at which the Act in question was passed?

Answer: No, 21-A M.R.S.A. § 901(1) requires a people's veto application to be filed after adjournment of the session in which the Act in question was passed.

## ARGUMENT

### **I THE FIRST SPECIAL SESSION OF THE 129TH LEGISLATURE WAS THE SESSION OF THE LEGISLATURE IN WHICH THE RANKED-CHOICE VOTING LAW WAS PASSED.**

The First Special Session of the 129<sup>th</sup> Legislature, which ended on August 26, 2019, was the session of the Legislature “in which the [Ranked-Choice Voting Law] was passed” by a majority vote, and the Legislature took no vote on the Law or other action during its Second Regular Session that could be construed as “passage” of the Law. The effective date of the Ranked-Choice Voting Law is determined by application of the Maine Constitution, Article IV, Part 3, § 16, which provides: “No Act or joint resolution of the Legislature . . . shall take effect until 90 days after the recess of the session of the Legislature in which it was passed . . . .” To determine when the 90-day clock began to run in the case at bar the Court must interpret and apply the phrase “the session of the Legislature in which [the Act or joint resolution] was passed.” *Id.*

The Court must “look primarily to the language used” when interpreting the Maine Constitution. *Allen v. Quinn*, 459 A.2d 1098, 1100 (Me.1983). A constitutional provision is construed consistent with its plain meaning when the language is unambiguous. *Voorhees v. Sagadahoc County*, 2006 ME 79, ¶ 6, 900 A.2d 733, 735. To determine whether interpretation by plain meaning is possible, the Court first looks to uses of the examined language in other sections of the

Constitution to determine whether an alternate meaning is possible. *See, e.g., Opinion of Justices*, 2015 ME 107, ¶¶ 36-37, 123 A.3d 494, 507 (examining the term “adjournment” for second meaning based upon the term’s usage in other constitutional sections). Where alternate meanings of the examined language could be reasonably construed, the Court then seeks to “determine the meaning by examining the purpose and history surrounding the provision.” *Voorhees*, 2006 ME 79, ¶ 6 (citing *Morris v. Goss*, 147 Me. 89, 83 A.2d 556, 566 (1951)).

**A. “The Session of the Legislature in Which [the Act or Joint Resolution] was Passed” is Unambiguous and Plainly Refers to the First Special Session.**

The phrase “the session of the Legislature in which [the Act or joint resolution] was passed” in Section 16 is unambiguous when read in context with the Constitution’s consistent use of the word “pass” or “passed” to characterize the Legislature’s action on pending legislation before it is presented to the Governor for approval. It is axiomatic that the Maine Legislature debates and passes “Acts” which, after approval by the Governor, become “Laws.” In the instant case, the Legislature passed L.D. 1083 “An Act to Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine” which, after the Governor’s failure to take any action, became a “Public Law” P.L. 2019, ch. 539. Thus, Section 16’s reference to passage of an “Act or joint resolution” can only be interpreted to refer to the action taken by the Legislature to pass an Act rather than

the action or inaction of the Governor that results in the Act that was passed by the Legislature becoming a Public Law.

This is further demonstrated by the fact that the Maine Constitution uses the word “passed” or a derivative form in five different sections of Article IV, which delineates the powers of the Legislature. Conversely, no form of the word “pass” appears in Article V, which outlines the executive powers of the Governor. Section 16’s use of the word “passed” is consistent with the similar usage throughout Article IV to characterize the specific legislative actions available to the Legislature, actions which are often expressly distinguished from those actions available to the Governor, such as veto power rights or limitations. For example:

- Me. Const. Art. IV, Pt. 1, § 1 describes the effect of “any Act, bill, resolve or resolution *passed* by the joint action of both branches of the Legislature.”
- Me. Const. Art. IV, Pt. 3, § 2 outlines the requirement that “[e]very bill or resolution, having the force of law . . . *which shall have passed both Houses*, shall be presented to the governor,” with any veto overturned if “*2/3 of the House shall agree to pass it.*”
- Me. Const. Art. IV, Pt. 3, § 2-A provides that line-item vetoes “become law as revised by the Governor, unless *passed* over the Governor’s veto.”

- Me. Const. Art. IV, Pt. 3, § 17 provides that a People’s Veto referendum to challenge any “Acts, bills, resolves or resolutions . . . *passed by the Legislature,*” expressly including such “resolves” that are not subject to the Governor’s veto authority.
- Me. Const. Art. IV, Pt. 3, § 19 limits the Governor’s veto authority of “any measure initiated by the people and *passed by the Legislature.*” (emphasis added).

Article IV’s plain use of the word “pass” to reference a unique action of the Legislature—distinguished from the acts of the Governor—mirrors the usage of that word in Article IX and Article X of the Constitution. *See* Me. Const. Art. IX, § 5 (Requiring cause for an impeachment address to be entered on the House journal “before such address shall *pass* either House”); Me. Const. Art. X, § 4 (Providing that “[t]he Legislature . . . may propose amendments to this Constitution; and when any amendments shall be so agreed upon, a resolution shall be *passed* and sent to the selectmen of the several towns”).

Section 16’s language cannot reasonably be construed to denominate the Legislature’s Second Regular Session as the session in which the Ranked-Choice Voting Law “passed” because the Legislature took no action whatsoever on the Ranked-Choice Voting Law during the Second Regular Session. *See* A. 19 ¶ 15. Thus, regardless of precisely what action by the Legislature constitutes “passage”

of legislation, in the instant case that action did not occur during the Second Regular Session.

Moreover, it is clear from the language of the Maine Constitution that it is the Legislature alone that has the power to “pass” legislation. Thus, the Ranked-Choice Voting Law could not have been “passed” by any action or inaction of the Governor regardless of when that action or inaction occurred. This plain language interpretation of Section 16, distinguishing that the Legislature “passes” legislation, while the Governor “approves” the Act that was passed by the Legislature, is not a novel construction. The Constitution’s repeated use of “pass” in Article IV to reference the legislative act of endorsement, and “approve” to reference the executive act of endorsement means that these words are not interchangeable or subject to generalization.

This Court has consistently recognized the need for precise language on this subject without interchanging the key words. *See, e.g., Call v. Chadbourne*, 46 Me. 206, 208 (1858) (describing the application of an Act “passed by the Legislature and approved by the Governor”); *In re Opinion of the Justices*, 116 Me. 557, 103 A. 761, 763 (1917) (discussing the adoption of four different laws, each requiring two distinct acts: “The Legislature of 1917 passed an act . . . . This act was approved by the Governor . . . .”); *City of Bangor v. Inhabitants of Etna*, 140 Me. 85, 34 A.2d 205, 208 (1943) (emphasizing that a resolution once “passed by

both branches of the legislature and approved by the Governor” has the force of law); *Collins v. State*, 2000 ME 85, ¶ 13, 750 A.2d 1257, 1262 (discussing the enrolled bill rule preventing litigation challenging the legislative process of bills “which are duly certified as having been passed by the Legislature and approved by the Governor”).

Interpreting the word “passed” in Article IV, Part 3, Section 16 to reference the Legislature’s enactment of legislation is consistent with the word’s usage throughout Article IV, Article IX and Article X and with the plain meaning of the word. Affording the word “passed” its plain and unambiguous meaning leads to the inexorable conclusion that the “session of the Legislature in which the [Ranked-Choice Voting Law] was passed” was the session during which both branches of the Legislature took direct action on the law by voting for its final passage, i.e. the Legislature’s First Special Session which ended on August 26, 2019. *See* A. 18 ¶¶ 4-5.

**B. Examination of Section 16’s Purpose and History Compels the Conclusion that the Legislature’s Actions During the First Special Session Constituted Passage of the Law.**

Even if the language of Article IV, Part 3, Section 16 of the Maine Constitution is deemed ambiguous as to whether it is a legislative or executive act that determines the session in which the Ranked-Choice Voting Law “passed,” Section 16’s purpose and history compels the conclusion that the Law was passed

during the Legislature’s First Special Session upon the Senate’s vote for concurrent and final passage of the Act — not upon the Governor’s failure to take action within the first three days of the Legislature’s Second Regular Session.

The Governor’s constitutional power to allow legislation to become law without signature was included within Maine’s original Constitution adopted in 1820. *See* Me. Const. Art. IV, Pt. 3, § 2 (1820) (Legislation “shall have such force and effect [as if it had been signed by the Governor], unless returned within three days after [the Legislature’s] next meeting”). Nearly nine decades later, the Legislature in 1907 crafted several new sections of the Constitution, including Me. Const. Art. IV, Pt. 3, § 16, which took effect in 1909. *See* Res. 1907, ch. 121 at 1477 (“No act or joint resolution of the legislature . . . shall take effect until ninety days after the recess of the legislature passing it.”). By the early 1900s, the Governor’s ability to delay executive approval of any passed legislation until a future meeting of the Legislature was an established and understood operation of the Governor’s veto power as provided in Article IV, Part 3, Section 2. Still, the Legislature employed language in Section 16 that linked the operation of that Section to the session in which the Legislature “passed” the legislation, not the session in which the Governor caused the passed legislation to become law by either signing it or failing to act on it.

Had the Legislature intended Section 16 to link the effective date of a piece of legislation to the session in which it *became law* through executive action or inaction, the Legislature knew how to employ the words “become law” or “be a law” to reference the conclusion of legislative process, rather than a reference to the session in which the legislation passed. Indeed, Maine’s Constitution uses that precise phrasing in Article IV, Part 3, Section 2, to denote the final step in the legislative process. *See Opinion of the Justices*, 673 A.2d 1291, 1302 (Me. 1996). “The phrase ‘become law’ is similar to words used in other provisions of the Maine Constitution to indicate the conclusion of the legislative process.” *Id.* at 1302, n.2.

In 1975, The Legislature introduced the modern wording of Section 16, tying the effective date of a law to the “session in which it passed” in order to align Section 16 with new provisions in Article IV, Part 3, Section 1 that set out limitations on each Legislature’s second regular session. *See Con. Res. 1975*, ch. 5. However, the Legislature expressly retained the affirmative constitutional mandate to calculate effective dates based upon the date on which the Legislature took its action to “pass” an Act or joint resolution, not the date when that legislation became law upon the Governor’s act of approval.

## II THE RANKED-CHOICE VOTING LAW TOOK EFFECT ON JANUARY 12, 2020.

Because the Ranked-Choice Voting Law was “passed” during the First Special Session, Article IV, Part 3, Section 16 of the Maine Constitution provides that the Law was eligible to take immediate effect on January 12, 2020 upon the Governor’s failure to take any action during the first three days of the Second Special Session. “No Act or joint resolution of the Legislature . . . shall take effect until 90 days after the recess . . .,” Me. Const. Art. IV, Pt. 3, § 16.

There is no dispute that the Ranked-Choice Voting Law, L.D. 1083, is an Act of the Legislature within Section 16’s purview. A. 18 ¶ 1; A. 24-25. This Court has previously held that the term “recess,” as utilized in Section 16, includes legislative adjournment *sine die*, which is what occurred at the close of the First Special Session on August 26, 2019. A. 18 ¶ 5. *See Opinion of Justices*, 2015 ME 107, ¶ 37 (finding in Section 16, “the term ‘recess’ is used synonymously with ‘adjournment *sine die*’”). Thus, it is beyond dispute that the First Special Session was in recess as of August 26, 2019.

Section 16 does not *require* that every piece of non-emergency legislation passed by the Legislature take effect 90 days after the session in which it was passed. Instead, Section 16 is constructed in the negative, establishing that no piece of non-emergency legislation can take effect at any *earlier* than the date 90 days after the session in which it was passed. Here, November 25, 2019 was the

date that was 90 days after adjournment of the First Special Session. A. 19 ¶ 11. Applying Section 16’s plain meaning, November 25 was the earliest possible date the Ranked-Choice Voting Law could have taken effect. *Voorhees*, 2006 ME 79, ¶ 6 (the Court “appl[ies] the plain language of the constitutional provision if the language is unambiguous”). It was not, however, the only date that the Ranked-Choice Voting Law could have gone into effect. That means, when the Governor was deemed to have approved the Law without taking any action pursuant to Section 2 of Article V on January 12, 2020— which was more than 90 days after the end of the session in which the Law was passed—the Ranked-Choice Voting Law took immediate effect.

### **III 21-A M.R.S.A. § 901(1) EFFECTUATES THE INTENT OF THE PEOPLE’S VETO PROVISION TO LIMIT ALL PETITION GATHERING TO A PERIOD NOT LONGER THAN 90 DAYS.**

Assuming for the sake of argument that the Legislature’s Second Regular Session was the “session in which [the Ranked-Choice Voting Law] was passed,” the proposed People’s Veto of the Law, which was filed during the Second Regular Session, is barred by the express language of 21-A M.R.S.A. § 901(1) requiring that a People’s Veto proponent must file an application with the Secretary of State to begin signature gathering *after* adjournment of the session in which the challenged law was passed. The People’s Veto section of the Maine Constitution provides citizens an opportunity to suspend laws they find objectionable upon the

filing of a defined number of petition signatures, and to submit the proposed repeal of those laws to an election referendum. To qualify for a People’s Veto, proponents must file the defined number of petition signatures “in the office of the Secretary of State . . . on or before the 90<sup>th</sup> day after the recess of the Legislature.” Me. Const. Art. IV, Pt. 3, § 17.

The Constitution permits the Legislature to “enact further laws not inconsistent with the Constitution for applying the People’s Veto and direct initiative” and “to establish procedures for determination of the validity of written petitions.” Me. Const. Art. IV, Pt. 3, § 22. The Legislature in 1931 enacted such laws to establish procedures for the initiative provisions of the Constitution, including the People’s Veto at 21 M.R.S.A. § 1351 *et seq* (recodified in 1985 at 21-A M.R.S.A. § 901 *et seq.*).

**A. Section 901(1) Expressly Bars People’s Veto Signature Gathering Prior to the Legislature’s Adjournment.**

Section 901(1) is titled “Limitation on petitions.” The statute requires that “[a]n application for a people’s veto referendum petition must be filed in the Department of the Secretary of State *within 10 business days after adjournment* of the legislative session at which the Act in question was passed.” 21-A M.R.S.A. § 901(1) (emphasis added). This Court has never interpreted the language of Section § 901(1) to construe the lawful window of time in which a valid People’s Veto application must be filed. The Court has, however, interpreted the

construction of timelines defined by precisely the same language that Section 901(1) employs, limiting certain acts to that time “within” a number of days “after” a certain event occurs. *See Allen v. Quinn*, 459 A.2d at 1102.

In *Allen*, the Court analyzed an earlier version of the direct initiative provision contained in Me. Const. Art. IV, Pt. 3, § 18 which, before 1975, provided that petitions could be filed “within forty-five days after the date of convening of the Legislature in regular session.” *Id.* The Court construed that the section’s “within -- after” clause to set both a start date and an end date because it “plainly limited the presentation of initiative petitions to the legislature to the time when it was in regular session.” *Allen*, 459 A.2d at 1102.<sup>1</sup>

This Court has consistently deemed a statutory “within -- after” timing clause to provide both a start and an end date. The clause’s establishment of a precisely defined start date is often the subject of the Court’s analysis in statutes of limitation cases that turn on a defined date of accrual. For example, Maine’s statute of limitations for actions on negotiable instruments requires that an action “must be commenced within 6 years after the due date or dates stated in the note,” or if accelerated, “within 6 years after the accelerated due date.”

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<sup>1</sup> The *Allen* Court ultimately held that the pre-1975 constitutional language was inconsistent with the intent of Article IV, Part 3, Section 18 as amended to remove the “within -- after” clause from Section 18 because the legislative history was ambiguous about whether that timing was intended to apply to filings in the Secretary of State’s office. Section 17’s distinguishable history, discussed *infra* at Sec. III(B), compels a different result.

11 M.R.S.A. § 3-118. This Court has recognized that such language requires the controlling start date to be determined by the Court to ensure accurate application. *See, e.g., Premier Capital, Inc. v. Doucette*, 2002 ME 83, ¶ 7, 797 A.2d 32, 34 (finding Section 3–118’s “within -- after” timing clause was satisfied because “[t]he facts indicate that the Note was accelerated by a letter dated March 16, 1993, and the action was commenced on July 22, 1998”).

Section 901(1)’s inclusion of the “within -- after” clause plainly establishes the Legislature’s adjournment as the point of beginning for the filing of a People’s Veto application governed by Section 901(1)’s provisions. The statute’s reference to a specific start date cannot be disregarded in the statute’s application here.<sup>2</sup> Proponents of a People’s Veto referendum of the Ranked-Choice Voting Law plainly failed to conform with Section 901(1)’s precisely defined application filing window. That means that the People’s Veto application filed on January 16, 2020—more than three months prior to the Legislature’s adjournment—failed Section 901(1)’s requirement that applications “must be filed in the Department of the Secretary of State *within 10 business days after* adjournment” to be effective. 21-A M.R.S.A. § 901(1) (emphasis added).

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<sup>2</sup> Appellants are aware of the Maine Superior Court’s decision in *Remmel v. Gwadosky*, Docket No. AP-97-112, in which that court reached a different conclusion, but that decision should be disregarded because it is inconsistent with this Court’s decision in *Allen*, 459 A.2d at 1102, inconsistent with this Court’s other decisions interpreting the “within -- after” construction, and unsupported by the authorities cited by the Superior Court in its decision.

The People's Veto proponents filed an application for a People's Veto referendum regarding the Ranked-Choice Voting Law with the Secretary of State on January 16, 2020, while the Second Regular Session was still active.

A. 19 ¶ 16. The Secretary nonetheless approved the application on February 3, 2020 and provided proponents with referendum petition forms on which to collect petition signatures. A. 19 ¶ 17. Each of these actions occurred well before the March 17, 2020 adjournment of the Second Regular Session of the 129<sup>th</sup> Legislature. *See* A. 20. Accordingly, the People's Veto referendum application, and/or any petition signatures gathered therefrom prior to the Legislature's adjournment, are invalid because they fail to comport with the Legislature's "establish[ed] procedures for determination of the validity of written petitions." Me. Const. Art. IV, Pt. 3, § 22.

**B. The People's Veto Provision and Section 901 Share the Common Purpose and History of Requiring that all People's Veto Petition Signatures be Collected Within a Time Not Longer Than 90 Days.**

The Constitution expressly authorizes the Legislature to enact laws "for applying" the People's Veto and "to establish procedures for determination of the validity of written petitions," Me. Const. Art. IV, Pt. 3, § 22. That authority is "without question," but "limited . . . by the existing constitutional scheme and the explicit direction that the statutes must be 'not inconsistent with the Constitution.'" *McGee v. Sec'y of State*, 2006 ME 50, ¶ 20, 896 A.2d 933, 940 (quoting Me. Const.

Art. IV, Pt. 3, § 22). Section 901(1) imposes lawful, enforceable restrictions governing the validity of People’s Veto petitions, because the statute imposes no limitation inconsistent with the Constitution or the People’s Veto’s longstanding purpose and history.

When construing a statute’s constitutionality, the Court “must assume that the Legislature acted in accord with [constitutional] requirements, if [it] can reasonably interpret a statute as satisfying those . . . requirements.” *Rideout v. Riendeau*, 2000 ME 198, ¶ 14, 761 A.2d 291, 297-98. “Established principles of constitutional construction require that the views of the framers be given great consideration.” *Morris v. Goss*, 147 Me. 89, 108, 83 A.2d 556, 566 (1951).

Section 901(1) is wholly consistent with the Constitution’s People’s Veto Provision. Both the People’s Veto Provision and Section 901(1) contemplate initiation of a People’s Veto referendum *after* the Legislature’s adjournment. Section 901(1) mirrors the intent of Section 17’s framers, who sought to constrain petition signature gathering exclusively to the 90-day time window following the Legislature’s adjournment. Debate on the House floor in support of the People’s Veto amendment on March 14, 1907 observed the intended time available for gathering People’s Veto petitions was constrained. “[I]f within that time, within the ninety days, a petition signed by 10,000 of the voters of the State requests that any statute which has been enacted be referred to the people, it shall be . . . .”

Legislative Record, House March 14, 1907, at 640 (testimony of Johnson of Waterville). Thus, from its very inception, the understanding of the People's Veto framers was to impose a weighty signature requirement within the defined ninety-day period following adjournment.

Section 901(1)'s faithful application of the People's Veto's intended purpose of limiting the signature gathering period to the 90 days after adjournment is further evidenced by Section 17's historical wording. When adopted in 1909, the People's Veto section mirrored Section 901's "within -- after" time clause, requiring that the electors' petition be "filed in the office of the secretary of state *within* ninety days *after* the recess of the legislature." Resolves 1907, ch. 121 at 1478.

Although the "within" portion of People's Veto "within -- after" clause was removed in a 1975 resolution to amend Section 17, the legislative record demonstrates the amendment was not intended to expand the 90-day window after adjournment for collection of all People's Veto petition signatures. *See* Con. Res. 1979, ch. 3. Specifically, the 1975 resolution sought to add a 5 p.m. deadline on the 90<sup>th</sup> day and a provision to shift the deadline forward if the deadline falls on a weekend for the purpose of avoiding the need to staff the Secretary of State's Office until midnight on the 90<sup>th</sup> day to accept otherwise timely petitions. *See*

Report of the Judiciary Committee on the Initiative and Referendum Process 12-13  
(Dec. 1974).

Finally, public policy favors application of Section 901(1) in a manner consistent with the People's Veto's long-established purpose and history. Constraining petition signature gathering to the 90-day period after adjournment ensures consistency, fairness, and the application of a rigorous standard for vetoing a law duly passed by the Legislature. Without Section 901(1), proponents of a People's Veto challenging an act passed early in a legislative session would have much more than 90 days to collect petitions. Section 901(1) promotes fairness among all citizens who might wish to initiate a People's Veto. Under the ten-day period set by Section 901(1), every proponent receives the same 90 days to complete the People's Veto process, and no proponent is unfairly advantaged or disadvantaged based on when during the legislative session an Act is passed. The race must start on the same day for all, and Section 901(1) creates a standard to ensure such fairness.

Section 901(1)'s plain language limiting any application for People's Veto petitions until after the Legislature's adjournment is consistent with the People's Veto Provision in Article IV, Part 3, Section 17, and duly enacted by the Legislature with authority expressly granted through Article IV, Part 3, Section 22.

## CONCLUSION

For the aforementioned reasons, the Court should answer the questions of law presented on report of the Kennebec County Superior Court as follows:

- I. *The First Special Session* of the 129<sup>th</sup> Legislature was the session at which L.D. 1083, An Act to Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine, was passed for purposes of Me. Const. Art. IV, Pt. 3, §§ 16 and 17;
- II. P.L. 2019, Ch. 539 was effective January 12, 2020; and,
- III. 21-A M.R.S.A. § 901(1) does not permit filing of a People's Veto application with the Department of the Secretary of State prior to adjournment of the legislative session at which the Act in question was passed.

Dated at Portland, Maine this 2<sup>nd</sup> day of July, 2020.

Respectfully submitted,

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STATE OF MAINE

SUPREME JUDICIAL COURT

Sitting as the Law Court

Docket No. Ken-20-169

Clare Hudson Payne, et al.,

v.

**CERTIFICATE OF SIGNATURE**

Secretary of State, et al.

**You must file this certificate if you do not sign at least one paper copy of your brief. This form may be used only by an attorney representing a party.**

I am filing the electronic copy of a brief with this certificate. I will file the paper copies as required by M.R. App. P. 7A(i). I certify that I have prepared (or participated in preparing) the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R. App. P. 7A(f), and conform to the form and formatting requirements of M.R. App. P. 7A(g).

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## CERTIFICATE OF SERVICE

I, Glenn Israel, hereby certify that on July 2, 2020, two copies of the Appellants' Brief and one copy of the Appendix were served via electronic and first-class mail upon counsel of record as follows:

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