

# MAINE STATE LEGISLATURE

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**LEGISLATIVE COUNCIL**  
**Thursday, May 16**  
**9:00 a.m.**  
**Legislative Council Chamber**

**AGENDA**

**CALL TO ORDER**

**ROLL CALL**

**SECRETARY'S REPORT**

Summary of May 7, 1991, Council Meeting

**EXECUTIVE DIRECTOR'S REPORT**

**REPORTS FROM COUNCIL COMMITTEES**

**OLD BUSINESS**

Item #1: Request from the Attorney General for Payment of  
Attorney's Fees and Expenses incurred in Auburn Police  
Union, et al. v. James E. Tierney, Civil 90-0042-P.  
(Tabled at May 7 meeting).

**NEW BUSINESS**

Item 1: Requests to Carry Over Legislation to the Second  
Regular Session.

Item #2: After Deadline Requests.

**ANNOUNCEMENTS AND REMARKS**

**ADJOURNMENT**

SEN. CHARLES P. PRAY  
CHAIR

REP. DAN A. GWADOWSKY  
VICE-CHAIR



STATE OF MAINE

115th LEGISLATURE

LEGISLATIVE COUNCIL

SEN. NANCY RANDALL CLARK  
SEN. DENNIS L. DUTREMBLE  
SEN. CHARLES M. WEBSTER  
SEN. PAMELA L. CAHILL  
REP. JOHN L. MARTIN  
REP. JOSEPH W. MAYO  
REP. WALTER E. WHITCOMB  
REP. FRANCIS C. MARSANO

SARAH C. TUBBESING  
EXECUTIVE DIRECTOR

## LEGISLATIVE COUNCIL

**Tuesday, May 7, 1991**

### MEETING SUMMARY

**APPROVED MAY 16, 1991**

### CALL TO ORDER

The Legislative Council meeting was called to order by the Chair, Senator Pray, at 9:15 a.m. in the Legislative Council Chamber.

### ROLL CALL

Senators: Sen. Pray, Sen. Clark, Sen. Webster,  
Sen. Cahill  
Absent: Sen. Dutremble

Representatives: Rep. Martin, Rep. Gwadosky, Rep.  
Whitcomb, Rep. Mayo, Rep. Marsano

Legislative Officers: Sally Tubbessing, Executive Director,  
Legislative Council  
Lynn Randall, State Law Librarian  
John Wakefield, Director, Office of  
Fiscal and Program Review  
Martha Freeman, Director, Office of  
Policy and Legal Analysis  
David Kennedy, Revisor of Statutes  
Joy O'Brien, Secretary of the Senate

### SECRETARY'S REPORT

The Summary of the May 1, 1991, Council meeting was approved and placed on file. (Motion by Rep. Mayo; second by Sen. Cahill; unanimous).

## EXECUTIVE DIRECTOR'S REPORT

None.

## REPORTS FROM COUNCIL COMMITTEES

None.

## OLD BUSINESS

None.

## NEW BUSINESS

Item #1: Request from the Attorney General for Payment of Attorney's Fees and Expenses incurred in Auburn Police Union, et al. v. James E. Tierney, Civil 90-0042-P

The Chair reported that the District Court had recently ruled against the State and that the court had subsequently directed the State as defendant to pay fees and related expenses incurred by the plaintiff, Auburn Police Union, in the amount of \$37,981.79. Ms. Tubbesing added that Frank Wood had delivered the request from the Attorney General, noting that it was standard practice to send the bill to the state agency who was the defendant.

In discussion, Council members questioned why the Legislature should bear the sole responsibility for a law subsequently found to be unconstitutional and concluded that they needed further information before they could act on the request, including the legislative history of the law that the court had declared unconstitutional in this case and a copy of the opinion itself.

**Motion:** That the item be tabled pending the receipt of further information. (Motion by Sen. Cahill; second by Rep. Marsano; unanimous).

Item #2: Requests to Carry Over Legislation to the Second Regular Session.

The Chair prefaced the Council's review of requests to carry bills over to the Second Regular Session with a brief review of the procedures that past Councils have

employed for this review. In the ensuing discussion of the procedures, Council members raised the following questions and points:

1. Why carryover requests were being considered at this point. (Rep. Whitcomb).

Sen. Pray responded that the Council's timing was to give Committees time to complete work on bills that were not approved for carryover within the established deadlines.

2. The Council should encourage Committees to request carryovers because January, when other bills are still being drafted, is a better time for Committees to deal with complex issues than this point in the session. (Rep. Marsano).

Sen. Pray noted that, while he did not disagree with Rep. Marsano, it was the Council's responsibility to balance the desire to carry bills over with the need to manage the total workload of the Second Regular Session.

3. Whether Committee Chairs had been formally apprised of the procedures for requesting carry overs. (Sen. Clark).

Sen. Pray responded that this had been discussed in a Chairs' meeting, but that there had not been a formal communication on this subject.

4. Whether Committees should have to present written requests to carry over bills. (Rep. Gwadosky; Rep. Mayo).

Discussion on this point focussed on the desirability of minimizing the paperwork for Committees who are already overloaded. Sen. Pray pointed out that several committees had, in fact, submitted letters, that Martha Freeman had collected information from her staff for those requests which were not accompanied by letters, and that if Council members still felt further information was required before they could vote on a particular request, a motion to table would be in order. Finally, Sen. Webster noted that he would like to have information regarding whether each request to carry over had the unanimous support of the committee. Sen. Pray noted that these requests reflected a committee vote and, hence, would require majority approval before the request could be forwarded to the Council.

The Council then proceeded to consider the requests from committees.

**Motion:** That all requests before the Council be approved. (Motion by Sen. Webster; second by Rep. Marsano; unanimous). A list of the bills approved for carryover at this meeting is attached.

**Item #3: After Deadline Requests**

A summary of the Council's action on After Deadline requests is attached.

## **ANNOUNCEMENTS AND REMARKS**

Rep. Mayo announced that the Redistricting Planning Committee would be meeting in the near future.

## **ADJOURNMENT**

The Legislative Council meeting was adjourned at 9:54 a.m. (Motion by Sen. Webster; second by Sen. Cahill; unanimous).

State of Maine  
DEPARTMENT OF ATTORNEY GENERAL

M E M O R A N D U M

To: Frank P. Wood, Special Assistant  
From: Stephen L. Wessler, Deputy Attorney General *SLW*  
Date: April 25, 1991  
Subject: Auburn Police Union v. Tierney

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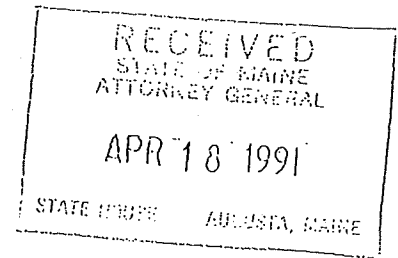
I am attaching the Decision and Order from Judge Carter reducing the attorneys fees for plaintiffs' counsel from \$58,530.80 (the amount requested) to \$37,981.79. This amount is owed by the State of Maine to plaintiffs.

SLW/kesp  
cc: Tom Warren  
Peter Brann

RECEIVED  
ATTORNEY GENERAL

APR 26 1991

OFFICE OF THE CLERK  
UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE



WILLIAM S. BROWNELL  
CLERK

P.O. Box 7505  
Portland, ME 04112

April 17, 1991

TO: ALL COUNSEL OF RECORD

RE: AUBURN POLICE UNION, ET AL. v. JAMES E. TIERNEY  
CIVIL 90-0042-P

Enclosed is a copy of the Memorandum of Decision and Order on Plaintiffs' Application for Attorneys' Fees and Expenses which was filed on April 17, 1991.

Sincerely,

William S. Brownell, Clerk

By Susan Austin  
Deputy Clerk

B/sd

Enc.

cc: Leland N. Chisholm, Esq.  
Errol Copilevitz, Esq.  
John P. Jennings, Jr., Esq.  
Stephen L. Wessler, AG



UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

U.S. DISTRICT COURT  
DISTRICT OF MAINE  
FILED

91 APR 17 AM 10:05

BY: SD  
DEPUTY CLERK

AUBURN POLICE UNION, et al.,

Plaintiffs

v.

Civil No. 90-0042-P

JAMES E. TIERNEY, as Attorney  
General of the State of Maine,

Defendant

GENE CARTER, Chief Judge

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS'  
APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

This matter is now before the Court on Plaintiffs' Application for Attorneys' Fees and Expenses, filed on February 27, 1991 (Docket No. 14), to which Defendant's Opposition was filed on February 20, 1991 (Docket No. 17). By the application, Plaintiffs seek reimbursement for attorneys' fees in the total amount of \$58,530.80. This amount is made up of hourly charges for professional time and expenses for the two firms who represented Plaintiffs herein, totaling \$44,014.35. In addition Plaintiffs seek an upward adjustment of 33.3%, in recognition of accomplishment, in the amount of \$14,524.73. The affidavits filed in support of the application reflect that attorneys in the firm of Copilevitz, Bryant Gray & Jennings, P.C., booked time charges totaling \$33,780 and expenses of \$2,704.76 in the course of their work, for a total charge of

\$36,484.76. Plaintiffs' local Maine counsel, Kelly, Remmel & Zimmerman, booked time charges of \$6,793.90 and expenses of \$735.69 in the course of the work, for a total amount of \$7,529.59.

Defendant's Opposition notes its objection to the allowance of any multiplier in recognition of accomplishment and also seeks adjustments downward in various minor respects.<sup>1</sup>

The Court has now carefully reviewed and considered the written submissions on the motion and determines that the appropriate total portion of Plaintiffs' counsel fees for which reimbursement is to be had is \$36,771.79. This amount is arrived at by allowing the Copilevitz firm total hourly time charges of \$28,279.50 and recoverable expenses of \$2,372.70, for a total amount of \$30,652.20. In addition, Plaintiffs are permitted reimbursement for the charges of the Kelly firm for billable time in the amount of \$6,593.90 and total expenses of \$735.69, for a total of \$7,329.59.

The Court arrives at this allowance of fees and expenses in the following manner:

- (1) Travel Time -- Defendant legitimately objects to the charged hourly rate of the Copilevitz firm for travel of Errol Copilevitz, principal counsel for Plaintiffs, apparently

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<sup>1</sup>Defendant's Opposition states specific objection to Plaintiffs' fee computations in the following respects: (1) elimination of 18 billable hours for travel time at Mr. Copilevitz's usual hourly rate of \$150; (2) elimination of 8.6 hours booked by Mr. Copilevitz for research into the legislative history of the Maine act as duplicative of time also booked by Mr. Chisholm for the same function; (3) elimination of 5.5 hours allegedly booked by Mr. Chisholm for interviews with media representatives; and (4) reduction of the 17.5 hours booked for preparation of the Application for Fees.

from Kansas City, Missouri to Portland, Maine on three occasions, at Mr. Copilevitz's normal hourly billing rate of \$150. This Court does not permit travel time to be recovered at anything approaching a usual billing rate. The Court has allowed its normal amount of \$10 per hour for travel time with respect to the time which the Court has determined from the Affidavit of Mr. Copilevitz (Docket No. 15) to be devoted to actual travel time. The entries in his Affidavit reflect a 9-hour booking on each of three occasions: 1/9/89, 8/24/89, and 4/26/90. Each of those bookings, however, include time devoted to actual lawyer functions. Succeeding bookings do not indicate duplication of those additional attributions. Accordingly, the Court allocated for each of these bookings a total of 6 hours to travel time from Missouri to Maine for a total of 18 hours. This requires a reduction of \$2,700 in the time as billed and an allowance of \$180 for travel time at \$10 per hour, for a net reduction of \$2,520.

- (2) Time Allocated to Press Interviews of 2/12/90 and 2/22/90 -- Defendant objects to reimbursement of some 5.5 hours of the time of Mr. Chisholm, at the Kelly firm, which is booked against interviews with media representatives after the case was decided. Such activities are not in furtherance of the prosecution of Plaintiffs' case in any direct legal sense and may not be the subject of reimbursement as counsel fees. However, Defendant's suggestion that 5.5 hours of billable time should be disallowed is not supported since the two bookings in question reflect that other functions are included in them. Accordingly, the Court has deducted from those bookings 2 hours at Mr. Chisholm's then regular hourly rate of \$100 for each of the two media interviews indicated, for a net reduction of \$200.
- (3) Preparation of Application for Fees -- The Copilevitz firm has booked a total of 17.5 hours against preparation of the fee application in this matter. The time attribution is to Attorney John P. Jennings at his usual hourly rate of \$120. The Court is satisfied, having carefully reviewed and

worked with the fee application materials, that the allocation is excessive in terms of reasonable allocation of time to the function in question. The Court is satisfied that a total hourly allocation of 5 hours of Mr. Jennings' time at his regular hourly rate of \$120 is a fair and reasonable allowance for time reasonably to be devoted by competent and diligent counsel to the preparation of the application for fees in this matter. Accordingly, the Court has reduced the time allocation of the Copilevitz firm by \$2,100 and allowed \$600 for this function, for a net reduction of that firm's charges of \$1,500.

- (4) Law Clerk Charges -- The Copilevitz firm has included charges of \$388.50 for time attributed to law clerks in this case. This Court does not permit such charges to be the subject of reimbursement or of allowance of counsel fees generally since the Court is of the view that such charges are properly includable in firm overhead. The individuals for whom the charges are made are not fully licensed professionals and much of their time and effort is duplicated by the supervisory and review roles of more experienced, licensed counsel in making use of their work product. Accordingly, the Court has reduced the Copilevitz firm's time attribution by \$388.50 for disallowance of this item.
- (5) WESTLAW Charges -- This Court likewise considers WESTLAW computer time charges allocated against the case by the Copilevitz firm in the total amount of \$332.06 to be firm overhead charges. The Court is well aware that it is a somewhat prevalent practice, where the client will permit it, for lawyers to seek reimbursement of the time charges made by WESTLAW for research facilities. The Court, however, is satisfied that this is properly an item attributed to firm overhead. The Court assumes that the actual time of a lawyer utilizing the research computer facility is, in fact, booked at his normal hourly rate. The Court thinks it inappropriate and unreasonable to permit an overhead item of this type to be recovered in addition to recovery for the

time of the lawyer who used the research facility.

Defendant objects to what it characterizes as a dual billing between the Copilevitz and Kelly firms for research into legislative history. The Court finds the objection not to be well taken and finds that it would be unreasonable to disallow the 8.6 hours claimed as research time by Mr. Copilevitz in respect to legislative history issues involving the Maine statute in question in this case.

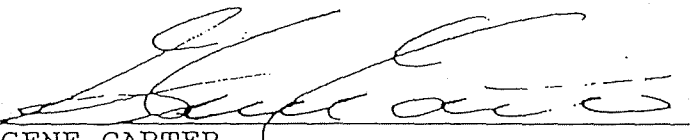
Finally, the Court finds proper the Defendant's objection to a 33.3% multiplier to the time and expense allocations in recognition of Plaintiffs' counsel's accomplishment. Success alone is not an appropriate basis for enhancing an attorneys' fee award. In cases of this nature, such multipliers are to be used only where the achievement is exceptional in nature. Blum v. Stenson, 465 U.S. 886, at 899 (1984). Mr. Copilevitz notes in his Affidavit in support of this litigation:

When this litigation commenced, the Plaintiffs agreed to pay for this firm's services on an hourly basis. It was further agreed that the Plaintiffs would be charged \$150.00 per hour for my services, and \$120.00 per hour for the services of my partner, John P. Jennings, Jr., which are fees customary in the community.

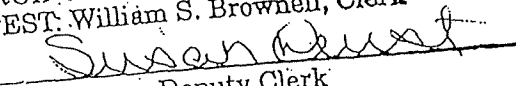
Affidavit of Errol Copilevitz (Docket No. 15) at ¶ 7. The Court is satisfied that counsel are reasonably compensated, on the basis of their agreed-upon fee arrangement, by the allocation of fees approved hereinabove. The case is not of such an exceptional nature and the accomplishment of counsel in obtaining

a favorable result is not so unique or achieved in the face of such overwhelming difficulty as to reasonably require a multiplier to be applied.

Accordingly, it is hereby ORDERED that Defendant reimburse Plaintiffs herein in the total amount of Thirty-Seven Thousand Nine Hundred Eighty-One Dollars and Seventy-Nine Cents (\$37,981.79), representing the reasonable allowance for attorneys' fees and expenses as set forth hereinabove.

  
\_\_\_\_\_  
GENE CARTER  
Chief Judge

Dated at Portland, Maine this 19<sup>TH</sup> day of April, 1991.

A TRUE COPY  
ATTEST: William S. Brownell, Clerk  
By \_\_\_\_\_  
Deputy Clerk

OFFICE OF THE EXECUTIVE DIRECTOR

MEMORANDUM

May 8, 1991

TO: Honorable Charles P. Pray, Chair  
and Members of the Legislative Council

FROM: Sally *Sally*

SUBJECT: Auburn Police Union v. Tierney: Some Legislative History

With Lynn Randall's able assistance, we have pulled together some of the information that was requested during yesterday's meeting.

The statute in question is Auburn Police Union v. Tierney is the Maine Solicitation by Law Enforcement Officers Act, 25 MRSA § 3702. A copy of this section is enclosed.

The original bill was introduced as LD 664 in the 108th Legislature by Representative Carroll (of Limerick), enacted with a Committee Amendment and signed by Governor Longley on July 5, 1977 (Chapter 449, P.L. 1977). The law was amended by the 111th Legislature (LD 1481; Sponsored by Sen. Usher of Cumberland; enacted with a Committee Amendment; and signed by the Governor on May 24, 1983 -- P.L. Chapter 330).

Finally, I have enclosed a copy of the District Court's decision in response to Representative Marsano's request.

Enclosures

A. Any verbal request, including, but not limited to, a request that is made in person, by telephone or through any advertising media;

B. Any written request, including, but not limited to, a request that is sent, delivered or distributed or any advertisement posted in a public place or appearing in a newspaper, television or other advertising media; and

C. The sale of, offer or attempt to sell, any advertising, advertisements, advertising space, book, card, tag, coupon, ticket, device, magazine, membership, subscription or other tangible item or thing of value.

1977, c. 449; 1979, c. 575, § 1; 1981, c. 267, § 1.

#### Historical Note

Laws 1979, c. 575 repealed the last paragraph of subsec. 5, which prior thereto read:

"The definition of solicit shall not apply to the offer for sale to the general public admissions to public events sponsored by a law enforcement association, provided that no promotion of the event and no sale or attempts to sell and no active part in the sale of these admissions shall be undertaken by any members of the law enforcement association or law enforcement agency or law enforcement officer, and provided that no person shall initiate contact with the general public in person or by telephone for the purpose

of selling property. It shall not include advertisements posted in a public place or media advertising in a newspaper or on radio or television."

Laws 1981, c. 267 repealed and replaced pars. A and B of subsec. 5, which prior thereto read:

"A. Any verbal request, including, but not limited to, a request that is made in person or by telephone;"

"B. Any written request, including, but not limited to, a request that is sent, delivered or distributed by personal means; and".

#### Library References

Municipal Corporations ⇨189(1).  
C.J.S. Officers § 575.

#### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### § 3702. Solicitation unlawful

No person may solicit property from the general public when the property, or any part of it, in any way benefits, is intended to benefit or is represented to be for the benefit of any law enforcement officer, law enforcement agency or law enforcement association, except that any state warden service association may offer for sale, by persons other than wardens or members of the association, to members and the public guide books or handbooks containing historical reviews or descriptions of services, except that on the request of a nonmember the association may provide that person with the copies requested for sale by that person. No advertisements may be sold or included in these publications, except greetings or complimentary statements from members or former members which shall give the full name of the member or former member. A stated rate for this advertisement space shall be published and no funds in excess of that stated rate may be accepted by the association for space.

A record of receipts and sales for space and sales of the publication shall be kept and available to the public during normal working hours.



All proceeds from these sales shall be expended for direct charitable services to members or their spouses, widows, children, widowers or parents and may not be used for buildings or equipment, construction or maintenance or entertainment of members.

Any violation of this chapter shall constitute a violation of Title 5, chapter 10, the unfair trade practices laws.<sup>1</sup>

1977, c. 449; 1983, c. 330.

<sup>1</sup>Section 205-A et seq. of title 5.

#### Historical Note

Laws 1983, c. 330, in the first paragraph, in the first sentence, substituted "may solicit" for "shall solicit" and added ", except that any state warden service association may offer for sale, by persons other than wardens or members of the association, to members and the public guide books or handbooks containing historical reviews

or descriptions of services, except that on the request of a nonmember the association may provide that person with the copies requested for sale by that person.", and added the second and third sentences; inserted the second and third paragraphs; and, in the fourth paragraph, substituted "laws" for "Act".

#### Library References

Officers and Public Employees §91.  
C.J.S. Officers and Public Employees § 218.

#### Notes of Decisions

Solicitation of the general public 2  
Validity 1

##### 1. Validity

Because integrity of State's law enforcement agents is cast in doubt with every solicitation on their behalf, prohibition of 25 M.R.S.A. § 3702 against soliciting "general public" for benefit of law enforcement associations is not fatally overbroad under the First Amendment. *State v. Maine State Troopers Ass'n* (1985) Me., 491 A.2d 538, appeal dismissed 106 S.Ct. 34, 474 U.S. 802, 88 L.Ed.2d 28.

25 M.R.S.A. § 3702 prohibiting solicitation of "general public" for benefit of law enforcement associations did not, by limiting permissible solic-

itation by State Troopers Association to Association's own membership and immediate members, amount to a taking of property without due process of law. *State v. Maine State Troopers Ass'n* (1985) Me., 491 A.2d 538, appeal dismissed 106 S.Ct. 34, 474 U.S. 802, 88 L.Ed.2d 28.

##### 2. Solicitation of the general public

State Troopers Association's actions in soliciting advertisement for publication from businesses with which it or individual troopers had personal relationship involves solicitation of the "general public" within meaning of section of the solicitation by law enforcement officers law. *State v. Maine State Troopers Ass'n* (1985) Me., 491 A.2d 538, appeal dismissed 106 S.Ct. 34, 474 U.S. 802, 88 L.Ed.2d 28.

#### § 3703. Exception for law enforcement officers elected to public office

Nothing in this chapter shall prevent any person from soliciting funds to pay obligations incurred or about to be incurred in the furtherance of, or as the result of, a campaign by a law enforcement officer for public office.  
1977, c. 449.

#### § 3704. Repealed. Laws 1981, c. 267, § 2

#### Historical Note

The repealed section, derived from Laws 1979, c. 575, § 2, related to exemptions.

such claim is put forth in response to the motion.<sup>4</sup>

In sum, Plaintiffs have asserted in the Complaint a claim of negligence based upon the factual contention that the named Defendant, U-Haul International, Inc., acted to effect some mechanical repair or correction to the subject recreational vehicle. It is now established by the record made on this motion that, in fact, that did not occur. That being so, it is clear that there is no genuine issue of material fact and that Defendant is entitled, as a matter of law, to judgment against the Plaintiffs on all claims set forth in the Complaint. Accordingly, it is hereby ORDERED that Defendant U-Haul International, Inc.'s Motion for Summary Judgment be, and it is hereby, GRANTED, judgment to enter.

So ORDERED.



AUBURN POLICE UNION, et  
al., Plaintiffs,

v.

James TIERNEY, as Attorney General  
of the State of Maine, Defendant.

Civ. No. 90-0042-P.

United States District Court,  
D. Maine.

Feb. 7, 1991.

Police unions and officers brought action challenging constitutionality of section of Maine Solicitation by Law Enforcement Officers Act prohibiting solicitation of

4. Unless and until there is a fact generated, on some legal theory, as to whether U-Haul of New Hampshire and Vermont, Inc. acted for or on behalf of U-Haul International, Inc., there is no relevant basis on which to impute to the latter corporation any inferences to be drawn from the documents generated by the former or its making of admissions in the course of discovery.

property from general public when property or any part of it benefits, is intended to benefit or is represented to be for benefit of law enforcement officers, agencies or associations. On cross motions for judgment on basis of stipulated record, the District Court, Gene Carter, Chief Judge, concurring with recommendations of David M. Cohen, United States Magistrate Judge, held that statute, as applied to plaintiffs, was unconstitutional as it was facially overbroad, operated as impermissible prior restraint, and violated plaintiffs' right to equal protection.

Plaintiffs' motion granted.

#### 1. Federal Civil Procedure $\S$ 2462

Procedural device of seeking judgment on basis of stipulated written record allows court to resolve any lingering issues of material fact in reaching its decision on merits.

#### 2. Courts $\S$ 107

Summary actions by Supreme Court are decisions on merits of case and, as such, are binding on lower courts if certain preconditions are met; summary actions remain controlling until such time as Supreme Court doctrinal developments undermine their validity.

#### 3. Courts $\S$ 107

Changes to Maine's Solicitation by Law Enforcement Officers Act undermined binding force of Supreme Court's summary dismissal of appeal from Maine Supreme Judicial Court decision rejecting constitutional challenges to section of Act barring solicitation of property from general public when property benefits law enforcement officers, agencies, or associations, though Maine case did not turn on significantly different facts from instant case, did not break with Supreme Court precedent, and

Likewise, any issue as to the adequacy of these companies' records retrieval systems sheds no light on the determination of whether U-Haul International, Inc. was involved in any way in the performance of actual mechanical repairs to the subject recreational vehicle in the face of the undisputed evidence which now demonstrates that it was not so involved.

was not undermined by subsequent doctrinal developments; enactment of private laws allowing solicitation called into question premise underlying Maine case, that all charitable solicitation by police officers and law enforcement organizations was inherently coercive. 25 M.R.S.A. § 3702.

#### 4. Courts ⇨107

Not every factual distinction is significant in assessing precedential weight of Supreme Court summary action.

#### 5. Statutes ⇨47

Vagueness doctrine does not apply only to criminal statutes. U.S.C.A. Const. Amend. 14.

#### 6. Statutes ⇨47

Statute is void for vagueness if its prohibitions are not clearly defined.

#### 7. Constitutional Law ⇨251.4

Impermissibly vague statutes offend Fourteenth Amendment right to due process in several ways: they may trap innocent by not providing fair warning, may open door to arbitrary and discriminatory enforcement, and may impinge protected First Amendment free-speech rights. U.S. C.A. Const.Amend. 1, 14.

#### 8. Officers and Public Employees ⇨91

Proscription of solicitation of "the general public," in section of Maine Solicitation by Law Enforcement Officers Act prohibiting solicitation of property from general public when property benefits law enforcement officers, agencies, or associations is not impermissibly vague, particularly in light of Maine Supreme Judicial Court decision narrowly construing phrase to mean any member of public other than members of police association and their immediate families. 25 M.R.S.A. § 3702.

#### 9. Officers and Public Employees ⇨91

Term "benefit," within meaning of section of Maine Solicitation by Law Enforcement Officers Act prohibiting solicitation of property from general public when property "benefits, is intended to benefit or is represented to be for the benefit" of law enforcement officers, agencies, or associations, is not unconstitutionally vague; average person would perceive that donations

to police charity fund benefit police, regardless of whether all solicited funds eventually flow to nonpolice beneficiaries. 25 U.S.C.A. §§ 3702, 3706.

#### 10. Constitutional Law ⇨82(4)

Statute is overbroad if it includes protected, as well as unprotected, activities in its ambit.

#### 11. Constitutional Law ⇨82(4)

Statutory overbreadth normally must be substantial to warrant finding of facial unconstitutionality.

#### 12. Constitutional Law ⇨90.1(1.1)

While charitable solicitation is protected under First Amendment right to freedom of speech, state may burden charitable solicitation provided its regulations withstand strict scrutiny; to do so, state must demonstrate that challenged law serves compelling governmental interest and is narrowly tailored to be least restrictive means of furthering that interest. U.S. C.A. Const.Amend. 1.

#### 13. Officers and Public Employees ⇨91

Section of Maine Solicitation by Law Enforcement Officers Act prohibiting solicitation of property from general public when property benefits law enforcement officers, agencies or associations was unconstitutionally overbroad and invalid on its face; complete prohibition on police solicitation was not narrowly tailored to Maine's evident interest in banning some, but not all, such solicitation. U.S.C.A. Const.Amend. 1, 14; 25 M.R.S.A. § 3702.

#### 14. Constitutional Law ⇨90.1(1.1)

##### Officers and Public Employees ⇨91

Section of Maine Solicitation by Law Enforcement Officers Act prohibiting solicitation of property from general public when property benefits law enforcement officers, agencies, or associations was impermissible prior restraint; in silencing by fiat an entire category of charitable solicitation, Act was form of censorship which prejudged rather than punished after fact. U.S.C.A. Const.Amend. 1, 14; 25 M.R.S.A. § 3702.

## 15. Constitutional Law ⇨238.5

## Municipal Corporations ⇨176(3)

## Officers and Public Employees ⇨91

Section of Maine Solicitation by Law Enforcement Officers Act prohibiting solicitation of property from general public when property benefits law enforcement officers, agencies or associations violated equal protection rights of police unions and officers desiring to solicit advertising for inclusion in publications; special law had waived prohibition for solicitation of funds for memorial, which was no less inherently coercive than police solicitation for any other worthy cause. U.S.C.A. Const.Amends. 1, 14; 25 M.R.S.A. § 3702.

## 16. Declaratory Judgment ⇨126

Police unions and officers were entitled to judgment declaring constitutional invalidity of section of Maine Solicitation by Law Enforcement Officers Act prohibiting solicitation of property from general public when property benefits law enforcement officers, agencies or associations; declaration would not only end parties' dispute but also properly challenge state to rethink mechanisms by which it might pursue its legitimate goal of protecting integrity of law enforcement. 25 M.R.S.A. § 3702.

## 17. Declaratory Judgment ⇨91, 111

Declaratory judgment is appropriate when it will serve useful purpose in clarifying legal relations at issue or terminate and afford relief from uncertainty, insecurity, and controversy giving rise to proceeding.

## 18. Injunction ⇨85(2)

Police unions and officers were entitled to permanent injunction against enforcement of unconstitutional section of Maine Solicitation by Law Enforcement Officers Act prohibiting solicitation of property from general public when property benefits law enforcement officers, agencies or associations; unions and officers had sustained crippling injury to their ability to publish magazines and money damages could not adequately compensate for impermissible burden on their freedom of expression. U.S.C.A. Const.Amends. 1, 14; 25 M.R.S.A. § 3702.

## 19. Civil Rights ⇨296

Attorney fees had to be awarded to police unions and officers who succeeded in § 1983 action challenging constitutionality of section of Maine Solicitation by Law Enforcement Officers Act prohibiting solicitation of property from general public when property benefits law enforcement officers, agencies or associations, absent evidence of special circumstances rendering award unjust. 42 U.S.C.A. §§ 1983, 1988; 25 M.R.S.A. § 3702.

Leland N. Chisholm, Portland, Me., for plaintiffs.

Errol Copilevitz, John P. Jennings Jr., Kansas City, Mo., Stephen L. Wessler, Dept. Atty. Gen., Augusta, Me., for defendant.

ORDER AFFIRMING THE RECOMMENDED  
DECISION OF THE  
MAGISTRATE JUDGE

GENE CARTER, Chief Judge.

[1-19] The United States Magistrate Judge having filed with the Court on December 21, 1990, with copies to counsel, his Recommended Decision on Cross-Motions for Judgment on the Basis of a Stipulated Record, a copy of which is attached hereto and made part hereof as "Exhibit A"; and Defendant having filed, on January 2, 1991, his Objections to Portions of the Magistrate Judge's Recommended Decision and Request for De Novo Review by the District Court, to which Plaintiffs replied on January 8, 1991; and this Court having reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; and this Court having made a *de novo* determination of all matters adjudicated by the Magistrate Judge's Recommended Decision; and this Court concurring with the recommendations of the United States Magistrate Judge for the reasons set forth in his Recommended Decision, and having determined that no further proceeding is necessary; it is *ORDERED* as follows:



(1) The Recommended Decision of the Magistrate Judge is hereby *AF-FIRMED*;

(2) Plaintiffs' Motion for Judgment on the Basis of a Stipulated Record is hereby *GRANTED*;

(3) Defendant's Motion for Judgment on the Basis of a Stipulated Record is hereby *DENIED*;

(4) Judgment is hereby entered *DECLARING* that the provisions of 25 M.R.S.A. § 3702, as applied to Plaintiffs herein, is unconstitutional because it is facially overly broad, operates as an impermissible prior restraint upon Plaintiffs, and violates Plaintiffs' right to equal protection of the laws;

(5) Defendant, and all others acting for, on behalf of, or in concert with the Defendant, are hereby *ENJOINED* from enforcement of 25 M.R.S.A. § 3702 against Plaintiffs in any manner inconsistent with the foregoing declaratory judgment, and

(6) Plaintiffs shall recover reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, and to that end Plaintiffs' counsel shall file, within ten (10) days of the entry of this order, an application for such fees, setting forth the pertinent details required by the Court to assess the reasonableness thereof; and Defendant shall respond thereto within ten (10) days of receipt of such application.

#### EXHIBIT A

#### RECOMMENDED DECISION ON CROSS-MOTIONS FOR JUDGMENT ON THE BASIS OF A STIPULATED RECORD

DAVID M. COHEN, United States Magistrate, Judge.

[1] In this lawsuit challenging the constitutionality of § 3702 of the Solicitation

1. The plaintiffs and the State actually filed cross-motions for summary judgment. Plaintiffs' Motion for Summary Judgment; Defendant's Motion for Summary Judgment. However, the parties confirmed in conference that they in fact seek judgment on the basis of a stipulated written record. See Report of Conference of Counsel dated November 26, 1990.

2. Union plaintiffs are the Auburn Police Union, Stipulated Facts ¶ 7, the Portland Police Benevo-

by Law Enforcement Officers Act ("Act"), 25 M.R.S.A. §§ 3701-06, the plaintiffs and defendant James Tierney, attorney general of the state of Maine ("State" or "defendant"), seek judgment on the basis of a stipulated written record.<sup>1</sup> This procedural device allows a court to resolve any lingering issues of material fact in reaching its decision on the merits. *Boston Five Cents Sav. Bank v. Secretary of the Dep't of Hous. & Urban Dev.*, 768 F.2d 5, 11-12 (1st Cir.1985).

The plaintiff police unions and police officers<sup>2</sup> want to solicit advertising from the general public for inclusion in publications, Stipulated Facts ¶¶ 27-30; plaintiff Charles Underwood wishes to advertise in and receive copies of police publications, *id.* ¶ 13; and plaintiff R.H. McKnight Co., Inc. d/b/a Brent-Wyatt East, a professional fundraiser and publisher, seeks to solicit advertisements for publications on behalf of the plaintiff unions and officers, *id.* ¶¶ 14-15, 27-30. The Act effectively bars all of the above activities by virtue of its prohibition against solicitation of property from the general public "when the property, or any part of it, in any way benefits, is intended to benefit or is represented to be for the benefit of any law enforcement officer, law enforcement agency or law enforcement association...." 25 M.R.S.A. § 3702. Violation of § 3702 is punishable as an unfair-trade practice. *Id.*

The plaintiffs charge that the State, in violation of 42 U.S.C. § 1983, has deprived them of rights secured under the United States Constitution. Specifically, the plaintiffs contend that the Act violates the First and Fourteenth Amendments in that it serves as an unconstitutional prior re-

lent Association, *id.* ¶ 8, and the Lewiston Police Union (a/k/a Local 545, International Brotherhood of Police Officers), *id.* ¶ 9. All are Maine not-for-profit corporations. *Id.* ¶¶ 7-9. Police-officer plaintiffs are Leonard Dexter, vice president of the Portland Police Benevolent Association, *id.* ¶ 10, Kevin MacDonald, secretary of the Portland Police Benevolent Association, *id.* ¶ 11, and David B. Chamberlain, secretary of the Lewiston Police Union, *id.* ¶ 12.

## EXHIBIT A—Continued

straint on their freedom of speech, is unconstitutionally vague, is unconstitutionally overbroad and denies them equal protection of the laws.<sup>3</sup> They therefore seek declaratory judgment of the unconstitutionality of § 3702 pursuant to 28 U.S.C. § 2201, preliminary and permanent injunctions against enforcement of § 3702 and recovery of attorney's fees and costs pursuant to 42 U.S.C. § 1988.

The State observes that in 1985 the Supreme Court summarily dismissed an appeal from a Maine Supreme Judicial Court ("Law Court") decision rejecting constitutional challenges to the Act. *State v. Maine State Troopers Ass'n*, 491 A.2d 538 (Me.), appeal dismissed, 474 U.S. 802, 106 S.Ct. 34, 88 L.Ed.2d 28 (1985) ("MSTA"). Insofar as it resolves the same constitutional issues, *MSTA* is binding upon this court, the State asserts. The State additionally contests all of the plaintiffs' claims on the merits.

For the reasons explicated below, I recommend that the court grant the plaintiffs' motion, and deny the defendant's motion, for judgment on the basis of a stipulated written record. The Act should be declared unconstitutional on grounds it operates as a prior restraint, is facially overbroad and denies the plaintiffs equal protection of the laws. Accordingly, I recommend that this court permanently enjoin enforcement of § 3702 and award the plaintiffs attorney's fees pursuant to 42 U.S.C. § 1988.

#### I. EFFECT OF SUPREME COURT'S SUMMARY ACTION

[2] Summary actions by the Supreme Court are decisions on the merits of a case. *Hicks v. Miranda*, 422 U.S. 332, 344, 95 S.Ct. 2281, 2289, 45 L.Ed.2d 223 (1975). As such, they are binding on lower courts if certain preconditions are met. *Mandel v. Bradley*, 432 U.S. 173, 176, 97 S.Ct. 2238, 2240-41, 53 L.Ed.2d 199 (1977) (per curiam). The Supreme Court has cautioned that lower courts must engage in a careful analysis to determine the precedential val-

ue of summary actions. *Id.* Summary affirmances or dismissals "without doubt reject the specific challenges presented in the statement of jurisdiction and do leave undisturbed the judgment appealed from. They do prevent lower courts from coming to opposite conclusions on the precise issues presented and necessarily decided by those actions." *Id.* Lower courts must assess precedential significance "in the light of all of the facts." *Id.* at 177, 97 S.Ct. at 2241 (observing that lower court had wrongly judged itself bound by a summary action based on "very different" facts). Finally, summary actions "should not be understood as breaking new ground but as applying principles established by prior decisions to the particular facts involved." *Id.* at 176, 97 S.Ct. at 2240-41. Summary actions remain controlling until such time as Court doctrinal developments undermine their validity. *Hicks*, 422 U.S. at 344-45, 95 S.Ct. at 2289-90.

[3] The plaintiffs present four arguments for freeing their case from the yoke of *MSTA*. Plaintiffs' Reply to Defendant's Memorandum in Support of Motion for Summary Judgment ("Plaintiffs' Reply Memorandum") at 2-8. Three of the contentions lack merit: (1) that *MSTA* and the instant case turn on "very different" facts, (2) that *MSTA* broke with Supreme Court precedent and thus lacks binding force and (3) that doctrinal developments since *MSTA* undercut its precedential value. The fourth contention, however, is persuasive. Changes to the Act since 1985 significantly alter the nature of the issues raised. Hence, the Supreme Court's summary action in *MSTA* does not foreclose fresh consideration of the merits in the instant case.

#### A. Factual Differences

The facts underlying *MSTA* and the instant case are strikingly similar. The defendant in *MSTA*, a Maine police association, sold advertising in a police publication in violation of the Act. The plaintiff Maine police officers and unions in the instant

3. It is important to note that, although the Act applies to law-enforcement agencies, officers and associations, 25 M.R.S.A. § 3701, the plain-

tiffs base their legal claims on its impact upon non-profit, or charitable, law-enforcement associations.

## EXHIBIT A—Continued

case wish to sell advertising in publications.

[4] The plaintiffs observe that the advertising conducted in *MSTA* was by means "of letters, telephone calls, and in-person solicitations." Plaintiffs' Reply Memorandum at 6 (quoting *MSTA*, 491 A.2d at 540). They seek to distinguish their case in that they propose to hire a middleman—a professional solicitor who would employ such safeguards against coercion as written assurances that the police would visit no adverse consequences upon the reluctant customer. *Id.* at 6-7. Not every factual distinction is significant in assessing the precedential weight of a Supreme Court summary action. *Members of Jamestown School Comm. v. Schmidt*, 699 F.2d 1, 8-9 (1st Cir.), *cert. denied*, 464 U.S. 851, 104 S.Ct. 162, 78 L.Ed.2d 148 (1983). In the context of the Supreme Court's summary dismissal of *MSTA*, this factual difference pales. The question presented to the Supreme Court on appeal was the constitutionality of the Act's prohibition on

the sale of or attempt to sell any book, magazine or advertisement, when the sale benefits, is intended to benefit or is represented to be for the benefit of any Law Enforcement Association.... The enumerated acts are unlawful, regardless of whether the person performing the act is a law enforcement officer or not.

Appendix A to Memorandum in Support of Defendant James E. Tierney's Motion for Summary Judgment ("State's Memorandum") (Jurisdictional Statement) at 2. The Supreme Court therefore contemplated the question of complete prohibition of both direct and indirect solicitation.

## B. Breaking New Ground

The plaintiffs contend that the Law Court's decision in *MSTA* flew in the face

of established Supreme Court principles in that the Law Court imposed a blanket prohibition on a certain type of speech by an identifiable minority. Plaintiffs' Reply Memorandum at 7-8. The State asserts, and I agree, that the Law Court's opinion constitutes a straightforward application of preexisting Supreme Court law as enunciated in the leading cases of *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 100 S.Ct. 826, 63 L.Ed.2d 73, *reh'g denied*, 445 U.S. 972, 100 S.Ct. 1668, 64 L.Ed.2d 250 (1980), and *Secretary of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 104 S.Ct. 2839, 81 L.Ed.2d 786 (1984). State's Memorandum at 9; *MSTA*, 491 A.2d at 542.

## C. Doctrinal Developments

The plaintiffs argue that doctrinal developments since *MSTA* undermine its weight as binding precedent on this court. This contention fails. The plaintiffs cite only one Supreme Court case, *Riley v. National Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988), in their list of opinions affecting *MSTA*. Lower-court cases cited, Plaintiffs' Reply Memorandum at 3, have no effect on the precedential value of *MSTA*.<sup>4</sup> Moreover, *Riley* itself does not demand reevaluation of *MSTA*. *Riley* applies *Schaumburg* and *Munson* to facts significantly different from those in *MSTA*. The statute struck down in *Riley* implicated state interests other than law enforcement, advanced through a strikingly different regulatory scheme than Maine's complete prohibition.

## D. Substantive Issues

The instant case poses two interrelated questions that appear to be identical to those determined in *MSTA*: (1) whether the Act violates the First and Fourteenth Amendment rights to free speech and (2) whether the Act is unconstitutionally overbroad.<sup>5</sup> Both questions were necessarily

was void for vagueness. The two claims overlap in that both question the clarity of the phrase "the general public" in § 3702. However, the plaintiffs in the instant case, unlike the defendant in *MSTA*, additionally assert that the Act's use of the word "benefit" is impermissibly

4. As I read the Court's opinion in *Hicks*, lower courts are bound by Supreme Court summary actions unless doctrinal developments in the Supreme Court itself indicate otherwise. 422 U.S. at 344-45, 95 S.Ct. at 2289-90.

5. The defendant police union in *MSTA* also claimed, as do the plaintiffs here, that the Act

## EXHIBIT A—Continued

decided by the Law Court and were squarely presented to the Supreme Court in the Jurisdictional Statement. Appendix A to State's Memorandum (Jurisdictional Statement) at 2, 7-9, E-1 to E-2.

Nonetheless, as the plaintiffs argue, the issues diverge in a fundamental respect. The Legislature has revisited the Act since the *MSTA* decision in 1985. Specifically, the Legislature amended the Act in 1989 to create an exception for the Department of the Attorney General, 25 M.R.S.A. § 3706 <sup>6</sup>, and enacted special, private legislation to allow solicitation for a memorial to slain police officers, Exh. B to Stipulated Facts (Priv. & Spec.Laws 1989 ch. 47). The special law waived the provisions of § 3702 for one year to allow police officers not in uniform or any other person authorized by the Maine Chiefs of Police Association to solicit funds for the memorial. *Id.* On April 6, 1990 the governor approved a second private law extending the waiver for six months. Exh. A to Plaintiffs' Reply Memorandum (Priv. & Spec.Laws 1990 ch. 114). The State's attempt to minimize the importance of the private laws because of their temporary character, Reply Memorandum in Support of Defendant James E. Tierney's Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment ("State's Reply Memorandum") at 7, is unavailing. As the plaintiffs correctly note, *MSTA* turned on the premise that all charitable solicitation by police officers and law enforcement organizations is "inherently coercive." Plaintiffs' Memorandum Brief in Support of Their Motion for Summary Judgment ("Plaintiffs' Memorandum") at 20 (quoting *MSTA*, 491 A.2d at 542, which in turn quoted Act's Statement of Fact). The enactment of the private laws calls that premise into question, undermining the binding

vague. Compare *MSTA*, 491 A.2d at 543, with Complaint ¶ 39.

6. Section 3706 provides, in its entirety, "Nothing in this chapter prevents the Department of the Attorney General from distributing, publicizing and charging for the cost of consumer education materials, including descriptions of federal and state laws dealing with unfair and deceptive trade practices."

force of the Supreme Court's summary dismissal and of the Law Court's own conclusions.

## II. COUNT II(A):

## IMPERMISSIBLE VAGUENESS

[5] The plaintiffs contend in Count II(A) that § 3702 of the Act is unconstitutionally vague on its face in that it provides inadequate notice of the conduct prohibited.<sup>7</sup> Complaint ¶ 39. The Act proscribes three intertwined behaviors: (1) solicitation of "property" (2) from "the general public" that (3) "benefits, is intended to benefit or is represented to be for the benefit of any law enforcement officer, law enforcement agency or law enforcement association." The plaintiffs specifically charge that the term "benefit" is subjective and arbitrary, *id.*, and that the Act's ban on solicitation of "the general public" raises questions as to whether that "public" includes such individuals as other police officers and members of the Attorney General's office, Plaintiffs' Memorandum at 25.

[6, 7] A statute is void for vagueness "if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298, 33 L.Ed.2d 222 (1972). Impermissibly vague statutes offend the Fourteenth Amendment right to due process in several ways. They "may trap the innocent by not providing fair warning," may open the door to "arbitrary and discriminatory enforcement," and may impinge on protected First Amendment free-speech rights. *Id.* at 108-09, 92 S.Ct. at 2298-99 (footnotes omitted).

[8] The Act's proscription of solicitation of "the general public" is not impermissibly vague. The Law Court in *MSTA* narrowly construed the phrase to mean "any mem-

7. The State correctly observes that violation of 25 M.R.S.A. § 3702 is punishable by civil, rather than criminal, sanctions. State's Memorandum at 26. Nonetheless, the State wrongly asserts that the vagueness doctrine applies only to criminal statutes. See, e.g., *Whisenhunt v. Spradlin*, 464 U.S. 965, 970, 104 S.Ct. 404, 407-08, 78 L.Ed.2d 345, denying cert. to 701 F.2d 470 (5th Cir.1983) (Brennan, J., dissenting).



## EXHIBIT A—Continued

ber of the public other than members of the MSTA and their immediate families." *MSTA*, 491 A.2d at 541, 543. Clearly, a member of the Lewiston Police Union could solicit neither a member of the Auburn Police Union nor members of the Attorney General's office. He or she could solicit only other members of the Lewiston Police Union and their immediate families.

[9] The plaintiffs next question the clarity of the Act's ban on solicitation of property that "benefits, is intended to benefit or is represented to be for the benefit of any law enforcement officer, law enforcement agency or law enforcement association." The plaintiffs wonder whether a "benefit" is necessarily the direct receipt of funds, Plaintiffs' Memorandum at 26, and whether contributions to a police-union fund for emergency donations to non-police officers qualify as "benefitting" the police, *id.* at 25. The plaintiffs contend that contributions to such a fund arguably would benefit a police union only intangibly, by enhancing its credibility and public recognition. *Id.* at 25-26.

The word "benefit" is neither defined in the Act nor construed by the Law Court. Nonetheless, the conduct prohibited is not as unclear as the plaintiffs suggest. The verb "benefit" means "to be useful or profitable to: aid, advance, improve...." *Webster's Third New International Dictionary* 204 (1981). The disjunctive "or" indicates that the benefit need not be "profitable"—financially rewarding—so long as it is "useful." Contributions to police charitable funds, while not "profitable" to the police, are "useful" to them in the intangible ways the plaintiffs suggest. A person of average intelligence comprehends, even without the aid of *Webster's*, that benefits take myriad forms. The average person would perceive that donations to a police charity fund benefit the police, regardless of whether all solicited funds eventually flow to non-police beneficiaries.

### III. COUNT II(B): UNCONSTITUTIONAL OVERBREADTH

[10, 11] A statute is overbroad if it includes protected, as well as unprotected,

activities in its ambit. *MSTA*, 491 A.2d at 543. Overbreadth normally must be substantial to warrant a finding of facial unconstitutionality. *Id.* However, the Supreme Court has recognized a type of *per se* overbreadth if a statute is not narrowly tailored enough to serve legitimate state interests. See, e.g., *State v. Events Int'l, Inc.*, 528 A.2d 458, 461 (Me.1987), *cert. denied*, 487 U.S. 1234, 108 S.Ct. 2899, 101 L.Ed.2d 932 (1988) (citing *Munson*, 104 S.Ct. at 2852 & n. 13; *Schaumburg*, 444 U.S. at 637-39, 100 S.Ct. at 836-37).

[12] Determination of the quality of the State's tailoring requires reconsideration of a question disposed of in *MSTA*: whether the Act unconstitutionally infringes the First Amendment right to free speech, as applied to the states through the Fourteenth Amendment. As the Law Court observed in applying the *Munson* and *Schaumburg* tests, charitable solicitation is protected under the First Amendment right to freedom of speech. *MSTA*, 491 A.2d at 542. The right, however is not absolute. *Id.* A state may burden charitable solicitation provided its regulations withstand strict scrutiny. *Id.* To do so, the state must demonstrate that the challenged law serves a compelling governmental interest and is narrowly tailored to be "the least restrictive means" of furthering that interest. *Id.* (citations omitted).

[13] The plaintiffs question both the substantiality of the State's interest and the tailoring of its law. Plaintiffs' Memorandum at 17. The Law Court determined in 1985 that "[t]he State's interest in protecting the reputation of its law enforcement bodies is undeniably substantial. Indeed, we would be hard pressed to suggest a weightier interest." *MSTA*, 491 A.2d at 542. The Law Court held the Act sufficiently narrowly tailored in that "the mere act of solicitation is inherently coercive" and "the appearance of the transaction to third persons, serves to undermine public confidence in the integrity of the public office." *Id.* Relatedly, the Law Court rejected the contention that the Act was overbroad "[b]ecause the integrity of the

## EXHIBIT A—Continued

State's law enforcement agents is cast in doubt with every solicitation on their behalf...." *Id.* at 543.

As discussed above, subsequent to the Law Court's decision in *MSTA* the Legislature enacted a permanent waiver from § 3702 for certain Attorney General communications and an 18-month waiver to allow solicitation for a memorial to slain police officers. These actions crack the foundation upon which the Law Court judged the Act narrowly tailored: that the appearance of coercion inheres in every solicitation for the benefit of law-enforcement personnel. The Legislature effectively has admitted that its complete ban sweeps too broadly insofar as it encompasses the activities of a different kind of law enforcer—the Attorney General's office. Even more damaging, the Legislature has revealed its interest to be less than absolute by determining that it must selectively yield for causes such as the memorial. A complete prohibition on police solicitation is not narrowly tailored to Maine's evident interest in banning some, but not all, such solicitation. *See, e.g., Riley*, 487 U.S. at 801, 108 S.Ct. at 2679–80 ("Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.") (quoting *NAACP v. Button*, 371 U.S. 415, 438, 83 S.Ct. 328, 340, 9 L.Ed.2d 405 (1963) (citations omitted)). I conclude that § 3702 is thus unconstitutionally overbroad and invalid on its face.

To resurrect its statute, the State must isolate the elements of police solicitation that produce coercion and then tailor its statute to root them out evenhandedly. Provisions of the private law allowing solicitation for the memorial suggest, for example, that the State is particularly concerned that officers not solicit in uniform and that a single overseer approve and track all solicitors.<sup>8</sup> Exh. B to Stipulated Facts (Priv. & Spec.Laws 1989 ch. 47).

8. The plaintiffs suggest that the field of solicitation at the very least be widened to include as permissible solicitees other public officials, such as other law-enforcement unions and firefighters, on the grounds that the appearance of coercion is unlikely in such transactions. Plaintiffs'

## IV. COUNT I: PRIOR RESTRAINT

[14] The plaintiffs contend that the Act constitutes an impermissible prior restraint in that it directly bans their constitutionally protected right to charitable solicitation, Complaint ¶¶ 32, 34, 36, and indirectly forces them to cease publication. Complaint ¶¶ 33–36. The plaintiffs therefore ask this court to apply the maxim that "[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963) (citations omitted).

The Supreme Court has signalled that the doctrine of prior restraint applies to the act of charitable solicitation. *Munson*, 467 U.S. at 968–69, 104 S.Ct. at 2853–54. Schemes vesting discretion in administrators to license solicitors for charities or screen their messages have been struck down as impermissible prior restraints. *See id.*; *Famine Relief Fund v. West Virginia*, 905 F.2d 747, 753 (4th Cir.1990); *Telco Communications, Inc. v. Carbaugh*, 885 F.2d 1225, 1232–34 (4th Cir.1989), *cert. denied*, — U.S. —, 110 S.Ct. 1923, 109 L.Ed.2d 286 (1990); *Telco Communications, Inc. v. Barry*, 731 F.Supp. 670, 682–83 (D.N.J.1990). Maine's direct prohibition avoids the vice of delegating power to administrators to prescreen solicitors or their messages. However, the Act silences by fiat an entire category of charitable solicitation. It is in this respect a form of censorship; it prejudges rather than punishes after the fact. *See, e.g., Near v. Minnesota*, 283 U.S. 697, 714, 51 S.Ct. 625, 630, 75 L.Ed. 1357 (1931) (Founders envisioned security from legislative, as well as administrative, prior restraints). For the reasons discussed more fully above in the context of the overbreadth challenge, I conclude that the State's interest in protecting against coercive law-enforcement solici-

Memorandum at 26. The plaintiffs also suggest the confinement of solicitation to professional fundraisers who would employ safeguards against coercion. Plaintiffs' Reply Memorandum at 6–7.

## EXHIBIT A—Continued

tion is not great enough to justify prior restraint.

## V. COUNT III: EQUAL PROTECTION

[15] The plaintiffs persuasively argue that the State's distinction between solicitation for the memorial and all other law-enforcement solicitation offends their Fourteenth Amendment right to equal protection of the laws. Plaintiffs' Memorandum at 22-24. A state must demonstrate a substantial governmental interest for discrimination that implicates First Amendment rights. *Police Dep't of the City of Chicago v. Mosley*, 408 U.S. 92, 98-99, 92 S.Ct. 2286, 2291-92, 33 L.Ed.2d 212 (1972). The State can demonstrate none. Police solicitation for a memorial to the slain is no less inherently coercive than police solicitation for any other worthy cause. *Id.* at 100, 92 S.Ct. at 2292-93 (peaceful non-labor picketing no more disruptive than peaceful labor picketing). The State has impermissibly chosen among causes for which it will lift its heavy burden on free-speech interests. *Id.* at 97-98, 92 S.Ct. at 2291-92.

## VI. RELIEF

[16, 17] The plaintiffs seek declaratory and injunctive relief as well as attorney's fees. All three requests should be granted. Declaratory relief is a matter of discretion. See, e.g., *Hibernia Sav. Bank v. Ballarino*, 891 F.2d 370, 372 (1st Cir.1989). A declaratory judgment is appropriate when it will "'serve a useful purpose in clarifying the legal relations in issue' or 'terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.'" *President v. Vance*, 627 F.2d 353, 364 n. 76 (D.C.Cir. 1980) (quoting E. Borchard, *Declaratory Judgments* 299 (2d ed. 1941)). A declaration of the invalidity of § 3702 will not only end these parties' dispute but also properly challenge the State to rethink the mechanisms by which it might pursue its legitimate goal of protecting the integrity of law enforcement.

[18] Further, the plaintiffs are entitled to a permanent injunction against the enforcement of § 3702 as now drafted. The First Circuit Court of Appeals enumerates three preconditions to permanent injunctive

relief. The plaintiff must (1) demonstrate direct injury, (2) succeed on the merits, if alleging past unlawful conduct and (3) show "continuing irreparable injury for which there is no adequate remedy at law." *Lopez v. Garriga*, 917 F.2d 63, 67-68 (1st Cir.1990). The plaintiffs here have sustained crippling injury to their ability to publish magazines. Two of the plaintiff unions offer uncontroverted testimony, and I find as a fact, that they have abandoned publication as a result of the Act. Exh. C to Stipulated Facts (Affidavit of Plaintiff Auburn Police Union) ¶ 6; Exh. D to Stipulated Facts (Affidavit of Plaintiff Portland Police Benevolent Association) ¶ 5. An official of the third plaintiff union avers, and I find as a fact, that the union will be unable to publish its magazine as a result of the Act. Exh. H to Stipulated Facts (Affidavit of Plaintiff David B. Chamberlain) ¶¶ 4-5. The plaintiffs also fulfill the second criterion of success on the merits of their attack on the Act's constitutionality. Finally, money damages cannot adequately compensate for the impermissible burden on the plaintiffs' freedom of expression.

[19] 42 U.S.C. § 1988 allows a court to award, "in its discretion," reasonable attorney's fees to the prevailing party in an action under 42 U.S.C. § 1983. The statute's discretionary language is misleading, for "it is well-established that a court may not deny an award of attorney's fees to a prevailing civil rights plaintiff in the absence of special circumstances rendering the award unjust...." *De Jesus v. Banco Popular de Puerto Rico*, 918 F.2d 232, 234 (1st Cir., 1990) (citation omitted). Indeed, the First Circuit "requires findings of fact and conclusions of law identifying the special circumstances and explaining why an award would be inappropriate...." *Id.* (citations omitted). There being no evidence whatsoever of any such special circumstances here, attorney's fees must be awarded.

## VII. CONCLUSION

For the foregoing reasons, I recommend that the court GRANT the plaintiffs' motion, and DENY the defendant's motion, for judgment on the basis of a stipulated written record. The court should per-

EXHIBIT A—Continued  
manently enjoin enforcement of 25 M.R. S.A. § 3702, declaring it unconstitutional on grounds it is facially overbroad, operates as an impermissible prior restraint and violates the plaintiffs' right to equal protection of the laws. Finally, I recommend that attorney's fees be awarded to plaintiffs pursuant to 42 U.S.C. § 1988.

#### NOTICE

*A party may file objections to those specified portions of a magistrate's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

*Dated at Portland, Maine this 21st day of December, 1990.*



CANAL ELECTRIC COMPANY, Commonwealth Electric Company, Cambridge Electric Light Company, Montaup Electric Company, Boston Edison Company, Massachusetts Municipal Wholesale Electric Company and New England Power Company, Plaintiffs,

v.

WESTINGHOUSE ELECTRIC CORPORATION, Defendant.

Civ. A. No. 85-2902-Y.

United States District Court,  
D.Massachusetts.

July 17, 1990.

On Motion For Reconsideration  
Feb. 1, 1991.

Buyer of steam turbine generator, and other utility companies which purchased

electricity from buyer, sued seller alleging, inter alia, breach of warranty upon failure of rotating blades in the generator. On motion of seller for summary judgment, the District Court, Young, J., held that: (1) seller had not repudiated its warranty obligations; (2) assuming there had been failure of essential purpose of warranty, refund of purchase price provided minimum adequate remedy, so as to preclude statutory remedies under the Uniform Commercial Code; (3) if seller breached its contractual warranty, direct damages were recoverable, though contract precluded incidental damages; (4) economic damages sought by the other utilities were not legally cognizable under Massachusetts deceptive practices statute; and (5) buyer could not recover under that statute on a mere breach of contract claim.

Motion denied in part and otherwise allowed.

#### 1. Sales ⇄286

Manufacturer and seller of blades for steam turbine generator was not willfully dilatory and did not repudiate its warranty obligations within meaning of Massachusetts version of Uniform Commercial Code, despite inability to repair satisfactorily, where seller acted in good faith, did not intentionally delay repairs, and returned purchase price. U.C.C. §§ 1-101 et seq., 2-610, 2-610 comment; M.G.L.A. c. 106, § 1-101 et seq.

#### 2. Sales ⇄426

Purchase price refund upon failure of rotating blades in steam turbine generator was a "minimum adequate remedy" within the Uniform Commercial Code as adopted in Massachusetts, so that other remedies were not provided on ground that there had been failure of essential purpose of warranty, where agreement provided for damage recovery separate and independent from the limited warranty, warranted item was a highly complex, sophisticated and in some ways experimental piece of equip-

Legislative Council  
Requests to Carry Over Bills  
to the Second Regular Session

DB: TEST5  
RPT: SPEC04

May 13, 1991

Committee Name	Title	Sponsors	
Audit & Program Review L.D. 1630	An Act to Require Gender Impact Analysis as Part of All Audit and Program Reviews	MCCORMICK CONLEY CATHCART	
Banking & Insurance L.D. 701	An Act to Provide Community Rating of Health Insurance Providers	RYDELL BUSTIN KETOVER MARTIN J	WS 5/9
L.D. 847	An Act to Establish a Consumer Advocate for Insurance	RAND KANY PARADIS J MITCHELL E	WS 5/9
L.D. 1122	An Act to Encourage Medical Cost Containment Measures by Enabling the Establishment of Preferred Provider Arrangements	MANNING GWADOSKY THERIAULT	WS 5/9
L.D. 1553	An Act to Provide Equitable Insurance Coverage for Mental Illness	DORE HOGLUND MAHANY	WS 5/9
L.D. 1613	An Act to Reform Maine Motor Vehicle Insurance	THERIAULT BRAWN JOSEPH RICHARDS	
L.D. 1721	An Act Concerning Small Business Employer Health Coverage Reforms	THERIAULT GARLAND PLOURDE	WS 5/9
Corrections (Jt. Select) L.D. 1396	An Act to Establish the Maine Correctional Institution - Warren	GILL BUSTIN MELENDY NORTON	
L.D. 1447	An Act Transferring County Jail Operations to the State	MARTIN J KETOVER BERUBE JOSEPH	

Committee Name	Title	Sponsors
Human Resources L.D. 1650	An Act to Establish Minimum Standards for Special Relief for Border Hospitals	OTT ESTES HICHENS LAWRENCE
Judiciary L.D. 1751	An Act to Require that Restrooms are Accessible to Persons with Disabilities (BY REQUEST)	MILLS
L.D. 1754	An Act to Increase the Penalties for Trafficking in or Furnishing Scheduled Drugs	LEMKE
L.D. 1780	An Act to Provide More Effective Recovery of Child Support	ANTHONY CONLEY PARADIS P
L.D. 1791	An Act to Clarify Implied or Legal Malice for the Purpose of Awarding Punitive Damages	CONLEY
L.D. 1802	An Act to Adopt a New Article for the Uniform Commercial Code	CONLEY GAUVREAU
L.D. 1812	An Act to Discourage Motor Vehicle Theft	TWITCHELL
Labor L.D. 1723	An Act to Protect the Health and Safety of Public Employees	PINEAU TREAT CONLEY MCKEEN
Transportation L.D. 309	An Act Regarding Truck Weights for Sand and Gravel Hauling	DUPLESSIS LOOK NUTTING
L.D. 498	An Act to Modify Weight Limits for Farm Trucks	THERIAULT MARTIN H PINES COLLINS
L.D. 1506	An Act to Amend the Farm Truck Registration Laws	PINES MAHANY
Utilities L.D. 1548	An Act to Regulate Incineration Plants	MELENDY
L.D. 1643	An Act to Protect Telephone Customer Privacy	ADAMS MORRISON CLARK H

Committee Name

Title

Sponsors

L.D. 1649

An Act to Promote the Access of Cable Television to Maine  
Citizens

CLARK H  
PRAY  
CARPENTER  
MORRISON

L.D. 1660

An Act to Establish the Electric Facilities Siting Council

CLARK H  
COLLINS  
BALDACCI  
MORRISON

WS 5/9

--- End of Report ---

Legislative Council  
Action on Requests to Carry Over Bills  
to the Second Regular Session  
as of May 16, 1991

DB: TEST5  
RPT: SPEC05

Committee Name	Title	Sponsors	Action
Audit & Program Review L.D. 1630	An Act to Require Gender Impact Analysis as Part of All Audit and Program Reviews	MCCORMICK CONLEY CATHCART	Approved
Banking & Insurance L.D. 701	An Act to Provide Community Rating of Health Insurance Providers	RYDELL BUSTIN KETOVER MARTIN J	Approved
L.D. 847	An Act to Establish a Consumer Advocate for Insurance	RAND KANY PARADIS J MITCHELL E	Approved
L.D. 1122	An Act to Encourage Medical Cost Containment Measures by Enabling the Establishment of Preferred Provider Arrangements	MANNING GWADOSKY THERIAULT	Approved
L.D. 1553	An Act to Provide Equitable Insurance Coverage for Mental Illness	DORE HOGLUND MAHANY	Approved
L.D. 1613	An Act to Reform Maine Motor Vehicle Insurance	THERIAULT BRAWN JOSEPH RICHARDS	Approved
L.D. 1665	An Act to Facilitate the Purchase of Insurance by Purchasing Groups	RAND THERIAULT ERWIN	Approved
L.D. 1721	An Act Concerning Small Business Employer Health Coverage Reforms	THERIAULT GARLAND PLOURDE	Approved
L.D. 1800	An Act Concerning Insurance Coverage for the Diagnosis and Treatment of the Disease of Infertility	CLARK N MITCHELL E GARLAND	Approved
Corrections (Jt. Select) L.D. 1396	An Act to Establish the Maine Correctional Institution - Warren	GILL BUSTIN MELENDY NORTON	Approved



Committee Name	Title	Sponsors	Action
L.D. 1447	An Act Transferring County Jail Operations to the State	MARTIN J KETOVER BERUBE JOSEPH	Approved
Education L.D. 1088	An Act to Amend the School Finance Laws	SIMPSON ESTES HANDY CAHILL M	Approved
L.D. 1677	An Act to Recodify the Adult and Secondary Vocational Education Laws	WHITCOMB NORTON CROWLEY CAHILL P	Approved
L.D. 1690	An Act Concerning Amendments to the Laws Affecting Education Programs of the Finance Authority of Maine	ESTES CROWLEY NORTON	Approved
L.D. 1785	An Act Regarding Reimbursement for Out-of-District Special Education Placements	ESTES CROWLEY NORTON	Approved
L.D. 1810	An Act to Provide for the Orderly Transfer of Contracts from Union Schools to Separate School Systems upon Dissolution	MCCORMICK	Approved
Energy & Natural Resources L.D. 1513	An Act Relating to Best Practicable Treatment Determinations in Air Emission Licensing	GOULD R A LUDWIG THERIAULT ANDERSON	Approved
L.D. 1832	An Act Allowing Zoning Boards of Appeal to Grant Dimensional Variances Based On Practical Difficulty	LORD ANDERSON JACQUES TITCOMB	Approved
Human Resources L.D. 890	An Act to Require the Department of Human Services to Have a Regular Presence in Every County of the State	KILKELLY MANNING HOLLOWAY SPEAR	Approved
L.D. 1562	An Act Providing Nursing and Boarding Home Residents with a Right of Action for Violations of Their Resident Rights	CLARK N GAUVREAU FARNSWORTH PENDLETON	Approved

Committee Name	Title	Sponsors	Action
L.D. 1650	An Act to Establish Minimum Standards for Special Relief for Border Hospitals	OTT ESTES HICHENS LAWRENCE	Approved
L.D. 1797	An Act to Establish a Trauma Advisory Committee and a Voluntary Trauma Reporting System	MITCHELL E RICHARDSON MANNING GILL	Approved
L.D. 1820	An Act to Provide Accountability for Certain Purchased Services by the Bureau of Mental Health	GEAN CONLEY MARTIN J GILL	Approved
L.D. 1825	An Act to Amend the Laws Relating to the Collection of Debts by the Department of Human Services	PINES MAHANY SUMMERS	Approved
Judiciary			
L.D. 1498	An Act to Promote Gun Safety	OLIVER	Approved
L.D. 1514	An Act to Limit the Liability of Nonprofit Food Providers Who Supply Meals and Other Food to Low-income and Homeless Persons	OLIVER GEAN LAWRENCE CONLEY	Approved
L.D. 1590	An Act to Establish the Maine Volunteer Service Act	MARTIN J BUSTIN CARROLL D	Approved
L.D. 1654	An Act to Facilitate Criminal Enforcement of the Environmental Laws	TREAT JACQUES GAUVREAU MARSH	Approved
L.D. 1751	An Act to Require that Restrooms are Accessible to Persons with Disabilities (BY REQUEST)	MILLS	Approved
L.D. 1754	An Act to Increase the Penalties for Trafficking in or Furnishing Scheduled Drugs	LEMKE	Approved
L.D. 1780	An Act to Provide More Effective Recovery of Child Support	ANTHONY CONLEY PARADIS P	Approved
L.D. 1791	An Act to Clarify Implied or Legal Malice for the Purpose of Awarding Punitive Damages	CONLEY	Approved
L.D. 1802	An Act to Adopt a New Article for the Uniform Commercial Code	CONLEY GAUVREAU	Approved

Committee Name	Title	Sponsors	Action
L.D. 1812	An Act to Discourage Motor Vehicle Theft	TWITCHELL	Approved
L.D. 1822	An Act to Allow Admissible Evidence Concerning the Physical or Sexual Assault or Abuse of a Minor	BOUTILIER BERUBE HOLLOWAY FARNSWORTH	Approved
L.D. 1834	An Act Creating the Victims' Compensation Board	MACBRIDE COLLINS RICHARDS KETTERER	Approved
L.D. 1838	An Act Amending the Definition of Murder in the First Degree to Include Homicide by Pattern or Practice of Assault or Torture of a Child under the Age of 16	BOUTILIER HOLLOWAY CATHCART	Approved
L.D. 1843	An Act to Improve Implementation of the Maine Indian Claims Settlement Laws	BAILEY H LUDWIG VOSE TOWNSEND	Approved
Labor			
L.D. 399	An Act to Effect Cost Savings and Ensure Worker Safety by Implementing Sexual Harassment Education and Training in the Workplace	RAND AULT ESTY CONLEY	Approved
L.D. 665	An Act Concerning Prevailing Wages Established by the Department of Labor	MCKEEN CONLEY	Approved
L.D. 968	An Act to Improve and Expand Job Training Opportunities for Maine Citizens	ESTY CLARK M RAND MARTIN J	Approved
L.D. 1248	An Act to Amend the Municipal Public Employees Labor Relations Laws	ESTY CLARK N CAHILL M OLIVER	Approved
L.D. 1723	An Act to Protect the Health and Safety of Public Employees	PINEAU TREAT CONLEY MCKEEN	Approved
Legal Affairs			
L.D. 1344	An Act to Protect Children from Illegal Tobacco Sales	CLARK N PENDLETON	Approved
Transportation			
L.D. 309	An Act Regarding Truck Weights for Sand and Gravel Hauling	DUPLESSIS LOOK NUTTING	Approved

Committee Name	Title	Sponsors	Action
L.D. 498	An Act to Modify Weight Limits for Farm Trucks	THERIAULT MARTIN H PINES COLLINS	Approved
L.D. 1506	An Act to Amend the Farm Truck Registration Laws	PINES MAHANY	Approved
Utilities L.D. 1548	An Act to Regulate Incineration Plants	MELENDY	Approved
L.D. 1643	An Act to Protect Telephone Customer Privacy	ADAMS MORRISON CLARK H	Approved
L.D. 1649	An Act to Promote the Access of Cable Television to Maine Citizens	CLARK H PRAY CARPENTER MORRISON	Approved
L.D. 1660	An Act to Establish the Electric Facilities Siting Council	CLARK H COLLINS BALDACCI MORRISON	Approved

— End of Report —

Carry Over Requests  
 Approved by the  
 Legislative Council  
 as of  
 May 16, 1991

DB: TEST5  
 RPT: SPEC06

Committee Name	Title	Sponsors	Date Approved
Aging, Retirement & Veterans L.D. 528	An Act to Permit Portability of Teacher Retirement Credits	HANDY MCCORMICK O'DEA OUTREMBLE L	05/07/91
L.D. 1323	An Act to Establish the Maine Volunteer Firefighters Retirement System	MITCHELL J CLARK N GILL BUSTIN	05/07/91
Agriculture L.D. 101	An Act Amending the Potato Branding Laws	TARDY TWITCHELL	05/07/91
L.D. 1704	An Act to Prohibit the Sale and Distribution of Certain Milk Products	WHITCOMB NUTTING SPEAR	05/07/91
Audit & Program Review L.D. 1630	An Act to Require Gender Impact Analysis as Part of All Audit and Program Reviews	MCCORMICK CONLEY CATHCART	05/16/91
Banking & Insurance L.D. 177	Resolve, to Provide Group Insurance Coverage to Maine's Foster Parents	BUSTIN RYDELL MCCORMICK TREAT	05/07/91
L.D. 284	An Act to Amend and to Clarify Confidentiality Provisions in the Maine Insurance Code	MARSANO TRACY COLLINS BUSTIN	05/07/91
L.D. 516	An Act to Include Smokers in Rehabilitation Treatment Insurance Coverage	HALE TOWNSEND GEAN BRANNIGAN	05/07/91
L.D. 626	An Act to Require Insurers to Provide Insurance Coverage for Newborn Hospital Care	CAHILL P	05/07/91

Committee Name	Title	Sponsors	Date Approved
L.D. 701	An Act to Provide Community Rating of Health Insurance Providers	RYDELL BUSTIN KETOVER MARTIN J	05/16/91
L.D. 771	An Act to Provide Coverage for Chiropractic Services under Health Maintenance Organization Plans	PRAY MARTIN J WEBSTER GARLAND	05/07/91
L.D. 847	An Act to Establish a Consumer Advocate for Insurance	RAND KANY PARADIS J MITCHELL E	05/16/91
L.D. 925	An Act to Ensure that Health Care Insurance Policies Offer Discounts to Nonsmoking Consumers	NUTTING RYDELL DUPLESSIS MITCHELL E	05/07/91
L.D. 982	An Act to Provide Equitable Insurance Reimbursement for Acupuncture Services Provided by Licensed Acupuncturists	JOSEPH MARTIN J CLARK N BRAWN	05/07/91
L.D. 1015	An Act to Provide for Increased Coverage of Mental Illness by Group Health Insurance	LAWRENCE WENTWORTH GEAN	05/07/91
L.D. 1122	An Act to Encourage Medical Cost Containment Measures by Enabling the Establishment of Preferred Provider Arrangements	MANNING GWADOSKY THERIAULT	05/16/91
L.D. 1553	An Act to Provide Equitable Insurance Coverage for Mental Illness	DORE HOGLUND MAHANY	05/16/91
L.D. 1613	An Act to Reform Maine Motor Vehicle Insurance	THERIAULT BRAWN JOSEPH RICHARDS	05/16/91
L.D. 1665	An Act to Facilitate the Purchase of Insurance by Purchasing Groups	RAND THERIAULT ERWIN	05/16/91
L.D. 1721	An Act Concerning Small Business Employer Health Coverage Reforms	THERIAULT GARLAND PLOURDE	05/16/91

Committee Name	Title	Sponsors	Date Approved
L.D. 1800	An Act Concerning Insurance Coverage for the Diagnosis and Treatment of the Disease of Infertility	CLARK N MITCHELL E GARLAND	05/16/91
Corrections (Jt. Select) L.D. 1396	An Act to Establish the Maine Correctional Institution - Warren	GILL BUSTIN MELENDY NORTON	05/16/91
L.D. 1447	An Act Transferring County Jail Operations to the State	MARTIN J KETOVER BERUBE JOSEPH	05/16/91
Education L.D. 128	An Act Concerning Federal Impact Aid for Education	ESTES PINES CLARK N LAWRENCE	05/07/91
L.D. 1088	An Act to Amend the School Finance Laws	SIMPSON ESTES HANDY CAHILL M	05/16/91
L.D. 1677	An Act to Recodify the Adult and Secondary Vocational Education Laws	WHITCOMB NORTON CROWLEY CAHILL P	05/16/91
L.D. 1690	An Act Concerning Amendments to the Laws Affecting Education Programs of the Finance Authority of Maine	ESTES CROWLEY NORTON	05/16/91
L.D. 1785	An Act Regarding Reimbursement for Out-of-District Special Education Placements	ESTES CROWLEY NORTON	05/16/91
L.D. 1810	An Act to Provide for the Orderly Transfer of Contracts from Union Schools to Separate School Systems upon Dissolution	MCCORMICK	05/16/91
Energy & Natural Resources L.D. 1191	An Act to Amend the State Ground Water Classification System and Implement the Maine Wellhead Protection Program for the Protection of Public Water System Wellheads	KANY JACQUES TITCOMB HOGLUND	05/07/91
L.D. 1289	An Act to Promote Comprehensive and Consistent Statewide Environmental Policy and Regulation	GOULD R A TARDY	05/07/91

Committee Name	Title	Sponsors	Date Approved
L.D. 1513	An Act Relating to Best Practicable Treatment Determinations in Air Emission Licensing	GOULD R A LUDWIG THERIAULT ANDERSON	05/16/91
L.D. 1540	An Act to Improve Coordination of Municipal and State Review of Environmental Permits	LUDWIG GOULD R A	05/07/91
L.D. 1551	An Act to Supplement State Environmental Enforcement	COLES MARSH TREAT	05/07/91
L.D. 1832	An Act Allowing Zoning Boards of Appeal to Grant Dimensional Variances Based On Practical Difficulty	LORD ANDERSON JACQUES TITCOMB	05/16/91
Fisheries & Wildlife L.D. 232	An Act Concerning Road Kills	BRAWN	05/07/91
Human Resources L.D. 403	An Act to Enhance Medical and Social Services for Maine's Long-term Care Consumers (Reported Pursuant to Resolve 1989, chapter 58)		05/07/91
L.D. 579	An Act to Appropriate Funds for At-risk Youths and Families	BRANNIGAN CHONKO POULIOT DUTREMBLE L	05/07/91
L.D. 890	An Act to Require the Department of Human Services to Have a Regular Presence in Every County of the State	KILKELLY MANNING HOLLOWAY SPEAR	05/16/91
L.D. 1257	An Act to Give Legal Effect to General Assistance Decisions Made by the Administrative Hearings Unit of the Department of Human Services	MANNING CONLEY	05/07/91
L.D. 1543	An Act to Penalize the Department of Human Services for Failing to Make Prompt Child Support Payments to Obligees	LAWRENCE OLIVER GEAN CONLEY	05/07/91
L.D. 1562	An Act Providing Nursing and Boarding Home Residents with a Right of Action for Violations of Their Resident Rights	CLARK N GAUVREAU FARNSWORTH PENDLETON	05/16/91



Committee Name	Title	Sponsors	Date Approved
L.D. 1650	An Act to Establish Minimum Standards for Special Relief for Border Hospitals	OTT ESTES HICHENS LAWRENCE	05/16/91
L.D. 1797	An Act to Establish a Trauma Advisory Committee and a Voluntary Trauma Reporting System	MITCHELL E RICHARDSON MANNING GILL	05/16/91
L.D. 1820	An Act to Provide Accountability for Certain Purchased Services by the Bureau of Mental Health	GEAN CONLEY MARTIN J GILL	05/16/91
L.D. 1825	An Act to Amend the Laws Relating to the Collection of Debts by the Department of Human Services	PINES MAHANY SUMMERS	05/16/91
Judiciary			
L.D. 171	An Act to Strengthen the State's Role in Drug-related Prosecution	PARADIS P GAUVREAU RICHARDS	05/07/91
L.D. 271	An Act to Replace Certain Criminal Fines with Community Service	CONLEY	05/07/91
L.D. 298	An Act Regarding District Court Location	OTT	05/07/91
L.D. 344	An Act to Establish a Limit on Noneconomic Damages in Medical Liability Actions	HASTINGS RICHARDS TWITCHELL BERUBE	05/07/91
L.D. 345	An Act Relating to Surrogate Parenting	DORE PARADIS J COTE KANY	05/07/91
L.D. 513	An Act Requiring the Provision of Information to Victims of Gross Sexual Assault	TOWNSEND VOSE	05/07/91
L.D. 933	An Act to Promote Equity in Court Filing Fees	GAUVREAU CONLEY OTT LIPMAN	05/07/91
L.D. 939	An Act to Provide Funding for Sexual Abuse Victims and Offenders	FARNSWORTH CATHCART MCCORMICK PARADIS P	05/07/91

Committee Name	Title	Sponsors	Date Approved
L.D. 1133	An Act to Amend Sentences of Imprisonment for Class A Crimes Other Than Murder	CONLEY	05/07/91
L.D. 1458	An Act Relating to Court Security Personnel	GAUVREAU BERUBE POULIOT COTE	05/07/91
L.D. 1498	An Act to Promote Gun Safety	OLIVER	05/16/91
L.D. 1514	An Act to Limit the Liability of Nonprofit Food Providers Who Supply Meals and Other Food to Low-income and Homeless Persons	OLIVER GEAN LAWRENCE CONLEY	05/16/91
L.D. 1590	An Act to Establish the Maine Volunteer Service Act	MARTIN J BUSTIN CARROLL D	05/16/91
L.D. 1593	An Act to Amend the Maine Health Security Act	STEVENS P KETTERER CONLEY OTT	05/07/91
L.D. 1654	An Act to Facilitate Criminal Enforcement of the Environmental Laws	TREAT JACQUES GAUVREAU MARSH	05/16/91
L.D. 1751	An Act to Require that Restrooms are Accessible to Persons with Disabilities (BY REQUEST)	MILLS	05/16/91
L.D. 1754	An Act to Increase the Penalties for Trafficking in or Furnishing Scheduled Drugs	LEMKE	05/16/91
L.D. 1780	An Act to Provide More Effective Recovery of Child Support	ANTHONY CONLEY PARADIS P	05/16/91
L.D. 1791	An Act to Clarify Implied or Legal Malice for the Purpose of Awarding Punitive Damages	CONLEY	05/16/91
L.D. 1802	An Act to Adopt a New Article for the Uniform Commercial Code	CONLEY GAUVREAU	05/16/91
L.D. 1812	An Act to Discourage Motor Vehicle Theft	TWITCHELL	05/16/91
L.D. 1822	An Act to Allow Admissible Evidence Concerning the Physical or Sexual Assault or Abuse of a Minor	BOUTILIER BERUBE HOLLOWAY FARNSWORTH	05/16/91

Committee Name	Title	Sponsors	Date Approved
L.D. 1834	An Act Creating the Victims' Compensation Board	MACBRIDE COLLINS RICHARDS KETTERER	05/16/91
L.D. 1838	An Act Amending the Definition of Murder in the First Degree to Include Homicide by Pattern or Practice of Assault or Torture of a Child under the Age of 16	BOUTILIER HOLLOWAY CATHCART	05/16/91
L.D. 1843	An Act to Improve Implementation of the Maine Indian Claims Settlement Laws	BAILEY H LUDWIG VOSE TOWNSEND	05/16/91
Labor			
L.D. 172	An Act to Encourage Family Unity	MCHENRY	05/07/91
L.D. 399	An Act to Effect Cost Savings and Ensure Worker Safety by Implementing Sexual Harassment Education and Training in the Workplace	RAND AULT ESTY CONLEY	05/16/91
L.D. 665	An Act Concerning Prevailing Wages Established by the Department of Labor	MCKEEN CONLEY	05/16/91
L.D. 968	An Act to Improve and Expand Job Training Opportunities for Maine Citizens	ESTY CLARK M RAND MARTIN J	05/16/91
L.D. 1248	An Act to Amend the Municipal Public Employees Labor Relations Laws	ESTY CLARK N CAHILL M OLIVER	05/16/91
L.D. 1723	An Act to Protect the Health and Safety of Public Employees	PINEAU TREAT CONLEY MCKEEN	05/16/91
Legal Affairs			
L.D. 251	An Act Concerning Liquor Licenses for Small Stores	HASTINGS TWITCHELL PLOURDE	05/07/91
L.D. 1048	An Act Authorizing Presidential Primary Elections in the State	RICHARDSON KONTOS GEAN	05/07/91

Committee Name	Title	Sponsors	Date Approved
L.D. 1344	An Act to Protect Children from Illegal Tobacco Sales	CLARK N PENDLETON	05/16/91
Marine Resources L.D. 688	An Act Concerning the Scallop Dragging Limit	LOOK VOSE FARREN CARROLL J	05/07/91
Transportation L.D. 309	An Act Regarding Truck Weights for Sand and Gravel Hauling	DUPLESSIS LOOK NUTTING	05/16/91
L.D. 498	An Act to Modify Weight Limits for Farm Trucks	THERIAULT MARTIN H PINES COLLINS	05/16/91
L.D. 702	An Act Regarding the Relocation of Utility Facilities as a Result of State Highway Construction	MARTIN J THERIAULT GOULD R R HUSSEY	05/07/91
L.D. 1506	An Act to Amend the Farm Truck Registration Laws	PINES MAHANY	05/16/91
Utilities L.D. 1491	An Act to Authorize the Public Utilities Commission to Regulate Rates for Cable Television	PLOURDE DIPIETRO ADAMS	05/07/91
L.D. 1548	An Act to Regulate Incineration Plants	MELENDY	05/16/91
L.D. 1643	An Act to Protect Telephone Customer Privacy	ADAMS MORRISON CLARK H	05/16/91
L.D. 1649	An Act to Promote the Access of Cable Television to Maine Citizens	CLARK H PRAY CARPENTER MORRISON	05/16/91
L.D. 1660	An Act to Establish the Electric Facilities Siting Council	CLARK H COLLINS BALDACCI MORRISON	05/16/91

--- End of Report ---

LEGISLATIVE COUNCIL  
REQUESTS TO INTRODUCE LEGISLATION  
FIRST REGULAR SESSION  
May 14, 1991

Action

SPONSOR: Rep. Mayo

LR 2692     Resolve to Establish a Commission to Investigate  
             Census Data Irregularities

Cosponsors: Rep. Cathcart  
             Rep. MacBride  
             Sen. Bost

SPONSOR: Rep. Rotondi

LR 2691     An Act to Increase the Borrowing Authority of  
             the Jackman Sewer District

TABLED BY THE LEGISLATIVE COUNCIL

SPONSOR: Sen. Brawn

TABLED  
04/17/91

LR 2635 An Act to Amend the Laws Governing Safety Standards  
for Over the Road Commercial Vehicles

Cosponsors: Sen. Gould, Robert R.  
Rep. Macomber

SPONSOR: Rep. Kilkelly

TABLED  
04/17/91

LR 2551 An Act to Provide for Effective Enforcement of Laws  
Prohibiting the Drugging of Animals in Pulling  
Competitions

SPONSOR: Rep. Martin, John L.

TABLED  
04/17/91

LR 2584 Resolve, to Freeze Pay Levels for  
Certain Confidential Employees

SPONSOR: Rep. O'Gara

TABLED  
04/17/91

\*\*LR 2529 An Act to Amend the Laws Concerning Immunization  
of College Students

Cosponsors: Rep. Kontos

SPONSOR: Rep. Rotondi

TABLED  
04/17/91

LR 0997 An Act Regarding Access to Certain Lands

SPONSOR: Rep. Rotondi

TABLED  
04/17/91

LR 2578 An Act to Require Training for Certain Corrections  
Personnel

Cosponsors: Sen. Kany

SPONSOR: Sen. Summers

TABLED  
05/07/91

LR 2688 An Act to Amend the Definition of Prostitution

JOINT RESOLUTION

SPONSOR: Rep. Martin, John L.

TABLED  
04/17/91

LR 2600 JOINT RESOLUTION MEMORIALIZING CONGRESS TO AMEND  
THE UNITED STATES CONSTITUTION TO MAKE DESECRATION  
OF THE AMERICAN FLAG A CRIME

\*\* Requests noted with 2 asterisks appear to be closely  
related to other requests on file.

ADDENDUM

LEGISLATIVE COUNCIL  
REQUESTS TO INTRODUCE LEGISLATION  
FIRST REGULAR SESSION  
May 16, 1991

Action

SPONSOR: Sen. Summers

LR 2700 An Act Relating to Going Out of Business Sales