

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

REPLY 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

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
INTRODUCTION	1
ARGUMENT	2
I. The Court Should Reject the Committee’s Interpretation of Article IV, Part 3, §§ 16 and 17.	2
A. The Committee’s Interpretation of §§ 16 and 17 Would Severely Constrain the Right to Pursue a People’s Veto, Contrary to the Plain Language of the Constitution.	2
B. The Committee’s Interpretation of the Term “Passed” in §§ 16 and 17 Would Lead to Illogical Results.....	5
1. The term “passed,” as used in § 16 and § 17, can logically only refer to the completed legislative process.....	5
2. The legislative history of the 1908 amendment does not support the Committee’s interpretation.	8
C. The Act Did Not Take Effect on January 12, 2020.	9
II. The Court Should Reject the Committee’s Interpretation of § 901 of Title 21-A.	9
A. The Cases Cited by the Committee Do Not Support Its Interpretation of § 901.	10
B. The Committee’s Interpretation Is Not Supported By the Legislative History or Policy of Article IV, Part 3, § 17.....	12
CONCLUSION	14
CERTIFICATE OF SERVICE.....	16

TABLE OF AUTHORITIES

	<u>Page(s)</u>
CASES	
<i>Allen v. Quinn</i> , 459 A.2d 1098 (Me. 1983)	<i>passim</i>
<i>Bowler v. State</i> , 2014 ME 157, 108 A.3d 1257	7
<i>Call v. Chadbourne</i> , 46 Me. 206 (1858)	7
<i>City of Bangor v. Inhabitants of Etna</i> , 140 Me. 85, 34 A.2d 205 (1943)	7
<i>Collins v. State</i> , 2000 ME 85, 750 A.2d 1257	5, 7
<i>Conservation Law Found., Inc. v. Pruitt</i> , 881 F.3d 24 (1st Cir. 2018)	3
<i>Eagle Rental, Inc. v. State Tax Assessor</i> , 2013 ME 48, 65 A.3d 1278	6
<i>Farris ex rel. Dorsky v. Goss</i> , 143 Me. 227, 60 A.2d 908 (1948)	1
<i>Glaze v. Grooms</i> , 478 S.E.2d 841 (S.C. 1996)	10
<i>In re Opinion of the Justices</i> , 116 Me. 557, 103 A. 761 (1917)	7
<i>Klosterman v. Marsh</i> , 143 N.W.2d 744 (Neb. 1966)	10
<i>McGee v. Sec’y of State</i> , 2006 ME 50, 896 A.2d 933	1, 13, 14
<i>Opinion of the Justices</i> , 682 A.2d 661 (Me. 1996)	8

Palmer v. Hixon,
74 Me. 447 (1883) 7, 8

Premier Capital, Inc. v. Doucette,
2002 ME 83, 797 A.2d 32..... 11

Reed v. Sec’y of State,
2020 ME 57, ___ A.3d ___ 10

Rommel v. Gwadosky,
No. AP-97-112, Order (Me. Super. Ct. Nov. 21, 1997) 12

Southall v. State,
796 S.E.2d 261 (Ga. 2017)..... 11

Stuart v. Chapman,
104 Me. 17, 70 A. 1069 (1908)..... 7, 8

Wagner v. Sec’y of State,
663 A.2d 564 (Me. 1995) 1

Whitman v. Am. Trucking Ass’ns,
531 U.S. 457 (2001) 3

STATUTES

11-A M.R.S. 3-1118(1) 11

21-A M.R.S. § 901 *passim*

21-A M.R.S. § 901(1)..... 10

CONSTITUTIONAL PROVISIONS

Me. Const. art. IV, pt. 3, § 2 5, 6

Me. Const. art. IV, pt. 3, § 16 *passim*

Me. Const. art. IV, pt. 3, § 17 *passim*

Me. Const. art. IV, pt. 3, § 17(1) 4, 6, 13

Me. Const. art. IV, pt. 3, § 17(2) 9

Me. Const. art. IV, pt. 3, § 18 11

Me. Const. art. IX, § 55

LEGISLATIVE DOCUMENTS

Con. Res. 1975, ch. 213

Leg. Rec. 640 (1907)..... 8, 12

Leg. Rec. 644 (1907).....4

OTHER AUTHORITIES

Report of the Judiciary Committee on the Initiative and Referendum Process (Dec. 1974),
available at
http://lldc.mainelegislature.org/Open/Rpts/kf4881_z99m22_1974.pdf.....13

INTRODUCTION

The Committee’s brief is notable for what it omits: any acknowledgement of the principles that guide this Court’s interpretation of the provisions governing the people’s right to participate directly in the law-making process. This Court has long recognized that the people have an “absolute” right to “disapprove legislation enacted by the legislature,” *Farris ex rel. Dorsky v. Goss*, 143 Me. 227, 231, 60 A.2d 908, 911 (1948), and that 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 v. Quinn*, 459 A.2d 1098, 1102-03 (Me. 1983)). The Court has also recognized that the Legislature may not “directly or indirectly” abridge the constitutional right to participate in the lawmaking process. *McGee v. Sec’y of State*, 2006 ME 50, ¶ 21, 896 A.2d 933, 940.

These fundamental principles are beyond question – yet they garner not even a passing mention in the Committee’s brief. It is no wonder: far from construing the relevant constitutional and statutory texts liberally, the Committee urges this Court to interpret those provisions in the most parsimonious manner possible. As the Committee would have it, article IV, part 3, §§ 16 and 17 of the Maine Constitution and § 901 of Title 21-A should be construed in the manner that Ebenezer Scrooge would construe a contract. This analytical error infects the Committee’s entire brief, and leads to conclusions that infringe upon Ms. Kouzounas’ broad constitutional right to pursue a people’s veto.

ARGUMENT

I. **The Court Should Reject the Committee’s Interpretation of Article IV, Part 3, §§ 16 and 17.**

The Act was not “passed” for purposes of article IV, part 3, §§ 16 and 17 during the First Regular Session of the 129th Legislature. That term, viewed in context, refers to the *completed* legislative process – including the Governor’s action in allowing a bill to become law – not just the action of the Legislature in enacting a bill. The language of the Constitution, the legislative history of the 1908 people’s veto amendment, and case law all contradict the interpretation urged by the Committee.

A. **The Committee’s Interpretation of §§ 16 and 17 Would Severely Constrain the Right to Pursue a People’s Veto, Contrary to the Plain Language of the Constitution.**

As set forth in the opening briefs of Ms. Kouzounas and the Secretary of State, the Committee urges an interpretation of §§ 16 and 17 that would create a significant exception to the absolute right to a people’s veto – an exception that has remained undiscovered for more than a century. According to the Committee, there is no recourse to a people’s veto if the Governor allows a bill to become law without a signature where the Legislature (1) enacted the bill during its first regular session or a subsequent special session, and (2) then adjourned *sine die* more than 90 days before the second regular session. Appellant Br. at 5-9. The Committee infers this exception from its interpretation of the word “passed.” *Id.* The Court should reject the Committee’s interpretation for two reasons. First, there is a presumption against

reaching a broad result based on the reading of an obscure term rather than express language, and, second, the Committee fails to liberally interpret §§ 16 and 17.

A legislature is presumed not to “hide elephants in mouseholes.” *Conservation Law Found., Inc. v. Pruitt*, 881 F.3d 24, 32 (1st Cir. 2018) (quoting *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001)). It is “even less likely” that legislators would “hid[e] a herd of elephants in a mousehole, much less a herd that remained unnoticed for several decades.” *Id.* This presumption applies with even greater force in the interpretation of a constitutional text. The reason the Court accords a “liberal interpretation” of constitutional provisions so as “to carry out their broad purpose” is because “they are expected to last over time and are cumbersome to amend.” *Allen*, 459 A.2d at 1102. If a court wrongly concluded that an elephant *had* been hidden in a statutory mousehole, there would be a quick legislative remedy. Not so with the Maine Constitution. The elephant would likely be in that mousehole to stay. In order to avoid permanently diminishing the people’s “sovereign power to legislate,” the Court should decline to find the elephantine exception the Committee claims was hidden in the mousehole that is the word “passed.” *Id.* at 1103.

The framers of the 1908 amendment knew how to create an express exception to the people’s veto power. In § 16, the framers provided that an “emergency bill” is not subject to the 90-day delay for the effective date of legislation. Me. Const. art. IV, pt. 3, § 16. The framers further provided, in § 17, that only bills “passed by the Legislature but not then in effect by reason of the provisions of the preceding

section,” namely, § 16, are subject to a people’s veto. *Id.* § 17(1). By this simple and clear language, the 1908 amendment expressly exempted emergency bills from the people’s veto process. Notably, the framers closely circumscribed this exception – only bills that “are immediately necessary for the preservation of the public peace, health or safety” and that garner super-majority support in each House can qualify as emergency legislation that is exempt from the people’s veto. *Id.* § 16.

In light of this express exception, it is highly unlikely that an additional exception, unconstrained by the subject-matter and super-majority requirements applicable to emergency legislation, was hidden in the meaning of the term “passed.” The unlikely nature of this exception is highlighted by the fact that it remained undiscovered for over 100 years, and would render the people’s veto susceptible to evasion by a simple majority of the Legislature.

As discussed further *infra*, the term “passed,” as used in §§ 16 and 17, refers to bills that have completed the legislative process, including presentment to the Governor, and have become law. When given this straightforward interpretation, §§ 16 and 17 subject *all* non-emergency legislation to the potential exercise of a people’s veto – consistent with the overall intent of the 1908 amendment. *See* Leg. Rec. 644 (1907) (“If the people are ever so dissatisfied with *any law* passed by their representatives, as to assume the necessary trouble and expense of petitioning for the submission of the measure to a referendum vote,” then “a majority of all the voters” should be permitted “to veto such measure, if they wish.” (emphasis added)). This is

the only interpretation that adheres to the Court’s directive to construe the Constitution liberally in favor of the people’s veto. *See Allen*, 459 A.2d at 1102.

B. The Committee’s Interpretation of the Term “Passed” in §§ 16 and 17 Would Lead to Illogical Results.

The paucity of support for the Committee’s narrow interpretation is striking. The Committee begins by merely asserting that it is “axiomatic that the Maine Legislature . . . passes ‘Acts,’” and, “[t]hus, Section 16’s reference to passage . . . can only be interpreted to refer to the action taken by the Legislature.” Appellant Br. at 5. This *ipse dixit* is not sufficient authority. In fact, considered in context, it is clear that both § 16 and § 17 are referring to bills that have gone through the entire legislative process and would have the force of law but for the 90-day delay period in § 16.

1. The term “passed,” as used in § 16 and § 17, can logically only refer to the completed legislative process.

While it is possible to use the term “passed” in reference to the action of the Legislature as distinct from the Governor’s role in the legislative process, that is not how the term is used in §§ 16 and 17. The Constitution does at times use the term “passed” to describe the Legislature’s action. *See, e.g.*, Me. Const. art. IV, pt. 3, § 2 (“Every bill or resolution . . . which shall have passed both Houses, shall be presented to the Governor.”); Me. Const. art. IX, § 5 (discussing impeachment process).¹ Courts have also used the term “passed” in this manner. *See Collins v. State*, 2000 ME

¹ It is unsurprising that the term “passed” is not used in article V, which outlines the executive powers of the Governor. The Governor’s role in the legislative process is described in article IV. *See* Me. Const. art. IV, pt. 3, § 2 (presentment clause).

85, ¶ 13, 750 A.2d 1257, 1262 (Calkins, J., concurring). Nevertheless, contrary to the Committee’s argument, *see* Appellant Br. at 6-8, this usage does not mean that “passed” must always be so interpreted. It would be absurd to read “passed” in §§ 16 and 17 to refer solely to legislative enactment. The Court should therefore avoid this interpretation. *See generally Eagle Rental, Inc. v. State Tax Assessor*, 2013 ME 48, ¶ 11, 65 A.3d 1278, 1281 (the Court avoids “absurd” or “illogical” interpretations).

In § 16 and § 17, the term “passed” can logically refer only to the completed lawmaking process, not the action of the Legislature alone. Section 16 states that no non-emergency bill “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. The clear purpose and effect of this sentence is to delay the effective date of a law – *but there is no reason to delay the effective date of a bill that has not yet become law*. No bill can take effect before the Governor acts on it. *See id.* § 2. The 90-day provision would therefore be nonsensical, unless read to refer to laws that have gone through the entire legislative process – including presentment. Likewise, § 17 permits a people’s veto of any “Acts, bills, resolves or resolutions . . . passed by the Legislature but not then in effect by reason of the provisions of the preceding section.” *Id.* § 17(1). The “not then in effect by reason of” language necessarily presumes that the law subject to a people’s veto would have already taken effect *but for the operation of the 90-day delay provision in § 16*. Again, presentment is required for a law to take effect. *Id.* § 2. The term “passed” in § 16 and § 17 thus refers to the completed lawmaking process.

In turn, it is well established that the lawmaking process is only complete once the Governor acts. Indeed, the 1908 amendment was adopted well after this Court declared that the Governor's action is the "last legislative act necessary to make . . . a complete law." *Palmer v. Hixon*, 74 Me. 447, 449 (1883). This basic principle was repeated by the Court in the very year that the 1908 amendment was adopted. *Stuart v. Chapman*, 104 Me. 17, 70 A. 1069, 1072 (1908). The framers should therefore be presumed to have been aware of these principles when they drafted the amendment containing the 90-day delay and people's veto provisions. See *Bowler v. State*, 2014 ME 157, ¶ 8, 108 A.3d 1257, 1261 ("The Legislature is presumed to be aware of the state of the law and the decisions of this Court.").

Accordingly, §§ 16 and 17, in using the term "passed," did not refer solely to the action of the Legislature. The cases cited by the Committee for the proposition that "passed" refers only to the action of the Legislature, see Appellant Br. at 8-9, are entirely inapposite. See, e.g., *In re Opinion of the Justices*, 116 Me. 557, 103 A. 761, 763 (1917) (quoting a question presented by the Governor); *Call v. Chadbourne*, 46 Me. 206, 208 (1858) (quoting a town warrant). Justice Calkins' concurrence in *Collins* did not address the issue now before this Court, but simply referred generically to the Legislature's role in passing a bill. *Collins*, 2000 ME 85, ¶ 13, 750 A.2d at 1262. The decision in *City of Bangor v. Inhabitants of Etna* actually undermines the Committee's position, because it supports the venerable principle that a law only takes effect after the Governor acts. 140 Me. 85, 34 A.2d 205, 208 (1943). None of the cases address

the question of when a people's veto can be pursued, or contravene the *Palmer / Stuart* line of cases establishing that the Governor's act completes the legislative process.

2. The legislative history of the 1908 amendment does not support the Committee's interpretation.

The Committee relies on the "purpose" and "legislative history" of the 1908 amendment, *see* Appellant Br. at 9-11, but neither supports the Committee's position. As an initial matter, the Committee never mentions that the purpose of § 16 was to delay the effective date of legislation in order to allow for the exercise of the people's veto. *See Opinion of the Justices*, 682 A.2d 661, 666 (Me. 1996); Leg. Rec. 640 (1907). The Committee's interpretation would eviscerate that purpose for many bills. Further, in relying upon legislative history, the Committee commits the logical fallacy of begging the question – assuming the truth of the conclusion asserted, instead of supporting it. The Committee simply assumes that the word "passed" refers to the action of the Legislature, and then argues that, in light of the Governor's pre-existing power to allow a bill to become law at the beginning of a subsequent session, the use of this language in the 1908 amendment demonstrates that the framers did not intend to refer to the completed legislative process. In fact, as discussed above, the text of §§ 16 and 17 make it clear that the framers of the 1908 amendment used the term "passed" in reference to bills that had gone through the entire legislative process and would have taken effect but for the 90-day delay provision in § 16.

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

Because the term “passed” refers to the completed legislative process, the Act did not take effect on January 12, 2020. Instead, it was scheduled to take effect 90 days after the adjournment of the Second Regular Session – the session in which the Act became law. During that time, Ms. Kouzounas had the right to pursue a people’s veto. Any other conclusion would greatly constrain the people’s constitutional right to participate directly in the lawmaking process, contrary to this Court’s precedent.² *Allen*, 459 A.2d at 1102-03. There is no justification for such an outcome.

II. The Court Should Reject the Committee’s Interpretation of § 901 of Title 21-A.

The Committee’s crabbed construction of the relevant provisions is highlighted by its argument regarding § 901 of Title 21-A. Having filed an application for a people’s veto of a law delaying the implementation of ranked choice voting before the Legislature adjourned, the proponents of ranked choice voting now seek to deprive Ms. Kouzounas of her right to file an application for a people’s veto of a law expanding implementation of ranked choice voting *under the same circumstances*. See Sec’y Br. at 23-24. The irony is hard to miss. Regardless, the Secretary permitted the earlier application for the same reason it permitted Ms. Kouzounas’ application – the

² The availability of the direct initiative process to repeal a law does not alleviate the detrimental impact of this restraint upon the people’s rights. Recourse to the people’s veto process, unlike the direct initiative process, actually prevents a law from going into effect in the first instance. *See* Me. Const. art. IV, pt. 3, § 17(2). If the people of Maine are precluded from pursuing a people’s veto, therefore, the harm that the people wish to avoid may well occur before there is ever an opportunity to repeal the law. That is the case here, as – absent a people’s veto – ranked choice voting will take effect for the election in November 2020. The people’s veto process and the direct initiative process are not interchangeable equivalents.

Secretary has consistently interpreted § 901 to permit applications prior to the Legislature’s adjournment. The Secretary’s long-held interpretation is owed deference. *See Reed v. Sec’y of State*, 2020 ME 57, ¶¶ 14, 18, 22, ___ A.3d ___.

As set forth in Ms. Kouzounas’ and the Secretary’s opening briefs, § 901 – in requiring applications to be filed “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) – does not limit filing an application to a 10-day window. *See Klosterman v. Marsh*, 143 N.W.2d 744, 749 (Neb. 1966) (requirement that petitions be filed “within ninety days after the Legislature . . . shall have adjourned” established only a “cutoff date”). This conclusion is not undermined by the reference to adjournment of the Legislature. That language simply provides the reference point that is necessary to calculate the *end* of the 10-day period set out in the “within-after” clause. “Within 10 business days” has no meaning unless there is a point in time from which the end of the period is to be calculated. Referencing an event for the purpose of establishing the end of the period therefore does not imply that the statute fixes the earliest possible time for taking an action. *See Glaze v. Grooms*, 478 S.E.2d 841, 844 (S.C. 1996).

A. The Cases Cited by the Committee Do Not Support Its Interpretation of § 901.

The Committee incorrectly relies on *Allen v. Quinn* to support its argument that § 901 establishes the earliest date to file an application. Appellant Br. at 15. Despite the Committee’s claim, the Court in *Allen* did not construe the “within-after” clause in

a prior version of article IV, part 3, § 18 to “set both a start date and an end date” for presenting an initiative to the Secretary. *Id.* To the contrary, the Court found that the “within-after” clause – as with the “on or before” language in the current version of § 18 – did *not* unambiguously prevent filings with the Secretary prior to the convening of the Legislature. *Allen*, 459 A.3d at 1102.³ Having found both the “within-after” and “on or before” language ambiguous, the Court then went on state that (1) ambiguous provisions should be construed liberally in favor of the right to direct democracy, and (2) the Constitution’s specificity on the applicable timelines means that the Court should be “chary” of reading another time limitation into the relevant provisions by implication. *Id.* at 1102-03. These principles – never mentioned by the Committee – foreclose the Committee’s interpretation of § 901.

The only other case cited by the Committee is completely inapposite. In *Premier Capital, Inc. v. Doucette*, the Law Court did not answer the question whether the “within-after” construct sets a start date. Instead, the Court only determined that the statute of limitations was satisfied because the action was initiated prior to the *end* of the period. 2002 ME 83, ¶ 7, 797 A.2d 32, 34 (applying the statute of limitation set out in 11-A M.R.S. 3-1118(1)). Those courts that have actually taken up the question presented in this case have found that the “within-after” construct does not generally establish a start date. *See, e.g., Southall v. State*, 796 S.E.2d 261, 265 (Ga. 2017). The

³ The “within-after” clause did establish a start date for filing with the Legislature – but that is only because a filing could not be made with the Legislature if it was not in session. *Allen*, 459 A.2d at 1102.

only court to have reached this question under § 901 came to the same conclusion, consistent with the Court’s decision in *Allen. Remmel v. Gwadosky*, No. AP-97-112, Order at 6-8 (Me. Super. Ct. Nov. 21, 1997)).

B. The Committee’s Interpretation Is Not Supported By the Legislative History or Policy of Article IV, Part 3, § 17.

The Committee has identified no authority that meaningfully supports its claim that both article IV, part 3, § 17 and § 901 of Title 21-A were intended to limit petition circulation to a 90-day period. Appellant Br. at 17-20. Neither the legislative history nor the policy behind the people’s veto provision supports this argument.

The Committee’s argument rests primarily on a statement in the legislative history of the 1908 amendment to the effect that a law must be referred to the people if sufficient signatures are submitted “within . . . ninety days.” Leg. Rec. 640 (1907). This statement, however, only reflects the straightforward requirement that signatures must be turned in before the 90-day delay period for the effective date of legislation, established in § 16, expires. While it demonstrates an intent to require the people’s veto process to be complete by the 90th day following adjournment of the Legislature, it says nothing about when the signature gathering can begin. This extraordinarily thin reed cannot bear the weight placed upon it by the Committee.

The Committee also references use of the “within-after” construct in the original version of § 17, but its reliance is misplaced. The Committee reasons that, because § 17 originally contained a “within-after” clause for the filing of petitions, the

framers of the 1908 amendment must have intended that the petition circulation process would take no more than 90 days. Again, however, this begs the question because it assumes that the original “within-after” clause must have established a start date. But the wording of § 17 establishes nothing more than an *end date* for the process. This can be seen from the 1979 amendment to § 17, which (1) removed the original “within 90 days” language, and (2) added additional specificity regarding the *end date* for the petition circulation process, without adding any language at all about a start date for the process. Con. Res. 1975, ch. 2.⁴

As amended, § 17 remains conspicuously silent as to any starting deadline for circulating petitions. *See* Me. Const. art. IV, pt. 3, § 17(1) (establishing only a deadline of “5:00 p.m., on or before the 90th day after the recess of the Legislature” for filing a people’s veto petition). The Constitution thus grants petitioners flexibility as to when circulation of petitions may begin. To read a start date into § 17 despite its silence on the issue would impermissibly limit this flexibility. The Committee’s interpretation must therefore be rejected. *See McGee*, 2006 ME 50, ¶¶ 20-39, 896 A.2d at 940-44.

Finally, the Committee’s appeal to public policy falls short. The Committee suggests that its interpretation “promotes fairness among all citizens who might wish to initiate a people’s veto.” Appellant Br. at 20. But, as the Secretary aptly notes, the

⁴ In the Judiciary Committee Report that led to this amendment, the committee considered only the “filing deadline for [people’s veto] petitions,” without ever discussing the date on which the circulation process could begin. *Report of the Judiciary Committee on the Initiative and Referendum Process*, at 13 (Dec. 1974), available at http://lldc.mainelegislature.org/Open/Rpts/kf4881_z99m22_1974.pdf. The report thus reinforces the conclusion that the Constitution grants flexibility as to the beginning of the petition process.

people’s veto process is not a race. Any benefit that one individual gains by having more time to collect signatures does not disadvantage anyone else. In any event, even if the “policy consideration[]” urged by the Committee had “some merit, it by no means compels the narrow construction . . . urged by plaintiff.” *Allen*, 459 A.2d at 1102. Ensuring that every applicant has the same number of days to circulate petitions is far less important than encouraging “participatory democracy” by “facilitat[ing]” the people’s veto process – the real policy behind § 17. *McGee*, 2006 ME 50, ¶ 25, 896 A.2d at 941. Because the Committee’s interpretation would undermine this policy, it is infirm.

CONCLUSION

The Court should reject the Committee’s attempt to deny Ms. Kouzounas the opportunity to exercise her constitutional rights. The Committee’s arguments are selective and self-serving because they were made after the Democratic Party primary, which should have been conducted using ranked choice voting if the Committee is correct, and after ranked choice voting proponents had more than 90 days to pursue a people’s veto on earlier legislation. Further, the Committee’s arguments run counter to the plain language of the relevant constitutional and statutory provisions, are inconsistent with legislative history, and contravene this Court’s precedent. The questions presented to this Court should be answered as Ms. Kouzounas and the Secretary urged in their opening briefs.

DATED: July 13, 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

Attorney for Intervenor Demitroula Kouzounas

CERTIFICATE OF SERVICE

I, Joshua D. Dunlap, Esquire, hereby certify that two copies of this Reply 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 13, 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 13, 2020



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

Attorney for Intervenor Demitroula Kouzounas