

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. KEN-20-169

CLARE HUDSON PAYNE, PHILIP STEELE, FRANCES M. BABB, and
THE COMMITTEE FOR RANKED CHOICE VOTING,

Plaintiff-Appellant

v.

MATTHEW DUNLAP, as MAINE SECRETARY OF STATE,

Defendant-Appellee

and

DEMITROULA KOUZOUNAS,

Intervenor-Appellee.

On Report from Kennebec County Superior Court
Docket No.: AUGSC-CV-2020-50

BRIEF OF INTERVENOR DEMITROULA KOUZOUNAS

Ann R. Robinson, Bar No. 3898
Joshua D. Dunlap, Bar No. 4477
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, Maine 04101
arobinson@pierceatwood.com
jdunlap@pierceatwood.com
(207) 791-1100

Attorneys for Intervenor Demitroula Kouzounas

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STATEMENT OF THE FACTS

I. Factual Background

The 129th Legislature enacted L.D. 1083, An Act to Implement Ranked-choice Voting for Presidential Primary and General Elections in Maine (“the Act” or “L.D. 1083”), at a one-day special session in August 2019. The Governor allowed the Act to become law without her signature when she did not return it after the Second Regular Session of the 129th Legislature convened in January 2020. The relevant parties – the Governor, the Secretary of State, and Demitroula Kouzounas (the applicant for the people’s veto referendum of the Act) – all understood that, given the timing of the Legislature’s and Governor’s actions, the Act would not take effect until 90 days after that session adjourned *sine die* on March 17, 2020. For the reasons that will be discussed in this brief, that understanding was correct.

The Act was introduced and debated during the 129th Legislature’s First Regular Session, in the spring of 2019. App.18, ¶ 1.¹ The House of Representatives enacted L.D. 1083, as amended, on June 19, 2019. *Id.*, ¶ 2. The Senate, however, did not act on L.D. 1083 during the First Regular Session, which adjourned *sine die* on June 20, 2019; instead, it was carried over to a special session. *Id.*, ¶ 3. The Senate enacted L.D. 1083 during that First Special Session, held on August 26, 2019. *Id.*, ¶ 4.

¹ The parties reached agreement on a Statement of Facts pursuant to M.R. App. P. 24(a)(2). The Statement of Facts, with exhibits, is included in the Appendix. *See* App.18-29.

On the same day, the Act was presented to Governor Mills and the Legislature’s First Special Session adjourned *sine die*. *Id.*, ¶¶ 5-6.

A few days later, on September 6, 2019, the Governor announced her intention to allow the Act to become law without her signature. App.18, ¶ 8. In her statement announcing that decision, the Governor explained that L.D. 1083 posed potential problems for March 2020 presidential primaries. *See* Governor Mills Statement on Ranked Choice Voting for Presidential Primary and General Elections in Maine (Sep. 6, 2019) (hereafter, “Governor’s Statement”).² As she wrote, the Act raised “serious questions about the cost and logistics of ranked-choice voting including collecting and transporting ballots from more than 400 towns in the middle of winter, and questions remain about the actual impact of this particular primary on the selection of delegates to party conventions.” *Id.* The Governor further stated that, “[b]y not signing this bill now, I am giving the Legislature an opportunity to appropriate funds and to take any other appropriate action in the Second Regular Session to fully implement ranked-choice voting in all aspects of presidential elections as the Legislature sees fit.” *Id.* In short, the Governor did not sign the Act in order to prevent it from going into effect until after the March 2020 primaries.

² This Court can take judicial notice of the Governor’s Statement. *Moulton v. Scully*, 111 Me. 428, 89 A. 944, 963 (1914) (“We are bound to take judicial notice of the doings of the executive *** departments of the government.” (alterations in original)); *see also* M.R. Evid. 201. The Governor’s statement is available at <https://www.maine.gov/governor/mills/news/governor-mills-statement-ranked-choice-voting-presidential-primary-and-general-elections-maine> (last visited June 18, 2020).

Because of the timing of the Senate’s action on L.D. 1083, Ms. Kouzounas – who wished to pursue a people’s veto of the law – sought and obtained guidance from the Secretary of State’s office regarding the appropriate timing for filing an application for a people’s veto referendum. App.19, ¶ 9. On September 10, 2019, Deputy Secretary of State Julie Flynn sent an email to Ms. Kouzounas’ counsel stating:

Our understanding, as explained in the attached Attorney General’s Opinion, is that legislation is not considered to have “passed” until it has been signed by the Governor, vetoed with the Legislature then overriding the veto, or allowed to become law without the Governor’s signature. The Governor has announced her intention to allow LD 1083 to become law without her signature, but under Article IV, part 3, section 2 this cannot occur until the fourth day after this Legislature reconvenes – presumably at the second regular session in January, 2020. Until that occurs, there is no chaptered public law that petitioners could seek to veto.

I understand your concern that someone might take a contrary position and argue that the 10-business day period for filing an application to circulate a people’s veto petition, pursuant to 21-A M.R.S. § 901(1), started to run once the special session ended on August 26th. If that were true, then the deadline for filing an application under this statute would be today.

If your clients choose to file an application today to avoid that argument being raised, we are willing to keep it on file, but we would not consider the application “complete” until after the legislation has become a chaptered public law. This means we would not draft a ballot question or create a petition form for circulation, pursuant to 21-A M.R.S. § 901(4), until after the public law is filed with us in January.

App. 21; *see* App.19, ¶ 9. The email attached Attorney General’s Opinion 79-170, the opinion referenced by Ms. Flynn. App.19, ¶ 9.

Out of an abundance of caution, Ms. Kouzounas filed an application for a people’s veto referendum regarding L.D. 1083 with the Secretary of State that same day, September 10, 2019. App.19, ¶ 10; App.22-24. In the filing, counsel for Ms. Kouzounas explained that she understood that there was no obligation to submit a people’s veto application until 2020, but that the application was nevertheless being submitted “with the understanding that [the Secretary of State’s] office will retain the Application on file” and would “defer action on it until January, 2020, after the legislation becomes chaptered public law.” App.22.

The next meeting of the 129th Legislature occurred when the Second Regular Session convened on January 8, 2020. App.19, ¶ 12. The Governor, consistent with her prior statement, did not return L.D. 1083 to the Legislature within three days of the convening of the Second Regular Session. *Id.*, ¶ 13. Accordingly, L.D. 1083 was chaptered as P.L. 2019, ch. 539 on January 12, 2020. *Id.*, ¶ 14; App.24-25.

Again out of an abundance of caution, Ms. Kouzounas filed a second application for a people’s veto referendum regarding P.L. 2019, ch. 539 with the Secretary of State on January 16, 2020. App.19, ¶ 16; App.26-29. In the filing with the Secretary of State’s office, counsel for Ms. Kouzounas stated: “While we recognize that you are prepared to proceed on the basis of our pending application, we are nevertheless submitting the enclosed completed Application now that the legislation has become a chaptered public law.” App.26. The Secretary approved Ms. Kouzounas’ referendum application on February 3, 2020, and provided

referendum petition forms on which to collect petition signatures. App.19, ¶ 17. People’s veto proponents thereafter began gathering signatures. *Id.*, ¶ 19.

Subsequently, the Secretary of State administered primary elections, held on March 3, 2020. App.19, ¶ 18. Based on the understanding that the Act was not yet effective, the Secretary of State did not implement ranked choice voting – even though the Democratic Party primary had more than three candidates, and therefore would have triggered ranked choice voting had the law been in effect. *Id.*; see 21-A M.R.S. § 1(27-C) (defining “elections determined by ranked-choice voting” as “any election . . . in which 3 or more candidates have qualified to be listed on the ballot for a particular office . . .”). Joseph R. Biden, Jr., was declared the victor of the primary based on a plurality vote. App.19, ¶ 18.

II. Procedural Background

On April 15, 2020, after the presidential primary held in March but before proponents of the people’s veto submitted the petition, the Committee for Ranked Choice Voting together with other individuals (collectively, the “Committee”) filed suit against the Secretary of State seeking declaratory and injunctive relief that would preclude Ms. Kouzounas from pursuing a people’s veto of the Act. App.7-17. Ms. Kouzounas intervened in the action to protect her constitutional rights under article IV, part 3, § 17 of the Maine Constitution.

On June 15, 2020, Ms. Kouzounas and people’s veto referendum proponents filed the people’s veto petition, containing more than 63,067 signatures, with the

Secretary of State. *See* App.5-6 (Report of the Kennebec County Superior Court (June 15, 2020)). The submission of the petition automatically suspended P.L. 2019, ch. 539 from taking effect. *Id.*; *see* Me. Const. art. IV, pt. 3, § 17(2).

The parties having agreed, the Superior Court reported the case to this Court. App.5-6; *see* M.R. App. P. 24(a)(1). The report presents three questions. The first two questions relate to the availability, under the Maine Constitution, of recourse to pursue a people's veto of the Act. The last question relates to the statutory timing for filing the application for a people's veto of the Act. The questions are as follows:

1. Which session of the 129th 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?
2. Was P.L. 2019, ch. 539 effective January 12, 2020?
3. Does 21-A M.R.S. § 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?

App.6. The parties agree that the answer to these questions of law will finally dispose of the action brought by the Committee. *See* M.R. App. P. 24(a)(3).

STATEMENT OF THE ISSUES

First, whether the people of Maine are precluded from exercising their constitutional right to pursue a people's veto as to any bill enacted by the Legislature during its first regular session or a special session, when the Legislature adjourns before the Governor acts and the Governor subsequently allows the bill to become

law without her signature at the beginning of next session? The answer is “no.” L.D. 1083 was “passed” during the second regular session for purposes of Me. Const. art. IV, pt. 3, §§ 16 and 17, and therefore did not take effect on January 12, 2020.

Second, whether 21-A M.R.S. § 901(1) should be construed to limit the time available for a citizen to file an application for a people’s veto to a 10-day window after adjournment of the Legislature, even though Me. Const. art. IV, pt. 3, § 17 imposes no such temporal restriction? The answer, again, is “no.” Section 901(1) permits the filing of a people’s veto application with the Secretary of State prior to the adjournment of the legislative session at which the Act was passed.

SUMMARY OF THE ARGUMENT

The Committee seeks to deprive Ms. Kouzounas, and by extension all of the people of Maine, of the right to pursue a people’s veto under the Maine Constitution. According to the Committee, there is a gaping (and previously undiscovered) hole in the “absolute right” to a people’s veto – namely, all legislation enacted during the First Regular Session or a special session preceding the Second Regular Session cannot be subject to a people’s veto if the Legislature adjourns and the Governor subsequently allows the legislation to become law without a signature. That simply is not the law. All non-emergency legislation is subject to a people’s veto under the Constitution.

L.D. 1083 was “passed,” pursuant to article IV, part 3, §§ 16 and 17 of the Maine Constitution, during the Second Regular Session of the 129th Legislature and could not take effect prior to June 16, 2020. Sections 16 and 17 of article IV, part 3

are designed to work together seamlessly to allow the exercise of a people's veto. The 90-day period established in § 16 – during which a non-emergency law does not take effect – was adopted in order to allow veto petitions to be filed pursuant to § 17. This design would be frustrated if the 90-day period under § 16 is deemed to run before the Governor acts and, thus, before a people's veto petition can be filed. Further, as is well established under Maine law, the legislative process is not complete until the Governor takes action on a bill. Accordingly, a law is “passed” during the session during which the Governor acts and, with the exception of emergency laws, takes effect 90 days after that session has adjourned. Properly construed, therefore, the Constitution permits Ms. Kouzounas to pursue a people's veto of the Act.

Moreover, Ms. Kouzounas was not required, under 21-A M.R.S. § 901, to wait until the Second Regular Session of the 129th Legislature adjourned in order to file a people's veto application. Section 901 establishes only an end date, not a start date, for filing an application. Consistent with established Maine precedent, the natural reading of the phrase “within 10 business days after adjournment” is that applications may be filed “on or before” the tenth day after adjournment. Reading a start date into § 901 would create constitutional problems, given that the Constitution provides significant flexibility to those seeking to pursue a people's veto. The Constitution, far from establishing a policy that a people's veto effort cannot take more than 90 days, must be construed liberally to facilitate the exercise of that power. Ms. Kouzounas was therefore permitted to file her application in January, 2020, as she did.

ARGUMENT

I. **The Act, Like All Non-Emergency Legislation, Is Subject to the People's Veto Provisions of the Maine Constitution.**

The Committee's primary argument is that, because L.D. 1083 was enacted during a special session between the Legislature's first and second regular sessions, it became effective immediately upon being chaptered on January 12, 2020, after the Governor allowed it to become law without her signature. App.11, ¶ 24. Under the Committee's theory, it was impossible to seek a people's veto of the Act. A people's veto could not be initiated *before* January 12, 2020, because the Governor had until January 11, 2020, to veto the bill; and it could not be initiated *after* January 12, 2020, because the law immediately became effective on that date, the 90-day period during which laws do not become effective having already expired. *Id.*, ¶ 23; App.13, ¶ 35.

The ramifications of the Committee's argument are sweeping: if credited, the argument leads to the conclusion that the 1908 amendment adopting the people's veto provisions of the Maine Constitution contained an enormous loophole that the Legislature can use to evade a people's veto. According to the Committee, whenever the Legislature enacts legislation and that legislation is allowed to become law without the Governor's signature during the next session, it cannot be subjected to a people's veto. Never has such a reading of the Constitution been adopted. The Court should decline the Committee's invitation to dramatically curtail the right to a people's veto.

As discussed below, the Act *is* subject to the people’s veto process – as with all other non-emergency legislation enacted by the Legislature. The first two questions presented in the Superior Court’s report should be answered as follows. First, the Act was “passed,” for purposes of Me. Const. art. IV, pt. 3, §§ 16 and 17, during the Second Regular Session of the 129th Legislature. Second, because it was passed during the Second Regular Session, the Act did not become effective on January 12, 2020.

A. The Relevant Constitutional Provisions Must Be Construed Liberally in Favor of the Right to Pursue a People’s Veto.

This Court has repeatedly recognized that “[t]he right of the people” to “approve or disapprove legislation enacted by the legislature is an absolute one.” *Farris ex rel. Dorsky v. Goss*, 143 Me. 227, 231, 60 A.2d 908, 911 (1948); *see McGee v. Sec’y of State*, 2006 ME 50, ¶ 21, 896 A.2d 933 (noting the people’s “absolute right” to an initiative). Because of the importance of this constitutional right, the people’s veto provisions in the Constitution must be “accorded a liberal interpretation in order to carry out their broad purpose.” *Allen v. Quinn*, 459 A.2d 1098, 1102 (Me. 1983). The “broad purpose” of the 1908 amendment adding the initiative and people’s veto provisions “is the encouragement of participatory democracy.” *Id.*; *see McGee*, 2006 ME 50, ¶ 24, 856 A.2d at 941. The 1908 amendment returned to the people the power previously lodged in their elected representatives. *McGee*, 2006 ME 50, ¶ 24, 896 A.2d at 941; *see League of Women Voters v. Sec’y of State*, 683 A.2d 769, 771 (Me. 1996). Thus, the Constitution must be “liberally construed to facilitate, rather than to

handicap, the people's exercise of their sovereign power to legislate." *Wagner v. Sec'y of State*, 663 A.2d 564, 566 (Me. 1995) (quoting *Allen*, 459 A.2d at 1102-03).

The relevant constitutional provisions that must be construed liberally in favor of the right to pursue a people's veto are as follows.

- Article IV, part 3, § 2 provides that bills, having the force of law, must (1) be enacted by both houses of the Legislature, and (2) be presented to the Governor for signature or veto.

Every bill or resolution, having the force of law, to which the concurrence of both Houses may be necessary, . . . which shall have passed 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.

Me. Const. art. IV, pt. 3, § 2. The Governor also has the option to neither sign nor return a bill.

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 meeting of the Legislature which enacted the bill or resolution, the bill or resolution shall not be law.

Id. Thus, a bill enacted by both houses of the Legislature may become law without the Governor's signature, but only after the same Legislature reconvenes.

- Article IV, part 3, § 16 provides that laws (excepting emergency laws) do not take effect for a period of 90 days. "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.” Me. Const. art. IV, pt. 3, § 16.

- Article IV, part 3, § 17 provides for a people’s veto.

Upon written petition of electors, the number of which shall not be less than 10% of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition, and addressed to the Governor and filed in the office of the Secretary of State by the hour of 5:00 p.m., on or before the 90th day after the recess of the Legislature . . . requesting that one or more Acts, bills, resolves or resolutions, or part or parts thereof, passed by the Legislature but not then in effect by reason of the provisions of the preceding section, be referred to the people, such Acts, bills, resolves, or resolutions or part or parts thereof as are specified in such petition shall not take effect until 30 days after the Governor shall have announced by public proclamation that the same have been ratified by a majority of the electors voting thereon at a statewide or general election.

Me. Const. art. IV, pt. 3, § 17(1).

The Committee narrowly construes these provisions to argue that the Act was “passed” by the Legislature for purposes of § 16 when the Senate voted to approve the bill on August 26, 2019, even though the Legislature by its adjournment the same day prevented the bill’s return by the Governor until the next legislative session. Under this construction, the 90-day period in section 16 was triggered on August 26, 2019, and, because that period ended before the deadline for the Governor’s action, the Act immediately took effect on January 12, 2020 – thereby precluding a people’s veto. App.12, ¶¶ 28-29, 32-33. The effect of this interpretation is to deny the people’s veto right on the basis of legislative scheduling.

This strained, narrow construction of article IV, part 3 must be rejected. It not only violates the Law Court’s repeated observation that these constitutional provisions must be “liberally construed,” *Wagner*, 663 A.2d at 566, but it would completely deprive the people of their “absolute right,” *Farris*, 143 Me. at 231, 60 A.2d at 911, to pursue a people’s veto as to a wide swath of legislation.

B. The Act Was “Passed,” For Purposes of the Maine Constitution, During the Legislature’s Second Regular Session.

The Committee argues that the Act was “passed” during the First Special Session of the 129th Legislature, App.9. ¶ 11, because the “Legislature alone can ‘pass’ acts of law,” and the Governor’s action on legislation has no bearing on when an act is deemed to have “passed,” App.11, ¶¶ 26-27. The Committee’s argument is based on a misapprehension of article IV, part 3 of the Maine Constitution. The Act did not “pass” until the Second Regular Session, because (1) that conclusion is necessary to effectuate the right to a people’s veto, and (2) the Governor’s action is the final legislative step by which a bill becomes law. The 90-day period during which ordinary legislation cannot become effective thus did not begin to run on August 26, 2019.

1. A law must be deemed to have “passed” during the session when the Governor acts in order to effectuate the constitutional right to pursue a people’s veto.

In determining the legislative session during which the Act was “passed” for purposes of article IV, pt. 3, §§ 16 and 17, it is necessary to examine the “the purpose and history” of the constitutional provision at issue, as well as its structural context, to

determine the meaning of the relevant term. *Opinion of Justices*, 2015 ME 107, ¶¶ 39-40, 123 A.3d 494, 507-08 (citing *Voorhees v. Sagadahoc Cty.*, 2006 ME 79, ¶ 6, 900 A.2d 733); see *McGee*, 2006 ME 50, ¶ 24, 896 A.3d at 941 (“Any analysis of the initiative provisions in the Constitution must take account of their significance and purpose.”). Here, the purpose, history, and structure of §§ 16 and 17 compel the conclusion that, if the right to a people’s veto is to be effectuated, a bill must be deemed to have “passed” during the session at which the Governor acts – not the session at which the Legislature enacts the bill.

There is a single, critical policy that underlies the 90-day delay provision in § 16, and that is to ensure that the people can pursue a veto under § 17. “The purpose of the 90 day suspension in section 16 is to allow time in which legislative acts or resolves may be subjected to the people’s veto under section 17.” *Opinion of the Justices*, 682 A.2d 661, 666 (Me. 1996); see Me. Op. Att’y Gen. No. 95-4, 1995 WL 279966, at *1 (Apr. 26, 1995) (“The purpose of the provision in Section 16 suspending the operation of legislation until 90 days after the recess of the Legislature is to allow for the operation of Article IV, Part Third, Section 17 of the Maine Constitution, whereby the electors may seek to prevent any legislation enacted by the Legislature from becoming law by exercising the ‘people’s veto.’”); Marshall J. Tinkle, *The Maine State Constitution* 98 (2d ed. 2013) (noting that the “purpose” of § 16 is to “suspend” non-emergency “laws until an opportunity is afforded to challenge the enactment by referendum”). This purpose is indisputable.

Indeed, both §§ 16 and 17 were adopted as part of the same constitutional resolve enacting the rights of referendum and initiative, Res. 1907, ch. 121, and were designed to enable a process for pursuing a people’s veto. The parallel between the two provisions – namely, the 90-day delay set forth in § 16 and the 90-day period for pursuing a people’s veto set forth in § 17 – strongly indicates that the purpose of the 90-day effective date provision was to suspend the operation of legislation until the people have the opportunity to exercise a people’s veto. This conclusion is supported by the legislative history of the people’s veto amendment. *See* Legis. Rec. 640 (1907) (“[N]o statute enacted by the Legislature shall become a law until ninety days after the final adjournment of the session of the Legislature which enacted it, and if within that time, within the ninety days, a petition . . . requests that any statute which has been enacted be referred to the people it shall be referred by public proclamation by the Governor”); *id.* at 645 (any bill “must remain three months before it becomes a law” and “if in that time [sufficient] voters petition to have that question referred to the people” then it must go to “an election for the people to act”).

Interpreting § 16 to allow a bill to become effective 90 days after adjournment of the session at which the Legislatures enacted the bill, rather than during the following session at which the Governor allowed the bill to become law without her signature, would gravely undermine this policy – contrary to this Court’s precedent. The Court has repeatedly made clear that the right to pursue a people’s veto “cannot be abridged directly or indirectly by any action of the legislature.” *Farris*, 143 Me. at

231, 60 A.2d at 911; *see McGee*, 2006 ME 50, ¶ 21, 896 A.2d at 940. Concluding that the 90-day period can run even before the Governor acts on a bill, however, would permit extraordinary gamesmanship by the Legislature: it could avoid a people’s veto on any legislation during its First Regular Session (or, as here, during special sessions preceding the Second Regular Session) by simply adjourning *sine die* before the Governor acts on the legislation.

It is not possible to seek a people’s veto before the Governor acts: there is no chaptered law until the Governor allows it to become law. *See App.19*, ¶¶ 13-14. Until then, there is only a bill – and, thus, no *law* to veto. *See Me. Const. art. IV*, pt. 3, § 2 (providing that a bill must be signed or allowed to become law by the Governor in order to have the force and effect of law); *see also App.9*, ¶ 9; *App.21* (until the Governor acts, “there is no chaptered public law that petitioners could seek to veto”).³ Indeed, allowing for the possibility of a people’s veto before the Governor takes action would be unreasonable: it would mean that, in order to preserve their rights, the bill’s opponents would have to expend the time and extensive resources necessary to collect signatures and file petitions even though the bill may yet be vetoed by the Governor. There is no reason to conclude that the drafters of the 1908

³ This basic constitutional principle set out in the presentment clause, unsurprisingly, corresponds with article IV, part 3, § 17, which limits the people’s veto to laws that would already be in effect but for the operation of the 90-day period established in § 16. *Me. Const. art. IV*, pt. 3, § 17 (allowing for people’s veto of laws “not then in effect *by reason of the provisions of the preceding section*” (emphasis added)). Thus, there is no constitutional basis to conclude that it is possible to seek a people’s veto of a bill that has not yet become law.

amendment intended such a result. Accordingly, if the time to pursue a people's veto expires before the Governor takes action, then there is no right to pursue a veto *at all*.

Yet that is exactly the position the Committee urges. By recourse to the simple expedient of adjourning *sine die* before the Governor acts, under the Committee's interpretation, the Legislature could completely deprive the people of their constitutional right to participate in the law-making process by pursuing a people's veto. Simply stating the proposition refutes it. The "absolute right" to a people's veto cannot be so easily abridged.

2. A law must be deemed to have "passed" during the session when the Governor acts because the Governor's action is the final step in the legislative process.

The answer compelled by the purpose and structure of article IV, pt. 3 §§ 16 and 17 is supported by the use of the phrase "session of the Legislature *in which it was passed*." Me. Const. art. IV, pt. 3, § 16 (emphasis added). To determine the legislative session "in which [a law] was passed," thereby triggering the 90-day period for a law to take effect, it is necessary to determine when the final legislative act has occurred. The Law Court has consistently held that the Governor's action is the final step in the legislative process of passing a bill. Thus, a bill can only be deemed to have "passed" during the session at which the Governor acts – here, the Second Regular Session.

The Governor, in acting upon a bill, is participating in the legislative process. The authority to sign, veto or allow a bill to become law without a signature is lodged in article IV, part 3, which deals with the legislative power. Me. Const. art. IV, pt. 3,

§ 2. As the Court stated in *Stuart v. Chapman*, “the last *legislative act* is the approval of the Governor. When approved, and not till then, they become existing acts.” 104 Me. 17, 70 A. 1069, 1072 (1908) (emphasis added). Accordingly, the Governor’s action on a bill is “the last legislative act which breathe[s] the breath of life into . . . statutes, and ma[kes] them a part of the laws of the state.” *Id.* This long-standing rule has been recognized in Maine as far back as 1883. *See Palmer v. Hixon*, 7 Me. 447, 449 (1883) (concluding that “the last legislative act necessary to make [the subject statute] a complete law, *including approval of the Governor*, was done as early as February 21, 1878” (emphasis added)). Indeed, this principle can be traced back to the United States Constitution, and the Framers’ intent to design a structure that gave the President a “role in the lawmaking process” in order to “carefully circumscribe[]” Congress’ power. *INS v. Chadha*, 462 U.S. 919, 947 (1983) (citing the Federalist Papers and stating that “[i]t is beyond doubt that lawmaking was a power to be shared by both Houses and the President”); *see Opinion of the Justices*, 2015 ME 107, ¶ 46 n.11, 123 A.3d at 509 n.11 (quoting *Chadha*, 462 U.S. at 947).⁴ Accordingly, under well-established law, the legislative process is not complete prior to the Governor’s action.

⁴ Unsurprisingly, therefore, the action of governors in issuing a veto or otherwise considering bills is widely characterized as legislative. *See, e.g., Pataki v. New York State Assembly*, 824 N.E.2d 898, 927 (N.Y. Ct. App. 2004) (veto is “a legislative power”); *Colorado General Assembly v. Lemm*, 704 P.2d 1371, 1382 (Colo. 1985) (“The veto power is a legislative power.”); *Jensen Assocs., Inc. v. Bullock*, 531 S.W.2d 593, 598 (Tex. 1975) (the governor’s “veto power is a legislative function”); *Williams v. Kerner*, 195 N.E.2d 680, 682 (Ill. 1963); (“And when engaged in considering bills the Governor is acting in a legislative capacity.”); *Fairfield v. Foster*, 214 P. 319, 320 (Ariz. 1923) (veto power is “essentially legislative in its nature”); *Commonwealth v. Barnett*, 48 A. 976, 976 (Pa. 1901) (“the veto is a legislative power”).

The Court has consistently held to this view. In a 1967 Opinion of the Justices, for instance, the justices concluded that “[e]very bill or resolution, having the force of law,’ the phrase employed in Article IV, Part Third, Section 2, means every bill or resolution which, *upon completion of the legislative process*, shall have the effect of law.” *Opinion of the Justices*, 231 A.2d 617, 619 (Me. 1967) (emphasis added). The justices described the “legislative process” as

composed of concurring action by both Houses of the Legislature *together with consideration by the Chief Executive* resulting in (a) approval, (b) disapproval, followed by reconsideration and passage by the legislature over such disapproval, or (c) failure of the Chief Executive to either approve or disapprove within the applicable period of time prescribed in the last sentence of Article IV, Part Third, Section 2.

Id. (citing *Stuart*, 104 Me. at 23, 70 A. at 1072) (emphasis added); *see also Opinion of the Justices*, 571 A.2d 1169, 1180 (Me. 1989) (“‘proper enactment’ refers to the process by which a legislative measure is passed by both Houses *and signed by the Governor*” because “the last legislative act is the approval of the governor” (quoting *Stuart*, 104 Me. at 23, 70 A. at 1072) (emphasis added)).

Accordingly, under this Court’s clear precedent, the last legislative act involved in passing a bill is the action of the Governor. In this case, because the Governor did not take action (by not returning the Act to the Legislature) until the Second Regular Session, the Act could not have been “passed” for purposes of article IV, part 3, §§ 16 and 17 during the First Special Session held on August 26, 2019.

3. The conclusion that a law must be deemed to have “passed” during the session when the Governor acts is supported by a long-standing Opinion of the Attorney General.

Interpreting article IV, part 3, §§ 16 and 17 so as to conclude that the Act was passed during the Second Regular Session is consistent with the guidance received by Ms. Kouzounas from the Secretary of State’s office, which in turn was based on Attorney General Opinion 79-170. That Attorney General’s Opinion, which reflects the long-standing interpretation given to § 16 by the State, is sound and provides useful interpretive guidance here. *See Opinion of the Justices*, 2015 ME 107, ¶¶ 39-40, 123 A.3d at 507-08 (“Also critical to our analysis . . . are the traditions of Maine government and its long-practiced actions interpreting the constitutional provisions at issue.”); *Opinion of the Justices*, 146 Me. 316, 323, 80 A.2d 866 (1951) (the Court considers the “long course of practice” under a constitutional provision).

The issue presented to the Court is not a new one, but instead was considered at length by the Attorney General in 1979. *See Me. Op. Att’y Gen. No. 79-170*, 1979 WL 482479 (Sep. 21, 1979). In his Opinion, Attorney General Cohen considered the effective date of bills enacted by the Legislature but not signed or returned by the Governor before the Legislature’s adjournment or within three days of its next meeting. *Id.* at *1, 3. The Attorney General “concluded that the legislative session which ‘passed’ a pending bill, for purposes of § 16, is the ‘next meeting’ during which the Governor could have disapproved and returned the bill.” *Id.* *6.

The Attorney General reached this conclusion substantially for the reasons explained above. The Attorney General noted that the purpose behind § 16 was “the protection of the people’s right to referendum,” and that this right “cannot be abridged by any action of the Legislature or Governor.” *Id.* *4. He went on to observe that the twin 90-day periods set forth in §§ 16 and 17 “strongly indicates that the purpose of the effective date provision was to allow the electorate an adequate opportunity to exercise the right of referendum” – a conclusion supported by “[t]he legislative debate on [the constitutional] resolve” from 1907. *Id.* *5. The Attorney General concluded that “interpret[ing] § 16 as providing that the pending bills would become effective 90 days after the adjournment of the session at which they were approved by the Houses of the Legislature” would not only “undercut the very policy which prompted the adopting of that section” but would also “severely curtail, and in some cases possibly even eliminate, the right of the people to override legislative action through the referendum process.” *Id.* Finally, the Attorney General concluded that, under Maine law, “no bill can become effective until the final legislative act has occurred, and that act is the Governor’s approval or failure to act.” *Id.*

This Attorney General’s Opinion has formed the basis for the actions taken by the Secretary of State and Ms. Kouzounas, as well as the Governor. Ms. Kouzounas sought guidance on the timing of a people’s veto from the office of the Secretary of State, and Deputy Secretary Flynn responded: “Our understanding, as explained in the attached Attorney General’s Opinion, is that legislation is not considered to have

‘passed’ until it has been allowed to become law without the Governor’s signature.” App.21; *see* App.19, ¶ 9. Ms. Kouzounas came to the same conclusion, based on the Attorney General’s Opinion – but nevertheless, out of an abundance of caution, filed an application within ten days of the adjournment of the First Special Session. App.19, ¶ 10; App.22-23. The Governor also apparently took the same view as that expressed in the Attorney General’s Opinion, having allowed the Act to become law without her signature for the express purpose of not allowing it to become effective for the March 2020 primaries. *See* App.19, ¶ 13; Governor’s Statement (noting “serious questions about the cost and logistics of ranked-choice voting” for the March 2020 primary).

Concluding that the Act was “passed” during the First Special Session would thus upset long-settled expectations that have guided the State and these parties. The Attorney General’s Opinion has guided official State actions since 1979. Rejecting it now would call into question the validity of actions taken over the span of decades, including, most recently, the conduct of the March 2020 Democratic Party primary.⁵ The conduct of that primary was unlawful if the Committee’s position is correct, as the Secretary would have been required to use ranked choice voting in the election.

Because ranked choice voting can change the outcome of elections, *see Opinion of the*

⁵ It is curious that the Committee did not bring suit alleging that the Act became effective January 12, 2020, prior to the March 2020 primaries. Perhaps the Committee also recognized the logistical difficulties of implementing ranked choice voting for the primaries and thus delayed their lawsuit, instead timing their lawsuit in the hopes that only the presidential election (and not the presidential primary) would be affected by the outcome of this case. They cannot be so selective. Either the Act was effective for both the presidential primary and the general election, or neither.

Justices, 2017 ME 100, ¶¶ 66-67, 162 A.3d 188, 211,⁶ the 2020 primary would be undermined if the Committee prevails. Rejecting the Attorney General’s Opinion now would also upset Ms. Kouzounas’ reliance interest in seeking to exercise her constitutional rights. There is no persuasive reason to reach such a disruptive result.

C. The Act Did Not Take Effect on January 12, 2020.

The Act having been “passed” during the Second Regular Session, it necessarily follows that the Act did not take effect on January 12, 2020, but, instead, was set to take effect on June 16, 2020 absent submission of a people’s veto petition. The Act still has not taken effect, however, because of the timely submission of a people’s veto petition containing more than 63,067 signatures.

The Act could not take effect until 90 days after the adjournment of the 129th Legislature’s Second Regular Session. Article IV, part 3, § 2 provides that a bill “not returned by the Governor within 10 days,” or if “the Legislature by their adjournment prevent its return . . . within 3 days after the next meeting of the same Legislature” must “have the same force and effect, as if the Governor had signed it.” Me. Const. art. IV, pt. 3, § 2. Thus, the expiration of the time during which the Governor could veto the bill gives the bill the same effect as if it had been signed on that day. Article IV, part 3, § 16, in turn, provides that an act shall not “take effect until 90 days after the recess of the session of the Legislature in which it was passed.” *Id.* § 16. Having

⁶ The outcome of the 2018 election in the second congressional district was altered by ranked-choice voting. *See* Representative to Congress – District 2 – Results Certified to Governor 11/26/18, <https://www.maine.gov/sos/cec/elec/results/2018/updated-summary-report-CD2.xls>.

passed during the Second Regular Session, as discussed above, the Act could not take effect until June 16, 2020 – after the 90-day period following adjournment *sine die* of the 129th Legislature’s Second Regular Session expired. App.19, ¶ 20; App.20, ¶ 24.

The submission of the people’s veto petition on June 15, 2020, suspended the effective date of the Act. Me. Const. art. IV, pt. 3, § 17(2) (“The effect of any Act, bill, resolve or resolution or part or parts thereof as are specified in such petition shall be suspended upon the filing of such petition.”); *see* App.5-6. Accordingly, the Act still has not taken effect, and will not take effect unless a majority of electors ratify the Act. Me. Const. art. IV, pt. 3, § 17(1) (“[S]uch Acts, bills, resolves or resolutions or part or parts thereof as are specified in such petition shall not take effect until 30 days after the Governor shall have announced by public proclamation that the same have been ratified by a majority of the electors voting thereon at a statewide or general election”). The Act having not yet taken effect, there is no impediment to the people’s veto referendum to be held in November 2020.

II. The People’s Veto Application Was Timely Because 21-A M.R.S. § 901 Permits Filing an Application Prior to the Legislature’s Adjournment.

The Committee next argues, in the alternative, that because Ms. Kouzounas filed the application for a people’s veto with the Secretary of State’s office prior to the adjournment of the Legislature’s Second Regular Session, *see* App.19, ¶¶ 16, 20; App.26-29, the Secretary’s acceptance of the application violated 21-A M.R.S. § 901. App.13-15, ¶¶ 37-52. That statute provides: “An 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. § 901(1). The Committee contends that this statute limits the time period in which an application can be filed to the 10 days immediately following adjournment of the Legislature, and that no application may be made *prior* to adjournment of the relevant legislative session. App.14, ¶ 41.

This reading must be rejected because it would impermissibly constrain Ms. Kouzounas’ constitutional rights. The Secretary permitted Ms. Kouzounas to file an application on January 16, 2020, enabling her to begin collecting signatures as soon as the Secretary issued referendum petition forms. App.19, ¶¶ 16-17, 19. The Secretary’s interpretation of § 901, which allowed Ms. Kouzounas to apply for and receive a people’s veto petition before the end of the legislative session, was not only reasonable but also *correct* – and it should accordingly be granted deference. *See Reed v. Sec’y of State*, 2020 ME 57, ¶¶ 14, 18, 22, ___ A.3d ___ (accordng deference to Secretary’s interpretation of § 903-E). Rejecting the Secretary’s determination would require an unnatural reading of § 901 that would be in tension with the Constitution. There are therefore no grounds to conclude that the Secretary erred by accepting Ms. Kouzounas’ application and issuing a petition.

Accordingly, as discussed below, the third question presented in the Superior Court’s report should be answered as follows. Section 901 does permit filing of a people’s veto application prior to the adjournment of the Legislature.

A. The Most Natural Reading of § 901 Is That It Provides an End Date, But Not a Start Date, for Filing an Application.

This Court must give statutory words their most natural reading, construed according to their common usage. *Zablotny v. State Bd. of Nursing*, 2014 ME 46, ¶ 17, 89 A.3d 143, 148. The most natural reading of § 901 is that, in providing that an application for a people’s veto must be filed “within 10 business days after adjournment of the legislative session,” 21-A M.R.S. § 901(1), the Legislature did not preclude filing before the Legislature’s adjournment. The word “within” equates to “on or before.” *Leader v. Plante*, 95 Me. 339, 50 A. 54, 54 (1901) *see Sanborn v. Fireman’s Ins. Co.*, 82 Mass. 448, 455 (1860) (“When time is spoken of, any act is within the time named that does not extend beyond it.”). Thus, the term “‘within,’ when used with reference to time, is generally a word of limitation that means ‘not beyond’ or ‘not later than’ – fixing the end, but not the beginning, of a period.” *Southall v. State*, 796 S.E.2d 261, 265 (Ga. 2017) (collecting cases); *see Glaze v. Grooms*, 478 S.E.2d 841, 844 (S.C. 1996) (“If an action is required by statute within a certain time ‘after’ an event the general rule is that the action may be taken before the event, since the statute will be considered as fixing the latest, but not the earliest, time for taking the action.”).⁷

⁷ Many other courts have also so found. *See, e.g., Gonzalez v. United States*, 44 Fed. Cl. 764, 767 (1999) (phrase “within thirty days of final judgment” held to “prescribe[e] only a final deadline . . . , not a window”); *District of Columbia v. Gantt*, 558 A.2d 1120, 1122-23 (D.C. Ct. App. 1989) (the phrase “within 6 months after the date of the first publication of notice” created “only a cutoff point, not a starting point”); *State v. Griffin*, 370 A.2d 1301, 1305 (Conn. 1976) (word “within” in probate statute “means not later than the termination date” and does not set a start point); *Young v. Waldrop*, 109 P.2d 59, 60-61 (Mont. 1941) (“[W]ithin’ means ‘not beyond’ or ‘not later than’” and “includes only the final limit and not the starting point.”) (collecting cases).

The only court to consider the meaning of the term “within” in § 901 construed the term to provide only an end point, and not a start point. *Remmel v. Gwadosky*, No. AP-97-112, Order at 7-8 (Me. Super. Ct. Nov. 21, 1997) (citing cases). The decision in *Remmel* is consistent with analogous cases. *See Klosterman v. Marsh*, 143 N.W.2d 744, 749 (Neb. 1966) (comparable language in the Nebraska Constitution “refer[red] only to a cutoff date after which no referendum petition could be filed and was not intended to fix the date that the right of referendum became exercisable, nor the date before which signatures could not be validly obtained”).

Defining “within” to create an end point but not a beginning is supported by *Allen v. Quinn*. In that case, the Law Court considered whether article IV, part 3, § 18(1), by requiring initiative petitions to be filed “on or before the 50th day after the date of convening of the Legislature in first regular session” actually established not only an end point but also a *starting* point on the period in which such petitions may be filed with the Secretary of State. *Allen*, 459 A.2d at 1100-01. The petition in that case was directed at the 111th Legislature, the first regular session of which convened on December 1, 1982. *Id.* at 1099. The Secretary of State, however, accepted petitions filed on November 1. Thus, the question arose: does § 18 prohibit filing of a petition with the Secretary before the Legislature convened? The court concluded that the answer was “no.” *Id.* at 1103.

The Court reached this conclusion based on “[t]wo constructional precepts.” *Id.* at 1102. The first precept was that the Constitution must be accorded a liberal

interpretation to effectuate the purpose of the 1908 people’s initiative amendment – namely, to encourage “participatory democracy.” *Id.* Because “the people, as sovereign, have retaken unto themselves legislative power,” the relevant constitutional provisions “must be liberally construed to facilitate, rather than to handicap, the people’s exercise of their sovereign power to legislate.” *Id.* at 1102-03. The second precept was that “the people in retaking to themselves part of the legislative power have laid out in unusual detail the procedure by which they will legislate by direct vote.” *Id.* at 1103. The constitutional detail – even specifying the time of day for filing petitions – is so great as to render the referendum provisions “self-executing.” *Id.* “In the midst of this specificity, with one time limitation on filing clearly defined, a court must be chary of reading another time limitation [into the Constitution] by implication.” *Id.* “[A] court should infer additional procedural requirements only if they are clearly necessary.” *Id.*

The same conclusion should be reached here, based on the same precepts. While the exact language differs slightly,⁸ the issue raised by § 901 is identical to the

⁸ The term in § 901 is “within”; the phrase in § 18(1) was “on or before.” In *Allen*, the Court did discuss, in dicta, an earlier version of section 18(1), which used the phrase “within forty-five days after the date of convening of the Legislature.” *Allen*, 459 A.3d at 1102. The Court was of the view that this phrase limited the presentation of initiative petitions *to the Legislature* to the time it was in regular session. *Id.* That is logical – after all, if the Legislature was not meeting, a petition could not be presented to the Legislature. The Court went on to state that this phrase did *not* clearly restrict filings *with the Secretary of State* to the time the Legislature was in session. *Id.* The Court found the earlier “within” language of § 18(1) to be unclear on this point – just like the “on or before” language used in the current version. *Id.* Thus, had the “within” language still applied, the Court would have reached the same conclusion as it did under the “on or before” language, based on the precepts it elucidated. See *Rommel*, Docket No. AP-97-112, Order at 6-7 (analyzing *Allen*).

issue raised by § 18(1) and addressed by the Law Court in *Allen*: Both provisions expressly state an end date after which a petition (in the case of a petition for direct initiative) or application for petition (in the case of a people’s veto referendum) must be filed, but neither provision expressly creates any start date. No such start date should be read into § 901 by implication, for the same reason the Court did not read a beginning date into § 18(1): doing so would handicap the people’s right to pursue a people’s veto and would unnecessarily add, by judicial construction, additional time limitations not included in the detailed provisions set forth in the Constitution. *See Allen*, 459 A.2d at 1102-03.

B. Construing § 901 to Create a Start Date for Filing an Application Would Unnecessarily Raise Constitutional Problems.

Not only should “within” in § 901 be construed to mean “on or before” because that is its most natural reading in context, but giving “within” that construction is necessary to avoid raising a constitutional problem. When a statute is capable of multiple interpretations, the Law Court “prefers interpretations of statutes that do not raise constitutional problems.” *McGee*, 2006 ME 50, ¶ 18, 896 A.2d at 939-40; *see Anderson v. Town of Durham*, 2006 ME 39, ¶ 19, 895 A.2d 944, 951. That principle applies with particular force in this context: while “the Legislature is authorized to enact implementing legislation, [it] cannot do so in any way that is inconsistent with the Constitution or that abridges directly or indirectly the people’s right of initiative.” *McGee*, 2006 ME 50, ¶ 21, 896 A.2d at 940; *see Me. Const. art. IV*,

pt. 3, § 22 (the Legislature may “enact further laws not inconsistent with the Constitution for applying the people’s veto and direct initiative”). As illustrated by *McGee*, reading a start date into § 901 would conflict with the Constitution.

In *McGee*, the Court struck down a statutory time limitation because it created deadlines that were inconsistent with the flexibility permitted under the Constitution. 2006 ME 50, ¶ 41, 896 A.2d at 944. The statute at issue in *McGee* established a one-year deadline from issuance of the initiative petition to filing with the Secretary. *Id.* ¶ 22, 896 A.2d at 940. The Court found that this conflicted with the Constitution, which “not only does not require such expeditious filing” but also “establishes no starting date from which a petition’s filing must be measured.” *Id.* ¶ 22, 896 A.2d at 941-42. The Court concluded that the Constitution, although it did not explicitly prohibit the statutory deadline, implicitly allowed a circulator more than one year to file the petitions. *Id.* ¶ 23, 896 A.2d at 941.

The Court began with the observation that the 1908 amendment returned the legislative power to the people, and must be liberally construed. *Id.* ¶ 25, 896 A.2d at 941. “[A]gainst this backdrop,” the Court observed that the Constitution only created two deadlines for initiatives: (1) petitions must be filed by a date certain after the beginning of a legislative session, and (2) when petitions *are* filed, only signatures obtained within one year will be valid. *Id.* ¶ 26, 896 A.2d at 941. Thus, the Constitution granted “significant flexibility in determining when to file with the Secretary of State.” *Id.* ¶ 27, 896 A.2d at 941. The Court found that the statute’s

one-year circulation period conflicted with this constitutional structure because it created a deadline for filing initiative provisions that did not exist under the Constitution and thereby limited the flexibility granted by the Constitution. *Id.* ¶¶ 28-33, 896 A.2d at 942-43. The Court found the statute invalid for that reason. *Id.* ¶ 39, 896 A.2d at 944.

Section 901, the statute at issue in this case, does not unambiguously create the type of conflict that the Court found in *McGee*, and the Court should decline the Committee’s invitation to read such a conflict into the statute. As with the initiative provision in article IV, part 3, § 18, the people’s veto provision in § 17 is designed to grant significant flexibility for the proponents of a people’s veto. The only deadline established in § 17 is the requirement that a people’s veto petition be submitted “by the hour of 5:00 p.m., on or before the 90th day after the recess of the Legislature” Me. Const. art. IV, pt. 3, § 17(1).⁹ It creates no artificial starting point for the process of seeking a people’s veto, other than the existence of a law that would be in effect were it not for operation of § 16. *Id.* As the Committee would have it, however, § 901 *does* create an artificial deadline prior to which no people’s veto could be pursued. As in *McGee*, such a start date would substantially restrict the flexibility of the schedule established by the Constitution – thereby impermissibly limiting the

⁹ Similarly, in § 20, the Constitution requires written petitions for a people’s veto to be submitted to town officials by a specified time and date. Me. Const. art. IV, pt. 3, § 20.

“absolute right” to pursue a people’s veto. *McGee*, 2006 ME 50, ¶¶ 20-39, 896 A.2d at 940-44. As such, the Committee’s construction must be rejected.

C. There Is No Sound Policy Reason to Construe § 901 to Provide a Starting Date for Pursuing a People’s Veto.

Not only is the Committee’s reading of § 901 both unnatural and in tension with the Constitution, but there is no sound policy reason to adopt its reading. The Committee argues that all would-be petitioners should have the same amount of time to pursue a people’s veto. App.14, ¶¶ 42-43. This policy argument is unpersuasive, as the only court to have considered this question concluded. *See Remmel*, Docket No. AP-97-112, Order at 8. There is no constitutional requirement that everyone who seeks a people’s veto must have the same amount of time in which to do so. As discussed above, the Constitution only establishes an end date for filing a petition. *Id.*; *see supra* Part II.B. Indeed, this “policy” runs counter to the *actual* policy embodied in the Constitution – that the right to directly participate in the legislative process be “facilitate[d].” *McGee*, 2006 ME 50, ¶ 25, 896 A.2d at 941.

Further, there is a sound policy reason for permitting filing before the end of the legislative session. “[E]arly filing is . . . a boon to the Secretary of State’s office,” *Allen*, 459 A.2d at 1101, in that it allows applications to be filed as laws are chaptered, rather than during one single, hectic 10-day window.

There is thus no policy reason to depart from the natural reading of § 901, which is consistent with the Maine Constitution. An application may be filed before the Legislature adjourns. Accordingly, Ms. Kouzounas' application was timely.

CONCLUSION

The Committee's novel, if not self-serving, interpretation of the constitutional and statutory framework for the people's veto process must be rejected, and their request for injunctive and declaratory relief therefore denied. Ms. Kouzounas was permitted to file an application for a people's veto, and she did so in a timely manner. To hold otherwise would improperly handicap the people's exercise of their sovereign powers – a result forbidden by the Constitution and this Court's clear precedent.

DATED: July 2, 2020



Ann R. Robinson, Bar. No. 3898
Joshua D. Dunlap, Bar No. 4477
PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
arobinson@pierceatwood.com
jdunlap@pierceatwood.com
207-791-1100

Attorneys for Intervenor Demitroula Kouzounas

CERTIFICATE OF SERVICE

I, Joshua D. Dunlap, Esquire, hereby certify that two copies of this Brief of Intervenor Demitroula Kouzounas was served upon counsel at the address set forth below by email and first class mail, postage-prepaid on July 2, 2020:

James G. Monteleone, Esq.
Bernstein Shur
100 Middle Street
Portland, Maine 04101

jmonteleone@bernsteinshur.com

Phyllis Gardner, Esq.
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006

Phyllis.Gardiner@maine.gov

Dated: July 2, 2020



Joshua D. Dunlap, Bar No. 4477
PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
arobinson@pierceatwood.com
jdunlap@pierceatwood.com
207-791-1100

Attorney for Intervenor Demitroula Kouzounas

ADDENDUM

ADDENDUM TABLE OF CONTENTS

Rommel v. Gwadosky, No. AP-97-112, Order
(Me. Super. Ct. Nov. 21, 1997).....ADD 1

STATE OF MAINE
CUMBERLAND, SS.

NOV 21 4 21 PM '97

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-97-112



KATHLEEN REMMEL,)
 MARVIN M. ELLISON, and)
 FRANKLIN L. BROOKS,)
)
 Petitioners)
)
 v.)
)
 DAN A. GWADOSKY, in his)
 official capacity as Secretary of)
 State for the State of Maine,)
)
 Respondent)
)
 and)
)
 CHRISTIAN CIVIC LEAGUE)
 OF MAINE)
)
 Intervenor)

ORDER

Pursuant to M.R. Civ. P. 80C and Title 21-A M.R.S.A. § 905(2), Petitioners are appealing the Secretary of State's October 20, 1997, Determination of the Validity of a Petition for a People's Veto of Legislation Entitled: "An Act to Prevent Discrimination."

The relevant facts may be briefly summarized. On May 8, 1997, the first special session of the 118th Legislature enacted L.D. 1116 (118th Legis. 1997), popularly known as "An Act to Prevent Discrimination." On May 13, 1997, a group known as the Ad Hoc Committee for Common Sense, (Ad Hoc Committee), submitted an application for a people's veto to the Secretary of State. On May 16,

1997, Governor Angus King signed L.D. 1116 into law. On June 4, 1997, the Secretary of State approved the Ad Hoc Committee's application. The first special session of the 118th Legislature adjourned on June 20, 1997.

On September 18, 1997, the Ad Hoc Committee submitted petitions containing some 65,256 signatures in favor of the people's veto, to the Secretary of State. By Determination dated October 20, 1997, the Secretary concluded that 51,131 valid signatures were needed and that the Ad Hoc Committee had collected 58,182 valid signatures.¹ The Secretary therefore found the petition valid.

Immediately upon the Secretary's determination, a political action group, Maine Won't Discriminate, began its own examination of the petitions. Petitioners, alleging that the group found an additional 15,000 invalid signatures, commenced this action on October 27, 1997. On November 3, 1997, this Court granted Intervenor status to the Christian Civic League of Maine, (CCL), a member of the Ad Hoc Committee. The parties submitted simultaneous briefs and reply briefs. All briefs are organized around twenty-seven questions of law posed by the Petitioners.

Oral arguments were had in Kennebec County on November 18, 1997. At the close of arguments all parties met and agreed to submit seven of the twenty-seven questions of law to this Court. Petitioners stated on the record that they were waiving their right to have this Court consider nineteen of the remaining twenty

¹In order to place a people's veto on the ballot the proponent must produce the valid signatures totalling at least "10% of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition." Me. Const. Art. IV, Pt. 3, § 17.

questions. As to the one remaining question², the parties stipulated to the governing law, but were unable to stipulate to the facts. This Court agreed to render a speedy decision on the seven questions of law, and to hold any necessary evidentiary hearing November 24, 1997 through November 26, 1997.

Maine's Referendum

Maine's Constitution was amended in 1909 to add the initiative and referendum process.³ The concept, however, was far from new to the citizens of Maine. Indeed, Maine's birth as an independent state in 1820 can be seen as the result of an initiative process. Responding to the petitions from the citizens of The District of Maine, the General Court of Massachusetts enacted the "Articles of Separation" and granted to Maine people the privilege of voting on the Act. J. William Black, *Maine's Experience with the Initiative and Referendum*, The Annals of the America Academy of Political and Social Sciences, Sept. 1912, at 159.

As early as 1898 Maine was watching, with interest, her sister states in the west as they enacted referendum and initiative provisions into their respective constitutions. Black, *supra*, at 160-61; Legis. Rec. 640 (1907). The idea was first brought before the Maine Legislature in 1903, and in 1909, Maine became the first eastern

² "Are signatures invalid when they are duplicate signatures, contrary to, *inter alia*, 21-A M.R.S.A. § 904(4) and the Secretary of State's instructions on the petition form?" All parties agree that the answer to this question is "yes".

³ The resolve enacted in 1907, was approved by a popular vote of 53,785 to 24,543. Lawrence Lee Pelletier, *The Initiative and Referendum in Maine*, The Bowdoin Bulletin, March 1951, at 9. Article XXXI became effective January 1, 1909. *Farris ex rel Dorsky v. Goss*, 143 Me. 227, 230 (Me. 1948).

state to enact initiative and referendum provisions. Black, *supra*, at 161. The people were apparently motivated to reclaim some of their legislative power by a sense that the Legislature itself was too often under the control of powerful lobbies. Black, *supra*, at 161-63.

The referendum and initiative process has been sparingly used in its eighty-eight year history, and the courts have only infrequently been called upon to address issues presented by the process. When doing so, however, the Court has been consistently guided by the principle that the constitutional provisions are to be liberally construed so as to effectuate the intent behind the amendment. See *Allen v. Quinn*, 459 A.2d 1098, 1103 (Me. 1983). As the Law Court has stated,

[T]he sovereign which is the people has taken back, subject to the terms and limitations of the amendment, a power which the people vested in the legislature when Maine became a state. The significance of this change must not be overlooked, particularly by this court whose duty is to so construe legislative action that the power of the people to enact their laws shall be given the scope which their action in adopting this amendment intended them to have.

Farris ex rel Dorsky v. Goss, 143 Me. 227, 231 (1948); See also, *Wagner v. Secretary of State*, 663 A.2d 564, 566 (Me. 1995); *Allen*, 459 A.2d at 1102 (Me. 1983) (“section 18. . . must be liberally construed to facilitate, rather than to handicap, the people’s exercise of their sovereign power to legislate”).

With that guiding principle in mind, this Court turns to the particular questions of law presented for its consideration.

I. COUNT I:

A. Is this people's veto a nullity when the application for a people's veto was approved by the Secretary of State and circulation of petitions commenced before the adjournment of the first special session of the 118th Legislature, which session passed "An Act to Prevent Discrimination" contrary to, *inter alia*, 21-A M.R.S.A. § 901(1) and the Secretary of State's summary of the law as stated in a document entitled "Information Summary on Pending People's Veto; P.L. 1997, ch. 205; An Act to Prevent Discrimination"?

This Court holds, as a matter of law, that the filing of the application with the Secretary of State prior to the adjournment of the first special session of the 118th Legislature, does not nullify that application.

At the center of the dispute is the language of 21-A M.R.S.A. § 901(1), to wit:

1. Limitation on petitions. An application for a people's veto referendum petition must be filed in the Department of the Secretary of State within 10 working days after adjournment of the legislative session at which the Act in question was passed.

21-A M.R.S.A. § 901(1)(Supp 1996).

Petitioners assert that "within 10 working days after adjournment" provides both a beginning point and an endpoint. That is, Petitioners argue, an application may not be filed prior to the adjournment, nor any more than ten days after such adjournment. Both the Respondent and the Intervenor assert that the language establishes only an endpoint.

In support of their position, Petitioners rely on *Allen v. Quinn*, 459 A.2d 1098 (Me. 1983). They argue that *Allen* draws a clear distinction between "within" and "on or before", and that the former does not permit filing of the application prior to adjournment of the legislative session which enacted the law. Additionally,

Petitioners urge on this Court public policy rationales for their interpretation of § 901(1); namely, “fairness, uniformity, predictability of the process and minimizing competition between the people and the Legislature...” (Petitioners’ Reply Brief, 3).

This Court is unpersuaded by Petitioners’ reading of *Allen* and the policy justifications advanced by them. The *Allen* Court addressed whether an Art. IV, Pt. 3, § 18 petition could be “filed with the Secretary of State only during the first 50 days after the legislature convenes in its first regular session of the biennium. . .”. *Allen*, at 1098. The Court discusses at some length the history of Section 18. In so doing the Court refers to the 1975 Constitutional Resolution which, *inter alia*, changed the wording of that Section from requiring petitions to be “filed in the office of the Secretary of State or presented to either branch of the Legislature within forty-five days after the date of convening of the Legislature” to “filed in the office of the Secretary of State by the hour of five o’clock, p.m., on the fiftieth day after the date of convening of the Legislature” L.D. 188, (107th Legis. 1975) (emphasis added). In reviewing this history the Court states:

The ‘within’ clause plainly limited the presentation of initiative petitions to the legislature to the time when it was in regular session. It is less clear whether that pre-1975 time restriction was intended also to apply to filings in the Secretary of State’s office. In 1975 section 18(1) was amended Const. Res. 1975, ch.2, passed in 1975. Plainly, that amendment eliminated the option of presenting the initiative petitions directly to the legislature. At the same time, the abandonment of the ‘within’ clause used previously in the time restriction plausibly supports a construction by which the amendment changed that time restriction to set only a final deadline for filing in the Secretary of State’s office rather than fixing a period within which petitions had to be filed. Obviously that is not, however, the only plausible reading of the 1975 amendment. In sum, the history of the evolution of the language of section 18(1) does not provide any clear

answer to the question posed by the case at bar.

Allen, at 1102.

Thus the *Allen* Court did not address the issue of whether, prior to 1975, “within” had applied to the filing of a petition with the Secretary of State, or whether it only applied to filing the petition directly with the Legislature. In its final analysis, the Court found that the filing of a petition when the Legislature had not yet convened, “has, as a practical operating matter, no effect whatever upon the Secretary of State’s function in receiving the petition for filing and in promptly determining its validity . . .” Such early filing provides a “boon” to the Secretary and Legislature. *Id.* at 1099 and 1101.

In opposition to the Petitioners’ argument, the Secretary cites a 1901 case on negotiable instruments wherein the Court regarded “within” as synonymous with “on or before”. *Leader v. Plante*, 95 Me. 339, 341 (1901). This definition is consistent with extra-jurisdictional and secondary authorities. Black’s Law Dictionary, for example defines “within” as:

Into. In inner or interior part of, or not longer in time than.
Through. Inside the limits of; during the time of.
When used relative to time, has been defined variously as meaning any time before; at or before; at the end of; before the expiration of; not beyond; not exceeding; not later than. *Gleen v. Garrett*, Tex. Civ. App., 84 S.W. 2d 515, 516

Black’s Law Dictionary, 1602-03 (6th ed. 1990).

A review of Words and Phrases, and the extra-jurisdictional cases cited by the

Secretary⁴ reveal that relative to time, "within", though sometimes defined as providing a starting point, more frequently is equated only with an end point. *See*, 46 Words and Phrases (Perm. Ed. 1970 & Supp. 1997), pp. 82-110.

This Court is also not persuaded by Petitioners' policy justifications for their interpretation of "within". Petitioners make the interrelated arguments that all would-be petitioners should have the same amount of time to complete the process, (excepting that for a variety of legitimate reasons the Secretary may take longer to approve some applications than others), and that to interpret "within" as providing only an endpoint will encourage the Legislature to postpone all controversial matters until the end of the session. The result would therefore be that the opponents of those controversial acts would have less time to collect signatures than would opponents of non-controversial measures. That the Legislature would engage in such maneuvering is a disturbing thought. There is, however, neither a constitutional nor a statutory requirement that all who seek to initiate a people's veto have the same amount of time to complete the process. The Constitution provides only that all shall have until the 90th day after recess of the Legislature to submit their respective petitions. Me. Const. Art. IV, Pt. 3, § 20.

⁴ The cases cited by the Secretary involve a myriad of underlying factual scenarios, but all find or hold that "within" is not meant to establish a beginning point. *See e.g. Franklin v. Director of Revenue*, 909 S.W. 2d 759, 761 (Mo. Ct. App., 1995)(interpreting "within" to mean "on or before"); *Able Outdoor, Inc. v. Harrelson*, 439 S.E. 2d 245, 248, (N.C. Ct. App. 1994) *modified on other grounds*, 459 S.E. 2d 626 (1995)(finding "within 30 days following final disposition of the case,..." to state a deadline but not a starting point); *Royce v. Freedom of Info. Comm'n*, 418 A.2d 939, 940 (Conn. 1979)(citing to Webster and C.J. in finding that "within" means "not longer in time than" and "not later than" and "is almost universally used as a word of limitation,..."); *Klosterman v. Marsh*, 143 N.W. 2d 744, 749 (Neb. 1966)(comparable language in Nebraska Constitution found to "refer only to a cutoff date after which no referendum petition could be filed and was not intended to fix the date that the right of referendum became exercisable, nor the date before which signatures could not be validly obtained.").

Finally, Petitioners argue that interpreting “within” to provide a beginning point in essence establishes consecutive legislative power and promotes the finality of legislation. Again, there is simply no indication in the history of the referendum and initiative that the people of Maine so intended to limit their reacquired power to legislate.

In view of the principle that constitutional and statutory provisions in this area must be construed so as to facilitate the people’s exercise of their right to legislate, this Court finds that “within” as used in § 901(1) provides merely an end point and not a beginning point. Accordingly, this Court holds as a matter of law that application for the petition prior to June 20, 1997, does not invalidate the petition.

II. Count II:

A. Are signatures invalid if the registrar did not circle a number corresponding to each valid signature, contrary to, *inter alia*, the Secretary of State’s instructions on the petition form?

This Court holds as a matter of law that the mere failure of the registrar to circle a number corresponding to each valid signature does not necessarily invalidate the signature. There is no express or implied constitutional provision requiring such circling. Art. IV, Pt. 3, § 20, only requires the registrar to certify that the names of the petitioners appear on the voting lists of the given municipality. Neither the Constitution, nor Title 21-A provide any direction on how this is to be accomplished. There must, however, be some means by which the Secretary of State may determine from the face of the petition which of the names thereon are names

of registered voters.⁵

The Secretary asserts that so long as “there are other notations or indications on the face of the petition that reveal” who the registered voters are, he is free to rely on that other information. (Respondent’s Brief, 29). What those other notations and indications may be, and how they are used by the Secretary, is evidence that is not presently before this Court. It is evidence which this Court must receive in order to reach a final decision.

B. Are signatures invalid when the notary dated the circulator’s oath after the date of the registrar’s certificate contrary to, *inter alia*, the Secretary of State’s instructions on the petition form?

This Court holds as a matter of law that the circulator’s oath need not precede the notary’s verification. The Secretary instructs on the petition that:

B. VERIFYING CIRCULATOR...

(3) SHOULD TAKE OATH BEFORE THE REGISTRAR HAS COMPLETED THE REGISTRAR’S CERTIFICATION.

Beyond this permissive instruction, the Court finds no authority to support the proposition that the circulator’s oath must be taken prior to the registrar’s certification. Addressing a similar challenge in 1917, the Justices of the Supreme Judicial Court opined that “[i]n the Constitution the verification is evidently supposed to come first,” but none the less determined that the verification “has no connection with the clerk’s certificate. It is a simple declaration under oath of the

⁵ One of the most obvious reasons that the Secretary must be able to make such determination is to guard against duplicate signatures.

genuineness of the signatures. . .The vital fact is that the signatures are genuine.”

Opinion of the Justices, 116 Me. 557, 575 (1917).

In 1917, when the Justices so opined, there did not exist in the Constitution the current language regarding submission of the petitions to the registrar at least five days prior to the filing deadline. While the addition of this provision certainly makes the mandatory order suggested by Petitioners more efficient, it does not of necessity prescribe such order. Lacking a constitutional or statutory mandate that the oath must precede the certification, this Court holds as a matter of law that so long as the two are accomplished, the order is immaterial.

C. Are signatures invalid when the petitions were notarized after September 15, 1997, contrary to, *inter alia*, the Secretary of State’s instructions as stated in a document entitled “Information Summary on Pending People’s Veto: P.L. 1997, ch. 205: An Act to Prevent Discrimination”?

This Court holds as a matter of law that petitions notarized after September 15, 1997, are not thereby invalid. Even if this Court were to accept Petitioners’ argument that the petitions must be submitted to the registrar on the fifth day before the filing deadline with the Secretary’s office, it does not follow that notarization after that fifth day is invalid.

D. Are signatures invalid when they were collected before the adjournment of the first special session of the 118th legislature, which session passed “An Act to Prevent Discrimination”?

For those reasons laid out under Count I above, this Court holds as a matter of law that signatures collected before the adjournment of the first special session of the 118th Legislature are not invalid merely because they were so collected.

E. Are signatures invalid when the petitioner lists only a post office box, and not a street address or rural route, contrary to, *inter alia*, the Secretary of State's instructions on the petition form?

This Court holds as a matter of law that signatures are not invalid merely because the petitioner lists a post office box instead of a street address on the petition form. There is no express constitutional or statutory provision that a petitioner list his or her address. The only constitutional mandate is that the petitioner be a registered voter in the municipality in which the petitioner resides. The concern is that the registrar be able to determine whether the petitioner is a registered voter in that municipality. If the registrar can make such a determination without aid of a street address or rural route, the only constitutional requirement is met.

This Court holds as a matter of law, that failure to list a street address or rural route does not invalidate the signature.

F. Are signatures invalid when the petitions are improperly notarized, as where the notary fails to state the expiration date of his or her commission, contrary to, *inter alia*, the Secretary of State's instructions in a February, 1997 publication entitled "Notary Public Guide"?

This Court holds as a matter of law that the notary's failure to state the expiration date of his or her commission on the face of the petition does not invalidate the signatures thereon. 4 M.R.S.A. § 951 - 58 governs the notarization process. Nowhere therein is the express or implied requirement that the notary state his or her date of commission on the notarized document.

Petitioners point this Court to 5 M.R.S.A. § 82-A (Supp. 1996) wherein it is

provided that “[t]he Secretary of State shall make available such informational publications as may be necessary to ensure that notaries public are knowledgeable in the performance of their duties.” Pursuant to that provision, the Secretary has provided the “Notary Public Guide”; a pamphlet comprised of approximately twenty-seven pages. In that publication, Petitioners refer to language on unnumbered page v. and, page 4. On page v. is found the following pertinent language:

In addition to your signature, you should print or type your name, print your office - **Notary Public, State of Maine** and include your expiration date.

On page 4 there appears:

Please keep in mind, using an embossing seal does not eliminate the other requirements for a proper notarization: a statement of what the Notary Public has done (an acknowledgement or jurat statement), the official signature of the Notary Public, the commission expiration date, and the date when the notarization was performed.

That the Secretary is required to provide the notaries public with helpful publications does not elevate those publications to the level of the law. The Law is as it appears in the Constitution and the controlling statutes. Even accepting the Secretary’s publication as authoritative, its value is dubious given the inconsistencies, (i.e., compare p. v.; “should...include your expiration date” with p. 4; proper notarization “require[s]” expiration date). Additionally in that Publication the Secretary refers the reader to Alfred E. Piombino, Notary Public Handbook: A guide for Maine. In discussing the jurat that appears on a typical affidavit, the

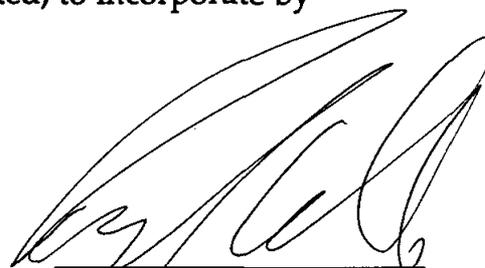
author of that publication states: "failure of the officer signing the jurat to add a statement of office or of the territory to which he holds office does not invalidate the affidavit; it is presumed that he is an authorized officer." Piombrio, *supra*, at 101.

The Secretary of State is the official charged with regulating the appointment and renewal of notaries public. He has within his possession the information to determine whether in fact a particular notary is acting upon a valid commission. It is undisputed that the Secretary undertook such evaluation in this case. Given this ability, the failure of a notary to include a commission expiration date on the face of the petition is not a failure which leads to the invalidation of signatures.

With that, the Court having answered the seven questions submitted by agreement of all the parties, will forthwith make factual determinations deemed necessary to render a final judgment in this matter.

Pursuant to M.R. Civ. P. 79(a), the Clerk is hereby directed, to incorporate by reference, this Order onto the docket.

Dated: *November 21, 1997*



Roland A. Cole
Justice, Superior Court