

4. Randall Greenwood is an elected member of the 131st Maine State Legislature, a citizen, taxpayer and registered voter in the State of Maine.

5. Respect Maine is an incorporated non-profit organization comprised of Maine residents, taxpayers, and members of the 131st Maine State Legislature, that advocates for responsible government that respects the rule of law, the supremacy of the constitution, and the People of Maine.

6. Defendant Troy Jackson is the President of the Maine Senate and is sued in his official capacity. As President of the Senate, Defendant Jackson is a presiding officer in the 131st Legislature of Maine.

7. Defendant Rachel Talbot Ross is the Speaker of the Maine House of Representatives and is sued in her official capacity. As Speaker of the House, Defendant Talbot Ross is a presiding officer in the 131st Legislature of Maine.

8. Defendant Janet Mills is the Governor of the State of Maine and is sued in her official capacity.

Jurisdiction and Venue

9. This action arises out of a declaration of rights under the Maine State Constitution.

10. The Superior Court is the court of general jurisdiction in the State of Maine and has jurisdiction to declare Plaintiffs' rights as raised in this Amended Complaint. See 14 M.R.S.A. § 5953.

11. Defendants Jackson, Talbot Ross and Mills conduct their official business in the City of Augusta, County of Kennebec, State of Maine.

12. Plaintiffs Greenwood and Rudnicki conduct their official business as elected Representatives in the City of Augusta, County of Kennebec, State of Maine.

13. Plaintiff Clardy resides within the City of Augusta, County of Kennebec, State of Maine.

14. Plaintiff Tucker resides within the City of Auburn, County of Androscoggin, State of Maine.

15. Kennebec County Superior Court is the appropriate venue for this Complaint.

Statement of Facts

16. The date on which the Maine State Legislature (the “Legislature”) adjourns *sine die* (“without day”) is significant in its signifying the conclusion of a regular legislative session and, thus, its resulting impact on the enactment of non-emergency legislation, including non-emergency legislation pertaining to budget appropriations, under the Maine State Constitution.

17. To pass legislation, the Maine State Constitution states that: “No Act or joint resolution of the Legislature . . . shall take effect until 90 days after the *recess of the session* of the Legislature in which it was passed, unless in case of emergency, which with the facts constituting the emergency shall be expressed in the preamble of the Act, the Legislature shall, by a vote of 2/3 of all the members elected to each House, otherwise direct.” Me. Const. art. IV, pt. 3, § 16 (emphasis added).

18. As interpreted by the Maine Supreme Judicial Court, the term “recess” as specifically used in Article IV, Part 3, Section 16, is “synonymous[] with ‘adjournment *sine die*.’” *In re Op. the Justices of the Supreme Judicial Court Given Under the Provisions of Article IV, Section 3 of the Maine Constitution*, 2015 ME 107 (123 A.3d 494).

19. The Legislature directs its own session limits. The Maine Constitution provides that: “The Legislature shall enact appropriate statutory limits on the length of the first regular session and of the second regular session.” Me. Const. art. IV, pt. 2, § 1.

20. No statutory limits are defined for legislative sessions except for the limits on the First and Second Regular Sessions. See 3-A M.R.S.A. § 2.

21. Pursuant to statute, the first regular session of the Legislature, after its convening, “shall adjourn no later than the 3rd Wednesday in June,” and the second regular session of the Legislature “shall adjourn no later than the 3rd Wednesday in April.” 3-A M.R.S.A. § 2.

22. The same statute permits the Legislature to extend the date for adjournment under specified conditions, with a vote of two-thirds of the members of each House present and voting. See 3-1 M.R.S.A. § 2.

**On March 30, 2023, the Budget Act Passes by Simple Majority
in the First Regular Session of the 131st Maine Legislature**

23. On March 30, 2023, both houses of the 131st Maine Legislature passed “An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2023, June 30, 2024, and June 30, 2025.” L.D. 424 (131st Legis. 2023) (hereafter the “Budget Act”).

24. The Budget Act outlines and directs the appropriation and spending of approximately \$10,000,000,000 of State money.

25. On March 30, 2023, at or around 10:00 p.m., the Maine House voted 76-48 to pass the Budget Act.

26. On March 30, 2023, at or around 10:30 p.m., the Maine Senate voted 22-9 to pass the Budget Act.

27. Because the Budget Act was not passed as with a two-thirds majority in the Maine House, the Budget Act could not become enacted law until 90 days after the Legislature adjourned *sine die*. Me. Const. art. IV, pt. 3, § 16.

28. The State of Maine’s fiscal year 2022-2023 ends on June 30, 2023; fiscal year 2023-2024 begins on July 1, 2023.

29. The Maine State Government faced a potential shutdown if governmental operations were unfunded on July 1, 2023, at the outset of fiscal year 2023-2024.

30. Having voted to enact the Budget Act with a simple majority, the Legislature needed to adjourn *sine die* at least 90 days before July 1, 2023, for the Budget Act to take effect and for fundings to be in place at the beginning of fiscal year 2023-2024.

31. Alternatively, the Legislature could have voted to pass a bipartisan appropriations bill with the two-thirds majority required for emergency legislation, which would take effect immediately upon the governor’s signing the passed legislation into law. See Me. Const. art. IV, pt. 3, § 16; see also Me. Const. art. IV, pt. 3, § 2.

32. The majority party in the Legislature made a deliberate choice that allowed them to avoid engaging in bipartisan negotiations to obtain a two-thirds majority in passing an appropriations bill within 90 days of July 1, 2023.

**Prior to Passing the Budget Act, the Legislature Does Not Consent
to Reconvene on April 5, 2023**

33. Also on March 30, 2023, at or around 10:00 p.m., Defendant Talbot Ross called for a division of the House to “poll members to reconvene for the First Special Session to be held on Wednesday, April 5, 2023.”

34. The Maine State Constitution provides that, “The Legislature may convene at such other times on the call of the President of the Senate and Speaker of the House, with the consent of a majority of the Members of the Legislature of each political party, all Members of the Legislature having been first polled.” Me. Const. art. IV, pt. 3, § 1.

35. At this time, prior to formal adjournment, the next meeting of the House during

the First Regular Session was already scheduled for April 5, 2023.

36. Defendant Talbot Ross paused the proceedings on the Budget Act to poll the members of the House, asking for their consent to reconvene for a “special session” on the same day they would be meeting if they chose not to adjourn *sine die*.

37. At approximately 10:50 p.m., Defendant Jackson announced the results of the poll: 95 out of 103 members of one party consented to reconvene. No member of the other party consented to reconvene.

38. Because the majority of only one party consented to reconvene on the date proposed by Defendant Talbot Ross, the Defendants Jackson and Talbot Ross lacked consent to call the Legislature to reconvene on their own authority as presiding officers of the Legislature. Me. Const. art. IV, pt. 3, § 1.

**Prior to Adjourning on March 30, 2023, the Legislature Votes to Carry Over
Unfinished Legislative Business into the Next Session**

39. It is routine for the Legislature to adjourn their first regular session with unfinished business.

40. The Maine State Constitution calls for each Legislature to “convene on the first Wednesday after the first Tuesday of January in the subsequent even-numbered year in what shall be designated the second regular session of the Legislature; provided, however, that the business of the second regular session of the Legislature shall be limited to budgetary matters; legislation in the Governor’s call; legislation of an emergency nature admitted by the Legislature; legislation referred to committees for study and report by the Legislature in the first regular session; and legislation presented to the Legislature by written petition of the electors under the provisions of Article IV, Part Third, Section 18.” Me. Const. art. IV, pt. 3, § 1.

41. On March 30, 2023, both houses of the 131st Maine Legislature jointly ordered

that “all matters not finally disposed of at the time of adjournment of the First Regular Session of the 131st Legislature in the possession of the Legislature, including working papers and drafts in the possession of nonpartisan staff offices, gubernatorial nominations and all determinations of the Legislative Council regarding after-deadline bill requests and policies, be held over to a subsequent special or regular session of the 131st Legislature in the posture in which they were at the time of adjournment of the First Regular Session of the 131st Legislature.” S.P. 594 (131st Legis. 2023).

42. The Senate voted to pass S.P. 594 as a joint order. Soon thereafter, the House of Representatives passed S.P. 594 in concurrence with the Senate, permitting the Legislature to adjourn *sine die* with unfinished business carrying over to a “subsequent special or regular session.”

The Legislature Adjourns *Sine Die*

43. On March 30, 2023, after passing the Budget Act in both houses, the Maine Senate passed a motion to adjourn *sine die*. Soon thereafter, the Maine House of Representatives passed a motion to adjourn *sine die*.

44. At approximately 11:00 p.m. on March 30, 2023, Rep. Nathan Carlow, a member of the Maine House of Representatives, made a parliamentary inquiry in anticipation of the motion to adjourn *sine die*, noting that “Mason’s Manual of Legislative Procedure, states ‘A legislative body cannot make a rule that evades or avoids the effect of a rule prescribed by the Constitution governing it. It cannot do indirectly what it cannot do directly.’ Could the Speaker please provide information to the House how this statute does not violate this provision?”

45. In response to the inquiry, Defendant Talbot Ross responded, “The House is within its bounds to adjourn as it sees fit. Without day. Adjourned without day as it sees fit.”

46. On March 30, 2023, the First Regular Session of the 131st Legislature was officially adjourned *sine die*.

Governor Mills Issues a Proclamation Ordering the Legislature to Convene to Finish All Outstanding Business

47. A day later, on March 31, 2023, Defendant Mills signed the Budget Act, making it Public Law 17, to become effective 90 days after the Legislature’s prior adjournment *sine die*.

48. On the same day, Governor Mills issued a proclamation declaring that, “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 adjournment of the First Regular Session of the 131st Legislature of the State of Maine. . . .” See **Exhibit A** (Proclamation of Governor Janet T. Mills Convening the Members of the 131st Legislature in Special Session Dated March 31, 2023) (hereafter the “Proclamation”).

49. In so convening the Legislature, Defendant Mills references the “constitutional power vested” in her office pursuant to Article V, Part I, Section 13 of the Constitution of the State of Maine. Exhibit A.

50. Article V, Part I, Section 13 of the Constitution of the State of Maine provides that the Governor “may, on extraordinary occasions, convene the Legislature . . . not beyond the day of the next regular session.”

51. Predicated on that “extraordinary occasion,” Defendant Mills’ Proclamation called for the Legislature to convene for a special session and to assemble “in their respective chambers” on April 5, 2023, the same day that they had been scheduled to meet prior to their official adjournment, “in order to receive communications, resolve pending legislation carried over from the First Regular Session of the 131st Legislature and act upon pending nominations

and whatever other business may come before the legislature.” Exhibit A.

52. Defendant Mills’ Proclamation effectively orders the Legislature to address both old and new/yet-unannounced legislative business that did not exist prior to the Legislature adjourning the session *sine die* on March 30, 2023. Exhibit A.

53. Defendant Mills’ Proclamation plainly disregards the Legislature’s authority to adjourn *sine die* “as it sees fit.”

54. The Governor has constitutional power under Article V, Section 8 of the Constitution of the State of Maine to call the Senate into session for the specific purpose of voting upon confirmation of appointments, so there is no need to assemble the entire Legislature for that stated purpose.

55. Upon information and belief, some members of the Maine Legislature, including Defendants Talbot Ross and Jackson, anticipated and/or expected Defendant Mills to issue the Proclamation, providing the Defendants pretense to reconvene and resume other legislative business despite failing to obtain appropriate consent from members of the Legislature.

56. Defendant Mills’ Proclamation was also foreshadowed—two years to the day—by previous official statements made by the governor in 2021, in which she threatened to call back the Legislature after the 2021 biennial budget was passed with a narrow majority vote before adjourning *sine die*—though in that case, the Legislature established a consensus vote to reconvene without her ordering a special session. See **Exhibit B** (Governor Mills Statement on Legislature’s Passage of Biennial Budget Dated March 30, 2021) (stating “[I]f the Legislature does not call themselves back into session, I will call them back on April 28, 2021.”).

Defendant Mills’ Proclamation Contradicts Her Own Interpretation of the Constitution

57. As Maine State Attorney General in 2015, Defendant Mills wrote an official letter

to State Senator Dawn Hill and State Senator Thomas Saviello, evaluating the legal status of several bills presented to then-Governor Paul LePage which were neither signed nor vetoed (hereafter the “Attorney General Letter”).

58. The Attorney General Letter analyzed the status of bills that were passed when the Legislature had, critically, not formally adjourned *sine die*, and which the then-governor had not formally vetoed. See **Exhibit C** (Letter from Attorney General Janet Mills to State Senators Dated July 10, 2015).

59. In the Attorney General Letter, Defendant Mills wrote: “The determination of the length of the session is uniquely a legislative one, and for another branch of government to reinterpret the decision of the Legislature might well violate the provisions of Article III, Section 2 of the Maine Constitution. (‘No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.’ Cf. *State v. Hunter*, 447 A.2d 797 (1982)).” See Exhibit C, p. 2.

60. Attorney General Letter also states: “It is exclusively the Legislature that decides when it adjourns, not another branch of government” See Exhibit C, p. 2.

61. Defendant Mills also wrote in the Attorney General Letter: “[W]hen the Legislature adjourns its session *sine die*, it does so deliberately, with a degree of formality befitting the occasion, each house sending a committee notifying the other body and sending a committee to officially notify the governor that they are ready for final adjournment so that [s]he may confirm that there is no further business for them to address.” Exhibit C, p. 2-3.

62. In issuing her Proclamation, which compels the Legislature to convene based on the “extraordinary occasion” of the Legislature intentionally and deliberately adjourning *sine die*

on March 30, 2023, Defendant Mills flouted her published interpretation of the Maine State Constitution's separation of powers doctrine as to the Legislature's right to adjourn *sine die* as it sees fit.

**The Legislature Reconvenes as Ordered by the Governor
and Resumes Passing Legislation**

63. Despite lacking the constitutionally-required consent of the members of the 131st Maine State Legislature, Defendants Talbot Ross and Jackson reconvened the Legislature pursuant to Defendant Mills' Proclamation.

64. At the time of filing this amended complaint, the Maine House of Representatives and the Maine Senate have met eight times between April 5, 2023, and April 25, 2023, and in these meetings the houses have voted on numerous legislative items which had not been finally disposed of at the time of the March 30, 2023, adjournment *sine die*.

65. Members of the Legislature who refused to consent to reconvening would, if they refused to attend the "special" legislative session, permit the majority party to pass legislation without any objection whatsoever, and thereby have a personal stake in being compelled to the Legislature due to Defendant Mills' Proclamation and Defendants Talbot Ross and Jackson acquiescing to the Proclamation.

66. The Legislature has, during this "special" session, passed laws that do or will impact Maine State expenditures, permitting rights, governmental services, aid programs, and other laws impacting taxpayer interests.

67. Moreover, based on news reports and statements by legislators, the majority in the Legislature intends to use the "special" session to further authorize hundreds of millions of dollars in additional State spending and to continue passing non-emergency legislation.

68. Upon information and belief, some or all of the additional spending will result in

increased taxation, and that some of the legislation will mandate the imposition of costs on the people of Maine in the form of fee increases, targeted tax increases, unfunded mandates imposed on municipal and county governments, and subsidy programs funded by fees imposed on electricity ratepayers.

69. There exists direct and ongoing harm to Plaintiffs by permitting an unconstitutional “special” session of the 131st Legislature to persist after the Legislature adjourned *sine die* and did not consent to reconvene.

COUNT I

Request for Declaratory Judgement and Injunctive Relief

(Prohibiting Further Legislative Convening Pursuant to Gubernatorial Proclamation and Nullifying Defendant Mills’ Proclamation)

70. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

71. There exists an actual controversy between Plaintiffs and Defendants involving the constitutionality of Defendant Mills’ Proclamation and the subsequent legislative activity occurring pursuant to the Proclamation.

72. Article III, Section 1 of the Maine State Constitution provides that “The powers of this government shall be divided into 3 distinct departments, the legislative, executive and judicial.”

73. Article III, Section 2 of the Maine Constitution further provides that “No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.”

74. The Legislature “shall enact appropriate statutory limits on the length of the first regular session and of the second regular session,” Me. Const. art. IV, pt. 2, § 1; and the

Legislature has done so by enacting 3-A M.R.S.A. § 2.

75. The Legislature has further exclusive and absolute authority to adjourn *sine die* with unfinished legislative business, as it sees fit.

76. The Governor does not have the constitutional power to reconvene the Legislature and compel legislative action simply because there is unfinished legislative business after the Legislature adjourns *sine die*.

77. The Governor has contrived an “extraordinary occasion” where the Legislature, intentionally and deliberately, adjourned *sine die* after continuing its business pertaining to matters of interest to the executive branch, such as “pending nominations of state board and commission members” or “pending nominations of judicial officers by the Governor requiring legislative confirmation.”

78. The Governor need not compel the entire Legislature to convene to confirm gubernatorial nominations, there being separate constitutional provisions permitting her to convene the State Senate for such a specific purpose, and the mere existence of unfinished legislative business is not an “extraordinary occasion.”

79. Defendant Mills’ Proclamation violates the Legislature’s right to control its regular legislative sessions and violates the separation of powers by convening the Legislature indefinitely until such time that its old and new business is complete.

80. Plaintiffs suffer ongoing harm by being compelled to legislate to Defendant Mills’ satisfaction and by being subject to laws passed in an unconstitutional legislative session.

COUNT II

Request for Declaratory and Injunctive Judgement

(Prohibiting Further Legislative Activity and Nullifying Legislation Passed by the 131st Legislature Since Adjournment *Sine Die*)

81. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

82. There exists an actual controversy between Plaintiffs and Defendants involving the constitutionality of the Legislature's resumption of legislative action following the adjournment *sine die* on the First Regular Session of 131st Maine State Legislature.

83. The Legislature is bound by the Maine State Constitution, which is the supreme law of State (limited only by the Federal Constitution).

84. Defendants Talbot Ross and Jackson are similarly bound to obtain the consent of the members of the Legislature to reconvene the Legislature following *sine die* adjournment. Me. Const. Art. IV, pt. 3, § 1.

85. Upon information and belief, and based upon statements previously made by Defendant Mills when the majority party passed a partisan appropriations bill in 2021, leadership in the Maine House of Representatives and the Maine Senate ignored the consequences of adjourning *sine die* by anticipating that Defendant Mills would compel the Legislature to reconvene, regardless of the legitimacy of the gubernatorial order.

86. Defendants' collective actions undermine a faithful application of the checks-and-balances system created by the constitutional separation of powers, and undermine the constitutionally-created incentive to pass appropriations bills with broad legislative support.

87. Moreover, regardless of the constitutionality of Defendant Mills' Proclamation, the actions of Defendants Talbot Ross and Jackson are unconstitutional unto themselves by

ceding legislative power to the executive contrary to the Maine State Constitution.

88. The Legislature, when not lawfully convened, does not have the ability to form a quorum when there is no consented-to session, and therefore lacks the power to conduct its business assembled as a body outside of a lawfully convened session.

89. Laws enacted during an unconstitutional session of the Legislature inherit that unconstitutionality, rendering those laws void *ab initio*. Therefore, continuing to conduct Legislative business as if in session while the legitimacy of that session is being reviewed judicially risks great harm by continuing to enact laws which are at immediate risk of being invalidated.

90. Plaintiffs suffer ongoing harm by being compelled to legislate during an unconsented to “special” session and by being subject to laws passed in an unconstitutional legislative session.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- (A) Adjudication of this Amended Complaint be placed on an expedited schedule;
- (B) A temporary injunction barring Defendants Jackson and Talbot Ross from calling their respective chambers pursuant to Defendant Mills’ Proclamation while that Proclamation is subject to judicial review;
- (C) A declarative judgement that the Defendant Mills’ Proclamation is unconstitutional, as intrusion on the Legislature’s power to determine the length of its legislative session and to adjourn *sine die* with unfinished legislative business;
- (D) A declarative judgement that S.P. 594 remains in effect until the next lawful regular session of the 131st Legislature, and that all matters not finally disposed of at the time of

adjournment *sine die* of the First Regular Session of the 131st Legislature are to remain held over in the posture in which they were at the time of adjournment until the Legislature reconvenes in a manner consistent with the Maine State Constitution;

- (E) Compensation for reasonable costs incurred in the course of this litigation.
- (F) Any such further and other relief as the Court deems fit and proper.

DATED: April 27, 2023



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EXHIBIT A



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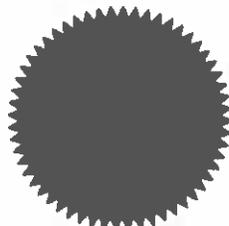
Proclamation of Governor Janet T. Mills Convening the Members of the 131st Legislature in Special Session

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 adjournment of the First Regular Session of the 131st 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 Regular Session of the 131 st Legislature of the State of Maine, including but not limited to the state budget, pending legislation, pending nominations of state board and commission members, and pending nominations of judicial officers by the Governor requiring legislative confirmation;

NOW, THEREFORE, I, JANET T. MILLS, Governor of the State of Maine, by virtue of the constitutional power vested in me as Governor pursuant to Article V, Part I, Section 13 of the Constitution of the State of Maine, do convene the Legislature of this State, and hereby request the Representatives to assemble at ten o'clock and the Senators to assemble at ten o'clock in the morning in their respective chambers at the Capitol in Augusta on Wednesday, April 5, 2023, in order to receive communications, resolve pending legislation carried over from the First Regular Session of the 131st Legislature and act upon pending nominations and whatever other business may come before the legislature.

In testimony whereof, I have caused the Great Seal of the State to be hereunto affixed GIVEN under my hand at Augusta and dated this thirty first day of March Two Thousand Twenty-Three.





Shenna Bellows
Secretary of State
TRUE ATTESTED COPY



Janet T. Mills
Governor

Credit



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EXHIBIT B



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Governor Mills Statement on Legislature's Passage of Biennial Budget

March 30, 2021

Governor Janet Mills released the following statement on the State Legislature's passage of a current services biennial budget:

"I believe this budget – which maintains current services and invests in public education and property tax relief without any added bells or whistles – was deserving of strong bipartisan support. While I am disappointed our Republican colleagues did not support it, passing and enacting this budget now provides much-needed stability and ensures continuity of services during this ongoing pandemic. I will sign it when it reaches my desk.

"This will not be the end of budget discussions for this biennium. There is much more work to be done. In the coming weeks, the non-partisan Revenue Forecasting Committee will meet to provide an updated projection of Maine's revenues, and my Administration is expecting to receive guidance from the Federal government about the allowable uses of Federal funding under the American Rescue Plan Act.

"With this information in hand, my Administration will propose a supplemental budget – effectively part two of the biennial budget – for the Legislature's consideration. Republicans, Democrats, and Independents alike will have ample opportunity to consider the most recent revenue projections and the impact of unallocated Federal funds and adjust the State's biennial budget accordingly. I hope, and fully expect, this important work can and will proceed in a bipartisan manner. To that end, if the Legislature does not call themselves back into session, I will call them back on April 28, 2021."

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EXHIBIT C

JANET T. MILLS
ATTORNEY GENERAL



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TTY USERS CALL MAINE RELAY 711

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July 10, 2015

The Honorable Dawn Hill
The Honorable Thomas Saviello
Maine State Senate
3 State House Station
Augusta, ME 04333-0003

Dear Senator Hill and Senator Saviello:

You have inquired about the status of bills that were presented to the Governor but which he has neither signed nor vetoed. The Legislature has not adjourned *sine die*, and more than ten days have elapsed since certain bills were presented to the Governor.

Article IV, Part 3, Section 2, of the Maine Constitution states:

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. (Emphasis added).

The most recent act of the Legislature was to pass a joint order reciting "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." Joint Order S.P. 556, June 30, 2015 (copy attached). This joint order was a day to day adjournment, and not a final adjournment *sine die* of the first regular session of the Legislature, which would start the 90-day period for non-emergency bills to become effective under Article IV, Part Third, Section 16, allowing time for a people's veto effort under Article IV, Part Third, Section 17 ("recess of the Legislature" in these sections means "the adjournment without day of a session of the Legislature." *Opinion of the Justices*, 116 Me. 557, 587, 103 A. 761, 774 (1917); Article IV, Part Third, Section 20).¹

¹ Although literally "sine die" means simply "without day," in custom, practice and constitutional and historical context, of course, adjournment "sine die" has much greater significance than merely not scheduling a specific day to come back into session.

The adjournment order of June 30, 2015, has not prevented the Governor from returning the bills with his objections. To the contrary, the Legislature specifically envisioned receiving veto messages and made it clear in the joint order that they were prepared to deal with them in timely fashion, and possibly even line item vetoes requiring more immediate attention, allotting the full ten days authorized in the Constitution.

The Maine Constitution delegates to the Legislature the authority to “enact appropriate statutory limits on the length” of the first and second regular sessions. Article IV, Part Third, Section 1. The Legislature has done so by enacting Title 3 M.R.S. sec. 2. The determination of the length of the session is uniquely a legislative one, and for another branch of government to reinterpret the decision of the Legislature might well violate the provisions of Article III, Section 2 of the Maine Constitution. (“No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.” Cf. State v. Hunter, 447 A.2d 797 (1982)).

It is exclusively the Legislature that decides when it adjourns, not another branch of government, and there is no requirement that the Legislature set a specific date for the next meeting when it finishes its business of the day. Conversely, the failure to set a specific date for reconvening does not become an adjournment *sine die* by default.

In this instance, the Legislature invoked its constitutional authority and complied with the procedure in Title 3 M.R.S. sec. 2 by twice voting to extend the date of final adjournment by five legislative days each. See, Senate RC #288; House RC #296; HP 991, Joint Order Extending the First Regular Session of the 127th Legislature for Five Legislative Days; and remarks of Rep. Fredette, June 24, 2015. The second five-day period has not expired, nor has the Legislature used the extra day authorized by the same statute for “considering possible objections of the Governor to any bill or resolution presented to him by the Legislature under the Constitution, Article IV, Part Third, Section 2.” The first regular session of the 127th Legislature has not concluded and the Legislature specifically extended the time for final adjournment in order to review any additional line item vetoes, giving the Governor the time allotted to him under Article IV, Part 3, Section 2-A, and to consider any vetoes under Section 2, giving the Governor the full ten days to review enacted legislation.

The term “adjournment” must be read in the context of the constitutional passage in which it appears. The phrase “unless the Legislature by their adjournment prevent its return” means final adjournment or adjournment *sine die*, because a day to day adjournment does not prevent the return of bills, as the presiding officers may call the Legislature back to work at any time. In recent decades the Legislature has regularly adjourned until the call of the presiding officers for the purpose of acting on veto messages from the governor. See, e.g., Leg.Rec.-H-1361, June 1, 1997, Orders; Leg.Rec.-H-2699, April 28, 2000; Leg.Rec. H-1589, May 17, 2012. Bills that were vetoed and overridden became effective 90 days after adjournment *sine die*—at the same time as bills that were not vetoed—not 90 days after the day to day adjournments of the Legislature.

There is no ‘default’ provision whereby the end of a legislative day becomes a final adjournment simply because the Legislature has not said otherwise or has not set a specific date for the next meeting. To the contrary, when the Legislature adjourns its session *sine die*, it does

so deliberately, with a degree of formality befitting the occasion, each house sending a committee notifying the other body and sending a committee to officially notify the governor that they are ready for final adjournment so that he may confirm that there is no further business for them to address. (Historically, this practice goes back at least as far as 1850; see, e.g. House Jour. 1850, <http://ldc.mainelegislature.org/Open/LegJrnl/HJ1850.pdf>, pp. 521, 525 (copy attached); Senate Rec., p.453 March 27, 1897). The event is significant, the action intentional and formal because it starts the clock ticking for nonemergency legislation to become law in ninety days and it notifies citizens that they may then commence a people's veto effort under Article IV, Part 3, Section 17. It also signifies that any unfinished business on the calendar automatically expires,² that the Legislature does not anticipate any additional meetings and that it may not reconvene except by the special and somewhat cumbersome procedures of Section 1 of Article IV, Part 3.³ No such formal adjournment *sine die* occurred in the Maine Legislature on June 30, 2015.⁴

Common sense says that the term "adjournment" in Section 2, as amended in 1973, must be read to be consistent with the term "recess" in Section 16, enacted in 1909; otherwise, different ninety day periods would be invoked for many different bills. In any case, neither a recess per Section 16, nor an adjournment per Section 2 has occurred for the first regular session of the 127th Legislature.

Notably, the same provision of the Constitution that authorizes the Governor to veto, or "return" a bill with his objections, in calculating the ten-day period excepts Sundays and Saturdays only. The provision therefore envisions that the Governor could return bills with his objections—or vetoes—on Saturdays and holidays when the Legislature does not meet, still within that session of the legislature and before adjournment *sine die*. Thus the Legislature need not actually be meeting in order for the Governor to return a bill with his objections to the house in which it originated.

This reading is consistent with the term "adjournment" as it is used generally and in other sections of the Constitution when it refers to final adjournment of the legislative *session*, not simply a day to day adjournment of that particular legislative day. See, e.g., Tinkle, The Maine Constitution, p.79 ("if a final adjournment of the legislature intervenes during the period that the governor has to consider a bill, then he may pocket-veto it..."). See also, Mason's Manual of Legislative Procedure, 2010, p.295, Sec. 445 Motion to Adjourn Sine Die: "1. When a state legislature is duly convened, it cannot be adjourned sine die nor be dissolved except in the regular legal manner, and an adjournment from day to day cannot have that effect."⁵

² Mason's Manual of Legislative Procedure, 2010, Sec.445.3: "A motion to adjourn sine die has the effect of ...terminating all unfinished business...and all legislation pending upon adjournment *sine die* expires with the session."

³ "The Legislature may convene at such other times on the call of the President of the Senate and Speaker of the House, with the consent of a majority of the Members of the Legislature of each political party, all Members of the Legislature having been first polled."

⁴ This situation therefore is distinguishable from the facts addressed in the Opinion of the Justices, 437 A.2d 597 (1981), the Opinion of the Justices, 484 A.2d 999 (1984) and the 2003 and 2005 controversies during the Baldacci administration; in each of those cases, the Legislature expressly and distinctly adjourned *sine die*.

⁵ "Adjournment" as used in constitutional provisions "is generally held to relate to final adjournment rather than temporary adjournment or recess. Thus, a return of a bill after a temporary recess does not prevent the bill from becoming law." Singer & Singer, Sutherland Statutory Construction, §16.4, p. 740.

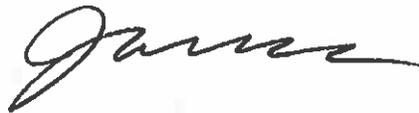
This reading is also consistent with the view adopted by the majority of jurisdictions which have construed similar state constitutional provisions and with interpretations of the comparable provision of the U.S. Constitution. See, e.g., NLRB v. Noel Canning et al., 573 U.S. _____, 134 S.Ct. 2550, 2574-76 (2014); Wright v. United States, 302 U.S. 583 (1938); State, ex rel. Gilmore v. Brown, 6 Ohio St. 3d 39, 40, 451 N.E.2d 235 (1983) (only adjournment *sine die* prevents delivery of Governor's veto message under Ohio Constitution); 1 Singer & Singer, Sutherland Statutory Construction § 16.4 (7thed). Finally, it is consistent with the historical practice of every legislature and every governor, including the present Governor, in recent memory, and it is consistent with the determination of the effective dates of enacted legislation under the Maine Constitution.

The Constitution requires that the Governor "return" a bill "with objections to the House in which it shall have originated" within ten days for the legislature's consideration of his veto. This provision clearly envisions a physical delivery of the bill with a veto message to the legislative branch within the ten day time frame.

Bills that have not been returned to the Legislature with the objections of the Governor within ten days of being presented to the Governor, excluding Sundays, have now become finally enacted in accordance with Article IV, Part 3, Section 2. Those that are emergency bills are in full force and effect.

I trust this answers your inquiry.

Yours very truly,



Janet T. Mills
Attorney General

JTM/elf

cc: President Michael Thibodeau
Sen. Garrett Mason
Sen. Andrea Cushing
Sen. Justin Alford
Speaker Mark Eves
Rep. Jeff McCabe
Rep. Sara Gideon
Rep. Kenneth Fredette
Rep. Ellie Espling
Heather Priest, Secretary of the Senate
Rob Hunt, Clerk of the House
Grant Pennoyer, Executive Director of the Legislative Counsel
Paul R. LePage, Governor

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

Tuesday, June 30, 2015

SUPPLEMENT NO. 31

ORDERS

Joint Order

(4-1) On motion by Senator MASON of Androscoggin, the following Joint Order:
S.P. 556

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.

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Chapman, Danforth, Demott, Quinn, Garland,
Guthrie, Gilman, M. A. Gordon, Haines,
Kathron, Hayden, Hayes, Holbrook, Holmes,
Hornard, Hutton, Jordan, Leighton, Lord,
Littlefield, McAntyre, Mitchell, Percival,
Purdham, W. P. Sumner, Putnam, Rogers,
Sewall, Simons, Stanley, Johnson,
Waterhouse, W. Wood, Whittier, Withers,
Young.

Keys

Alexander, Ames, Arnold, Carrisbell,
J. Chase, Cochran, Cox, Cushingham,
M. J. Davis, Dudley, Gordon, Hall, Hancock,
Higgins, Holway, Hopkins, King, Snowdon,
Lane, Manow, Milliken, J. Mitchell, Merrill,
Necross, Pavy, W. Sumner, Quinn,
Quint, Reed, Sargent, W. Smith, Shafter,
Tucker, Walker, J. Wood, Higgins, Wells,
York.

The House joined Messrs Sewall,
W. Smith, Franklin, Appleton, Merrill to
the Committee to wait on the Governor, and
inform him that the two Houses have
acted on all business before them, and
are now ready to adjourn.

The Committee subsequently reported
that the Governor had no further com-
munications to make, except to com-
municate the title of a resolution they
have signed.

Mr. Appleton of Bangor (the Speaker
having left the Chair on account of
indisposition) rose and said—

Mr. Sewall of Oldtown was charged with a message to the Senate informing that body that the House had acted upon all business before it and is now ready to adjourn without day.

A similar message was received from the Senate,

On motion of Mr. Sewall of Oldtown the House then adjourned without day.

E. W. Hays. Clerk