

STATE OF MAINE

SUPREME JUDICIAL COURT
DOCKET NO. OJ-15-2

In the Matter of
Request for Opinion of the Justices

BRIEF OF GOVERNOR PAUL R. LEPAGE

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STATEMENT OF FACTS

The first regular session of the 127th Legislature began on December 3, 2014. Throughout the session, the Legislature enacted bills and presented them to the Governor for action. The Governor signed numerous bills into law; he allowed others to become law without his signature; and he vetoed others. The statutory adjournment date for this session was the third Wednesday in June, or June 17, 2015. Although there is a statutory mechanism for extending the legislative session, the Legislature failed to timely do so by the close of the June 17 meeting. A Joint Order to extend the first regular session by five legislative days was prepared on June 17 (Exhibit 1, SP 549)¹, but it was never presented. Hence, instead of timely extending the first regular session, the Legislature simply adjourned at the end of the June 17 meeting (the 63rd legislative day) and returned on June 18 (the 64th legislative day), raising a question around its legal authority to reconvene the session at all. On June 18, a verbal motion to extend the session (which had arguably already ended by operation of law) was passed in the House on June 18, (Exhibit 2, Roll Call #296) and in the Senate on June 18 (Exhibit 3, Remarks, and Exhibit 4, Roll Call #288)². The Legislature then met on June 19, 22, 23, and 24. On June 24, the Legislature

¹ Exhibit Numbers 1 through 8, hereto attached, were submitted with the July 17, 2015 request for an advisory opinion. The exhibit numbers remain the same as the copies already submitted. Exhibit Numbers 9, 10, and 11, hereto attached, have not been previously submitted.

² The failure of the Legislature to properly extend the first regular session along with their subsequent attempt to do so after the session was statutorily adjourned was not discovered by the Governor's counsel until early July.

attempted, by Joint Order, to further extend the session by five more legislative days (Exhibit 5, HP 991). At the close of that day, the Senate and House adjourned until June 30, 2015 at 10:00 a.m. (Exhibit 6, SP 550). In contrast, at the close of the June 30 meeting, the Legislature, by Joint Order, adjourned "... until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business or consider possible objections of the Governor" (Exhibit 7, SP 556). The Joint Order did not set any date certain on which the Legislature would reconvene. Likewise, there is no record announcing a date of return.

Pursuant to the Maine Constitution, when the Legislature is in session, the Governor has 10 days (excepting Sundays) in which to return bills with his objections to their legislative houses of origin. ME. CONST. art. IV, pt. 3, § 2. The Constitution also provides, however, that if "the Legislature by their adjournment prevent [a bill's] return", there is an alternative veto process that ensures that the Governor has the opportunity to exercise his veto power and that the Legislature has time to reconsider the bill in light of the Governor's objections. That process allows the Governor to return the bills "within 3 days after the next meeting of the same Legislature which enacted the bill"³ *Id.*

Prior to June 30, the Governor had received 23 bills from the Legislature, six of which were emergency bills. The respective deadlines for return of these bills were all

³ This alternative three days granted to the Governor by the Constitution is hereafter referred to in this brief as "the three-day procedure."

later than June 30. Just prior to its adjournment on June 30, the Legislature presented the Governor with an additional 58 bills, 14 of which were emergency bills. The deadline for the return of these bills would have been July 11, 2015, if the Legislature's adjournment and subsequent absence had not prevented their return.

The indefinite condition that would have prompted the Legislature's return – the call of the Senate President and Speaker of the House – did not come to pass on or before July 11. In fact, while there were unofficial reports that the legislators would reconvene on July 16, the legislative record confirms that the date for reconvening was ambiguous at best (Exhibit 8, House Legislative Record on HP 991, Rep. Fredette's remarks). By the Legislature's adjournment without a set date of return, the Governor was prevented from returning these bills to their houses of origin.

Believing these circumstances triggered the constitutional three-day procedure, the Governor held the bills, waiting for the Legislature to reconvene for four consecutive days. *See Opinion of the Justices*, 437 A.2d 597, 604 (Me. 1981) and *Opinion of the Justices*, 484 A.2d 999, 1001 (Me. 1984). As he held the bills, the Governor had the opportunity to consider them and draft objections. Thus, when the Legislature reconvened on July 16, the Governor returned the vetoed bills within the time allowed him pursuant to the constitutional three-day procedure. July 16 was the very first opportunity after the Legislature's June 30 adjournment when the Governor could return the bills. In other

words, believing he had three days, the Governor opted not to use all of the time allotted him. He returned the bills to their appropriate houses of origin with a request to the legislative leadership that they reconsider the bills in light of his objections. The Speaker of the House refused to reconsider the bills, maintaining that they had become law as they had already been chaptered at his direction. The Senate, likewise, refused to consider the vetoes. It is undisputed that the Legislature then adjourned on July 16, 2015, using the words, “adjourned without day” in the House and “adjourned *sine die*” in the Senate, respectively.

The Governor has a constitutional duty to “take care that the laws be faithfully executed.” ME. CONST. art. V, pt. 1st, § 12. This duty applies only to those laws that have been duly enacted by both legislative houses and either signed by the Governor; become law without the Governor’s signature; or successfully reconsidered over the Governor’s objections. Accordingly, the Governor exercised his veto power over 65 bills presented to him by the Legislature, but the Legislature refused to reconsider the bills, declaring them already valid law. With the Legislature declaring the bills to be valid law and the Governor believing he has duly vetoed them, the Governor has serious doubts about the fulfillment of his constitutional duty with respect to these 65 bills. Hence, he must know whether his vetoes of these bills stand.

The need for judicial guidance is particularly urgent because 17 of these bills are emergency legislation. As such, if they are validly enacted laws, their effective date is

immediately after the conclusion of the session. There is no dispute that at this time, the first regular session of the 127th Legislature is concluded. The exact date of the end of the session is likely disputed, however. The Governor's doubts can be resolved by knowing what form of adjournment prevents the return of bills to the Legislature as contemplated by the Constitution, whether the constitutional three-day procedure was triggered by the Legislature's action or inaction during and/or after the session and whether the 65 bills the Governor returned to the Legislature on July 16 are properly before that body for reconsideration.

ISSUES PRESENTED

- I. Do the questions presented by the Governor to the Justices of the Maine Supreme Judicial Court constitute a solemn occasion necessary to invoke the constitutional obligation to provide an advisory opinion?**
- II. What form of adjournment prevents the return of a bill to the Legislature as contemplated by the use of the word, adjournment, in article IV, part third, section 2 of the Maine Constitution?**
- III. Did any of the action or inaction by the Legislature trigger the constitutional three-day procedure for the exercise of the Governor's veto?**
- IV. Are the 65 bills the Governor returned to the Legislature on July 16 properly before that body for reconsideration?**

ARGUMENT

- I. The Governor's questions constitute a solemn occasion necessary to invoke the Justices' constitutional obligation to provide an advisory opinion.**

The Maine Constitution requires Supreme Judicial Court justices to answer important questions of law posed by the Governor if a solemn occasion exists. ME.

CONST. art. VI, § 3. When the questions asked of the Justices “are of a serious and immediate nature, and the situation presents an unusual exigency,” a solemn occasion arises. *Opinion of the Justices*, 709 A.2d 1183, 1185 (Me. 1997). “[S]uch an exigency exists when the body making the inquiry, having some action in view, has serious doubts as to its power and authority to take action under the Constitution or under existing statutes.” *Id.*

The circumstances which give rise to the Governor’s questions are serious, immediate, and present an unusual exigency. The factual context in which the Governor’s questions arise presents serious questions of constitutional law, with the validity of 65 laws hanging in the balance. The Governor’s need for answers to his questions is immediate as he has a clear and present obligation to faithfully execute only those laws that are valid. With respect to at least 17 of these bills, which have emergency preambles, there is a particular exigency because if they are valid laws, the obligation to execute them was activated upon the close of the first regular session.

Because the background circumstances present an unusual exigency, and the Governor’s questions are serious and immediate, a solemn occasion exists, therefore meeting the constitutional threshold for an advisory opinion from the justices.

- II. **A form of adjournment that prevents return of a bill is any adjournment longer than 10 consecutive days, occurring after the statutory adjournment date, and with no date certain for reconvening.**

The Governor's veto power is codified in article IV, part third, section 2 of the Maine Constitution, which provides:

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

The Justices of this Court previously have advised that when the Legislature adjourns before the Governor has taken action on a bill within ten days after it was presented to him, and the adjournment prevents the return of the bill, then the bill will not become law until the expiration of three full, consecutive days during which the same Legislature next meets. *See Opinion of the Justices*, 437 A.2d 597, 604 (Me. 1981), *Opinion of the Justices*, 484 A.2d 999, 1001 (Me. 1984).

One of the disputes in the instant case is whether the "adjournment" required by the Constitution that triggers the three-day procedure is an "adjournment *sine die*," also known as "adjournment without day" or "final adjournment." Those who contend that the 65 bills became valid law base their argument, in part, on the contention that the adjournment required by the Constitution that triggers the three-day procedure is adjournment *sine die*. Since these legislators maintain that they did not adjourn *sine die* on June 30, they argue that the three-day procedure was not

triggered, and because the bills were not returned within 10 days of presentment, they became law without the Governor's signature.

The Governor, on the other hand, contends that it is not the descriptive name of the adjournment that is dispositive. Rather, it is the content, circumstances around, and effect of the adjournment on the Governor's ability to return it to its house of origin within 10 days that triggers the three-day procedure. Rather than read in qualifying words like "*sine die*," "without day," or "final," to the controlling constitutional provision, the Governor maintains that the plain language demonstrates that it is not the *form* of the adjournment – it is the effect of the adjournment that controls.

The Maine Constitution unambiguously provides that if the Legislature's *adjournment* prevents the Governor's return of the bills to their houses of origin, then the three-day procedure is triggered. Nothing more than adjournment is mandated and no more is necessary. Again, it is the effect of the adjournment that matters.

While no Maine cases elucidating this issue were found, the United States Constitution also addresses situations where adjournment interferes with the Chief Executive's return of bills to their house(s) of origin. To best analyze the plain language of article IV, part third, section 2 of the Maine Constitution, it is useful to examine federal case law interpreting article 1, section 7, clause 2 of the U.S. Constitution. In contexts similar to the instant situation, the U.S. Supreme Court construed "adjournment" in that clause to describe a situation where Congress's

members were not present at the Capitol to conduct legislative business for any longer than a short amount of time. *The Pocket Veto Case*, 279 U.S. 655, 683 (1929); *Wright v. U.S.*, 302 U.S. 583, 595 (1938).

In *The Pocket Veto Case*, the Court took up the issue of whether Congress, by its adjournment, prevented the President from returning a bill to its House of origin. The Court unambiguously held that “adjournment” as used in the federal Constitution was not limited to “final adjournment”:

Nor can we agree with the argument that the word ‘adjournment’ as used in the constitutional provision refers only to the final adjournment of the Congress. The word ‘adjournment’ is not qualified by the word ‘final’; and there is nothing in the context which warrants the insertion of such a limitation. . .

279 U.S. at 680.

Unlike the federal constitution, however, the Maine Constitution does make reference to the phrase “adjournment without day” elsewhere in the text.⁴ The appearance of the phrase, “adjournment without day” in another section of the Constitution surely suggests that the Constitution, itself, contemplates multiple forms of adjournment. Since the word, “adjournment” in article IV, part third, section 2 is unqualified, it should be read to encompass multiple forms of adjournment as long as they meet the threshold requirement of preventing the Chief Executive from returning a bill to its house of origin.

⁴ The phrase, “adjournment without day” is expressly limited to article IV, part third, sections 17, 18, 19, 20 which outline the process for a people’s veto and direction initiatives.

Upon undertaking an examination of how the word “adjournment” is used in the federal constitution, the U.S. Supreme Court reasoned that ultimately, the answer to the question of whether “adjournment” as used in the constitution actually meant “final adjournment” was not dispositive. Rather, much as the Governor contends, the Court held that the determinative factor was whether the Chief Executive was prevented from returning vetoed bills to the “House” in which they originated within the time allowed. *Id.* at 682.

The Supreme Court concluded that when referencing the word “House” to which the bills must be returned meant “House in session,” which it described as “... sitting in an organized capacity for the transaction of business, and having authority to receive the return, enter the President’s objections on its journal, and proceed to reconsider the bill, and that no return can be made to the House when it is not in session as a collective body and its members dispersed.” *Id.* at 682-83 (citations omitted).

The Court examined whether delivery of the bill to an authorized agent of the House when its members were adjourned overcame the requirement that the House be in session. They held that even if a House were adjourned but had designated an officer or agent to accept returned bills from the President, this still would not overcome the fact that House was not in session:

Manifestly it was not intended that, instead of returning the bill to the House itself, as required by the constitutional provision, the President should be authorized to deliver it, during an adjournment of the House, to some

individual officer or agent not authorized to make any legislative record of its delivery, who should hold it in his own hands for days, weeks or perhaps months,-not only leaving open possible questions as to the date on which it had been delivered to him, or whether it had in fact been delivered to him at all, but keeping the bill in the meantime in a state of suspended animation until the House resumes its sittings, with no certain knowledge on the part of the public as to whether it had or had not been seasonably delivered, and necessarily causing delay in its reconsideration which the Constitution evidently intended to avoid. In short, it was plainly the object of the constitutional provision that there should be a timely return of the bill, which should not only be a matter of official record definitely shown by the journal of the House itself, giving public, certain and prompt knowledge as to the status of the bill, but should enable Congress to proceed immediately with its reconsideration; and that the return of the bill should be an actual and public return to the House itself, and not a fictitious return by a delivery of the bill to some individual which could be given a retroactive effect at a later date when the time for the return of the bill to the House had expired.

Id. at 684-85. The Court ultimately held that the main determinative factor in analyzing whether the Executive was prevented from returning bills was whether the House from which the bill originated was present with a quorum and ready to conduct legislative business.

In *Wright v. U.S.*, the Court was presented with the question of whether the President was prevented from returning a vetoed bill to its House of origin while the members of that House were at a temporary adjournment that lasted three days. The Court reaffirmed that there is a distinction between an adjournment at the end of a congressional session when the members of Congress had dispersed, and a temporary recess that occurs during the regular session of Congress. The Court noted that during temporary recesses of Congress “such as is permitted by the Constitution without the consent of the other House, during the session of Congress” it was

appropriate for the President to deliver vetoed bills to their House of origin. 302 U.S. 583, 595-596 (1938). As previously noted, in the federal constitution, a House of Congress may adjourn for three days without the consent of the other House.⁵ Clearly, however, the holding in *Wright* kept intact the general holding of the *Pocket Veto Case*: Congress prevents the return of vetoed bills if it adjourns for a longer, or indefinite amount of time while its membership is dispersed and there is no quorum that would allow the relevant House to conduct legislative business such as reconsider bills in light of the Executive’s objections.

In the case now before the Court, not only had the members of both Houses of the Legislature been adjourned and absent from the State House since June 30, 2015, this adjournment occurred well after the statutory adjournment date of June 17, 2015. Also, at the time the Legislature adjourned on June 30, 2015, there was no stated time by which it would return. These circumstances present the same issues that were presented to the Supreme Court in *The Pocket Veto Case*.

In the instant case, the Legislature, by its failure to adjourn to a date certain after statutory adjournment, presented the Governor with the following options. He could either retain custody of the bills as clearly outlined by article IV, part third, section 2, or he could risk the bills being held in “suspended animation” until the

⁵ The Maine Constitution also contains a provision granting each legislative house the ability to adjourn for no longer than 2 days without gaining the consent of the other house. ME. CONST. art. IV, pt. 3rd, § 12.

President and the Speaker called the Legislature back into session, a condition over which he had neither control nor knowledge.

The Governor elected to act prudently by keeping custody of the bills until the Legislature next met, an indefinite date not set in any legislative record. It is worthy to note that the same concerns that were expressed by the Supreme Court in *The Pocket Veto Case* and were reaffirmed by the Court in *Wright*, were manifested by the Legislature's actions on and after the date of statutory adjournment. Specifically, the Legislature failed to properly extend the First Session of the 127th Legislature. By this failure, the Legislature has at least risked that all bills passed after June 17, 2015 would be void. When carefully considered, it becomes clear that the Supreme Court in the *Pocket Veto Case* and the *Wright* case were correct in holding that it would do damage to the Executive's role in the legislative process to mandate that the Executive return vetoed bills to their House of origin even when that House is adjourned, especially for lengthy or indefinite periods.

The Governor is not attempting to infringe in any way the Legislature's right to convene or adjourn. The Governor vigorously contends, however, that "the Constitution should not be interpreted in such a way as to allow the Legislature to infringe the Governor's right to veto by its power to adjourn." *Op. Me. Atty. Gen.*, 79-170 at 11. Alexander Hamilton, writing in support of the veto power conferred on the President noted that the veto power is necessary in order to protect the Executive Branch from the encroachment of the Legislative Branch: "[t]he primary inducement

to conferring the power in question upon the Executive is, to enable him to defend himself . . .” The Federalist No. 73 (Alexander Hamilton). The Legislature’s interpretation of the word “adjournment” in Section 2 ignores the important function that the veto power plays in upholding the delicate balance of powers between the branches of Maine State Government and ignores the rationale on which the alternate, three-day procedure is grounded.

The three days that the Governor is afforded by article IV, part third, section 2 reflects the reality that the legislative process is one of constant negotiation, one of give and take, between the Executive Branch and individual members of the Legislature. If the Governor is denied the benefit of having access to members of the Legislature while they are constituted to carry out legislative business, then he is put at a material disadvantage in the contest of whether his vetoes will be sustained or overridden. This is what article IV, part third, section 2 was intended to guard against as explained by Attorney General Joseph Brennan when he advised Governor James Longley in 1976: “[t]his three-day period would allow the Governor time in which to decide whether to exercise his veto power in light of circumstances then existing.” *Op. Me. Atty. Gen.* (May 7, 1976).

In the case of *N.L.R.B. v. Noel Canning*, relied on by the Maine Attorney General in her advisory opinion to the Legislature regarding the validity of the 65 bills at issue, the Supreme Court of the United States in interpreting the Recess Appointment Clause in the federal constitution, acknowledged the truism that the

United States Senate is in session when it says that it is in session, provided that, under its own rules, it retains the capacity to transact the business of the Senate. The Court qualified this by holding that “although the Senate’s own determination of when it is and is not in session should be given great weight, the Court’s deference cannot be absolute. When the Senate is without the capacity to act, under its own rules, it is not in session even if it so declares.” 573 U.S. ___, 134 S.Ct. 2550, 2555 (2014). The Court cited for this proposition the admission made by counsel for the Senate that if the “Senate had left the Capitol and ‘effectively given up . . . the business of legislating’ then it might be in recess even if it said it was not” *Id.* at 2574.

In this case, the Legislature adjourned on June 30, 2015, and the membership of both Houses left the State House. During the period from June 30, to July 16, there was never a time during which the Legislature was constituted to transact legislative business. It was claimed by legislative leadership and the Attorney General that the legislature was not adjourned but merely taking a “temporary recess.” The legislative record does not support this claim, however. Moreover, the public statements of legislative leadership, as well as the opinion offered by the Attorney General, fail to recognize that it is not the form of the adjournment that triggers the three-day procedure; according to the Maine Constitution, it is the effect of the adjournment that is dispositive.

Moreover, as for the contention by the Attorney General and some members of the Legislature that the only form of adjournment that prevents the Governor

from returning bills to their houses of origin is “adjournment *sine die*,” it is belied by the Legislature’s conduct in 1997. During the 118th first regular session, the Legislature manipulated adjournment *sine die* in order to enact a budget by voting to adjourn *sine die* during what would normally be the middle of the session, March 27, 1997. That day, the House of Representatives voted to “adjourn without day” at 12:25 p.m. on March 27, 1997, and the Senate voted to adjourn *sine die* at 12:42 that same afternoon (Exhibit 9, excerpts from the House and Senate Legislative Records for March 27, 1997). Both the House and the Senate reconvened for a special session called by the Governor at 4:00 in the afternoon of that same day (Exhibit 10, excerpts from the House and Senate Legislative Records, First Special Session, March 27, 1997). There is nothing about the *sine die* adjournment at noon on March 27, 1997 that would have prevented the Governor from returning bills to their houses of origin at 4:00 that afternoon when they reconvened. Again, it is not whether the formalism of adjournment is final that controls, it is whether the adjournment prevents the return of the bills.

In the case at hand, if the Legislature was validly and lawfully reconvened from June 18 to June 30 (an issue discussed below), then when it adjourned on June 30, 2015 without any date of return, its members dispersed and were not present at the State House. When the level of contentiousness present around the end of the session and the lack of communication between the two branches of government at that time are added to the mix, the written record of the Legislature’s action becomes

the only form of communication the Chief Executive can rely on. In this case, with respect to a date of return, there was nothing there.

From the moment of the June 30 adjournment until the Legislature reconvened on July 16, neither House was “... sitting in an organized capacity for the transaction of business.” *The Pocket Veto Case*, 279 U.S. at 683. As such, neither House had the “authority to receive the return, enter the [Chief Executive’s] objections on its journal, and proceed to reconsider the bill[s].” *Id.* Thus, the Legislature’s June 30 adjournment prevented the return of the bills, which is precisely the effect that triggers the three day procedure. The Governor’s decision, therefore, to hold the bills until such time as the Legislature reconvened for three days—whenever that might be—was reasonable.

III. The action and inaction of the Legislature triggered the three-day procedure for the exercise of the Governor’s veto.

Along with addressing the matter of the proper timeline for the Governor to issue vetoes after some form of adjournment, it has become clear that there is another threshold matter to be addressed in this case. This threshold matter relates to whether the bills in question—or any enacted after June 17, 2015—were properly before the Governor.

Pursuant to article IV, part third, section 1 of the Maine Constitution, the Legislature is required to convene its first regular session on the first Wednesday of December following the general election. Making clear that the Legislature is

constitutionally prohibited from allowing a session to continue indefinitely, section 1 further provides, “[t]he Legislature shall enact appropriate statutory limits on the length of the first regular session . . .” The limit on the length of the first regular session is set forth in statute: “[t]he first regular session of the Legislature, after its convening, *shall adjourn no later than* the 3rd Wednesday in June . . .” 3 M.R.S. §2 (emphasis added). The third Wednesday in June has come to be known as “the statutory adjournment date.” Should there be a need “in case of emergency,” this section also provides a mechanism for the Legislature to extend the legislative session by two terms of up to five legislative days each and by one additional legislative day for considering possible vetoes.

During the first regular session of the 127th Legislature, the statutory adjournment date fell on June 17, 2015. According to the Advance Journal and Calendar of both the House of Representatives and the Senate, June 17 constituted the 63rd legislative day for both chambers. A Joint Order to extend the first regular session by five legislative days was prepared on June 17, but that Joint Order was never presented (Exhibit 1, SP 549). Neither the House nor the Senate voted to extend the legislative session before adjourning on June 17.

Both chambers then met on June 18, in what was termed “the 64th legislative day” for both chambers (Exhibit 11, House and Senate Advance Journal and Calendar for June 18, 2015). On June 18 the House and the Senate recognized their failure to properly extend the legislative session. In an effort to remedy their error, they voted

and passed a Joint Order to extend the session past June 17. The stumbling block for both houses, however, is that the first regular session had already ended by operation of law. Consequently, both the legal basis for the Legislature's convening on June 18⁶ as well as its power to enact laws on that date and afterward must be questioned. If, of course, the bills in question were not validly enacted by the Legislature, then they did not properly reach the Governor's desk for the exercise of his veto power.

It is clear that the Maine Constitution envisions the requirement of statutory adjournment to be a limiting factor vis-à-vis the Legislature's ability to meet without end. Moreover, unlike almost all of the Legislature's internal workings, the Constitution requires this restriction be set by statute, as opposed to the internal rules determined by the Legislature itself. The statutory adjournment date must be fixed via the process of bicameralism and presentment, not merely set by the Legislature alone. As such, this constitutionally based limit on the length of the session is, as stated by the Washington Supreme Court, "a limitation on the power of enacting laws." *Washington ex rel. Robinson v. Fluent*, 191 P.2d 241, 246 (Wash. 1948).

While it appears that the validity of laws enacted after the statutory adjournment date without a proper extension is an unsettled question in Maine, some other state courts and/or Supreme Court justices offer some guidance for analysis. For example, in New Hampshire, in 1965, the Supreme Court justices were called

⁶ There is no legislative record suggesting that the Legislature called itself into Special Session on June 18, 2015, as contemplated by article IV, part third, section 1 of the Maine Constitution.

upon to issue an advisory opinion relating to the validity of a bill that was duly passed by the legislature but due to a clerical administrative mistake of the assistant clerk of the house, was not engrossed nor signed by presiding officers of both houses nor presented to and approved by the governor until a few days after legislative adjournment. *See Opinion of the Justices*, 213 A.2d 415 (N.H. 1965).

In that case, the justices opined that the vital issue presented was whether the legislation was invalid because it had been presented to the Governor after adjournment. Relying on the general rule that “in the absence of any constitutional provisions to the contrary, the adjournment of the legislature does not preclude the presentation to the chief executive of bills which have been passed by the legislature,” the justices concluded that the delay in presentment to the Governor due to clerical error did not invalidate the bill. *Id* at 416. Having said that, however, they reserved opinion on whether unreasonable delay or delay for reasons other than clerical mistake would invalidate a bill. *Id*.

In reaching their conclusion, the justices also relied on an earlier advisory opinion, stating that all of the justices concurred with the proposition that adjournment of the legislature has a different effect on bills with which the Governor approves versus on those to which he objects. *Id*. (citing *Opinion of the Justices*, 174 A.2d 420, 425 (1961)). As stated in the 1961 opinion, “[a]djournment of the Legislature forecloses the amendment of bills to meet objections by the executive.” 174 A.2d at 425.

Both the Wyoming Supreme Court and the Oklahoma Supreme Court have also wrestled with the validity of bills arguably passed post-adjournment date. In both of these cases, however, the legislatures convened on the statutory adjournment day and continued in session, without adjournment, through the night and into the next day. Both courts concluded the bills were valid, finding that they were actually passed during the same “legislative day” even though that legislative day stretched over a period of two calendar days. *White v. Hinton*, 30 P. 953, 955 (Wyo. 1892); *Davis v. Thompson*, 721 P.2d 789, 792 (Okla. 1986).

In *Davis*, an action for writ of prohibition, the house minority leader sought to prohibit the State Finance Director and State Treasurer from expending or disbursing funds under appropriation bills passed by the legislature after midnight of the 90th legislative day. The Oklahoma Constitution limited the legislative session to 90 legislative days. “In discussing the length of a legislative day, it must be emphasized that *common sense* dictates that the rule of reason should control the legislative day ...” *Id.* at 793. The Court went on to clarify, however, that while “[t]he Legislature has a right to conclude all legislative business it has already begun past the stroke of midnight of the ninetieth legislative day to bring a legislative session to a close so long as it does so reasonably, continuously, and *without breaks or adjournments.*” *Id.* (emphasis added).

With the guidance offered by other courts, both common sense and legal authority lead to the conclusion that both the Legislature’s inaction, i.e., failure to

extend the session while legally in session, and its action, convening post-adjournment and conducting legislative business without the legal authority to do so, call into question the validity of every bill it enacted into law, post-statutory adjournment, including the 65 bills vetoed by the Governor on July 16th.

IV. The 65 bills vetoed by the Governor on July 16 are properly before that body for reconsideration.

Answering this question involves choosing which constitutional veto procedure is most reasonable under this unique set of facts. The issues before these Justices developed over the course of a particularly contentious legislative session rife with political wrangling and clashes between the institutions and branches of government. After several months and numerous conflicts, communications between the two branches of government were often strained, at best, and at times, nonexistent.

Unbeknownst to the Governor at the time, the Legislature allowed the first regular session to end by operation of law. Disregarding its error, the Legislature continued in session as if nothing had gone awry. In the meantime, the querulous and at times combative tone in the State House continued to swell. The Governor exercised his veto power with increasing repetition; the Legislature responded by time and again exercising its own power to override the vetoes.

With this backdrop, on June 30, 2015, the Governor found himself the recipient of more than 65 bills to be reviewed and ultimately returned to their

legislative houses of origin. The Legislature adjourned; they had done so without setting a date certain for their return.

Holding the 65 bills, the Governor knew two things: the legislators were no longer present in the State House; and there was no record of when they would be back. The plain language of the Constitution provides that a Governor in this situation faces two possible options. The Governor either returns the bills to their houses of origin within 10 consecutive days of their presentment to him or he returns them within 3 days after the return of the Legislature if the Legislature's adjournment prevents their return.

On the tenth day after the Legislature's June 30 adjournment, the legislators were still not present in the State House. Nor had they reconvened at any point in between. Not having any control over or direct knowledge of when the Senate President and Speaker would call the Legislature back into session, the Governor reasonably concluded that the Maine Constitution allowed him to either retain custody of the bills until after the Legislature returned or he could risk the bills being held in "suspended animation" until some indefinite time in the future.

Recognizing that the Legislature was not sitting in an organized capacity for the transaction of business, that the legislators consequently could not receive the bills or enter the Governor's objections on the legislative journal, or proceed to reconsider the bills in light of his objections, the Governor reasonably concluded that he had been prevented from returning the bills by the Legislature's adjournment.

Once it was clear that the Legislature's adjournment had prevented the return of the bills, the Governor held them until the Legislature returned. While he believed he had three consecutive days after its return to act, the Governor, in the interest of expediency returned the bills with his objections at his first opportunity.

The bills at issue are properly before the Legislature for reconsideration because the Governor acted reasonably when he concluded that its June 30 adjournment prevented return of the bills within ten days and because he returned them as expeditiously as possible, not even using the full three days.

Ironically, the same individuals who will argue that the ten-day procedure should have been used and strictly construed against the Governor are likely the same individuals who will maintain that the legislative session did not end by operation of law when the Legislature failed to extend the session while it was in session. These same individuals will also likely argue that the Legislature need not suffer any consequences for its failure to adjourn to a date certain on June 30. In essence, these individuals seek a harsh, extreme remedy against the Governor for what they will claim is a missed constitutional deadline, while at the same time, maintaining that their missed constitutionally based deadline is of no consequence.

The Governor comes before this court not seeking to "win" while the other side "loses." Rather, the Governor seeks answers to questions that arose as a result of Legislative missteps, due in part, perhaps, to the antagonistic tone toward the end of the legislative session. The remedy the Governor seeks is as reasonable as the veto

procedure he chose: that the House and Senate consider his vetoes and either vote to override them or vote to sustain them.

CONCLUSION

The circumstances underlying the Governor's request for an opinion of the justices present an unusual exigency, and the Governor's questions are serious and immediate so a solemn occasion exists, thereby enabling them to issue an advisory opinion on the questions presented.

The form of adjournment that prevents return of a bill is longer than ten days, occurs after the statutory adjournment date and has no date certain to reconvene.

Because the June 30 adjournment met these requirements, the Governor was prevented from returning the bill within 10 days. The 65 bills vetoed by the Governor on July 16 are properly before the House and Senate for reconsideration.

Dated: July 24, 2015

Cynthia Montgomery, Bar No. 4456
Hancock Fenton, Bar No. 5294
Holly Lusk, Bar No. 9868
Avery Day, Bar No. 4549

STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
FIRST REGULAR SESSION
SENATE ADVANCED JOURNAL AND CALENDAR

Wednesday, June 17, 2015

SUPPLEMENT NO. 19

ORDERS

Joint Order

(4-1) On motion by Senator CUSHING of Penobscot, the following Joint Order:
S.P. 549

Ordered, the House concurring, that in accordance with emergency authority granted under the Maine Revised Statutes Annotated, Title 3, Section 2, the First Regular Session of the 127th Legislature shall be extended for five legislative days.

EXHIBIT 1

First Regular Session

127th LEGISLATURE

ROLL CALL NO. 296

MAINE HOUSE OF REPRESENTATIVES

EXTEND FIVE LEGISLATIVE DAYS

DATE: 6/18/2015

MOTION: EXTEND

VOTES REQUIRED: 94

YES: 118

NO: 23

ABSENT: 10

MOTION: PREVAILS

Y	Alley	N	Farrin	Y	Kruger	N	Russell
Y	Austin	N	Fecteau	Y	Kumiega	Y	Rykerson
Y	Babbidge	Y	Foley	Y	Lajoie	X	Sanborn
Y	Bates	Y	Fowle	N	Lockman	Y	Sanderson
Y	Battle	Y	Fredette	N	Long	Y	Saucier
Y	Beavers	Y	Frey	Y	Longstaff	X	Sawicki
Y	Beck	Y	Gattine	Y	Luchini	Y	Schneck
Y	Beebe-Center	Y	Gerrish	N	Lyford	Y	Seavey
Y	Bickford	Y	Gideon	Y	Maker	Y	Shaw
N	Black	Y	Gilbert	X	Malaby	N	Sherman
X	Blume	Y	Gillway	Y	Marean	Y	Short
Y	Brooks	Y	Ginzler	N	Martin, J.	N	Sirocki
Y	Bryant	Y	Golden	Y	Martin, R.	N	Skolfield
N	Buckland	N	Goode	Y	Mastraccio	Y	Stanley
Y	Burstein	Y	Grant	Y	McCabe	Y	Stearns
Y	Campbell, J.	N	Greenwood	Y	McClellan	Y	Statkis
Y	Campbell, R.	Y	Grohman	Y	McCreight	Y	Stuckey
Y	Chace	N	Guerin	Y	McElwee	Y	Sukeforth
Y	Chapman	Y	Hamann	Y	McLean	Y	Tepler
Y	Chenette	Y	Hanington	Y	Melaragno	Y	Therault
Y	Chipman	N	Hanley	Y	Monaghan	N	Timberlake
Y	Cooper	Y	Harlow	Y	Moonen	Y	Timmons
Y	Corey	Y	Hawke	Y	Morrison	Y	Tipping-Spitz
N	Crafts	Y	Head	Y	Nadeau	Y	Tucker
Y	Daughtry	Y	Herbig	Y	Noon	Y	Tuell
X	Davitt	Y	Herrick	X	Nutting	N	Turner
X	DeChant	Y	Hickman	N	O'Connor	Y	Vachon
X	Devin	Y	Higgins	Y	Parry	Y	Verow
Y	Dillingham	Y	Hilliard	Y	Peterson	Y	Wadsworth
Y	Dion	Y	Hobart	Y	Picchlotti	Y	Wallace
Y	Doore	Y	Hobbins	N	Pickett	N	Ward
Y	Duchesne	Y	Hogan	Y	Pierce, J.	Y	Warren
N	Dunphy, L.	Y	Hubbell	Y	Pierce, T.	Y	Welsh
Y	Dunphy, M.	Y	Hymanson	Y	Pouliot	Y	White
Y	Edgecomb	Y	Jorgensen	Y	Powers	Y	Winsor
Y	Espling	X	Kinney, J.	Y	Prescott	Y	Wood
Y	Evangelos	Y	Kinney, M.	Y	Reed	Y	Mr. Speaker
Y	Farnsworth	X	Kornfield	Y	Rotundo		

EXHIBIT 2

DRAFT

Remarks – June 18, 2015 – Regarding Extending Beyond Statutory Adjournment

THE PRESIDENT PRO TEMPORE: We need to do a housekeeping matter because the Senate extended beyond statutory adjournment as of yesterday. We need to be explicitly clear about our actions and the intentions of going beyond statutory adjournment date. I'm going to read language and then we will have to take a vote.

Pursuant to Title 3, Section 2, the date of adjournment for the 1st Regular Session of the 127th Legislature is hereby extended beyond June 17, 2015 for an additional five legislative days and further all action taken by the House and Senate on June 18, 2015 prior to the vote are hereby ratified.

We will open a vote. It will require a two-thirds majority to pass. Is the Senate ready for the question?

THE PRESIDENT PRO TEMPORE: The Chair recognizes the Senator from Waldo, Senator Thibodeau.

Senator **THIBODEAU:** Mr. President, I request a Roll Call.

THE PRESIDENT PRO TEMPORE: The Senator from Waldo, Senator Thibodeau, has asked for Roll Call. In order for the Chair to order a Roll Call it must have the expressed desire of one-fifth of the members present. All in favor of a Roll Call please raise your hand. Obviously more than one-fifth of the members present are in favor of a Roll Call. A Roll Call is ordered.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#288)

YEAS: Senators: ALFOND, BAKER, BRAKEY, BREEN, BURNS, COLLINS, CUSHING, CYRWAY, DAVIS, DIAMOND, DILL, DUTREMBLE, EDGECOMB, GERZOFISKY, GRATWICK, HAMPER, HASKELL, HILL, JOHNSON, KATZ, LANGLEY, LIBBY, MCCORMICK, MILLETT, MIRAMANT, PATRICK, ROSEN, SAVIELLO, THIBODEAU, VALENTINO, VOLK, WHITTEMORE, WILLETTE, WOODSOME, THE PRESIDENT PRO TEMPORE – GARRETT P. MASON

NAYS: Senators: None

35 Senators having voted in the affirmative and no Senator having voted in the negative, it is the vote of the Senate to Extend the Legislative Session.

MAINE STATE SENATE
 127TH LEGISLATURE
 First Regular Session

Extend Beyond Statutory
 Adjournment

DATE: June 18, 2015

Yea: 35 Nay: 0 Absent: 0 Excused: 0 MOTION: PREVAILS
 (2/3 Vote Required)

	Yea	Nay	Abs	Exc		Yea	Nay	Abs	Exc
Alfond	X				Johnson	X			
Baker	X				Katz	X			
Brakey	X				Langley	X			
Breen	X				Libby	X			
Burns	X				McCormick	X			
Collins	X				Millett	X			
Cushing	X				Miramant	X			
Cyrway	X				Patrick	X			
Davis	X				Rosen	X			
Diamond	X				Saviello	X			
Dill	X				Thibodeau	X			
Dutremble	X				Valentino	X			
Edgecomb	X				Volk	X			
Gerzofsky	X				Whittemore	X			
Gratwick	X				Willette	X			
Hamper	X				Woodsome	X			
Haskell	X				PROTEM Mason	X			
Hill	X				TOTALS =>	35	0	0	0

EXHIBIT 4

HP 991

STATE OF MAINE

In House, June 23, 2015

Ordered, the Senate concurring, that in accordance with emergency authority granted under the Maine Revised Statutes Annotated, Title 3, Section 2, the First Regular Session of the 127th Legislature shall be extended for five legislative days.

SPONSORED BY: 
(Representative McCABE)



TOWN: Skowhegan

EXHIBIT 5

HP 991

HP 991

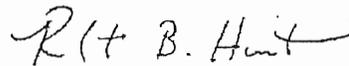
HOUSE OF REPRESENTATIVES

June 24, 2015

READ.

ON MOTION OF REPRESENTATIVE GIDEON OF FREEPORT,
TABLED PENDING PASSAGE.

LATER TODAY ASSIGNED.


CLERK

HOUSE OF REPRESENTATIVES

June 24, 2015

SPEAKER LAID BEFORE THE HOUSE

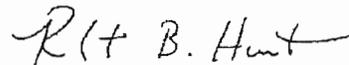
SUBSEQUENTLY, THE JOINT ORDER WAS PASSED.

PURSUANT TO JOINT RULE 102, THIS JOINT ORDER REQUIRED
THE AFFIRMATIVE VOTE OF TWO-THIRDS OF THOSE PRESENT
FOR PASSAGE.

ROLL CALL NO. 395

(YEAS 120 - NAYS 21 - ABSENT 10 - EXCUSED 0)

SENT FOR CONCURRENCE. ORDERED SENT FORTHWITH.


CLERK

IN THE SENATE CHAMBER

June 24, 2015

READ AND PASSED, IN CONCURRENCE.

2/3 VOTE REQUIRED.


SECRETARY OF THE SENATE

STATE OF MAINE

SP0550

In Senate June 23, 2015

Ordered, the House concurring, that when the Senate and House adjourn, they do so until Tuesday, June 30, 2015 at 10:00 in the morning.



Name: Senator Garrett R. Mason
County: Androscoggin

SP 550

SP 550

IN THE SENATE CHAMBER

June 23, 2015

ON MOTION BY SENATOR MASON OF ANDROSCOGGIN READ
AND PASSED.

ORDERED SENT DOWN FORTHWITH FOR CONCURRENCE.



SECRETARY OF THE SENATE

HOUSE OF REPRESENTATIVES

June 24, 2015

READ AND PASSED.

IN CONCURRENCE. ORDERED SENT FORTHWITH.



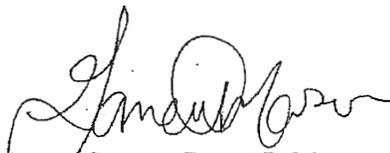
CLERK

STATE OF MAINE

SP0556

In Senate June 30, 2015

Ordered, the House concurring, that when the House and Senate adjourn they do so until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business, or consider possible objections of the Governor.



Name: Senator Garrett P. Mason

County: Androscoggin

EXHIBIT 7

SP 556

SP 556

IN THE SENATE CHAMBER

June 30, 2015

ON MOTION BY SENATOR MASON OF ANDROSCOGGIN READ
AND PASSED.

ORDERED SENT DOWN FORTHWITH FOR CONCURRENCE.



SECRETARY OF THE SENATE

HOUSE OF REPRESENTATIVES

June 30, 2015

READ AND PASSED.

IN CONCURRENCE. ORDERED SENT FORTHWITH.



CLERK

LEGISLATIVE RECORD - HOUSE, June 24, 2015

After Midnight

ORDERS

On motion of Representative McCABE of Skowhegan, the following Joint Order: (H.P. 991)

Ordered, the Senate concurring, that in accordance with emergency authority granted under the Maine Revised Statutes Annotated, Title 3, Section 2, the First Regular Session of the 127th Legislature shall be extended for five legislative days.

READ.

The SPEAKER: The Chair recognizes the Representative from Skowhegan, Representative McCabe.

Representative McCABE: Thank you, Mr. Speaker. Men and Women of House, we've done some good work, some bipartisan work in the last few days. There are some remaining items still with the other body so extending these days is appropriate so that we make sure that we can act on that work beyond July, I mean beyond June 30th. And, at this time, I hope that when we take this vote, folks will support this and will be prepared so that when we do come back July 16th, we can take up any remaining items as well as when we come back on the 30th. So, thank you very much.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Fredette.

Representative FREDETTE: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House, our conversations have sort of focused around trying to sort of finish up tonight before 11:59 p.m., so that we could leave one legislative day to focus on the 30th to come back and vote on the budget. And to the extent that now it's 12:10 p.m., I, quite frankly, would like to have an opportunity to speak to my caucus in regards to at least my understanding is, under the Constitution, we are allowed to extend two times, five legislative days, to complete the work of the Legislature. This would be the second time to do that. We have agreed to extend one time. Tonight is the expiration of that. Because we are at 12:10 p.m., the first five days, and to the extent that we are asking to extend that a second five days, I would like the opportunity to speak to my caucus to make sure that they are in agreement with that before we vote on this motion, because I don't want to make that decision on my own. And, so I would ask that this motion be Tabled until later in today's session. Thank you.

The same Representative moved that the Joint Order be TABLED until later in today's session pending PASSAGE.

The SPEAKER: The House will be in order. The Representative from Newport, Representative Fredette, has moved that this item be Tabled. The Tabling motion is out of order because the Representative made an argument prior to presenting the Tabling motion.

Subsequently, the Chair RULED that the motion was OUT OF ORDER.

The SPEAKER: The Chair recognizes the Representative from Skowhegan, Representative McCabe.

Representative McCABE: Thank you, Mr. Speaker. Men and Women of the House, I spent some time in the Clerk's Office reviewing some of the bills that we are sort of...that remain out there. There are a number of bills, as I mentioned before, that sit on the table in the other body. There is also a number of bills that have yet to become law or be signed or move forward without the Chief Executive's signature, and I just sort of continue to think of the number of bills, a lot of them good bipartisan bills, things that we debated on both sides of the aisle, things like the

Lyme disease bill, some things around broadband. I believe in the possession of this body is still a gaming bill that seemed important to folks on both sides of the aisle. So I just want to make sure that when we go forward tonight, we think about all the things that we have still pending and that we take the appropriate action so that we can deal with those in an appropriate manner.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Fredette.

Representative FREDETTE: Thank you, Mr. Speaker, and I agree with the good Representative from Skowhegan. If we could recess for 10 minutes, just to allow our caucus to caucus this particular issue, then I think that we would probably have some sort of resolution to this.

On motion of Representative GIDEON of Freeport, TABLED until later in today's session pending PASSAGE.

The Chair laid before the House the following item which was TABLED earlier in today's session:

Ordered, the Senate concurring, that in accordance with emergency authority granted under the Maine Revised Statutes Annotated, Title 3, Section 2, the First Regular Session of the 127th Legislature shall be extended for five legislative days.

(H.P. 991)

Which was TABLED by Representative GIDEON of Freeport pending PASSAGE.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Fredette.

Representative FREDETTE: Thank you, Mr. Speaker. Mr. Speaker and Ladies and Gentlemen of the House, my understanding is, according to the Maine Constitution, this chamber is permitted to extend five legislative days, two separate times, under the Maine Constitution. We have already done that once. So, therefore, in terms of my read of the Maine Constitution, we are now at, under this Supplement No. 22, the opportunity for this body to vote on the extension of five additional days, under the Maine Constitution, to complete our work. I think it was our hope and our anticipation in the extension of the first five additional days that we would be able to complete our work, including the work that we would anticipate on June 30th in regards to the budget. Obviously, recognizing the hour, at 12:45 p.m., on the fifth day of the first extension of the five additional days, under the first vote of extending the legislative session five additional days, we've expended those days. I have requested and graciously thank the body for the opportunity to speak to my caucus in regards to the question before the body today on Supplement No. 22, in regards to the question of extending the second and final five days as permitted under the Maine Constitution, to complete the work of this session of the Legislature. Our caucus is focused on the work that we need to do in terms of completing the work on our budget and other items that may or may not be related to vetoes related to the Chief Executive and anticipation on maybe coming back on a second day beyond June 30th which may or may not be July 16th, which is also a day which is in conflict with a tour which I understand that is currently scheduled by a farming organization that would include members of this body. And so that would be a conflict. So, Mr. Speaker, I believe I speak on behalf of my caucus in terms of the fact that we are in support of extending the second and final five legislative days as permitted under the Maine Constitution, but, quite frankly, are frustrated by the slow pace of the work between the bodies, and believe that we should be able to complete that work in an expeditious way so that it doesn't take five additional days to complete that work. We would

LEGISLATIVE RECORD - HOUSE, June 24, 2015

anticipate, my anticipation is that we would be able to anticipate that we would be able to come back on the 30th of June, complete some work on that day and come back on a second day, which may or may not be July the 16th, and complete some additional work that is required by this body on behalf of the people of the State of Maine, and then be able to complete that work in a timely fashion so that we don't have to use those complete five additional days. We have done, we have done our due diligence. We are here. It is 1 o'clock in the morning. So let's complete our work, let's do it in a timely fashion. There is no need to continue to be here five additional days. That's the message from my caucus, Mr. Speaker. Let's do this in a timely fashion, let's do it in a responsible way, let's do it in a reasonable way, and let's get the work done. We are committed to doing the work on behalf of the people of the State of Maine. Let's extend the five days, but let's get the work done in a timely fashion. Thank you, Mr. Speaker.

The Chair ordered a division on **PASSAGE**.

Representative McCABE of Skowhegan REQUESTED a roll call on **PASSAGE**.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: A roll call has been ordered. The pending question before the House is Passage. All those in favor will vote yes, those opposed will vote no.

Pursuant to 3 M.R.S.A., Section 2, this Joint Order required the affirmative vote of two-thirds of those present for **PASSAGE**.

ROLL CALL NO. 395

YEA - Alley, Austin, Babbidge, Bates, Battle, Beavers, Beck, Beebe-Center, Bickford, Black, Blume, Brooks, Bryant, Burstein, Campbell J, Campbell R, Chace, Chapman, Chipman, Cooper, Corey, Crafts, Daughtry, Davitt, DeChant, Devin, Dion, Doore, Dunphy M, Edgecomb, Espling, Evangelos, Farnsworth, Fecteau, Fowle, Fredette, Frey, Gattine, Gideon, Gilbert, Ginzler, Golden, Goode, Grant, Hamann, Hanley, Harlow, Hawke, Head, Herbig, Hickman, Hilliard, Hobart, Hobbins, Hogan, Hubbell, Hymanson, Jorgensen, Kornfield, Kruger, Kumiega, Lajoie, Longstaff, Luchini, Lyford, Maker, Martin J, Martin R, Mastraccio, McCabe, McClellan, McCreight, McElwee, McLean, Melaragno, Monaghan, Moonen, Morrison, Nadeau, Noon, Nutting, Parry, Peterson, Picchiotti, Pickett, Pierce J, Pierce T, Pouliot, Powers, Prescott, Reed, Rotundo, Russell, Rykerson, Sanderson, Saucier, Sohneck, Shaw, Sherman, Short, Stanley, Stearns, Stetkis, Stuckey, Sukeforth, Tepler, Theriault, Tipping-Spitz, Tucker, Tuell, Turner, Vachon, Verow, Ward, Warren, Welsh, White, Winsor, Wood, Mr. Speaker.

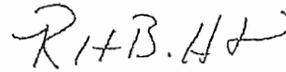
NAY - Buckland, Dillingham, Dunphy L, Farrin, Foley, Geirish, Greenwood, Grohman, Hanington, Higgins, Kinney M, Lockman, Long, O'Connor, Sawicki, Seavey, Sirocki, Skolfield, Timberlake, Wadsworth, Wallace.

ABSENT - Chenette, Duchesne, Gillway, Guerin, Herrick, Kinney J, Maiaby, Marean, Sanborn, Timmons.

Yes, 120; No, 21; Absent, 10; Excused, 0.

120 having voted in the affirmative and 21 voted in the negative, with 10 being absent, and accordingly the Joint Order was **PASSED**. Sent for concurrence.

This is to certify that this is a true and accurate copy of the House Legislative Record dated June 23, 2015.



Robert B. Hunt
Clerk of the House
July 13, 2015

House Legislative Record
of the
One Hundred and Eighteenth Legislature
of the
State of Maine

Volume I

First Regular Session

December 4, 1996 - March 27, 1997

First Special Session

March 27, 1997 - May 15, 1997

a glass dealer that would feel the call requesting a quotation for a new windshield and the first question the glass dealer would ask of the customer was, are you planning to pay for this windshield with insurance or out of your own pocket? The implication being that I have two prices. As I said, none of us on the committee liked the idea of the practice happening, yet the majority 12-to-1 "Ought Not to Pass" vote is indicative of our feelings that this bill is not the right way to go about taking care of the problem. We saw danger in insurance rates going up, unjustifiably, as a result of this practice occurring. However, if we can find a way to enforce a law that would prevent this adverse action from happening, I think we would and I think we will if we ever get the chance again. However, this bill as amended or left alone is not the way to do it. I ask that you support the Majority "Ought Not to Pass" Report. Thank you.

The SPEAKER: The Chair recognizes the Representative from Pittsfield, Representative Jones. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative JONES: Madam Speaker, Men and Women of the House. I do apologize for standing up here once more, but just very briefly, it has been mentioned about this anti-business. It is really not true folks. At the hearing there were seven or eight small glass repair shops not giving coupons. Their idea was that they just cannot compete and if it goes through they would go home and start giving coupons and charging more than they should. It is definitely for the small businesses, man and wife, one employee and it lines right up, in my opinion, to support the small businessman and might even save a job or two.

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Majority "Ought Not to Pass" Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 66

YEA - Ahearn, Bagley, Baker CL, Baker JL, Belanger IG, Berry RL, Bolduc, Bouffard, Brennan, Brooks, Bruno, Bull, Bunker, Cameron, Carleton, Chartrand, Chick, Chizmar, Clark, Colwell, Cowger, Desmond, Donnelly, Driscoll, Dunlap, Dutremble, Etnier, Farnsworth, Fisher, Frechette, Fuller, Gagne, Gagnon, Gamache, Gerry, Goodwin, Green, Jabar, Jones KW, Jones SL, Kane, Kerr, Kontos, LaVerdiere, Lemaire, Mailhot, Marvin, Mayo, McKee, Meres, Mitchell JE, Morgan, Murphy, Muse, O'Neal, O'Neil, Ott, Paul, Pieh, Poulin, Povich, Powers, Quint, Richard, Rines, Rowe, Samson, Sanborn, Saxl JW, Shannon, Shiah, Sirois, Skoglund, Stevens, Thompson, Townsend, Tripp, Tuttle, Usher, Volenik, Watson, Wheeler EM, Wheeler GJ, Winglass, Wright, Madam Speaker.

NAY - Barth, Berry DP, Bigl, Bragdon, Buck, Bumps, Campbell, Cianchette, Clukey, Cross, Dexter, Fisk, Gieringer, Gooley, Honey, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kneeland, Labrecque, Lane, Layton, Lemont, Lovett, MacDougall, Mack, Madore, McAlevey, McElroy, Nass, Nickerson, O'Brien, Peavey, Perkins, Perry, Pinkham RG, Pinkham WD, Plowman, Savage, Snowe-Mello, Spear, Stanley, Stedman, Taylor, Tobin, Treadwell, True, Underwood, Vedral, Waterhouse, Winn.

ABSENT - Belanger DJ, Bodwell, Davidson, Foster, Hatch, Lemke, Lindahl, Pendleton, Saxl MV, Tessier, Vigue, Winsor.
Yes, 86; No, 53; Absent, 12; Excused, 0.

86 having voted in the affirmative and 53 voted in the negative, with 12 being absent, the Majority "Ought Not to Pass" Report was accepted. Ordered sent forthwith.

The Chair laid before the House the following item which was tabled earlier in today's session:

Bill "An Act to Allow Field Testing of Unregistered Snowmobiles Repaired by Licensed Snowmobile Repair Shops" (H.P. 57) (L.D. 82) (C. "A" H-99) which was tabled by Representative PAUL of Sanford pending Passage to be Engrossed.

On motion of Representative PAUL of Sanford, the Bill was recommitted to the Committee on Inland Fisheries and Wildlife and sent up for concurrence. Ordered sent forthwith.

The Speaker appointed Representative KONTOS of Windham on the part of the House to inform the Senate that the House had transacted all business before it and is ready to adjourn without day.

Subsequently, Representative KONTOS reported that she had delivered the message with which she was charged.

The Chair appointed the following members on the part of the House to wait upon his Excellency, Governor Angus S. King, Jr., and inform him that the House has transacted all business before it, is ready to adjourn without day and is ready to receive any communication that he may be pleased to make.

Representative KERR of Old Orchard Beach
Representative POULIN of Oakland
Representative TOWNSEND of Portland
Representative STEVENS of Orono
Representative BERRY of Livermore
Representative LEMAIRE of Lewiston
Representative OTT of York
Representative KNEELAND of Easton
Representative MARVIN of Cape Elizabeth
Representative WINSOR of Norway

Subsequently, the Committee reported that they had delivered the message with which they were charged.

At this point, a message came from the Senate borne by Senator RAND informing the House that the Senate had transacted all business before it and is ready to adjourn without day.

On motion of Representative GAMACHE of Lewiston, the House adjourned without day at 12:25 p.m.

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Tabled - March 27, 1997, by Senator LONGLEY of Waldo.

Pending - REFERENCE

(In Senate, March 27, 1997, referred to the Committee on JUDICIARY and ORDERED PRINTED. Subsequently, RECONSIDERED.)

On motion by Senator LONGLEY of Waldo, REFERRED to the Committee on CRIMINAL JUSTICE.

Sent down for concurrence.

Senate at Ease

Senate called to order by the President.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORT - from the Committee on STATE AND LOCAL GOVERNMENT on Bill "An Act to Make the University of Maine System Board of Trustees an Elected Body"
H.P. 952 L.D. 1315

Report - REFER to the Committee on EDUCATION AND CULTURAL AFFAIRS.

Tabled - March 27, 1997, by Senator PINGREE of Knox.

Pending - ACCEPTANCE of the Committee Report in NON-CONCURRENCE

(In House March 26, 1997, the Report READ and REJECTED and the Bill and Accompanying Papers RECOMMENDED to the Committee on STATE AND LOCAL GOVERNMENT.)

(In Senate March 27, 1997, the Report READ.)

Which Report was ACCEPTED and the Bill and Accompanying Papers REFERRED to the Committee on EDUCATION AND CULTURAL AFFAIRS in NON-CONCURRENCE.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORT - from the Committee on STATE AND LOCAL GOVERNMENT on Bill "An Act to Make the State Board of Education Elected"
H.P. 962 L.D. 1325

Report - REFER to the Committee on EDUCATION AND CULTURAL AFFAIRS.

Tabled - March 27, 1997, by Senator PINGREE of Knox.

Pending - ACCEPTANCE of the Committee Report in NON-CONCURRENCE

(In House March 26, 1997, the Report READ and REJECTED and the Bill and Accompanying Papers RECOMMENDED to the Committee on STATE AND LOCAL GOVERNMENT.)

(In Senate March 27, 1997, the Report READ.)

Which Report was ACCEPTED and the Bill and Accompanying Papers REFERRED to the Committee on EDUCATION AND CULTURAL AFFAIRS in NON-CONCURRENCE.

Sent down for concurrence.

Senate at Ease

Senate called to order by the President.

Out of order and under suspension of the Rules, the Senate considered the following:

ORDERS

Senate Orders

On motion by Senator RAND of Cumberland, the following Order:

ORDERED, that a message be sent to the House of Representatives informing that Body that the Senate has transacted all business which has come before it and is ready to Adjourn Without Day. S.O. 15

Which was READ.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Amero.

Senator AMERO: Thank you Mr. President, ladies and gentlemen of the Senate. I think it's obvious to everybody in this Body today that the Senate has not transacted all the business which has come before it. In fact, we are still referring bills to different committees today. We have set several bills for second reader. We have hearings scheduled this afternoon, tomorrow and for the next few weeks. I don't see how we can send an order to the House which informs that Body that we have indeed transacted all of our business when we have not. So, I pose a question to the good Senator from Cumberland, Senator Rand as to why she is bringing forward this order, which claims that the Senate has indeed transacted all of its business?

THE PRESIDENT: The Senator from Cumberland, Senator Amero poses a question through the Chair to anyone who may be able to answer. The Chair recognizes the Senator from Cumberland, Senator Rand.

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Senator **RAND**: Thank you Mr. President. I apologize to the good Senator from Cumberland, Senator Amero for my delay. I guess the simple answer to the question is that we did pass an order yesterday which did carry over all of our business so, in effect, our business is done until we are called back in.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Harriman.

Senator **HARRIMAN**: Thank you Mr. President. I request a Roll Call.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY**: Thank you Mr. President, colleagues of the Senate. Before we vote I would just remind you that my experience with my constituencies is overwhelming approval of the fact that we have a budget set forth, and I heard nothing but greats and superlatives at events I was at last night.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT**: Thank you Mr. President, fellow members of the Senate. The issue before us, in my view, doesn't have to do with the budget, it has to do with whether or not we've finished our work and I can tell you as one Senator, who serves on a busy committee, Appropriations and Financial Affairs Committee, we have something in the neighborhood of 50, maybe 60, bills scheduled for public hearing next week, bills that were referred to that committee over the last couple of months. I don't see how we could possibly suggest that the business is done when many of these bills that have been introduced in this First Regular Session of the 118th Legislature have yet to be heard, some of them have barely been referred as you can see. It's patently clear that the work of this session is not done. As a matter of fact, I think there's only been 4 or 5 bills that my committee's actually dispensed with, one of which is the budget. There have been many others. I cannot vote for this adjournment order. I think it's premature. I think this is a charade and I think it's a sham on the people of Maine, to suggest that our work is done and I find it outrageous that we are now adjourning this legislature before the peoples business is complete. Thank you.

THE PRESIDENT: The Chair would answer that the Senator from Oxford, Senator Bennett is accurate. The only question before us is passage of the order, not the budget. The Chair recognizes the Senator from Cumberland, Senator Harriman.

Senator **HARRIMAN**: Thank you Mr. President, good morning ladies and gentlemen of the Senate. I appreciate the additional clarification by the president, regarding the question before us, which indeed is not the budget. It is a motion that I am asked to vote on that says the Senate has transacted all business which has come before it and that we are ready to adjourn without day. And it is clear to me that that is not true. The motion before us, that we're being asked to vote on, is not true, particularly in the area of the committee that I have the pleasure of serving on with my friend from Kennebec, Senator Carey, the Utilities and Energy Committee. We're in the midst, as we speak, literally as we speak, of deregulating the entire

electric utility industry in the State of Maine. We have just begun to do our work in that area, and this order suggests that we finished that business. Indeed we haven't. Second, I'm a little concerned that if we adjourn without day and as the order that my friend from Cumberland, Senator Rand said that we had passed an order regarding the carry over of bills, I have no assurance that we are going to be called back. As I understand it, the constitution says there's one of two ways we can be called back in; by a polling of the members, no one has told me, and second, the Chief Executive of the State of Maine could call us back, and I have not been contacted by his office to tell me if he's going to call us back and if so, under what circumstances we will be brought back. Is it to look at all bills, some bills, bills that may be through the Legislative Council? I feel that those are reasonable questions to want to have answers to before going home and telling the people who sent me here that on March 27th the Legislature passed an order saying that it has transacted all business which has come before it and is ready to adjourn without day. Thank you Mr. President.

At this point, a message was received from the House of Representatives, borne by Representative KONTOS of Windham, informing the Senate that the House had transacted all business before it and was ready to Adjourn Without Day.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS**: Thank you Mr. President, men and women of the Senate. There is really only one sense in which we could possibly be set to accomplish any business at all and that is under some guarantee from another branch of government and that we will be called in under article 5, section 13 of the Constitution which gives the Executive power to bring us back if there is an extraordinary occasion. I will look forward to reading the Governor's proclamation to see what the extraordinary occasion will be. I suspect that if the truth was told the extraordinary occasion is that there was a parliamentary disagreement between the parties that was not resolved and he has declared that to be an extraordinary event. Under the Constitution, I rather think that does violence to the intention of those who wrote this document in Portland during the convention that took place in October of 1919, and I think that we are playing in a charade. I think we have a duty, as a separate branch of government, to read and interpret the Constitution in a responsible and dignified way and I think this is the point where this process breaks down.

THE PRESIDENT: The Chair would instruct the members that it is inappropriate to discuss the actions of, or supposed actions of another Body or of the Executive during debate. The only thing to debate are the actions of this Body. The Chair recognizes the Senator from York, Senator Libby.

Senator **LIBBY**: Thank you Mr. President, women and men of the Senate. I rise to discuss an action of this Body and I believe that it relates to this order. It is the advertisement of a public hearing for the Joint Standing Committee on Inland Fisheries and Wildlife for Friday, March 28, 1997, at 9:30 a.m., in room 109 of the State Office Building, and I just wanted to say

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that if this committee were to have a proper public hearing, then that public hearing would be advertised by the legislative body that will hear it, and this is not it. We are in Regular Session and this bill will be heard in Special Session. And furthermore, I am offended that we do not have the discipline to schedule these public hearings on another day besides Good Friday. I am offended. I will be here on Good Friday representing my constituents, under protest. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Ruhlín.

Senator **RUHLIN:** Thank you Mr. President, ladies and gentlemen of the Senate. I do want to respond to the procedures that we are about at this point in time. Yesterday, when we voted to do a carry over bill, procedurally what we did, we said our workload shall disappear. Strictly a procedural motion but that is in fact what happened. That's why, when we come down here as duly elected representatives of the people, we have procedures to follow to ensure that anarchy does not reign. We are following those procedures. And, when that order was voted on to carry over and make our workload disappear, it was done, certainly by this Senator, with full knowledge that I can put the faith and the trust in our government, that I can take the good word of many of our officials, and that we will be called back into a special session, which will then have before it, magically if you will, but still so, and probably so, procedurally so, new, additional workload or continuing workload. What I've heard today for your arguments, are really nothing more than persistent and pervasive obstructionism on the procedures of this Body. And I ask you to seriously reconsider your comments. Thank you very much Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Kieffer.

Senator **KIEFFER:** Thank you Mr. President. I fully agree with you Mr. President. The discussion here is only upon the order that is before us and that order makes no reference to any other orders. It merely refers to the fact that the Senate has transacted all of its business which has come before us to this date. I guess my question I'd like to present through the Chair, Mr. President, is if we have in fact transacted all of our business, why are we coming back?

THE PRESIDENT: The Senator from Aroostook, Senator Kieffer poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Penobscot, Senator Ruhlín.

Senator **RUHLIN:** I would be more than pleased to respond to the good Senator from Aroostook and I will do so through the Chair and would point out through the Chair what we just said, that by procedure, your work goes away when you carry over those bills, over those items of business before you. So, the work is there. I don't know if I can make it any clearer, any plainer than that. Very simply, this order that's now before us recognizes previous actions promptly taken, procedurally done by this Chamber and it says, in fact, because of those actions, our business has been fully transacted, that which is allowable to come before us. So, it is time to go Sine Die. I hope the good

Senator from Aroostook can understand the explanation. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President, men and women of the Senate. This is my fourth term in the Senate and I had the opportunity to go through several Sine Die's in this Body and every single one of those, when we went Sine Die, there was still business on the calendar that had not been completed. Not every bill, not every resolve, not every issue had been fully completed. Now, the amount or the number may vary, but never have I seen us adjourn when there wasn't something that hadn't been completed, something that was tabled unassigned, something that hadn't been completed. It is clearly in the prerogative of this Body to determine when it wishes to adjourn, when it feels the business that it needs to deal with at the time, for the benefit of the people of this state, is sufficiently complete and that's a decision to be made by this Body and this Body alone. I think one of the things to remember is that when you're elected to public office you have a responsibility to govern. You have a responsibility to see that the meetings and the business of people are completed. It's fairly clear that the majority of this Body means to do that. It means to complete the business of providing the necessary funds to operate the government. And to complete that action, includes the necessity of adjourning the business at this point so we can achieve the constitutional requirement of allowing the public 90 days to determine whether they wish to initiate a citizens action to veto the bill. Those are all consistent, I think, with proper governance and the majorities of Bodies that were elected to do that. Hopefully that would be large majorities, but it's all consistent with what we've done in the past and what I think is in good governance. And I fully support the motion to Sine Die.

The Chair noted the presence of Senator Hall of Piscataquis and welcomed him back to the Chamber.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President, may it please the Senate. For the life of me I can't understand why some of you are agitated over this order. I expected it. I expected to, you know, given our track record so far in the session, I expected to read something that says, we transacted all the business that's come before us, even though perhaps, a good argument can be made that we have some suspicions confirmed, on my part. I will dignify this order by describing it for what it really is, monkey business. Thank you Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Cassidy.

Senator **CASSIDY:** Thank you Mr. President, men and women of the Senate. You know, sitting here listening to debate this morning, or this afternoon I guess we're into now, I think that the real problem I have with this is that it does say, transacted all the business that's come before us. I think what we might

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consider maybe is, I don't know whether anyone would be interested in making a tabling motion, so we may have an amendment that says, transacted all the business that the majority wished to complete, but that's just a suggestion, not really a motion.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Ferguson.

Senator **FERGUSON:** I'd like to make an inquiry, if I may.

THE PRESIDENT: The Senator may state his parliamentary inquiry.

Senator **FERGUSON:** I have an opportunity to go to Florida next week, would it be safe for me to do that Mr. President?

THE PRESIDENT: The President would merely state I can't speak for the airlines and I certainly can't speak for what the Governor may do.

Senator **FERGUSON:** Thank you, thank you very much Mr. President. I enjoy your quick wit and I compliment you on it.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Amero.

Senator **AMERO:** Thank you Mr. President, ladies and gentlemen of the Senate. I'd like to pose a question to any Senator who would care to answer.

THE PRESIDENT: The Senator may pose her question.

Senator **AMERO:** Thank you Mr. President. If this first regular term of the 118th Legislature, by majority vote, adjourns Sine Die before the completion of a substantial portion of its legislative business, can the Governor exercise Article 5 powers to convene the legislature in extraordinary circumstances, when in fact the extraordinary circumstance is caused by the premature adjournment and termination of the First Regular Session of the 118th Legislature for the purpose of avoiding the need for a two-thirds vote on the budget?

THE PRESIDENT: The Senator from Cumberland, Senator Amero poses a question to anyone in the Chamber who may wish to answer. The Chair recognizes the Senator from Penobscot, Senator Ruhlin.

Senator **RUHLIN:** Thank you Mr. President. I would respond to the good Senator from Cumberland through the Chair. The answer is yes.

On motion by Senator **HARRIMAN** of Cumberland, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: CAREY, CATHCART, CLEVELAND, DAGGETT, GOLDTHWAIT, JENKINS, KILKELLY, LAFOUNTAIN, LONGLEY, MICHAUD, MURRAY, NUTTING, O'GARA, PARADIS, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CASSIDY, FERGUSON, HALL, HARRIMAN, KIEFFER, LIBBY, MACKINNON, MILLS, MITCHELL, SMALL

EXCUSED: Senator: PENDLETON

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being excused, on motion by Senator **RAND** of Cumberland the Senate Order was **PASSED**.

The Chair appointed the Senator from Cumberland, Senator **RAND** to deliver the message to the House of Representatives. The Sergeant-At-Arms escorted the Senator to the House of Representatives.

On motion by Senator **PINGREE** of Knox, the following Order:

ORDERED, that a message be sent to Governor Angus S. King, Jr., informing him that the Senate has transacted all business which has come before it and is ready to Adjourn Without Day. S.O. 16

Which was **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Harriman.

Senator **HARRIMAN:** Thank you Mr. President. I rise to pose a parliamentary inquiry.

THE PRESIDENT: The Senator may pose his inquiry.

Senator **HARRIMAN:** Thank you Mr. President. This afternoon, as I understand it, there are a number of joint standing committees who are holding public hearings and I would be wondering under what parliamentary rule will they be able to operate today, since we have adjourned Sine Die?

THE PRESIDENT: The Chair would answer that it is not a parliamentary rule if the Senator refers to title 3, section 2 of the statute, it states: Members of a committee, with the approval of the President and the Speaker of the House may also meet on days when the legislature is not in session.

Senator **HARRIMAN:** Thank you Mr. President.

Senator **MILLS** of Somerset was granted unanimous consent to address the Senate off the Record.

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Off Record Remarks

Senator **RAND** of Cumberland was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

Senator **CLEVELAND** of Androscoggin was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

Senator **KILKELLY** of Lincoln was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Butland.

Senator **BUTLAND:** Thank you Mr. President, ladies and gentlemen of the Senate. I hope that you'll be voting against the pending motion, so that we may end this charade once and for all and continue to do the people's business. To state here today that we have concluded our business makes an absolute mockery of the legislative process. A process, that I might add, has worked to the benefit of the people of Maine for over 175 years. I'm truly disappointed that the Governor and the majority party find this time tested process inconvenient for their purposes. I'm also disappointed that they have adopted this extreme course of action. When I've gone over to the other Body, from time to time during this session, I've been amazed at the number of new faces over there and I wonder what they think of this attempt to hijack the legislative process. It must be very disappointing, and yes, disconcerting to them to come here full of idealism and enthusiasm and to have this totally unnecessary baptism by fire, to be participating in a process that is spinning out of control at warp speed. I'm reminded of my early days in the legislature under the tutelage of the former speaker, John Martin. Speaker Martin was known to run a very, very tight ship and you can believe me that there was only one hand on the tiller of that ship and it was his. Many members from both parties chafed under his control and positive reform began to take place in the Body in the early 90's. One of the major complaints by the rank and file, was their lack of involvement in the budget process. In the 117th legislature a tremendous amount of time was invested in the budget process by the committees of jurisdiction. It was indeed a tremendous improvement. Rank and file members were finally invested in the process. Unfortunately, these gains are being sacrificed in the 118th. We have taken, in my opinion, ten steps backwards and we probably won't regain the lost ground for decades. The new paradigm will be, the majority budget's made in haste, fraught with waste. I'd like to take a moment to respond to those people who are saying that

we have to do this. We justify this shut down of the legislature because of the threat of a shut down of state government and I would remind people that no member of the Republican party, either in the 117th legislature or in the 118th legislature, in either Body, has ever advocated for a shut down. In the 117th, the only folks mentioning a shut down were the Democratic leadership and the Governor. We didn't have to worry about a shut down. We passed a budget that had 160 votes, 160 votes gained through the strong leadership of the chairman of the Appropriations Committee, former Senator Hanley and his willingness to compromise. I can still remember the letter that we all received from the Chief Executive of the State on June 16th, 1995, stating that he would veto any budget that came across his desk that had broad based tax relief in it, even if it meant shutting down state government. Now, we're here today shutting down the legislative process to prevent any meaningful tax relief from being considered. The road that we appear to be ready to take is fraught with certain danger and I would hope that you would join me in voting against the pending motion to adjourn the legislature Sine Die.

The Chair noted the absence of the Senator from Cumberland, Senator **RAND** and further excused the same Senator from this Roll Call vote.

On motion by Senator **AMERO** of Cumberland, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: CAREY, CATHCART, CLEVELAND, DAGGETT, GOLDTHWAIT, JENKINS, KILKELLY, LAFOUNTAIN, LONGLEY, MICHAUD, MURRAY, NUTTING, O'GARA, PARADIS, PINGREE, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CASSIDY, FERGUSON, HALL, HARRIMAN, KIEFFER, LIBBY, MACKINNON, MILLS, MITCHELL, SMALL

EXCUSED: Senators: PENDLETON, RAND

18 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 2 Senators being excused, on motion by Senator **PINGREE** of Knox the Senate Order **PASSED.**

The President appointed the Senator from Knox, Senator **PINGREE** to deliver the message to the Governor. The Sergeant-At-Arms escorted the Senator to the Governor's Offices.

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Subsequently, the Senator from Knox, Senator **PINGREE**, reported that she had delivered the message with which she was charged.

Subsequently, the Senator from Cumberland, Senator **RAND**, reported that she had delivered the message with which she was charged.

Senator **CAREY** of Kennebec moved the Senate adjourn **SINE DIE**.

The Chair noted the absence of the Senator from Piscataquis, Senator **HALL**, and further excused the same Senator from today's Roll Call vote.

On motion by Senator **AMERO** of Cumberland, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

Senator **AMERO** of Cumberland was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator **PARADIS**.

Senator **PARADIS:** Mr. President, men and women of the Senate. I am upset. I object strenuously to the Senator referring to a former individual from the St. John Valley, who, before his tenure in the other Body, we, in the St. John Valley, were absolutely abandoned by the people that were here at the time. We went from having cigar smoking in the chambers, booze in drawers and small animals running amuck in the aisles, to having a very disciplined Body that could be respected. So, thank you so much.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: **CAREY, CATHCART, CLEVELAND, DAGGETT, GOLDTHWAIT, JENKINS, KILKELLY, LAFOUNTAIN, LONGLEY, MICHAUD, MURRAY, NUTTING, O'GARA, PARADIS, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

NAYS: Senators: **ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CASSIDY, FERGUSON, HARRIMAN, KIEFFER, LIBBY, MACKINNON, MILLS, MITCHELL, SMALL**

EXCUSED: Senators: **HALL, PENDLETON**

19 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 2 Senators being excused, the motion by Senator **CAREY** of Kennebec to **ADJOURN SINE DIE, PREVAILED**. The Honorable **MARK W. LAWRENCE**, President of the Senate, declared the First Regular Session of the 118th Legislature, **ADJOURNED SINE DIE** at 12:42 in the afternoon.

House Legislative Record
of the
One Hundred and Eighteenth Legislature
of the
State of Maine

Volume I

First Regular Session

December 4, 1996 - March 27, 1997

First Special Session

March 27, 1997 - May 15, 1997

LEGISLATIVE RECORD- HOUSE, March 27, 1997

ONE HUNDRED AND EIGHTEENTH LEGISLATURE
FIRST SPECIAL SESSION
1st Legislative Day
Thursday, March 27, 1997

This being the day designated in the proclamation of the Governor for meeting of the One Hundred and Eighteenth Legislature in extra session, the members of the House of Representatives are to assemble in their hall at 4:00 o'clock in the afternoon and will be called to order by the Speaker.

Prayer by Honorable Randall L. Berry, Livermore.
Pledge of Allegiance.
Doctor of the day, Francis Kleeman, M.D., Kennebunk.

A roll call was taken. 126 out of 151 members answered to their names and accordingly a quorum was found to be present.

STATE OF MAINE
PROCLAMATION
(H.C. 121)

WHEREAS, there exists in the State of Maine an extraordinary occasion arising out of the need to resolve many legislative matters pending at the time of the recess of the First Regular Session of the 118th Legislature of the State of Maine; and

WHEREAS, the public health, safety and welfare requires that the Legislature resolve these pending matters as soon as possible, and in any event prior to the date of the Second Session of the 118th Legislature, including, but not limited to, pending nominations of state board and commission members by the Governor requiring legislative confirmation, and pending bond authorizations for highway, bridge and other transportation related expenditures, pollution control and other public facilities:

NOW THEREFORE, I, **ANGUS S. KING, JR.**, Governor of the State of Maine, by the virtue of the constitutional power vested in me as Governor pursuant to Article V, Part 1, Section 13 of the Constitution of Maine, convene the Legislature of this State, hereby requesting the Senators and Representatives to assemble in their respective chambers at the Capitol in Augusta on Thursday, March 27, 1997 at 4:00 o'clock in the afternoon, in order to receive communications, resolve pending legislation carried over from the First Regular Session of the 118th Legislature and act upon pending nominations.

in testimony whereof,
I have caused the Great Seal of the State to be hereunto affixed GIVEN under my hand at Augusta this twenty-sixth day of March in the Year of our Lord One Thousand Nine Hundred and Ninety Seven.
S/ANGUS S. KING, JR.
Governor

S/Dan A. Gwadosky
Secretary of State

Was read and ordered placed on file.

On Motion of Representative KONTOS of Windham, the following Order: (H.O. 20)

ORDERED, that a Committee of ten be appointed to wait upon His Excellency, the Governor, and inform him that a quorum of the House of Representatives is assembled in the Hall of the House for the consideration of such business as may come before the House.

Was read and passed and the Chair appointed the following Members:

Representative AHEARNE of Madawaska
Representative LEMKE of Westbrook
Representative DUTREMBLE of Biddeford
Representative BAGLEY of Machias
Representative SANBORN of Alton
Representative GIERINGER of Portland
Representative BUMPS of China
Representative FISK of Falmouth
Representative KASPRZAK of Newport
Representative GERRY of Auburn

A message was received from the Senate, borne by Senator PINGREE of that body, announcing a quorum present and that the Senate was ready to transact any business that might properly come before it.

On Motion of Representative SAXL of Portland, the following Order: (H.O. 21)

ORDERED, that a message be conveyed to the Senate that a quorum of the House of Representatives is present for the consideration of such business as may come before the House.

Was read and passed and Representative KONTOS of Windham was appointed to convey the message
Subsequently, the same Representative reported that she had delivered the message with which she was charged.

Subsequently, Representative AHEARNE of Madawaska reported that the Committee had delivered the message with which it was charged.

The following item was taken up out of order by unanimous consent:

SENATE PAPERS

The following Joint Order: (S.P. 561)

ORDERED, the House concurring, that when the House stands Adjourned it does so until Monday, March 31, 1997 at 9:00 o'clock in the morning and when the Senate stands Adjourned it does so until Tuesday, April 1, 1997 at 10:00 o'clock in the morning.

Comes from the Senate, read and passed.

Was read by the Clerk in its entirety and passed in concurrence.

On motion of Representative GAMACHE of Lewiston, the House adjourned at 4:30 p.m., until 9:00 a.m., Monday, March 31, 1997 pursuant to Joint Order (S.P. 561).

Senate Legislative Record
One Hundred and Eighteenth Legislature

State of Maine

Volume 1

First Regular & Special Session
December 6, 1996 to May 19, 1997

Pages 1 - 980

STATE OF MAINE
ONE HUNDRED AND EIGHTEENTH LEGISLATURE
FIRST SPECIAL SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Thursday
March 27, 1997

In compliance with a proclamation of Governor **ANGUS S. KING, JR.**, the Senators convened in the Senate Chamber at four o'clock in the afternoon and were called to order by the President, **MARK W. LAWRENCE** of York.

Prayer by the Honorable Richard J. Carey of Kennebec.

HONORABLE RICHARD J. CAREY: Thank you Mr. President. Mr. President and members of the Senate. I find it a great honor, on the very same day that we closed out the regular session, as the senior Senator, to come back just a few hours later to be the one delivering the opening prayer of the First Special Session of the 118th. Please, let's pray together.

Dear Lord, please help us work closer together in this special session. We do represent the people of this great State but we sometimes forget that in the heat of partisan debate. Both parties must realize that the interest of the state rise above the district or the party issues. Help us find solutions to the problems together, for the benefit of all of our people. And we ask this in Your name. Amen.

Pledge of Allegiance led by Senator Vinton Cassidy of Washington.

The Secretary read the Proclamation.

S.C. 131

STATE OF MAINE
PROCLAMATION

WHEREAS, there exists in the State of Maine an extraordinary occasion arising out of the need to resolve many legislative matters pending at the time of the recess of the First Regular Session of the 118th Legislature of the State of Maine; and

WHEREAS, the public health, safety and welfare requires that the Legislature resolve these pending matters as soon as possible, and in any event prior to the date of the Second Session of the 118th Legislature, including, but not limited to, pending nominations of state board and commission members by the Governor requiring legislative confirmation, and pending bond authorizations for highway, bridge and other transportation related expenditures, pollution control and other public facilities:

NOW THEREFORE, I, **ANGUS S. KING, JR.**, Governor of the State of Maine, by the virtue of the constitutional power vested in me as Governor pursuant to Article V, Part 1, Section 13 of the Constitution of Maine, convene the Legislature of this State, hereby requesting the Senators and Representatives to

assemble in their respective chambers at the Capitol in Augusta on Thursday, March 27, 1997 at 4:00 o'clock in the afternoon, in order to receive communications, resolve pending legislation carried over from the First Regular Session of the 118th Legislature and act upon pending nominations.

In testimony whereof, I have caused the Great Seal of the State to be hereunto affixed GIVEN under my hand at Augusta this twenty-sixth day of March in the Year of our Lord One Thousand Nine Hundred and Ninety Seven.

S/ANGUS S. KING, JR.
Governor

Attest:
S/Dan A. Gwadosky
Secretary of State

Which was READ and ORDERED PLACED ON FILE.

The Chair noted the absence of the Senator from Hancock, Senator **GOLDTHWAIT**, the Senator from Piscataquis, Senator **HALL**, the Senator from York, Senator **MACKINNON** and the Senator from Cumberland, Senator **PENDLETON** and further excused the same Senators from today's Roll Call votes.

The Roll being called, the following Senators answered to their name:

ROLL CALL

Senators: **ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, CATHCART, CLEVELAND, DAGGETT, FERGUSON, HARRIMAN, JENKINS, LAFOUNTAIN, LIBBY, LONGLEY, MICHAUD, MILLS, MURRAY, NUTTING, O'GARA, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE**

ABSENT: Senators: **KIEFFER, KILKELLY, MITCHELL, PARADIS, SMALL**

EXCUSED: Senators: **GOLDTHWAIT, HALL, MACKINNON, PENDLETON**

26 Senators having answered to the Roll, the Chair declared a quorum present.

ORDERS

On motion by Senator **RAND** of Cumberland, the following Senate Order: S.O. 18

ORDERED, that a message be sent to Governor Angus S. King, Jr., informing him that a quorum of Senators is assembled in the Senate Chamber for the consideration of such business as may come before the Senate.

Which was READ and PASSED.

LEGISLATIVE RECORD - SENATE, MARCH 27, 1997

The President appointed the Senator from Cumberland, Senator **RAND**, to deliver the message to the Governor. The Sergeant-At-Arms escorted the Senator to the Governor's Office.

Subsequently, the Senator from Cumberland, Senator **RAND**, reported that she had delivered the message with which she was charged.

On motion by Senator **PINGREE** of Knox, the following Senate Order: S.O. 17

ORDERED, that a message be sent to the House of Representatives informing that Body that a quorum of Senators is present for the consideration of such business as may come before the Senate.

Which was **READ** and **PASSED**.

The Chair appointed the Senator from Knox, Senator **PINGREE**, to deliver the message to the House of Representatives. The Sergeant-At-Arms escorted the Senator to the House of Representatives.

Subsequently, the Senator from Knox, Senator **PINGREE**, reported that she had delivered the message with which she was charged.

Senate at Ease

Senate called to order by the President.

On motion by Senator **PINGREE** of Knox, the following JOINT ORDER: S.P. 561

ORDERED, the House concurring, that when the House stands adjourned it does so until Monday, March 31, 1997 at 9:00 in the morning and when the Senate stands adjourned it does so until Tuesday, April 1, 1997 at 10:00 in the morning.

Which was **READ** and **PASSED**.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

COMMUNICATIONS

The Following Communication: S.C. 132

STATE OF MAINE
ONE HUNDRED AND EIGHTEENTH LEGISLATURE
COMMITTEE ON JUDICIARY

March 27, 1997

The Honorable Mark W. Lawrence
President of the Senate of Maine
118th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 118th Maine Legislature, the Joint Standing Committee on Judiciary has had under consideration the nomination of Honorable Margaret J. Kravchuk of Bangor, for reappointment as a Justice of the Maine Superior Court.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

YEAS: Senators	3 Longley of Waldo, LaFountain of York, Benoit of Franklin
Representatives	9 Thompson of Naples, Watson of Farmingdale, Jabar of Waterville, Mallhot of Lewiston, Powers of Rockport, Plowman of Hampden, Madore of Augusta, Nass of Acton, Waterhouse of Bridgton

NAYS: 0

ABSENT: 1 Rep. Etnier of Harpswell

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Honorable Margaret J. Kravchuk of Bangor, for reappointment as a Justice of the Maine Superior Court be confirmed.

Signed:

S/Susan W. Longley
Senate Chair

S/Richard H. Thompson
House Chair

Which was **READ** and **ORDERED PLACED ON FILE**.

At this point, a message was received from the House of Representatives, borne by Representative **KONTOS** of Windham, informing the Senate that a quorum was present for the consideration of such business as might come before the House.

The President laid before the Senate the following: "Shall the recommendation of the Committee on **JUDICIARY** be overridden?"

In accordance with 3 M.R.S.A., Chapter 6, Section 151 and with Joint Rule 506 of the 118th Legislature, the vote was taken by the Yeas and Nays.

LEGISLATIVE RECORD - SENATE, MARCH 27, 1997

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Mr. President, colleagues of the Senate. I'll be quick. We just had a very meaningful session in the Judiciary Committee and I'd like to share, and it concerns Justice Kravchuk, who's up for reappointment. Basically, we heard quotes from wonderful people, everything from Socrates to Thomas Moore and Senator Muskie. We had a wonderful history lesson and dealt a lot with the importance of treating people courteously and giving them fair hearings, and I would urge you to vote no on this confirmation. In support of Judge Kravchuk, I think that if the Senator from Cumberland would have been there, I think that she would too, agree that Judge Kravchuk best represents the motto that Senator Amero, from Cumberland said when she said the prayer from Margaret Chase Smith last year. It applies very well to the one who we're about to vote for. As Senator Margaret Chase Smith would say, "My credo is that public service must be more than doing a job efficiently and honestly. It must be a complete dedication to the people and to the nation, with full recognition that every human being is entitled to courtesy and consideration. That constructive criticism is not only to be expected but sought. That smears are not only to be expected but fought, and that honor is to be earned, not bought." We're about to vote on someone, who has in every way, courteously, constructively and honorably earned her position and I'm very proud to have her about to be reconfirmed for appointment on the court. Thank you for listening.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President, may I please the Senate. As Senator Longley has just indicated, we had a unanimous committee vote on this particular nomination from the governor. The thing that I like about the situation is that Justice is a woman and is a very good example, according to my two daughters, of the success we see our women achieving in society today and I'm pleased about that. Justice Kravchuk has acquitted herself well, she's earned another term and I was pleased to vote for her. Thank you.

The Chair noted the absence of the Senator from Penobscot, Senator **MITCHELL** and further excused the same Senator from today's Roll Call votes.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: None

NAYS: Senators: **ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, CATHCART, CLEVELAND, DAGGETT, FERGUSON, HARRIMAN, JENKINS, LAFOUNTAIN, LIBBY, LONGLEY, MICHAUD, MILLS, MURRAY, NUTTING, O'GARA,**

PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: **KIEFFER, KILKELLY, PARADIS, SMALL**

EXCUSED: Senators: **GOLDTHWAIT, HALL, MACKINNON, MITCHELL, PENDLETON**

No Senator having voted in the affirmative and 26 Senators having voted in the negative, with 4 Senators being absent and 5 Senators being excused, and none being less than two-thirds of the Membership present, it was the vote of the Senate that the Committee's recommendation be **ACCEPTED** and the nomination of the **Honorable Margaret J. Kravchuk**, for reappointment as a Justice of the Maine Superior Court, was **CONFIRMED**.

The Secretary has so informed the Speaker of the House.

Off Record Remarks

On motion by Senator **PINGREE** of Knox, **ADJOURNED**, pursuant to the Joint Order, until Tuesday, April 1, 1997, at 10:00 in the morning.



The House Calendar

The Advance Journal and Calendar of the House of Representatives

ONE HUNDRED AND TWENTY-SEVENTH MAINE LEGISLATURE

FIRST REGULAR SESSION

64th Legislative Day

Thursday, June 18, 2015

Calling of the House to Order by the Speaker.

Prayer by Honorable Dale J. Crafts, Lisbon.

Pledge of Allegiance.

Reading of the Journal of yesterday.

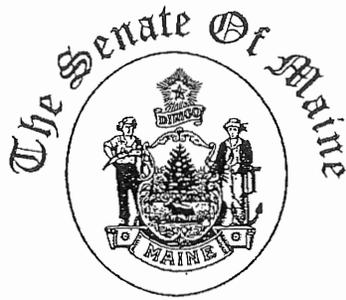
Mark W. Eves, Speaker of the House

Robert B. Hunt, Clerk

<http://www.maine.gov/legis/house/hcalfr.htm>

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EXHIBIT 11



One Hundred and Twenty-Seventh Legislature
First Regular Session

Advance Journal and Calendar

64th Legislative Day

In Senate Chamber, Thursday, June 18, 2015.

Senate called to Order by President Michael D. Thibodeau of Waldo County.

Prayer by the Honorable Nathan L. Libby of Androscoggin.

Pledge of Allegiance led by Senator David E. Dutremble of York County.

Reading of the Journal of Wednesday, June 17, 2015.
