

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Sixteenth Legislature
OF THE
State Of Maine

VOLUME I

FIRST REGULAR SESSION

House of Representatives
December 2, 1992 to May 13, 1993

ONE HUNDRED AND SIXTEENTH MAINE LEGISLATURE
FIRST REGULAR SESSION
42nd Legislative Day
Tuesday, April 27, 1993

The House met according to adjournment and was called to order by the Speaker.
Prayer by Father Frank J. Murray, Our Lady of Wisdom Parish, Orono.
The Journal of Monday, April 26, 1993, was read and approved.

SENATE PAPERS

The following Communication:

Maine State Senate
Augusta, Maine 04333

April 26, 1993

Honorable Joseph W. Mayo
Clerk of the House
State House Station 2
Augusta, Maine 04333

Dear Clerk Mayo:

Please be advised that the Senate today Insisted to its previous action whereby it accepted the Majority Ought Not to Pass Report on the Bill "An Act to Require Legislative Confirmation of the Director of the Maine Drug Enforcement Agency" (H.P. 358) (L.D. 461).

Sincerely,

S/Joy J. O'Brien
Secretary of the Senate

Was read and ordered placed on file.

Ought to Pass as Amended

Report of the Committee on Utilities reporting "Ought to Pass" as Amended by Committee Amendment "A" (S-68) on Bill "An Act to Amend the Maine Nuclear Emergency Planning Act" (EMERGENCY) (S.P. 152) (L.D. 484)

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-68).

Report was read and accepted, the bill read once. Committee Amendment "A" (S-68) was read by the Clerk and adopted and the Bill assigned for second reading Wednesday, April 28, 1993.

Ought to Pass as Amended

Report of the Committee on Business Legislation reporting "Ought to Pass" as Amended by Committee Amendment "A" (S-72) on Bill "An Act to Regulate Home

Repair by Transient Contractors" (S.P. 228) (L.D. 699)

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-72).

Report was read and accepted, the bill read once. Committee Amendment "A" (S-72) was read by the Clerk and adopted and the Bill assigned for second reading Wednesday, April 28, 1993.

Divided Report

Majority Report of the Committee on Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (S-70) on Bill "An Act to Exempt Employees of the Public Utilities Commission from Furlough and Shutdown Days" (EMERGENCY) (S.P. 119) (L.D. 357)

Signed:

Senators: VOSE of Washington
CARPENTER of York

Representatives: MORRISON of Bangor
CLARK of Millinocket
TAYLOR of Cumberland
HOLT of Bath
DONNELLY of Presque Isle
KONTOS of Windham
CASHMAN of Old Town
ADAMS of Portland

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Representatives: AIKMAN of Poland
COFFMAN of Old Town

Came from the Senate with the Majority "Ought to Pass" as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-70)

Reports were read.

Representative Clark of Millinocket moved that the House accept the Majority "Ought to Pass" Report.
The SPEAKER: The Chair recognizes the Representative from Poland, Representative Aikman.
Representative AIKMAN: Mr. Speaker, Men and Women of the House: I would like speak against the Majority "Ought to Pass" Report and hope you will accept the "Ought Not to Pass" Report.

This bill would exempt the PUC staff from discretionary furlough and shutdown days. This would give the PUC staff a 7 percent increase in salaries that other state workers are not receiving. Other departments are also overworked and are managing despite the furlough and shutdown days. It may not be money from the General Fund but these dollars will come from the ratepayers. Either way, the money comes out of the pockets of the Maine citizens.
Mr. Speaker, I request a roll call.

The SPEAKER: The Chair recognizes the

Representative from Old Town, Representative Coffman.

Representative COFFMAN: Mr. Speaker, Ladies and Gentlemen of the House: My concern in signing on the Minority Report was what it would do for the morale of the rest of the state employees. All of them feel like they are overworked, all of them feel like they are being dumped on. If we were to make an exception and allow the state employees that work for the PUC to be exempt from furlough days, I think it would hit into the morale into the rest of the state workers.

Looking at this a little further, I also realized that the PUC employees are very overworked to the extent that rate cases that Bangor-Hydro presents to them are scheduled for sometime in 1994 which puts them on the back burner because the sufficient employee level that they have to deal with the problems that they have aren't enough, so they have to take the biggest first and that is CMP. So, I realize there are both sides to this story. I would just like to make that statement in support of state workers.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Holt.

Representative HOLT: Mr. Speaker, Men and Women of the House: As a member of the Utilities Committee too, I would like to tell you that accepting the Majority "Ought to Pass" motion is very important, not only to the ratepayers of Maine but to everyone including the shareholders.

You all know how up in arms that people have been these past few years to do with electric rates, rising costs. The money that pays the Public Utilities Commission staff people, as well as the commissioners, comes from the utilities themselves, not from our General Fund. We have heard time after time in committee how much work and time and effort and experience it takes to deal with a rate design, fairness among utilities, fairness to low income people, fairness to all of us as ratepayers and shareholders in Maine of the Public Utilities.

We thought long and hard about this bill in committee and there was much testimony. I do not believe we are giving the PUC staff people anymore leg up than we ought to be doing in this time of difficulty. I hope that you will understand that the PUC and its staff is somewhat different from the rest of the people you have been hearing about in this short exchange. With great respect to my colleagues on the PUC Committee who are opposed to the "Ought to Pass" motion, I request that you go along with the Majority Report and help the ratepayers of this state as much as we can in this difficult time.

The SPEAKER: The Chair recognizes the Representative from Millinocket, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: There was mention that this could be a possible loss to the ratepayers. We are being told by the Public Advocate, the PUC, and everybody who came to the hearing that this could be a major savings to the ratepayers because the people are taking their time off through furlough days, they are going to be there doing their work. The Public Advocate took a long hard time reviewing this bill and came to the committee and spoke very strongly in favor of the bill.

There was mention also by one of the speakers that MSEA may have a problem with this bill. If some of the members would come to the hearings and work sessions, they would have known that MSEA was there during the hearings and the work sessions and

lobbying us out in the halls trying to get this bill passed sooner than what we have here today. The MSEA is very much in favor of this bill, wants it passed.

I even had an amendment I was going to put on this bill to deal with the advocate because I believe the advocate ought to be part of it. But, I sacrificed a little bit to get the bill out. MSEA is very much in favor of this bill. There is no loss of revenues to the ratepayers, it could save the ratepayers a lot of money in the long run. This is a unique commission, they do a lot of hard work and that is why the bill is here.

The other body on the other end passed this unanimously. If you notice on the sponsorship of the document, the Senator was out of town or his name would even be on there. So, I hope when you vote today, I hope you vote with the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Winthrop, Representative Norton.

Representative NORTON: Mr. Speaker, Ladies and Gentlemen of the House: While I intend to vote for this bill, I can't let the opportunity slide to mention that these employees are not unique. They may be funded from a different source but I believe that too long state employees have been taking it right on the nose, disproportionately to every person in the State of Maine. So, I believe that we ought to keep that in mind, however you vote on this issue, because the people who work for this state, in all capacities, are necessary and vital to the job they are doing. I don't know how they keep on for I have seen morale in state government go downhill since 1971. I was once a state employee and I think I am in a position to judge it. I think it has sunk and sunk and sunk and I wouldn't know where the upturn is but I hope it is near.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Holt.

Representative HOLT: Mr. Speaker, Men and Women of the House: I just want to say as a member of the Utilities Committee that I could not agree with the good Representative Norton more and, if there were a mechanism whereby we could treat our state workers fairly, I would surely be right here speaking for it, right now today.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Coffman.

Representative COFFMAN: Mr. Speaker, Men and Women of the House: To me, it comes down to, who pays? If this bill goes forth, there is going to be a cost to the consumer out there, to the electrical ratepayers. They are going to pick this bill up. In this instance, that is where the money comes from, the rates. If the state workers — the situation with state workers is they get paid by a tax. The tax and the electrical rate comes from the same person. I would like to make that point.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of Representative Clark of Millinocket that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those

opposed will vote no.

ROLL CALL NO. 60

YEA - Ahearne, Bowers, Brennan, Caron, Carroll, Cashman, Cathcart, Chase, Chonko, Clark, Clement, Cloutier, Constantine, Cote, Daggett, DiPietro, Donnelly, Dore, Driscoll, Erwin, Faircloth, Gamache, Gean, Gould, R. A.; Gwadosky, Hatch, Heeschen, Hichborn, Hogle, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Kerr, Ketterer, Kontos, Lemke, Lord, Marsh, Martin, H.; Melendy, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Norton, O'Gara, Oliver, Paradis, P.; Pfeiffer, Pineau, Pinette, Plourde, Poulin, Rand, Richardson, Ricker, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Saxl, Skoglund, Spear, Stevens, K.; Strout, Sullivan, Swazey, Tardy, Taylor, Townsend, E.; Townsend, L.; Tracy, Treat, True, Vigue, Walker, Wentworth, Winn.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bruno, Cameron, Carleton, Carr, Clukey, Coffman, Cross, Dutremble, L.; Farnum, Farren, Foss, Gray, Greenlaw, Hale, Heino, Hillock, Joy, Kneeland, Lemont, Libby James, Lindahl, Look, MacBride, Marshall, Murphy, Nickerson, Pendexter, Plowman, Quint, Reed, G.; Reed, W.; Robichaud, Small, Stevens, A.; Thompson, Tufts, Whitcomb, Zirkilton.

ABSENT - Adams, Aliberti, Beam, Campbell, Coles, Dexter, Farnsworth, Fitzpatrick, Kilkelly, Kutasi, Larrivee, Libby Jack, Lipman, Michael, Michaud, Nash, Ott, Pendleton, Pouliot, Simonds, Simoneau, Townsend, G.; Young, The Speaker.

Yes, 82; No, 45; Absent, 24; Paired, 0; Excused, 0.

82 having voted in the affirmative and 45 in the negative with 24 being absent, the Majority "Ought to Pass" Report was accepted, the Bill was read once.

Committee Amendment "A" (S-70) was read by the Clerk and adopted and the bill assigned for second reading, Wednesday, April 28, 1993.

Non-Concurrent Matter

Bill "An Act to Create the Tax-exempt Organization Sunshine Act of 1993" (H.P. 942) (L.D. 1271) which was referred to the Committee on State and Local Government in the House on April 15, 1993.

Came from the Senate referred to the Committee on Taxation in non-concurrence.

The House voted to recede and concur.

COMMUNICATIONS

The following Communication:

STATE OF MAINE
SUPREME JUDICIAL COURT
AUGUSTA, MAINE 04330

April 26, 1993

Hon. John L. Martin
Speaker of the House
State House Station #2

Augusta, Maine 04333

Dear Speaker Martin:

I enclose the Answers of the Justices to the Questions Propounded by the House Order, dated March 4, 1993, pertaining to Legislative Document 751.

Sincerely yours,

S/Daniel E. Wathen
Chief Justice

OPINION OF THE JUSTICES
OF THE SUPREME JUDICIAL COURT

GIVEN UNDER THE PROVISIONS OF SECTION 3
OF ARTICLE VI OF THE CONSTITUTION

Docket No. OJ-93-1

QUESTIONS PROPOUNDED BY THE HOUSE OF REPRESENTATIVES
IN A COMMUNICATION

DATED MARCH 10, 1993

ANSWERED APRIL 26, 1993

ANSWERS OF THE JUSTICES

To the Honorable House of Representatives of the
State of Maine:

In Compliance with the provisions of section 3 of article VI of the Constitution of Maine, we, the undersigned Justices of the Supreme Judicial Court, have the honor to submit the following responses to the questions propounded by the House of Representatives on March 4, 1993.

On receiving a request for an advisory opinion from either house of the Legislature or the Governor, we must first determine whether we have constitutional authority to answer the propounded questions. Opinion of the Justices, 460 A.2d 1341, 1345 (Me. 1982). The Maine Constitution obliges us "to give [our] opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Senate, or House of Representatives." Me. Const. art. IV, section 3.

We are to answer only questions pertaining to matters of "instant, not past or future concern; things of live gravity." Opinion of the Justices, 355 A.2d 341, 389 (Me. 1976) (citation omitted). "The anticipated need for the advice must not be 'tentative, hypothetical and abstract.'" Id. (quoting Opinion of the Justices, 330 A.2d 912, 915 (Me. 1975)). In this instance, the House of Representatives has before it an initiated bill, (L.D. 751 (116th Legis. 1993)), seeking to impose term limits on legislators and various constitutional officers. Pursuant to article IV, part third, section 18, clause 2 of the Maine Constitution, that initiative, "unless enacted without change by the Legislature at the session at which it is presented,

shall be submitted to the electors...." Therefore, the Legislature must either enact L.D. 751 without amendment² or decline to enact L.D. 751 and submit the proposal to the electors. The House of Representatives has expressed substantial doubt as to the bill's constitutionality based on advice from the Attorney General. The House's need for guidance in the discharge of its obligations is not merely hypothetical and constitutes an issue of instant concern despite the fact that the Legislature could decline to enact L.D. 751 and allow it to be submitted to the voters. See Opinion of the Justices, 370 A.2d 654 (Me. 1977) (solemn occasion existed even though the Senate could have declined to act on a pending initiative and the voters could have rejected the initiative at an election); Opinion of the Justices, 343 A.2d 196, 202 (Me. 1975) (solemn occasion existed when Governor was required to either act or refuse to act in pending complaint seeking removal of a District Attorney and Governor professed doubts based on legal advice regarding the constitutionality of the statute under which he was requested to act).

We conclude that the questions propounded constitute important questions of law on a solemn occasion, see Opinion of the Justices, 370 A.2d at 667; Opinion of the Justices, 355 A.2d at 389. We answer questions 1 and 2 in the affirmative and therefore do not answer question 3.

At issue is the scope of legislative power, which is declared to be plenary and subject only to the limitations of the state and federal constitutions. "The legislature, with the exceptions hereinafter stated, shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to the Constitution, nor to that of the United States." Me. Const. art. IV, pt. 3, section 1. Legislative power is defined by limitation, not by grant, and is absolute except as expressly or by necessary implication restricted by the Constitution. "The people of this State retain all powers not enumerated. The Legislature of Maine may enact any law of any character or on any subject, unless it is prohibited, either in express terms or by necessary implication, by the Constitution of the United States or the Constitution of this State." Baxter v. Waterville Sewerage District, 146 Me. 211, 215, 79 A.2d 585, 588 (1951). See also Ace Tire Co. v. Municipal Officers of Waterville, 302 A.2d 90, 96 (Me. 1973) (interpreting article IV, part third, section 1 of the Maine Constitution as granting the Legislature plenary power "except as it may have been circumscribed expressly or inferentially by the constitution of the state or nation"); Town of Warren v. Norwood, 138 Me. 180, 192-93, 24 A.2d 229, 235 (1941) (stating that legislative power is "absolute and all-embracing except as expressly or by necessary implication restricted by the Constitution"). Thus the inquiry is whether the authority of the Legislature, or the authority of the electors through the process of initiative and referendum, Me. Const. art. IV, pt. 2, section 18, has been limited so that the proposed statutory qualifications for members of the Legislature and other constitutional officers may not be validly enacted.

In reviewing legislative enactments, we presume that the legislation is constitutional and invalidate it only if there is a clear showing by "strong and convincing reasons" that it conflicts with the

Constitution. Laughlin v. City of Portland, 111 Me. 486, 489, 90 A. 318, 319 (1914). In the present context, because the Maine Constitution does not expressly grant or deny legislative authority to prescribe qualifications for members of the Legislature and other constitutional officers beyond those enumerated, conflict between the proposed legislation and the Constitution could arise only by implication.

There are no qualifications set forth in the Constitution for the offices of secretary of state, treasurer, or attorney general, Me. Const., art. V, pts. 2 and 3; art. IX, section 11.³ Thus we find no implicit basis for restricting the power residing in the Legislature to enact reasonable qualifications for these offices. See Annotation, Legislative Power to Prescribe Qualifications for or Conditions to Constitutional Office, 34 A.L.R.2d 155, 174-75 (1962); see e.g., State ex. re. Askew v. Thomas, 293 So. 2d 40, 42 (Fla. 1974) (upholding a statute requiring residency for school board members in the absence of any constitutional qualifications).

Certain requirements are specified in the Constitution for representatives and senators. Those requirements consist of a period of citizenship, a minimum age, a period of state residency, and a period of residency in the district that the official will represent. The requirements are the same for representatives and for senators except for a difference in the minimum age. Me. Const. art. IV, pt. 1, section 4; art. IV, pt. 2, section 6.⁴ The requirements are stated in the negative and expressly disqualify any person not a citizen, or not a resident, or under the stated age.⁵ Such a specific statement of disqualification does not clearly and unmistakably give rise to an implication that the Legislature is without authority to prescribe additional qualifications for representatives or senators, provided the added qualifications are reasonable, do not conflict with those in the Constitution, and violate no guaranteed rights. See Annotation, Legislative Power to Prescribe Qualifications for or Conditions to Constitutional Office, 34 A.L.R. 2d at 166-68; see e.g., Boughton v. Price, 215 P.2d 286, 290 (Idaho 1950).

Prescribing additional qualifications by statute does implicate the constitutionally guaranteed right of suffrage, but reasonable restrictions on the eligibility for holding office only incidentally involve that right. Me. Const. art. II, section 1. Cf. Snider v. Shapp, 405 A.2d 602, 613 (Pa. Commw. Ct. 1979) (finding that a statute requiring candidates to file financial disclosure statements and proscribing conduct involving conflicts of interest did not unconstitutionally limit the field of candidates from which voters might choose).

It is our opinion that the limitations contained in L.D. 751 on the terms of office for secretary of state, treasurer, attorney general, representatives, and senators are within the legislative power and, if enacted, would be valid.

Dated: April 26, 1993

Respectfully submitted,

S/Daniel E. Wathen
Chief Justice

S/David G. Roberts
S/Samuel W. Collins, Jr.
S/Paul L. Rudman
S/Howard H. Dana, Jr.
Associate Justices

been established....
Me. Const. art. II, section 1.

ANSWER OF JUSTICE GLASSMAN AND JUSTICE CLIFFORD

To the Honorable House of Representatives of the
State of Maine:

¹The proposed legislation also seeks to impose term limits on the Office of State Auditor, which is not an office created by the Maine Constitution. That office is not a subject of the propounded questions.

²Generally, no solemn occasion exists when the matter on which an opinion is sought is "pending in committee and not yet before the inquiring branch of the Legislature." Opinion of the Justices, 370 A.2d 654, 667 (Me. 1977). The reason for the rule is that the proposed legislation might not reach the Legislature in its current form. Opinion of the Justices, 355 A.2d 341, 389 (Me. 1976). Accordingly, we have recognized an exception to that rule when "issues raised by the questions would be involved in whatever form the bill came out of Committee." Id. Because the initiated bill must be enacted by the Legislature in its present form or be submitted to the voters, the general rule is inapposite and we are free otherwise to find that a solemn occasion exists.

³The Constitution's sole limitation on the office of attorney general is to prohibit that official from holding certain incompatible offices. Me. Const. art. IX, section 2. The treasurer is subject to the same limitation and is prohibited from engaging in business or commerce while in office. Me. Const. art. V, pt. 3, section 3. We previously have suggested that the process set forth in the Constitution (Me. Const. art. IX, section 5) for removing constitutional officers is exclusive. See Opinion of the Justices, 343 A.2d 196, 203 (Me. 1975).

⁴ No person shall be a member of the House of Representatives, unless he shall, at commencement of the period for which he is elected, have been 5 years a citizen of the United States, have arrived at the age of 21 years, have been a residence in this State one year; and for the 3 months next preceding the time of his election shall have been, and, during the period for which he is elected, shall continue to be a resident in the district which he represents. Me. Const. art. IV, pt. 1, section 4.

The Senators shall be 25 years of age at the commencement of the term, for which they are elected, and in all other respects their qualifications shall be the same as those of the Representatives.

Me. Const. art. IV, pt. 2, section 6.

⁵In contrast, the Constitution states in the affirmative the qualifications for voting.

Every citizen of the United States of the age of 18 years and upwards...shall be an elector for Governor, Senators and Representatives, in the city, town or plantation where his or her residence has

We do not concur in the opinion of our colleagues on the Court and pursuant to Article VI, Section 3 of the Maine Constitution, we, the undersigned Justices of the Supreme Judicial Court, have the honor to submit our separate response to the questions propounded by the House of Representatives on March 4, 1993.

Question 3 asks whether L.D. 751 must be sent to the voters even if it is the opinion of the justices that the bill is unconstitutional. We would answer that question in the affirmative. Me. Const. art. IV, pt. 3, section 18 requires that the initiated bill be submitted to the voters in its current form regardless of our opinion as to its constitutional validity. See Farris ex rel. Dorsky v. Goss, 143 Me. 227, 231, 60 A.2d 908, 911 (1948) (right of the people to enact legislation is an absolute one and cannot be abridged by any direct or indirect action of the legislature). Because we would answer Question 3 in the affirmative, Questions 1 and 2 do not, in our view, constitute important questions of law upon a solemn occasion requiring an advisory opinion. We therefore decline to answer them.

An advisory opinion is an "extraordinary responsibility" given "outside the context of any concrete, fully developed factual situation and without the benefits of adversary evidentiary and [fully developed] legal presentations." Opinion of the Justices, 437 A.2d 597, 610 (Me. 1981). Such opinions are subjected by the constitution to "carefully confined conditions," id., and may be rendered only on important questions of law on solemn occasions. Me. Const. art. VI, section 3. "The matters with regard to which advisory opinions are proper are those of instant, not past nor future, concern; things of live gravity." Opinion of the Justices, 260 A.2d 142, 146 (Me. 1969) (quoting Opinion of the Justices, 134 Me. 510, 513, 191 A. 487, 488 (1936)).

The subject of Questions 1 and 2 is not related to any potential procedural defect in the pending initiated bill that could affect whether it can be sent to referendum. Rather, Questions 1 and 2 ask about the substantive constitutional validity of L.D. 751 and whether it will be enforceable if enacted. Although the legislature has the option of acting on L.D. 751, the initiated measure cannot be amended nor can it be kept from voter referendum except by enactment in its current form. The legislature may submit a competing measure to referendum along with L.D. 751 pursuant to Me. Const. art. IV, pt. 3, section 18, but there is nothing before us to indicate that a competing measure free from the same constitutional questions is being considered.

We are aware that the Court has in the past given an advisory opinion concerning an initiated bill.

See Opinion of the Justices, 370 A.2d 654 (Me. 1977). The circumstances leading to the rendering of that advisory opinion, however, were very different from the present situation. The 1977 initiated bill proposed a repeal of the uniform property tax. That proposal, as well as several specific bills that were pending before the legislature, had a direct and immediate effect on the Governor's proposed budget for the ensuing fiscal year (commencing just a matter of months from the date the advisory opinion was rendered). The legislature was required to enact a budget prior to the start of the fiscal year, and it sought our opinion concerning the effective dates of the various bills, including the initiated bill, in order to carry out that responsibility. There is no such immediacy present here. L.D. 751, if enacted by the people in referendum, will not be effective until 1996.

Art. IV, pt. 3, section 18 reserves to the people the power to enact legislation directly through the initiative and referendum process. We should not interfere with or handicap the people's right of franchise by offering an opinion on the enforceability of an initiated measure before the electorate has expressed its views. See Allen v. Quinn, 459 A.2d 1098, 1102-03 (Me. 1983); see also Farris, 143 Me. at 231, 60 A.2d at 911. As the United States Supreme Court has said, "The best teaching of this Court's experience admonishes us not to entertain constitutional questions in advance of the strictest necessity." Parker v. Los Angeles County, 338 U.S. 327, 333 (1949). Other state courts have similarly concluded that it is inappropriate to address the constitutionality of an initiative measure before it has been presented to the voters. See, e.g., Tilson v. Mofford, 737 P.2d 1367, 1369 (Ariz. 1987) (court is powerless to predetermine constitutional validity of substance of an initiated measure but can determine procedural issues); Associated Taxpayers of Idaho, Inc. v. Cenarrusa, 725 P.2d 526, 527 (Idaho 1986) (Donaldson, C.J. specially concurring) (any action by the court on the initiated measure's constitutionality is premature and interferes with the people's right to exercise their franchise); Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824, 827 (Mo. 1990) (court's preelection function limited to whether constitutional requirements relating to procedure and form of initiative petitions have been met); State ex rel. Montana Citizens v. Waltermire, 729 P.2d 1283, 1285 (Mont. 1986) (court will assume jurisdiction over preelection challenges only when challenge is procedural or measure is unconstitutional on its face); State ex rel. Cramer v. Brown, 454 N.E.2d 1321, 1322 (Ohio 1983) (court will not consider preelection claim of unconstitutionality).

The voters may reject this legislation. Even if enacted, the measure is not effective until 1996. Its constitutionality can then be determined in the "context of [a] concrete, fully developed factual situation and with[] the benefits of adversary evidentiary and [fully developed] legal presentations." Opinion of the Justices, 437 A.2d at 610.

We answer Question 3 in the affirmative. We respectfully decline to answer Questions 1 and 2.

Dated: April 26, 1993

Respectfully submitted,
S/Caroline D. Glassman
S/Robert W. Clifford
Associate Justices

Was read and with accompanying papers ordered placed on file.

On motion of Representative Gwadosky of Fairfield, the following was removed from the Tabled and Unassigned matters:

"An Act to Impose Term Limitations on Legislators, Constitutional Officers and the State Auditor" (I.B. 1) (L.D. 751)
TABLED - March 10, 1993 by Representative Gwadosky of Fairfield.
PENDING - Reference

The SPEAKER: The Chair recognizes the Representative from Fairfield, Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Men and Women of the House: L.D. 751 is the initiated referendum citizens' initiative. You have seen the opinion of the Supreme Court Justices, Article IV, part third, section 18 of the Constitution which indicates that this legislature must enact this without amendment or send it out to referendum. My motion now will be to, as we would normally do, refer this to the Joint Standing Committee on State and Local Government for a recommendation back to us, then we will be in a position to act on it before this session has ended.

I now move that L.D. 751 be referred to the Joint Standing Committee on State and Local Government.

Subsequently, (I.B. 1)(L.D. 751) was referred to the Joint Standing Committee on State and Local Government, ordered printed and sent up for concurrence.

The following Communication: (S.P. 426)

MAINE STATE SENATE
AUGUSTA, MAINE 04333

April 21, 1993

The Honorable Dennis L. Dutremble
President of the Senate
116th Legislature

The Honorable John L. Martin
Speaker of the House
116th Legislature

Dear Mr. President and Mr. Speaker:

Please be advised that today 1 bill was received by the Secretary of the Senate.

Pursuant to the provisions of Joint Rule 14, this bill was referred to the Joint Standing Committee and ordered printed on April 21, 1993, as follows:

JUDICIARY

Bill "An Act to Amend the Maine Civil Rights Act Regarding Violations of Constitutional Rights" (S.P. 425) (L.D. 1334) (Presented by Senator LAWRENCE of York) (Submitted by the Department of the Attorney General pursuant to Joint Rule 24.)

Sincerely,

S/Joy J. O'Brien
Secretary of the Senate

S/Joseph W. Mayo
Clerk of the House

Came from the Senate, read and ordered placed on file.

Was read and ordered placed on file in concurrence.

The following Communication: (S.P. 427)

MAINE STATE SENATE
AUGUSTA, MAINE 04333

April 20, 1993

The Honorable Dennis L. Dutremble
President of the Senate
116th Legislature

The Honorable John L. Martin
Speaker of the House
116th Legislature

Dear Mr. President and Mr. Speaker:

Please be advised that today 9 bills, 1 resolve and 1 Resolution were received by the Secretary of the Senate.

Pursuant to the provisions of Joint Rule 14, these bills were referred to the Joint Standing Committees and ordered printed on April 20, 1993, as follows:

AGING, RETIREMENT & VETERANS

Bill "An Act Regarding Creditable Service of Educational Technicians in the Maine State Retirement System" (S.P. 421) (L.D. 1330) (Presented by Senator PARADIS of Aroostook)

Bill "An Act to Change Beneficiary Provisions for Survivor Benefits in the Maine State Retirement System" (S.P. 424) (L.D. 1333) (Presented by Senator PARADIS of Aroostook)

APPROPRIATIONS & FINANCIAL AFFAIRS

Bill "An Act to Require that All Interest on Escrowed Assessments on Utilities Be Used for the

Benefit of the Public Utilities Commission and the Office of the Public Advocate" (S.P. 417) (L.D. 1326) (Presented by Senator CLEVELAND of Androscoggin)

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Allow the Governor to Veto Specific Appropriations and Allocations (S.P. 418) (L.D. 1327) (Presented by Senator HANLEY of Oxford) (Cosponsored by Senators: BERUBE of Androscoggin, BUTLAND of Cumberland, SUMMERS of Cumberland, Representatives: AIKMAN of Poland, BARTH of Bethel, HILLOCK of Gorham, OTT of York, PLOWMAN of Hampden, SPEAR of Nobleboro, TRUE of Fryeburg)

JUDICIARY

Bill "An Act to Deter Deliberate Polluters" (S.P. 420) (L.D. 1329) (Presented by Senator LAWRENCE of York) (Cosponsored by Representative MARSH of West Gardiner and Senator: CLEVELAND of Androscoggin, Representatives: ADAMS of Portland, COLES of Harpswell, FARNSWORTH of Hallowell, LIBBY of Buxton, LIPMAN of Augusta, MITCHELL of Freeport, ST. ONGE of Greene, TREAT of Gardiner) (Submitted by the Department of the Attorney General pursuant to Joint Rule 24.)

Bill "An Act Regarding Trafficking of Drugs in Homes in Which Children Live" (S.P. 422) (L.D. 1331) (Presented by Senator BERUBE of Androscoggin) (Cosponsored by Senators: BUTLAND of Cumberland, PARADIS of Aroostook, Representatives: AHEARNE of Madawaska, KILKELLY of Wiscasset, LOOK of Jonesboro, YOUNG of Limestone) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

LEGAL AFFAIRS

Resolve, Authorizing Richard Paradise of Wells, Maine to Sue the State (S.P. 414) (L.D. 1323) (Presented by Senator LAWRENCE of York) (By Request) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

Bill "An Act to Create Statewide Arrest Powers for Municipal Law Enforcement Officers" (S.P. 415) (L.D. 1324) (Presented by Senator LAWRENCE of York)

Bill "An Act to Keep Drunk Drivers Off the Road" (S.P. 419) (L.D. 1328) (Presented by Senator LAWRENCE of York) (Cosponsored by Representatives: MARTIN of Eagle Lake, OTT of York)

Bill "An Act to Protect Landlords from Certain Types of Fraud" (S.P. 423) (L.D. 1332) (Presented by Senator BERUBE of Androscoggin) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.)

UTILITIES

Bill "An Act to Decrease the Cost of Purchased Power to Electric Utility Customers in the State" (Emergency) (S.P. 416) (L.D. 1325) (Presented by Senator LUTHER of Oxford)

Sincerely,

S/Joy J. O'Brien

Secretary of the Senate

S/Joseph W. Mayo
Clerk of the House

Came from the Senate, read and ordered placed on file.

Was read and ordered placed on file in concurrence.

The following Communication: (S.P. 428)

116TH MAINE LEGISLATURE

April 23, 1993

Senator John J. O'Dea
Rep. Elizabeth H. Mitchell
Chairpersons
Joint Standing Committee on Education
116th Legislature
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated Natalie C. Graceffa of Augusta for appointment to the Maine Educational Loan Authority.

Pursuant to Title 20A, MRSA Section 11415, this nomination will require review by the Joint Standing Committee on Education and confirmation by the Senate.

Sincerely,

S/Dennis L. Dutremble
President of the Senate

S/John L. Martin
Speaker of the House

Came from the Senate, Read and Referred to the Committee on Education.

Was Read and Referred to the Committee on Education in concurrence.

The following Communication: (S.P. 429)

116TH MAINE LEGISLATURE

April 23, 1993

Senator John J. O'Dea
Rep. Elizabeth H. Mitchell
Chairpersons
Joint Standing Committee on Education
116th Legislature
Augusta, Maine 04333

Dear Chairs:

Please be advised that Governor John R. McKernan, Jr. has nominated Joseph Sewall of Old Town for reappointment Nathan E. Corning of Rockport and Henry

G. Brooks, Jr. of York Harbor for appointments to the Maine Maritime Academy Board of Trustees.

Pursuant to P.L. 1975, Chapter 771, Section 428, these nominations will require review by the Joint Standing Committee on Education and confirmation by the Senate.

Sincerely,

S/Dennis L. Dutremble
President of the Senate

S/John L. Martin
Speaker of the House

Came from the Senate, Read and Referred to the Committee on Education.

Was Read and Referred to the Committee on Education in concurrence.

REPORTS OF COMMITTEES

Divided Report

Tabled and Assigned

Majority Report of the Committee on Business Legislation reporting "Ought Not to Pass" on Bill "An Act to Require That the Inspection and Investigation Responsibilities of the Electricians' Examining Board Receive Funding Priority" (H.P. 490) (L.D. 648)

Signed:

Senators: CIANCHETTE of Somerset
MARDEN of Kennebec

Representatives: VIGUE of Winslow
REED of Dexter
HILLOCK of Gorham
CAMERON of Rumford

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-176) on same Bill.

Signed:

Senator: BUSTIN of Kennebec

Representatives: CLEMENT of Clinton
HOGLUND of Portland
ST. ONGE of Greene
WINN of Glenburn

Reports were read.

On motion of Representative Hوجلund of Portland, tabled pending acceptance of either report and specially assigned for Wednesday, April 28, 1993.

Divided Report

Tabled and Assigned

Majority Report of the Committee on Labor reporting "Ought to Pass" as amended by Committee Amendment "A" (H-178) on Bill "An Act Regarding Family Leave" (H.P. 318) (L.D. 406)

Signed:

Senators: HANDY of Androscoggin
LUTHER of Oxford

Representatives: LIBBY of Buxton
CHASE of China
RUHLIN of Brewer
CLEMENT of Clinton
ST. ONGE of Greene
SULLIVAN of Bangor
COFFMAN of Old Town

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senator: BEGLEY of Lincoln

Representatives: CARR of Sanford
LINDAHL of Northport
AIKMAN of Poland

Reports were read.

Representative Ruhlin of Brewer moved that the House accept the Majority "Ought to Pass" Report.

On further motion of the same Representative, tabled pending his motion that the House accept the Majority "Ought to Pass" Report and specially assigned for Wednesday, April 28, 1993.

CONSENT CALENDAR

First Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the First Day:

(S.P. 202) (L.D. 638) Bill "An Act to Modify Public Utilities Commission Practice and Rules of Evidence" Committee on Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (S-69)

(S.P. 223) (L.D. 694) Bill "An Act to Require That Purchasers of Used Cars Be Informed Whether the Cars Were the Subjects of Lemon Law Decisions" Committee on Business Legislation reporting "Ought to Pass" as amended by Committee Amendment "A" (S-67)

(H.P. 212) (L.D. 274) Bill "An Act to Revise the Correctional Facility Board of Visitors Laws" Joint Select Committee on Corrections reporting "Ought to Pass" as amended by Committee Amendment "A" (H-186)

(H.P. 557) (L.D. 754) Bill "An Act Concerning Property Tax Payment by Owners of Mobile Homes" Committee on Legal Affairs reporting "Ought to Pass"

(H.P. 386) (L.D. 499) Bill "An Act to Clarify the Process of Resolving Nuisance Complaints Involving Agriculture" Committee on Agriculture reporting "Ought to Pass" as amended by Committee Amendment "A" (H-187)

(H.P. 450) (L.D. 576) Resolve, to Maximize the Availability of Federal Financing of Services for Families and Children (EMERGENCY) Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-188)

(H.P. 287) (L.D. 374) Bill "An Act to Assist Policy Makers in Establishing Health Care Policy" Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-189)

(H.P. 664) (L.D. 902) Bill "An Act to Clarify the Role of the Child Abuse and Neglect Councils" Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-190)

There being no objections, the above items were ordered to appear on the Consent Calendar of Wednesday, April 28, 1993, under the listing of Second Day.

CONSENT CALENDAR

Second Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the Second Day:

(H.P. 747) (L.D. 1014) Resolve, to Continue the Commission to Study the Feasibility of a Capital Cultural Center (EMERGENCY)

(H.P. 628) (L.D. 848) Bill "An Act to Amend Laws Related to Dependent's Group Life Insurance Coverage" (C. "A" H-172)

(H.P. 580) (L.D. 784) Bill "An Act Clarifying Identification of Financial Institution Off-premise Facilities" (C. "A" H-173)

(H.P. 267) (L.D. 345) Bill "An Act Clarifying the Laws Limiting Insurance Charged to Credit Cards" (C. "A" H-174)

(H.P. 230) (L.D. 298) Bill "An Act Authorizing Maine Banks to Export Certain Credit Terms" (C. "A" H-175)

(H.P. 194) (L.D. 257) Bill "An Act to Amend the Laws Governing the Task Force on Defense Realignment and the Economy" (EMERGENCY) (C. "A" H-177)

(H.P. 210) (L.D. 272) Bill "An Act to License Flight Nurses within the Emergency Medical Services System" (EMERGENCY) (C. "A" H-179)

(H.P. 674) (L.D. 912) Bill "An Act to Amend Certain Provisions of the Maine Emergency Medical Services Act of 1982" (C. "A" H-180)

(H.P. 283) (L.D. 370) Bill "An Act to Clarify the Laws Relating to Property Tax Abatements" (C. "A" H-182)

(H.P. 661) (L.D. 899) Resolve, to Direct Elected and Appointed Officials of the State to Work to Maintain Canadian Atlantic Railway Service through the State (EMERGENCY) (C. "A" H-184)

(H.P. 679) (L.D. 921) Bill "An Act to Authorize the Operation of Articulated Buses on Maine Highways" (C. "A" H-185)

No objections having been noted at the end of the Second Legislative Day, the House Papers were Passed to be Engrossed or Passed to be Engrossed as Amended and sent up for concurrence.

PASSED TO BE ENGROSSED

As Amended

Bill "An Act to Increase the Penalties for Littering" (H.P. 608) (L.D. 823) (C. "A" H-181)

Bill "An Act to Amend the Motor Vehicle Laws" (H.P. 482) (L.D. 619) (C. "A" H-183)

Were reported by the Committee on Bills in the Second Reading, read the second time, Passed to be Engrossed as Amended, and sent up for concurrence.

At this point, the House went at ease for the purpose of joining in "Welcome Back Day" ceremonies.

The House was called to order by the Speaker.

ORDERS OF THE DAY

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Rule 24.

The Chair laid before the House the first item of Unfinished Business:

HOUSE REPORT - Pursuant to the Constitution of Maine, Article IV, Part Third, Section 1-A on Bill "An Act to Apportion the State's Senate, House of Representatives and Congressional Districts" (H.P. 883) (L.D. 1197)

- In House, Read.

TABLED - April 13, 1993 by Representative GWADOSKY of Fairfield.

PENDING - Further Action.

The SPEAKER: The Chair recognizes the

Representative from East Millinocket, Representative Michaud.

Representative MICHAUD: Mr. Speaker, Men and Women of the House: I hope you accept the Report. What we are considering today is a redistricting bill for the Legislature and Congress. This bill is based on a plan that was recommended by the Apportionment Commission created in December pursuant to the Constitution and we met our responsibility by developing a plan by April 1st.

I will give a little brief history on the Commission and where we are today. After members were appointed and a budget approved, the Commission unanimously adopted a set of criteria that met both the federal and state Constitutional requirements. The criteria requires that we maintain a certain standard of size for each district and that the districts be compact and contiguous in territory. The criteria also requires that we seek to preserve the core of existing districts and that we comply with the Federal Voting Rights Act.

I believe that the plan that we are considering today meets the goals set in that criteria. We have also been able in this plan to actually decrease the number of splits in municipalities, which is also spoken to in the Constitution.

This redistricting plan is the first since Maine's Constitutional Amendment that required the towns to be dealt with in a way so that we could keep the splits to a minimum. We do have fewer splits than we do currently. The remaining population in a town (under the Constitution) that is split has to be put in an adjoining district, unlike the situation currently in — I will use Saco for an example — where Saco was split, three districts currently under the proposed plan, Saco is one full district and the remainder of that district is in another district. It is not split two ways.

During January and February, the public members of the Commission worked hard to select a neutral chair. We finally managed to do so. We were fortunate, as I mentioned a couple of weeks ago, to have had Judge Jack Smith, who served as the Chair of the Commission. Since then, some of you have asked me what was Judge Smith's background. Judge Smith is a recently retired State Superior Court Judge. He came to us with a well-respected background. After graduating from Harvard Law School, Judge Smith, which I did not know but it would not have changed my mind, served as President of his College Young Republican Club. He also served as Mayor of Auburn. Judge Smith, I thought, did a tremendous job in leading the Commission to our end result.

After we had the Judge on board, the Commission held two public hearings in March, the first hearing was held here in Augusta using the ITV system and the second hearing was held over at the State Office Building here in Augusta to seek public input on the proposed plan that both bodies, both caucuses, presented.

Both sides actively negotiated throughout March. We made a great effort to reach consensus. In fact, many of the districts that you currently have before you in the proposed amendment, which I will be offering later, we had reached bipartisan agreements. There are 105 districts that we agreed on. Unfortunately, the night of April 1st, even though we did agree to quite a few districts, the report did not come out unanimous. On March 30th, Judge Smith presented what we called a unified Senate

plan that he drafted considering suggestions and submissions from the public and the Commission members. After negotiating on the House lines on April 1st, the final plan that was adopted by the 8th was what we called the Unified Commission Plan.

The Congressional Districts that we adopted were the Congressional Districts that the Republican members of the Commission had proposed. In general, the House Plan respects the current division of current districts as much as possible. Because of the population shift, there are some districts that has changed substantially but, on an average, about 70 percent of the districts will remain intact. This, we felt, will avoid confusion amongst the voters in those particular districts.

This plan is a balanced plan, there is inconvenience to both sides. I believe that this plan provides for fair and competitive districts for everyone. Nobody can even predict with certainty how their particular districts will turn out. There are some members in this body, Democrats and Republicans, who, by political analysis would have believed and never be in those districts.

This plan also attempts to recognize the voters familiarity with their districts and to seek and to cause the least damage in those current districts.

Mr. Speaker, the task before this chamber today is to adopt a complete plan for 151 House members and 35 Senate members and two Congressional seats. Each district will stand on its own merits and with the amendments, one that I will present later on this morning and another one this afternoon, it will provide for a complete plan. I believe that once you see both of those amendments that you will also realize that it will be a complete plan and that it will meet the criteria that the Commission had adopted unanimously.

Ever since the Supreme Court's landmark redistricting decision nearly 30 years ago, the primary focus on reapportionment is to achieve population parity. This plan keeps the total population within the range of legal requirements. The maximum population deviation in the plan is what we call the ideal population of 8,132 people. The Commission Report submitted to the legislature on April 1st goes into great detail in reviewing the legal principle guiding in the redistricting process and that the Commission had adopted. Copies of the report has been made available in the Clerk's Office if you have not seen one.

Our goal throughout this process has been to seek ideas from the public and from the affected political parties. We also ensured that this has been one of the most open redistricting processes that has occurred. Our door, I know on our side, has always been open. We have answered questions from either political party, any member of this body who wished to come in, we always had an open door policy.

Those of us who supported the Commission Plan that you have before you today never intended to have this bill go to court. We were elected to serve the people of this state and to uphold our Constitutional mandate. We intended all along, right from the beginning, to provide a plan to this body that was a compromise plan that would be passed by this body and signed by the Governor.

There's been many court cases as far as redistricting and the courts have repeatedly said that redistricting is a primary focus for the legislature. We are the policy-making body, not the

courts. The courts are not the place to waste sensitive social, political issues that our founders intended for the legislature. The Maine Constitution provides for court action as a form of last resort. The Commission created by the Constitution met its responsibility, it is time that we assume the responsibility and enact a plan into law.

I think over the last few months there has been some concerns from our side that, right from the outset, that certain members of the Commission wanted to take this to court. That has not been our goal and we still do not want it to go to court. I think we do have the responsibility to pass a plan.

We did, since the last vote — I met with former Congressman Emery to go over the plan, it was just he and I, other members of the Commission were unavailable and we did make a lot of progress. We agreed on an additional 25 seats. However, there are still left around 40 seats, 47 seats remaining. Out of those 47 seats remaining, most of those are city splits. Once you eliminate the city splits within the Cities of Portland, Biddeford and Sanford, those seats that remain unresolved are roughly around maybe 18 or 19. So, we do have a plan before us, I will be offering later on today three amendments, one to deal with the other body, the other two amendments will deal with the House Districts. So, at that time I will present those amendments, we will discuss those in great detail and, hopefully, this body will adopt the Commission Plan. It is our responsibility and I think we have got to move on.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendexter.

Representative PENDEXTER: Mr. Speaker, may I pose a series of questions to the Chair?

The first question is, is L.D. 1197 the Reapportionment Commission Plan?

The SPEAKER: The Chair would ask to whom is she posing the question?

Representative PENDEXTER: To the Chair.

The SPEAKER: The Chair will then listen to the question. Could the Representative please restate the question?

Representative PENDEXTER: Is L.D. 1197 the Apportionment Commission Plan?

The SPEAKER: The Chair would inquire for what purpose the question is asked?

Representative PENDEXTER: Well, it is not clear to me what the motion is on the floor. It is not clear to me.....

The SPEAKER: The pending motion before the House is accepting the bill that is now before us.

Representative PENDEXTER: Okay, so then my question would be, is the bill before us the Reapportionment Bill?

The SPEAKER: The Chair would answer in the affirmative.

Representative PENDEXTER: Thank you. Could I pose another question?

I am hearing that there are a lot of amendments that are going to be presented and I guess it is not clear to me because, according to our Constitution, Article IV, Part 1st, Section 3 which I would like to read into the Record says, "In the preparation of legislation implementing the plan, the Commission following a unanimous decision by commissioned members may adjust errors and inconsistencies in accordance with the standards set forth in this Constitution, so long as substantive changes are not

made. The legislature may enact a submitted plan of the Commission or a plan of its own by a vote of two-thirds of the members of each House within 30 days after the plan of the Commission is submitted." My question is, to me it is pretty clear in the Constitution that the only way that the Commission Plan can be amended is through the unanimous vote of the Commission members and those changes can only be to adjust errors and not create substantive changes to the plan. My question is, could you explain to me how we will be able to amend L.D. 1197?

The SPEAKER: The Chair would advise the Representative from Scarborough that the Chair cannot render an advisory opinion on behalf of the Attorney General nor for the Supreme Judicial Court of Maine. However, the Chair would advise members of the House that, as in the past, amendments have in fact been offered on the floor and have been adopted before the plan was finally adopted so the Chair would rule that amendments are entirely proper.

Representative PENDEXTER: Thank you. The Reapportionment Commission, which is established under the Maine Constitution, was charged with the responsibility of producing a package of pre-agreed plans, one for the State Senate, one for the State House of Representatives and the third for the two Congressional Districts.

Under the Constitution, the Commission was required to report such a package before midnight April 1st. The Commission failed to meet its Constitutional requirements for two reasons. First, the Commission failed to vote on the plan until after the midnight deadline. As at least two news reporters were present observed, the vote did not take place until 12:15 a.m. April 2nd. Some might consider this to be a rather technical objection, however, failings of a much more substantive nature render the Commission's action void. The Commission failed to report complete plans for either the Senate or the House of Representatives. Only the Congressional District plan was adopted in its entirety.

If you look through the text of L.D. 1197, you will note instances in which some districts have been listed with only a population figure but with no reference to towns or census blocks. These particular districts are incomplete, no agreement was reached as to the district boundary lines or town. There are no less than 42 incomplete House Districts in the Commission Plan, 28 percent of the entire House.

There are also six incomplete Senate Districts. Since the plan was not complete, a fact that is readily acknowledged by the neutral chairs consultant and others who worked on the Commission Plan, it cannot stand as an option for the '93 redistricting because it cannot function as a plan.

Subsequently, the Reapportionment Commission failed to do its constitutional duty and the incomplete Commission Plan now before us is null and void. The Constitution anticipates circumstances like these. When the Commission fails to do its duty, the legislature then has a period of time in which to pass a plan of its own. If, in turn, the legislature also fails, the issue is then automatically sent to the Maine Supreme Court.

It is now up to the legislature to act, the matter now properly before us is not the Commission Plan as just explained, the Commission failed. The failed and incomplete Commission Plan should be

rejected so that the legislature can attempt to adopt a complete and Constitutional Redistricting Plan.

I urge you to vote against the pending motion. When the vote is taken, I request the yeas and nays.

The SPEAKER: The Chair recognizes the Representative from Woodland, Representative Anderson.

Representative ANDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I realize that District #147 that I had before is not there anymore in my District. I would like to ask a question through the Chair to Representative Michaud from East Millinocket, where is Woodland? In what District is it now?

The SPEAKER: Representative Anderson of Woodland has posed a question through the Chair to Representative Michaud who may respond if he so desires.

The Chair recognizes that Representative.

Representative MICHAUD: Mr. Speaker, Ladies and Gentlemen of the House: I would ask the Representative from Woodland to turn to the L.D., page 39, he will see Woodland under District #148.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Small.

Representative SMALL: Mr. Speaker, Ladies and Gentlemen of the House: Representative Pendexter posed the question of whether it is possible to amend this piece of legislation and whether or not it is the Commission Report and the Speaker replied that it had been amended in the past. If he is referring to 1983, the bill was indeed amended and one of the legislators brought up the point, who did not like his District and asked a question of the Attorney General on whether or not they acted legally to amend the Commission Report after the final passage. Without having to read the entire letter into the Record, it does state that "Within a week after March 1, 1983, however, the Commission realized that due to technical difficulties in working with census data, its plan for the reapportionment of the House of Representatives did not accurately reflect the Commission's intent. Consequently, the Commission met and prepared a revised plan and map for the reapportionment of Maine's 151 Representative Districts. The material was then submitted to the Clerk of the House."

So, those amendments, I believe, did have the unanimous endorsement of the Apportionment Committee and I believe also that they were considered to be technical in nature although I am not sure they didn't maybe exceed the technical limitations.

I do urge you to reject L.D. 1197, "An Act to Apportion the State's Senate, House of Representatives and Congressional Districts." There are several reasons to vote against the Commission Report. The Commission failed to adopt a Commission Report in the time limit set by the Constitution of Maine and the report that was proposed was voted eight to seven "Ought to Pass" and is substantially flawed. It is incomplete in 42 of the 151 House Districts and six of the 35 Senate seats. If you wish to accept the Commission Report, you will be supporting the creation of districts with no boundary lines, just population totals.

There is also another misconception in this piece of legislation before us today. On page 42, section 3, under Legislative Findings, there is a sentence that reads, "The legislature also finds that the delicate balancing of diverse political interests required in apportionment matters has been achieved

by the Legislative Apportionment Commission." A sentence that is false if you consider one-half of the Commission rejected the plan before you. The rest of the sentence reads "and that substantial alteration of the plans proposed by the Legislative Apportionment Commission will detract both now and in the future from the important objective of apportioning the Legislature and Congressional Districts by the politically balanced process of the Legislative Apportionment Commission and the Legislature itself."

Indeed, unless we substantially alter the document before us today, we will have 42 incomplete House Districts and six incomplete Senate Districts. The Commission Report is flawed, incomplete and was rejected by seven members of the Commission.

I urge you to vote against this legislation before you.

The SPEAKER: The Chair would advise the Representative from Bath, Representative Small, that the Chair appreciates the fact that she has not been a member of the House quite as long as the presiding officer. However, the Chair would suggest that you go back and research the previous Commission Report and the amendments that in fact were presented and in fact were, as I recall, at least one was adopted by the Majority Floor Leader of the House at that time, Republican, Representative Simpson, from Standish or that general area. So, the Chair wants to make it clear that the history of it is very clear. The Commission, whether it did do or did not do its job, is in fact not an issue before us, it is whether or not it will now be amended. It is now in L.D. form, the legislature may choose to do whatever it wants to do.

The Chair recognizes the Representative from Bath, Representative Small.

Representative SMALL: Mr. Speaker, Men and Women of the House: Just to fill in my history of the legislature, did the '73 House Plan get adopted?

The SPEAKER: The Chair would have to go back and recall that — my understanding was that it was. The only one that I recall since I have been a member that was not adopted was one for the Senate which subsequently went to court. That is what my recollection is.

The Chair recognizes the Representative from Mount Desert, Representative Zirnkilton.

Representative ZIRNKILTON: Mr. Speaker, I would like to pose a question through the Chair.

The question is to the Representative from East Millinocket, Representative Michaud, if he would care to answer. The question is brief and it is whether or not you agree that in fact the 1197, the Commission Report, is in fact not complete as others have stated, do you agree with that statement?

The SPEAKER: Representative Zirnkilton of Mount Desert has posed a question through the Chair to the Representative from East Millinocket, Representative Michaud, who may respond if he so desires.

The Chair recognizes that Representative.

Representative MICHAUD: Mr. Speaker, Men and Women of the House: No, I do not agree. True, the bill that you have before you does have just numbers, it does not have streets in the bill. However, it has always been my assumption that those areas that we agreed on are in the bill and those areas that were in disagreement, which was pretty much the northern part of the state and some other Districts, that those would be the democratic plan.

This bill is before us and I would hope that you would adopt it because serving on the Appropriation Committee, being cognizant of the financial situation we are in here, it is useless to kill a bill just simply so we can add another bill and expend additional monies for printing the bill.

I will have, as I mentioned earlier, three amendments to this bill that will put in the city blocks. I will debate each one of those amendments when the time arises. I will add that there was, as Speaker Martin has stated, House Amendment "B" that was adopted by the Representative from Standish, Representative Simpson.

It is this legislature's responsibility to adopt the plan. I don't want to stand here debating semantics all day. Either we want a plan or we don't. If you do not want the plan as presented, then you should have an amendment ready to change it. It is the legislative responsibility, it is our responsibility, if you don't like the plan, we should change it. Whether or not this is a complete plan, whether or not the Commission met its deadlines is another issue. The legislature has the right and it has the responsibility to adopt a plan. The plan must meet all state, federal and constitutional requirements. Once this L.D. is out of this body and hopefully passed, it will meet each and every requirement. So, I hope that you would adopt this so we can get on and discuss the amendments that will be presented later on today.

The SPEAKER: The Chair recognizes the Representative from Mount Desert, Representative Zirnkilton.

Representative ZIRNKILTON: Mr. Speaker, Members of the House: I appreciate the Representative's answer but I do find it somewhat contradictory to what was stated earlier. I thought that I had heard you say that there were some unfinished districts and then you seemed to say that it was okay as it is. So, if I could actually ask you one additional question it would be, if we were to adopt L.D. 1197 as it is right now, would it be an enforceable plan?

The SPEAKER: Representative Zirnkilton of Mount Desert has posed a question through the Chair to the Representative from East Millinocket, Representative Michaud, who may respond if he so desires.

The Chair recognizes that Representative.

Representative MICHAUD: Mr. Speaker, Men and Women of the House: Not being an attorney and not having gone to court at all, particularly on any redistricting plan, I would dare not say whether or not the courts would say this is a complete plan or not. It is my understanding is that this is a complete plan. The difference in the actual L.D. and the amendments that I will present are the actual city lines within the cities that we disagreed on. The actual population is there, you do have a population count in those cities. However, you do not have the city lines in a few of those cities that we were unable to agree on before the bill was passed. We did have — and they are not printed in the bill — we did have the city lines, we did not pick a number out of the air for the lines in this bill. These are actual city lines but when they printed the bill, for those cities that were still disagreed on, they did not put the block numbers in because, where they were still disagreed on, the judge felt that we should not put the block lines. But, those numbers in this L.D. were not picked out of the air, those numbers were actual city lines that

were drawn.

I do hope that you adopt this plan so we can move on, so we can add the amendments necessary to put those city lines and deal with the additional districts that we agreed to over the past week.

The SPEAKER: The Chair recognizes the Representative from Presque Isle, Representative MacBride.

Representative MACBRIDE: Mr. Speaker, Men and Women of the House: Ten years ago, I served on the Reapportionment Commission so I know a good deal about what it involves and how much work it really is. I do know that the object is to create a fair plan.

I also served nationally on the Reapportionment Task Force for NCSL and serving on that task force, I visited a good many areas where they were doing redistricting. We had much discussion on reapportionment and I felt at that time that our plan set up by the Constitution was the fairest plan that I had heard of in which you had seven members of the Republican Party and seven members of the Democratic Party on that Commission and you selected a neutral chair. You all worked together to produce a very viable plan, a plan that the legislators could accept. The object was, of course, to have a legislative plan accepted. As I said, I served on that Commission, we worked very hard, we worked together all 14 members plus our neutral chair. We had a short time because of the convening date of the legislature had changed and we came forth with a plan.

Following that, a bill was submitted to the legislature and the Constitution did have some changes that were made, that were made since 1973. However, in our reapportionment commission, we were very cognizant of the Constitution and following the Constitution. I think Representative Michaud has just mentioned that we really wanted a plan that does meet constitutional standards. Now in the Constitution that has been read to you before but I want to read to you again, it says, "In preparation of legislation implementing the plan, the Commission, following a unanimous" (and that word is unanimous) "decision by the Commission members, may adjust errors and inconsistencies in accordance with the standards set forth in this Constitution so long as substantive changes are not made." That is a part of the Constitution and I think is important, that this body follow the Constitution. I think we do want a plan, we do want a fair plan and I am hopeful that we could have a plan in this body but, on the other hand, I don't think that we can sacrifice the wording of the Constitution — I think we need to follow that and go on with it.

I would like to pose a question through the Chair, Mr. Speaker.

I would like to pose a question to the legislator from East Millinocket. Inasmuch as the Constitution says that only technical changes can be made and that you have to have the unanimous vote of the Commission — how can we possibly accept a plan as you have submitted here when you have not had the unanimous vote as a committee and when you are talking about substantive changes?

The SPEAKER: The Representative from Presque Isle, Representative MacBride, has posed a question through the Chair to the Representative from East Millinocket, Representative Michaud, who may respond if he so desires.

The Chair recognizes that Representative.

Representative MICHAUD: Mr. Speaker, Men and Women of the House: I think what Representative MacBride and Representative Pendexter are telling you — they are only telling you half the story.

They are only reading that one sentence of the Constitution that talks about the Commission, the Commission. It says "the Commission by unanimous vote" — this is the legislature. It also says in the Constitution "the legislature has a right to adopt its own plan by a two-thirds vote." That is very clear so if we adopt this plan, it's the legislature's plan.

It is true the Commission has to have a unanimous vote but the legislature has a right to adopt its own plan by a two-thirds vote and that is our responsibility.

I went over and over the semantics of this issue about being able to amend this — it can be done and it has been done in the past. If you also look in the Constitution, the Constitution prohibits the legislature from amending only one thing to my knowledge and that is initiated bills. That is the only thing the legislature cannot amend. It has full power and authority to amend any other bill that is before us.

I would ask members who still debate or question whether or not you can amend this to read the full Constitution. The only section that has been referred to, for whatever reason and I think I know what the reason is, is simply because it has been the intent of some members of the Commission all along, right from the beginning, to take this to court.

As a matter of fact, Judge Smith had a meeting with myself and Senator Hanley because he was concerned at the comment that Representative Small had made one evening when we were dealing with this. The comment was about going to court, we will be better off in court. I don't think so. This is our responsibility and we do have the right to amend this, it is in the Constitution, the only thing the legislature cannot amend is an initiative bill.

What Representative MacBride and Representative Pendexter is telling you, they are referring to the Commission. This is not the Commission here, we are the legislature and we have the right, we have the obligation to pass a bill and present it to the Governor. It is not the court's responsibility. If they want to debate the bill in each district on its merits, I welcome that opportunity. I think that is what should be done. I don't think that they ought to try to defeat this bill by using false arguments that it cannot be amended. It can be amended and I will have some amendments ready.

I would like to pose a question through the Chair, if I may.

If the members, I will be specific since Representative MacBride and Representative Pendexter, are adamant that this cannot be amended, do they plan to offer any amendments if the Report is passed? I pose that question to both Representative MacBride and Representative Pendexter as well as Representative Small.

The SPEAKER: The Representative from East Millinocket, Representative Michaud, has posed a question through the Chair to Representative Pendexter of Scarborough, Representative MacBride of Presque Isle and Representative Small of Bath who may respond if they so desire.

The Chair recognizes the Representative from Scarborough, Representative Pendexter.

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: To answer — I will make a comment and then I will answer the question.

The motion before us is to accept the Commission Report and through difference of opinion some of us feel that the motion before us is the Commission's Report and the question was posed whether we should amend the Report or not. The Report is incomplete. Representative Michaud talks about the city districts as if they are not anymore important than the rural districts but the point of the matter is that the lines were not drawn. So, if the lines are not drawn or specified, then the districts are not drawn or specified and we have 42 of those in this Commission plan that are not drawn or specified.

We have nothing against the legislature accepting its own plan, I guess it is a difference of opinion. We feel that the motion before you right now to accept the Commission Plan, which is L.D. 1197, our argument is that we don't feel it should be amended because it is how we interpret the Constitution. There is nothing that predisposes the legislature from creating another L.D. which then can become the legislative plan and then that will be our plan. If the only show in town is to amend L.D. 1197, yes, we probably will amend it because we feel very strongly that we want to present a Minority Report.

The SPEAKER: The Chair would like to advise members of the House that the plan has been presented to the legislature and has been read and placed on file. That is not a matter before this body.

What is now before us is first reading of the bill, which is before us. The Commission Plan has been filed with the legislature and that, men and women of the House, is not an issue.

The Chair recognizes the Representative from Corinth, Representative Strout.

Representative STROUT: Mr. Speaker, Men and Women of the House: I agree with what the Speaker has just said and in reading the Constitution, I believe the gentleman from East Millinocket is correct, that once that plan was presented here, and I read right here very clearly, it says "The legislature shall enact the submitted plan of the Commission or a plan of its own" — if they don't want to accept the Commission's Plan, they can adopt a plan of their own and that is what we are here for.

Mr. Speaker, I would like to pose a question to you that has been bothering me just for clarification.

In the next section of the Constitution, this has been bothering me for a couple of weeks, whether or not this bill was properly before us because I have been trying to convince myself that what has been done is right but in the next paragraph it says, "In the event that the legislature shall fail to make an apportionment within the 130 calendar days after convening, the Supreme Court shall within 60 days." My question is, when did the 116th convene and how many calendar days have we been since then?

The SPEAKER: The Chair would advise the Representative from Corinth, Representative Strout, that the legislature convened on December 2nd — 130 days was April 11th. Based on that fact, the Chair asked for an advisory opinion from the Attorney General. The Chair was informed by the Attorney General's Office in an Advisory Opinion that the legislature could not have did what it did by amending the Constitution in one section dealing with reapportionment and fail to deal with the second one. In other words, the legislature made a mistake

in adoption of the Constitutional Amendment and should have amended the second portion as well. The Attorney General ruled that 30 days should be given to the legislature in order to deal with the plan or changes in the plan or the passing of another plan or passing of an L.D. and the Chair has that advisory opinion. It was distributed to members of both parties, both leaderships, so that is in their possession as well.

The Representative may proceed.

Representative STROUT: Mr. Speaker, in concurrence with that, I agree except that is the opinion of the AG and that is my concern and has been for a couple of weeks — is that in fact we.....

The SPEAKER: The Chair can only make one additional comment and that is, in discussion with members who have some access to the members of the Judiciary, the last thing the Supreme Judicial Court wants is reapportionment. And, if that question were posed, the Attorney General's Office informed me, they would be rather lenient in their interpretation in order to avoid, if at all possible, having to do reapportionment lines.

The Chair recognizes the Representative from Winthrop, Representative Norton.

Representative NORTON: Mr. Speaker, Ladies and Gentlemen of the House: I would not question the right of this body to deal with this plan nor the responsibility incumbent upon it. However, I feel a sense of powerlessness at this point. I have two communities, Readfield and Mt. Vernon, that are in with Norridgewock and there is no way, even though I am not running again at this time (you always learn to keep your options open and I don't mean for next time) that I could, in good conscience, render a decision on those two communities which I will have served for eight years to a fate as indefinite as going clear over to Norridgewock. Now, Norridgewock, I have been there twice and it is a nice community, I am not demeaning it at all, but it lies to the north of Fairfield. I am talking about two communities, one of which abuts Manchester and the other touches Fayette. Now, that is a fair piece up the pike and I, frankly, for that reason, don't go along with it. I don't feel that I would be able to exert much of an influence in terms of an amendment that would correct that. I really can't take the long view of this responsibility that is incumbent on this House because I can't get by my responsibility to the people who live in those two communities that I represent.

I wish that I could vote differently but I think you may see my dilemma and I chose to explain it to you because I am not blindly voting against anything but I can't accept that for two towns that I currently represent.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: As a member of the Commission, I would just like to take this opportunity to encourage you to vote for the Majority Report on this bill. I can tell you as a member of the Commission that both of us, Republicans and Democrats alike, worked extremely hard on this. We gave up most of our evenings and weekends during February and March in an effort to negotiate a good plan and to meet the April 1st deadline. It was very hard work.

I believe that the Commission plan before you is in fact a good plan and it can be made better by

amendments. In the past on apportionments, there have always been technical and substantive amendments and what I would like to point out to you is, if you give us an opportunity to get to that point, that because negotiations continued on the House Plan, that it will be an even better plan as a result of those negotiations.

The plan before you is in fact the product of compromise between Democrats and Republicans and it does reflect proposals that were put forward by both caucuses. It may be interesting to the Representative from Winthrop, Representative Norton, to know that the proposal he is so concerned about did in fact come from his own caucus. So, it is not necessarily — you know, there was give and take on both sides and I think people living in those communities may have concerns about what was done, but we simply had no other alternative or it was the best option before the Commission.

I would like to point out that before you is a three part plan. The Congressional proposal is in fact a hundred percent Republican plan that came from them and was not changed in any way.

The House Plan was negotiated district by district, starting from the southern part of the state up to the north and we got about two-thirds of the way through and did not get ultimate agreement between both parties on the entire thing. But, as I pointed out earlier, if we have an opportunity to amend it, you will see that that plan becomes even more of a compromise and a bipartisan alternative.

The third part of the plan is a neutral Senate plan that was drawn by the neutral chair, Judge Smith, and it in fact draws heavily from both Democratic and Republican proposals and he put those together in a plan that was viewed as fair by both parties. So, this is something that I think is worth supporting at this point — yes, we can make it better but we can't have the opportunity to do that unless you pass the pending Majority Report.

I would just like to note briefly that I believe that this plan, even as it is now before amended, is a very good plan in that it meets all of the criteria that we were required to comply with. As you consider, whether you like or dislike different pieces of this plan, I hope you will be mindful of the fact that the Commission members were bound by some fairly specific criteria, some of which are in our State Constitution, and these criteria included the fact that the population of every district must be as nearly equal as possible and we tried at all costs to keep it within the 10 percent margin and significantly less than that in most cases.

We were also under a Commission requirement that we have districts that were as compact and as contiguous as possible. Just so you understand what that means, compactness is not necessarily a concept of neatness, it is a concept of whether the communities that are placed together have some common sense of interest, that they are not gerrymandered in a string bean shape to include in political considerations that are inappropriate and that they are in fact connected territorially to neighboring districts, neighboring communities. That is a consideration that was one that we did meet with this plan.

We also had the requirement that we not cross political subdivision lines more than we had to and I would note that this plan has two fewer split communities than the current plan that we are

operating under today. I just know on a personal level that this is a very important consideration for many communities. I represent a community that is currently split and feels that it is unfairly so. So, it was certainly uppermost on the Commission members' minds that we avoid that at all costs but we often got into a situation where geography and the fact that population growth has been unequally distributed around the state and we got stuck with what some communities may find to be less than appealing alternatives.

We also had to comply with the Voting Rights Act and protect the involvement of minority group members under federal law. In addition, we had a requirement that if a community was larger than a district that it be included as one whole district and that the remaining amount be put into a separate district that was connected to it. That is a new constitutional requirement that was not a requirement in earlier redistrictings and it just made our tasks more difficult, although the result I think is an improved result.

The sixth criteria was that the Commission determine that it would seek to preserve the core of existing districts. Preserving the core of existing districts allows the continuation of representation and the maintenance of constituencies within those defined geographic areas. Finally, we sought to come up with a plan that was fair and in compliance with the Equal Protection Clause of the 14th Amendment to the United States Constitution. We did not seek to create safe districts for any political party but simply districts that were competitive for any hard working candidate and we believe that this plan before you is one that does achieve that goal.

I would urge you to vote for the Majority Report. It is not a matter that should end up in court. If we can come up with a plan that is acceptable to two-thirds of the legislature, then we should try to do that and the first step in that process is to vote for the Majority Report that is before you right now.

The SPEAKER: The Chair recognizes the Representative from the Penobscot Nation, Representative Attean.

Representative ATTEAN: Mr. Speaker, Ladies and Gentlemen of the House: Normally, I would hesitate and think long before speaking on such a volatile subject. However, I had occasion earlier this month to go to the Reapportionment Commission and present my views on my District. With me that day was Representative Cashman from District #131, Old Town and Senator Pearson from District #6, Penobscot County. We all agreed on the need for one thing and that was to keep the Indian Island voting district with Old Town, whatever that took.

Please understand that Indian Island is the home of the Penobscot Nation. We have been with the District of Old Town, now District #131, since first getting the right to vote in the early 1960's. My people identify very closely with Old Town, many of my people live in Old Town. In fact, of the 623 people who use as their address the Old Town zip code, 04468, 428 of those live right on the Reservation. That means that 195 Penobscot Tribal members or 31.3 percent live in Old Town. If Indian Island voting district were separated from Old Town, we would effectively lose our small voice.

I appreciate that all of the reports that I have seen on my desk today recognize the unique situation

of the Penobscot Nation and they listened to me and they kept Indian Island with its existing District. I just needed to say these words and to put them on Record in anticipation that that is the way it is going to stay right through whatever vote is taken, right through whatever final action is taken. Thank you.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendexter.

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: I just want to briefly summarize why I want to encourage you to vote against L.D. 1197.

First of all, as we stated before, the Commission did not fulfill its Constitutional mandate because it has presented us with an incomplete plan with 43 House Districts and 6 Senate Districts that are not defined.

Also in L.D. 1197, there are two more towns that are split that are necessary. Mathematically, the state can be redistricted with only six towns being split and the Commission Plan splits eight. I would just like to read to you that the Constitution clearly states that "Each Representative District shall be formed of contiguous and compact territory and shall cross political subdivision lines the least number of times necessary to establish as nearly as practicable equally populated districts." The plan violates this twice.

I would not call an 8 to 7 vote a consensus on redistricting of a state which will affect the political future of our parties for the next 10 years. The plan also doesn't respond to the Passamaquoddy Indian's request. L.D. 1197 is to an extent a compromise of some sort, a compromise that keeps incumbents apart, keeps some legislators happy but doesn't serve the people of Maine well.

I would like to see how the legislators who voted for this plan try to sell some of these legislative districts to the Maine people. When compromise becomes the goal versus creating districts that make sense, you get results like, for instance, District #58, which we could probably name the Omar Norton snake where he says that Readfield goes all the way up to Norridgewock and he feels that the district doesn't make sense if it doesn't serve the people of Maine well. That district is a result of having to conform with District #87, which connects Windsor with Vassalboro by just a little tiny corner and also connects Vassalboro with Sidney, which is not contiguous to anything other than with the river. To go to Vassalboro to Sidney, you would have to go down through Augusta or you go up through Waterville and that is not our definition of contiguous districts or districts that make sense or districts that serve the people of Maine well.

We have districts like Mount Desert Island who has to be split in two districts and splits Ellsworth just to keep three legislators happy. We have a district that says #126, which goes from Milford to Cherryfield which compromises three counties, Washington, Hancock and Penobscot. We have four gerrymandered districts coming from the St. John Valley, which in itself has a population that demands only 2.35 seats. However, you see four districts coming, finger-like districts coming into the rest of Aroostook County, just to serve political purposes.

The Chair has stated that L.D. 1197 is the Commission Plan. We continue to feel strongly that the Constitution states very clearly in Article IV,

Part 1st, Section 3 that the Commission Plan, thus L.D. 1197, can only be amended by unanimous vote of the Commission and only for the purpose of technical changes. Examples have been given of plans being amended by the legislature in 1973 and 1983 — however, the Constitution was amended in 1986 and we operating in 1993 under different circumstances, thus we should vote L.D. 1197, up or down as is, and proceed accordingly.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Coffman.

Representative COFFMAN: Mr. Speaker, Ladies and Gentlemen of the House: I have one of those districts that has been carved up. The areas surrounding Old Town, the towns that I used to represent that enjoy a lot of commonality in addition to the geographical location, they have the same school systems, the same recycling facilities, a lot of common issues. The employees in these districts are all employed in the greater Old Town/Bangor area and yet, in some infinite wisdom from somewhere, somebody has chosen to divide these communities up — four communities into four different districts. Does that mean that the Representative from this new district is going to have to meet with four different school boards? Those are the kinds of problems that we face when we do this, not to mention the example that was previously stated where Milford is now going to be joined two counties away with Cherryfield, where, incidentally, the Representative lives that is now going to represent Milford. I don't think the people in Milford are very happy about this. I don't imagine the Representative who lives in Cherryfield is going to be happy about that trying to commute those long distances. Basically, you can't even get there from here. That is what he is going to face, he is going to have to drive in another district to get up to Milford. I know how hard it is, I have one of those districts that stretches a lot of towns right now from Hancock County into Penobscot County surrounding Old Town. I can barely get back to my district surrounding Old Town, not to mention Aurora, Amherst, Otis, Waltham and all those places out there. It is very difficult.

I heard a lot of talk today on how this process was carried out and I have a real strong feeling with something that was stated — it was stated that there was an open door policy like we were free to go up there anytime — well, I want you to know that I was kicked out of there the last night. I wasn't interfering with anything, I was sitting there reading a newspaper listening to how this process worked and I was asked to leave. If that's an open door policy, I have a real problem with that. I don't like the way that the process works. It seems to work for the people who are in charge, who are in control down here, but it doesn't work for the constituents that live in the communities, in this example, that I represent. If you asked them what they would like, they would certainly not like to be in four or five different districts, they would like to be joined into one district represented by one Representative. This is just one example.

What was presented to me was a map that I could go home with showing the population of towns and say, if you've got a better plan, come up with it, introduce an amendment. The problem is, as I started to do this, every time I touch a town, it interferes with the next town or the next district and I might as well have a couple months and sit down and do the

whole thing myself. We know that is totally impossible.

This process where we look at amendments here looks like higher physics or quantum physics anyway, block 104, 105 — I mean, what does that mean? I would like to see something on a map. I know how long it took for the House to get a map, to get all these districts on a map so that we could actually see how our districts were being divided up. I can't believe that this is the process that we are going to go through to do something this important.

Therefore, I would ask everybody in here to vote against this bill and send it to an impartial body, a body that we could trust to think of the people of this state and not certain incumbents here and not anything else but the people who live in these communities.

The SPEAKER: The Chair recognizes the Representative from the Passamaquoddy Tribe, Representative Soctomah.

Representative SOCTOMAH: Mr. Speaker, Men and Women of the House: I have been requested by the Passamaquoddy Tribal leaders to speak on their behalf in regard to reapportionment.

The U.S. Constitution, as interpreted and implemented during the past 20 years, requires an aggregate deviation of no more than 10 percent or plus or minus 5 percent, except in special cases wherein the somewhat greater deviation may be allowed in order to combine adjacent populations of Native Americans or other federally recognized minority groups into a single district.

There is an amendment to the present bill that combines the Penobscot Indian Island Reservation with Old Town in order to include the Penobscot's living in Old Town with other tribal members living on the reservation. This becomes an oversized district, a deviation of plus 8.13 percent.

There is a plan also offered through the Republican plan but not at the Democratic plan at this time that would combine the Passamaquoddy Pleasant Point Reservation with Passamaquoddy Indian Township along with Perry, Robbinston, Calais, Baring and Baileyville. This was done in order to include Passamaquoddy Tribal members living in the two Passamaquoddy Reservations with other tribal members living in Perry and other adjacent towns. This district is also oversized, deviation plus 7.12. Federal courts have consistently upheld, and at this time required the creation of such marginally oversized districts in order to combine recognized minority populations in a single district, thereby enhancing their political voice. To the best of our knowledge, this is the first Maine reapportionment plan ever offered by either political party or one party and could be considered by the other that combines the Reservation with other significant Indian populations as the tribe is asking this legislature to consider.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Coffman.

Representative COFFMAN: Mr. Speaker, I would like to pose a question to the Chair, please.

I believe you stated earlier that you had an Advisory Opinion on the constitutionality of this matter from the Attorney General's Office?

The SPEAKER: The Chair would answer in the affirmative.

Representative COFFMAN: Did you get that in writing?

The SPEAKER: The Chair would answer in the affirmative. All Advisory Opinions are in writing.

Representative COFFMAN: Could I see that?

The SPEAKER: The Representative may go in my office and it will be shown to him.

Representative COFFMAN: Okay, thank you.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of the Representative from East Millinocket, Representative Michaud, that the House accept the Report.

The SPEAKER: The Chair recognizes the Representative from Limestone, Representative Young.

Representative YOUNG: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Biddeford, Representative Dutremble. If he were present and voting, he would be voting yea; I would be voting nay.

The SPEAKER: The Chair recognizes the Representative from Corinth, Representative Strout.

Representative STROUT: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Rockland, Representative Melendy. If she were present and voting, she would be voting yea; I would be voting nay.

The SPEAKER: The pending question before the House is the motion of the Representative from East Millinocket, Representative Michaud, that the House accept the Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 61

YEA - Adams, Ahearn, Aliberti, Bowers, Brennan, Caron, Carroll, Cathcart, Chase, Chonko, Cloutier, Coles, Constantine, Cote, Daggett, DiPietro, Dore, Driscoll, Erwin, Faircloth, Farnsworth, Fitzpatrick, Gamache, Gean, Gould, R. A.; Gray, Gwadosky, Hale, Hatch, Heeschen, Hichborn, Hogle, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Kerr, Kilkelly, Kontos, Lemke, Martin, H.; Michael, Michaud, Mitchell, E.; Morrison, Nadeau, O'Gara, Oliver, Paradis, P.; Pfeiffer, Pineau, Pinette, Plourde, Poulin, Pouliot, Rand, Ricker, Rowe, Rydell, Saxl, Simonds, Skoglund, Stevens, K.; Sullivan, Swazey, Tardy, Townsend, E.; Townsend, L.; Tracy, Treat, Vigue, Walker, Wentworth, Winn, The Speaker.

NAY - Aikman, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Bruno, Cameron, Campbell, Carr, Cashman, Clark, Clukey, Coffman, Cross, Dexter, Donnelly, Farnum, Farren, Foss, Greenlaw, Heino, Hillock, Joy, Ketterer, Kneeland, Kutasi, Lemont, Libby James, Lindahl, Lipman, Look, Lord, MacBride, Marshall, Murphy, Nickerson, Norton, Ott, Pendexter, Plowman, Quint, Reed, G.; Reed, W.; Robichaud, Simoneau, Small, Spear, Stevens, A.; Taylor, Thompson, True, Tufts, Whitcomb, Zirkilton.

ABSENT - Beam, Carleton, Clement, Larrivee, Libby Jack, Marsh, Mitchell, J.; Nash, Pendleton, Richardson, Rotondi, Ruhlin, Saint Onge, Townsend, G..

PAIRED - Young (Nay)/Dutremble (Yea); Strout (Nay)/Melendy (Yea).

LEGISLATIVE RECORD - HOUSE, APRIL, 27, 1993

Yes, 77; No, 56; Absent, 14; Paired, 4;
Excused, 0.

77 having voted in the affirmative and 56 in the negative with 14 being absent and 4 having paired, the Report was accepted, the bill read once.

Under suspension of the rules, the bill was read a second time.

(Off Record Remarks)

On motion of Representative Kneeland of Easton,
Adjourned at 5:04 p.m. until Wednesday, April 28,
1993, at eight o'clock in the morning.
