STATE OF MAINE

ONE HUNDRED AND SIXTH LEGISLATURE

COMMITTEE ON JUDICIARY

December 2, 1974

Legislative Council
106th Legislature
State House
Augusta, Maine

Gentlemen:

In accordance with HP 1644, Order directing the Judiciary Committee to study the Initiative and Referendum Process, I enclose herein final report of the Committee.

Respectfully submitted,

Wakine G. Tanous,
Chairman

WGT/pac
Enc.

REPORT OF THE JUDICIARY COMMITTEE
ON THE
INITIATIVE AND REFERENDUM PROCESS

Introduction

The 106th Maine Legislature ordered the Joint Standing Committee on the Judiciary to study the initiative and referendum process, by which the people of Maine exercise their constitutionally reserved powers to propose laws and to approve or reject them independently of the Legislature. The Legislature ordered the study by passing House Paper 1644, sponsored by Representative Stephen Perkins, a member of the Judiciary Committee. A copy of this document is attached to the report as Appendix A.

The Legislature's concern with the way the process has been working arose from its recent involvement in the process. Three controversial initiative petitions had been filed with the Legislature in the past few years. These were the petitions to repeal the state income tax, to repeal the "big box" or straight ticket ballot, and to establish a public power authority. The last of these aroused unusual controversy, because there was concern over some of the methods allegedly used in gathering and verifying signatures and over the process by which a committee of the Legislature was assigned to review, and to determine the validity of, the petitions. The guidelines

for the signature-gathering process did not appear to be clear or detailed enough, in either the Constitution or the statutes. The procedure for review of petitions was not defined at all in the Constitution or the statutes. The petitions were assigned to the Judiciary Committee for review after the signatures had been counted in the Office of the Secretary of State, but there was no authority for this procedure in the Constitution or statutes but only in custom.

The order for study of the process resulted from the Legislature's concern over these questions.

History of the Initiative and Referendum in Maine

The constitutional amendments which established the initiative and referendum in Maine were adopted in 1908, during the "progressive" movement in American politics. The popular initiative and referendum were among the principal reforms in government which the movement worked for in this era. Of the 22 states which have some form of the initiative and referendum, all except for Alaska adopted them between 1898 and 1918. The history of the campaign for these reforms in Maine has been described in The Initiative and Referendum in Maine by Professor Lawrence L. Pelletier, Bowdoin College Bulletin, March, 1951, from which the following description is quoted:

The campaign for the initiative and referendum.

Effective agitation supporting popular legislation dated from approximately the turn

of the century. The initiative and referendum were endorsed by a plank in the Democratic platform as early as 1902, and the matter was introduced in the legislature in 1903. No action was taken, however, other than to refer the measure to the attention of the next legislative session. Both gubernatorial candidates discussed the issue in the election of 1904, and the following year a memorial requesting positive action was presented to the legislature. A resolve providing for the initiative and referendum was defeated, however, in its final legislative stages by the House of Representatives. By 1906 popular interest and support had been sufficiently aroused so that both parties endorsed direct legislation by favorable planks in their platforms and both candidates for governor declared themselves to be in favor of the proposal. There was, nevertheless, still considerable opposition in the legislative session of 1907, with the Speaker of the House, the President of the Senate, and the members of the Judiciary Committee, to whom the proposal was referred, continuing the fight against the initiative and referendum. Popular pressure, however, was well organized and a resolve amending the constitution to provide for direct legislation was enacted in 1907. After a vigorous campaign, the measure was approved by a popular vote of 53,785 to 24,543, with every county in the state voting in the affirmative. Direct legislation, therefore, became a part of the Maine Constitution in 1909, and Maine became the sixth state in the Union to provide for a state-wide initiative and referendum.

Forces supporting and opposing the initiative and referendum.

Apparently the initiative and referendum were potent political issues, for both major parties went on record as supporting the principle of direct legislation. The Socialist and Prohibition parties also endorsed the proposal. The latter group acted after some

initial hesitation since the dry forces feared that the initiative, especially if extended to constitutional measures, might be utilized to refer the prohibition issue to the voters. Although the Republican and Democratic parties were in agreement as to the principle of direct legislation, they split when it came to the specific measure which they preferred to see enacted. The former desired to have the initiative apply only to statutory measures, but the Democrats supported a broader application to include constitutional amendments -- probably because they hoped by this device to secure a resubmission to the voters of the prohibition issue. The Democrats were not adamant, however, and eventually accepted the Republican measure.

Important interest groups, particularly labor and agriculture, also played a significant role in supporting the initiative and referendum. In 1904, the State Federation of Labor, through its legislative committee, endorsed the proposal. More important, however, was the State Grange, which also urged direct legislation. Finally the Maine Civic League approved the initiative and referendum.

In 1905, as the campaign for direct legislation reached its peak, a State Referendum League was formed. This group was to be "interparty in membership and non-partisan in methods". The League was successful in enlisting the active support of the State Grange and in getting endorsement of direct legislation into the platforms of both the Republican and Democratic parties. It also entered the political campaign and attempted to secure commitments on the initiative and referendum from those seeking legislative seats. Where candidates were unsympathetic to direct legislation or failed to indicate any stand the League opposed their election.

As one might anticipate, the most active opposition to direct legislation came from the corporation lobby and from the professional politicians, particularly several prominent members of the legislature. In general, it was argued that the initiative and referendum would destroy representative government and that the people would be led to excesses. In particular, vested interests, political as well

> as economic, feared that direct legislation would destroy the delicate balance upon which their control was based and that the people would utilize these devices to take economic as well as political power into their own hands. But in reading the newspapers of the period, one is impressed by the fact that the issue did not arouse as much discussion as its importance warranted.

Present Maine Law

The law now defining and regulating the initiative and referendum is found in eight sections of the Constitution, Article III, Part I, Section 1 and Part III, Sections 16 to 22, and is found in four sections of the statutes, Title 21, sections 1351 to 1353 and 1391-A.

To summarize briefly the constitutional requirements for the initiative under section 18, by which the voters may propose a measure to the Legislature, at least ten percent of the number of voters at the last gubernatorial election must sign written petitions containing the text of the proposed measure. The petitions must be filed with the Secretary of State or the Legislature within forty-five days after the convening of a regular session of the Legislature. The Legislature must enact the measure without change or it must be sent to the voters for their decision. If there is a competing measure, both that and the initiated measure must be submitted to the voters. The vote must be taken at the next general election, unless the petitions specifically request a special election, which must be scheduled within four to six months after adjournment.

A referendum, under section 17, by which the voters may approve or reject acts of the Legislature, also requires the signatures on petitions of a number of voters equal to at least ten percent of the vote at the last gubernatorial election. The referendum can be applied only to bills which are not emergencies and do not become effective, according to the Constitution, until ninety days after the recess of the Legislature. The petitions must be filed in the Office of the Secretary of State before the bill involved is scheduled to become effective. Once the necessary signatures are filed, the effective date of the bill is delayed until after a majority of the voters approve it at an election. The election is the next general election, unless the petitions include a specific request for a special election, which must then be scheduled within four to six months.

Article IV, Part 3, Section 20 provides several definitions and procedures that apply to both the initiative and referendum. The most important part of that section is as follows:

> "written petition" means one or more petitions written or printed, or partly written and partly printed, with the original signatures of the petitioners attached, verified as to the authenticity of the signatures by the oath of one of the petitioners certified thereon, and accompanied by the certificate of the clerk of the city, town or plantation in which the petitioners reside that their names appear on the voting list of his city, town or plantation as qualified to vote for governor.

This is the only provision of the Constitution that regulates the

signature-collecting process, although there have been a few opinions by the Supreme Judicial Court interpreting this provision in determining the validity of petitions.

Other important sections of Article IV, Part 3 of the Constitution are section 21 which authorizes cities to establish their own initiative and referendum ordinances, subject to a provision that the Legislature may enact a uniform method for cities, and section 22 which allows the Legislature to enact regulatory statutes consistent with the terms of the Constitution and provides that these provisions of the Constitution are otherwise self-executing.

The Legislature has enacted only very limited regulation of the initiative and referendum process. 21 M.R.S.A. § 1351 to 1353 govern the form of the written petitions. The Secretary of State furnishes the forms or approves forms prepared by the persons starting the petition drive. The Secretary of State must prepare instructions to advise the local clerks who certify signatures, the signers and the circulators of the requirements for a valid petition. These instructions must be printed on the petitions. They basically summarize the findings of the Supreme Judicial Court in the previously mentioned decisions which are all Opinions of the Justices, 114 Me. 557, 95 A. 869 (1915), 116 Me. 557, 103 A. 761 (1917), and 126 Me. 620, 137 A. 53 (1927).

The instructions in regard to petitioners, that is, individual signers, are that each must be a registered voter, must sign his or her own name, must not write another person's name, must sign but once, must spell out his or her first name in full, must if a married woman spell out her first name and surname instead of using husband's name preceded by Mrs., must not use typewriter, and must follow the name with the correct name of the town or city of residence together with the street address, if any. In regard to circulators of petitions or verifying petitioners, each must be a petitioner who has duly signed the petition, must sign and verify but one petition, must verify that the signatures of all petitioners are original and make oath accordingly, must personally see each petitioner sign and must make his oath after the town clerk has completed his certificate. In regard to the town clerks, they must sign a certificate that each name on the petition appeared on the voting list of the town or city designated next to the petitioner's name.

Neither the Constitution nor the statutes provide a procedure for determining the validity of petitions. In the case of initiative petitions, the Legislature has assumed the role of determining validity and has referred them to the Judiciary Committee for this purpose. In the case of referendum petitions, the Governor and the Secretary of State have done this. In both cases, they have in the past requested the opinion of the Justices of the Supreme Judicial Court on questions of law in

determining the validity of petitions, but there is no formal judicial review of decisions of the Legislature or Governor or Secretary of State in this area.

A statute enacted by the 106th Legislature, 21 M.R.S.A. § 1391-A, provides the only regulation of initiative and referendum campaigns. It requires every person, corporation or committee spending money to initiate, promote or defeat initiative and referendum questions to file a monthly report of all contributions and expenses in the office of the Secretary of State.

Study Procedure of the Judiciary Committee

When the Legislative Council of the 106th Legislature assigned the study of the initiative and referendum process to the Judiciary Committee, Senator Wakine G. Tanous, chairman of the committee directed the legislative assistant assigned to the committee to prepare a synopsis of the Maine law and a review of the law of other states. His report was distributed to the committee before the first meeting, which was held on December 4, 1973.

At the first meeting, the committee discussed the topic generally and heard from one witness, Attorney Michael T. Healy of Portland, who had worked in two recent petition campaigns and who had been involved in litigation in this area. Mr. Healy presented his outline of the procedure and made several recommendations based on his experience. His recommendations are included in the list later in this report.

The committee was not able to meet again on this subject for several months, because of the special session of the 106th Legislature. Senator Tanous scheduled the next meeting for August 7, 1974 and invited a number of persons who have been involved in the process to testify and to offer their suggestions for improvements in the system. The persons who appeared before the committee at that meeting were, in order of their appearance: Lorraine Fleury of the Election Division, Department of State; Bradley L. Peters of Maine Central Railroad, who had worked in a referendum campaign during the period after recess of the recent special session; Senator Peter S. Kelley of Caribou, who had been the sponsor of the public power initiative campaign; Attorney Severin Beliveau of Rumford, who had been involved in litigation resulting from several such campaigns; Gerald Berube, City Clerk of Lewiston; Arthur Duffett, City Clerk of Portland; and Paul Hermann, City Manager of Gardiner,

all three of whom had been concerned with certifying signers as registered voters in several petition campaigns.

At the close of the meeting, Senator Tanous directed the legislative assistant for the committee to prepare a list summarizing the proposals of all the witnesses so that the committee could review and vote upon them all in convenient form.

Proposals and Decisions of the Committee

The committee considered more than twenty proposals to change the initiative and referendum process, most of which were originally presented at the hearings, but some of which were advanced by members of the committee. Many of the suggestions were made by more than one person. The following list contains a summary of all of the proposed changes, with similar proposals combined into one item for purposes of discussion and without identification of the advocates of each change. Each item contains the proposal and the committee's decision, with a discussion of the committee's reasons for the decision.

1) The first suggestion was that, in making any changes in the process, the basic principles of the initiative and referendum should be stated in the Constitution, but that the mechanics

of the process should be in the statutes so that changes and improvements could be made more easily, by the Legislature.

The committee agreed to this concept generally, but felt that the most important mechanical aspects of the process should be kept in the Constitution so that the people's rights could not be abridged by hasty or ill-considered action of the Legislature in amending the process.

2) The time limit of forty-five days from the date of convening of a regular session of the Legislature for the filing of initiative petitions should be changed since the forty-fifth day is always a Saturday, and the deadline should be 5 p.m. instead of midnight. The forty-fifth day is always a Saturday because the Constitution requires the Legislature to convene on the first Wednesday of January. The Attorney General has ruled that the lack of specification as to hours requires the office to stay open till midnight. The present requirement causes major inconvenience for the office of the Secretary of State, which must remain open until midnight on Saturday, the forty-fifth day, to accept initiative petitions.

The committee agreed to recommend such a change to the Constitution, Art. IV, Pt. 3, § 18. The committee's proposal is to extend the filing deadline for initiative petitions to the forty-seventh day after the convening of the

Legislature, and to specify 5:00 p.m. as the final hour on that day. Since the forty-seventh would always be a Monday and since holidays usually occur on Mondays now, the amendment extends the filing deadline to the same time on the next day if the forty-seventh day is a holiday.

The committee decided on its own that the same consideration should also apply to the referendum process. The filing deadline for these petitions is ninety days after the recess of the Legislature. Since this could fall on a Saturday, Sunday or holiday, the committee recommends amending the Constitution, Art. IV, Pt. 3, § 17 to provide, if the ninetieth day does fall on such a day, for filing on the preceding day and for filing by 5:00 p.m. on whatever the final day is. The recommendation is for the preceding day, in the event of a Saturday, Sunday or holiday, rather than the next day, because another section of the Constitution provides that bills ordinarily will take effect ninety days after the recess of the Legislature. Extending the deadline for filing referendum petitions, which suspend the effectiveness of bills, might cause uncertainty about the actual effective dates. The committee considered amending the provision on the effective date, but decided to take the simpler step of referring to the preceding day.

3) The requirement that a circulator of a petition must be a signer of that petition should be eliminated. Under the Constitution, Art. IV, Pt. 3, §20, one of the signers of a petition must verify the authenticity of all the signatures. This requirement was said to prevent many persons from participating in the process, persons who might wish to circulate petitions, but who have already signed one.

The committee agreed to recommend an amendment to the section of the Constitution, but felt the circulator should be a registered voter. This was accomplished by adding to this section a definition of a circulator requiring him or her to be a resident of the state and a registered voter.

4) The reference to certification of petitioners as registered voters by the municipal clerk should be changed to certification by the registrar of voters or board of registration of voters, because these officials or agencies are now charged by law with administering registration and now do the actual checking of signatures, instead of the clerk.

The committee recommended that the Constitution be changed to refer to the "official authorized by law to maintain the voting list of the city, town or plantation". This would provide flexibility in the event the Legislature changed the titles or functions of these officials or agencies. The change would be to the Constitution, Art. IV, Pt. 3, § 20.

5) There should be a cut-off date for presenting signatures to boards or registrars for certification, which should be enough time before the deadline for filing with the Secretary of State for these officials to do a proper job of certifying. The cut-off dates might be staggered according to the population of the municipality, because checking would take longer in a larger city.

The committee agreed to a cut-off date of ten days before the filing deadline rather than a staggered schedule, which was considered too cumbersome and subject to change to be in the Constitution. This is to be accomplished by an amendment to the Constitution, Art. IV, Pt. 3, § 20. New language to this section would require petitions to be submitted to the appropriate local officials by 5:00 p.m. on the tenth day before the deadline for filing them in the office of the Secretary of State. The local officials would then have ten days to check their records to determine whether or not each signer is a registered voter in the municipality. This change would mean that the gathering of signatures for referendum petitions must be completed within eighty days after the recess of the Legislature instead of ninety days and that initiative petitions must be completed within thirty-five days after the convening of the Legislature instead of forty-five

days, so that the completed petitions can be submitted to local officials for certification. Although this limits the signature-gathering period, the committee felt that this was necessary in order for the process to be operated with efficiency and with sufficient checks. A well-organized petition drive should be able to gather sufficient signatures within these time limits without difficulty.

6) It should be made clear, perhaps in the instructions printed on petitions, that it is desirable to have a petition circulated only in one municipality because of the difficulty of having signatures certified by clerks in more than one municipality.

The committee rejected this suggestion. It was felt that the sponsors of a petition drive should be able to manage this problem.

7) The Constitution, Art. IV, Pt. 3, § 18, which provides that an initiative petition be filed only at a regular session, should be amended to allow filing at a special session as well.

The committee voted not to recommend such a change. Petitions must be filed within forty-five days after the Legislature convenes, and a special session may not last that long. Even if this time limit were reduced, there are sometimes special sessions lasting only a few days, which would not be enough time

for the Legislature to properly consider and act upon an initiated measure.

8) A change should be considered in the words of section 20 that provide that an initiated bill be "enacted without change" by the Legislature if it is not to go to a vote. A bill, especially a long, complex one, might need some technical or minor change, which the sponsors might agree to, but might still have to be sent to a vote, with the expense entailed, if enacted with such changes.

The committee considered changing this phrase to "enacted without substantive change", but decided that this would cause far more problems than it would solve since it would be very difficult to determine what would be a "substantive" change. Since it would be nearly impossible to specify precisely what degree of change might be permitted, the committee finally voted against any change in this provision.

9) There were suggestions that the requirement that the circulator verify the authenticity of signatures be either loosened or tightened. The courts have held that the easiest and most certain way to fulfill this requirement is for the verifying petitioner to see the signing but that he may gain knowledge in other ways, although not by hearsay.

It was recommended that the requirement be tightened by stating clearly that signatures must be signed in the actual presence of the verifying petitioner.

It was also recommended that it be made clear that signatures could be made on a petition left in a store, for example. It was contended that this was a valid way of gathering signatures in a rural area, where people know one another.

The committee felt strongly that this requirement should be strengthened and voted to recommend changing the Constitution, Art. IV, Pt. 3, § 20, to provide that the circulator swear that all signatures were made in his presence and are, to the best of his knowledge or belief, the signatures of the persons whose names they purport to be. The committee additionally required that the oath of the circulator be sworn in the presence of a person authorized by law to administer oaths. Although this is now required in the law as usually interpreted, the committee considered it advisable to clarify the requirement because of a dispute over the validity of some of the petitions in a recent initiative campaign.

10) The problem of certification of signers as registered voters by local officials could be eliminated by adoption of a system of centralized statewide voter registration such as

has been adopted recently in Rhode Island. All certification would be done at the central registry.

Such a change would require very extensive and detailed legislation. The committee felt that such a complete overhaul of the voter registration system was beyond the scope of the study, but agreed to recommend to the Legislature that the concept merits further consideration and study for this state.

11) The whole notary public and justice of the peace system should be reformed. The appointment process should be tightened. Many are appointed solely to work in campaigns. There should be more attention paid to their qualifications. There should be an accurate, accessible list of currently valid notaries and justices of the peace, since it was alleged to be very difficult to check this now. Notaries and justices should be required to keep a record of each exercise of their functions and to use their seals at all times. Any such requirements should also apply to attorneys, who by law have all the powers of notaries and justices of the peace.

The committee felt that such changes were beyond the scope of this study. In addition, at least some of the alleged problems do not appear to exist. For example, it was determined that it is relatively easy to check on the current status of notaries public and justices of the peace through the Department of State.

12) The case of Kelley v. Curtis, 287 A. 2d 426 (Me. 1972), should be reviewed and the Constitution amended to resolve the problem presented by that case. The case arose out of the "big box" initiative petition. The Constitution, Art. IV, Pt. 3, § 18 provides that the Governor shall order an initiated measure to be referred to the people at a special election in from four to six months, if so requested in the written petitions addressed to the Legislature. In this case, the petitions contained such a request, but the Governor failed to order the special election within that time. The Supreme Judicial Court stated that this was a mandatory obligation of the Governor, but that, because of the separation of powers, it could not order him to schedule the election.

The committee voted to recommend that the Constitution be amended to provide that the Secretary of State be empowered to schedule such elections if the Governor fails to do so within a specified time. The Secretary of State would be subject to the authority of the courts if he failed to perform his duty in this situation.

The committee's recommendation is to amend the Constitution, Art. IV, Pt. 3, §17 and §18, by adding such provisions to both of these sections since they already have similar provisions on calling special elections.

13) A committee of the Legislature should not determine the validity of signatures and petitions for initiatives. The Secretary of State should have this authority, which is not now clearly established in the Constitution or the statutes. It should be clearly established who has the right to challenge signatures and petitions. There should be a procedure for hearings on the validity of petitions to be held before the Secretary of State, within specified time periods, and there should be provision for appeal to the courts, within specified time limits, from an adverse decision by the Secretary of State.

The committee, although the Legislature had in the past been assigned the duty of reviewing petitions, agreed that there should be a different procedure. There is no clear authority for the Legislature's assumption of this role. If such a procedure were spelled out, the committee felt that the Legislature's role should be limited, because of the intent of the initiative and referendum process is to enable the people to exercise legislative power independently of the Legislature.

The committee recommends a change in the Constitution, Art. IV, Pt. 3, §22 to grant authority to the Legislature to enact statutory regulations consistent with the Constitution for review of both initiative and referendum petitions. The Constitution would provide a general guideline for the procedure,

with provisions for mandatory judicial review of any procedure, and for a time limit of one hundred days after the final date for filing of petitions for completion of judicial review.

The details of the review procedure would be spelled out in the statutes. The committee recommends that the Secretary of State have ten days within which to complete an initial report on whether the petitions contain sufficient valid signatures. Any citizen of Maine who wished to appeal the determination of the Secretary of State would then have to file an appeal with the Administrative Court. That court would have to schedule a public hearing within thirty days of the decision of the Secretary of State and would have to reach its decision within thirty days after that. That decision would be subject to appeal to the Supreme Judicial Court, whose final determination would have to be handed down within thirty days thereafter. The process would take at most one hundred days, the limit allowed by the proposed constitutional amendment.

Legislation to implement this recommendation could not be introduced unless and until the suggested constitutional authorization is approved by the Legislature and the people. The statutory procedure would be subject to change by the Legislature if problems appeared in it in the future.

The proposed constitutional change appears in Appendix B of this report, but the statutory change has not yet been drafted.

14) The Constitution should be clarified as to when and how a law is suspended by the filing of referendum petitions. The Constitution, Art. IV, Pt. 3, §17, provides that petitions must be filed within ninety days after adjournment of the Legislature and that the Governor shall make a proclamation that a law has been suspended in this way. The question is whether or not the law is in effect during the period after the deadline for filing petitions while petitions are being counted. The Attorney General has ruled that suspension occurs when petitions are filed, but this should be clarified in the Constitution.

The committee voted to recommend the clarification of this matter in the Constitution. The proposed amendment to the Constitution, Art. IV, Pt. 3, §17, states that bills are suspended upon the filing of referendum petitions. If it is later determined that the petitions were invalid, the amendment provides that the bill will take effect on the day following the final determination of invalidity. This will allow some advance notice, and will make bills effective on a definite day.

15) There were a number of questions raised and suggestions

made about contributions to and expenditures for initiative and referendum drives. It was suggested that reporting of contributions and expenditures be required for the signature-gathering process as well as for the campaigns for votes, and it was argued in rebuttal that the recent statute on financial reporting in these campaigns, 21 M.R.S.A. §1391-A, already required such reporting. A more recent statute, Chapter 756 of the Public Laws of 1973, establishes spending limitations for several types of election campaigns and, by its terms, applies to initiative and referendum campaigns. It was questioned, however, just what limits applied to initiative and referendum campaigns. The suggestion was advanced that limitations be placed on the amount of the contribution that a person, corporation or committee could make to such campaigns. The question was raised whether such a limitation would be an unconstitutional inhibition of freedom of speech.

It was also suggested that the practice of paying circulators for each signature, which has allegedly occurred during recent campaigns, be prohibited. In order to resolve these questions, the committee sent a letter to Attorney General Jon A. Lund requesting his opinion. Copies of the committee's letter and the Attorney General's opinion letter are attached as an appendix to this report.

The Attorney General in his reply stated that 21 M.R.S.A. §1391-A by its terms did require the reporting of expenses during the signature-gathering process.

He further stated that none of the spending limitations in Chapter 756 apply to initiative and referendum campaigns. None of the various limitations could be construed as applying by reference to these campaigns. The statement in the law that it applies to these campaigns is therefore meaningless.

The Attorney General further stated that it was his opinion that a statute which imposed any limitation on spending in the initiative and referendum process would very likely be a violation of the right of free speech guaranteed by the First Amendment, Constitution of the United States, and by Article I, Section 4, of the Constitution of Maine. If any such statute could be upheld, it could be possible only were there a legislative finding and identification of a demonstrated evil in the process which the government had a compelling interest in prohibiting and only if the statute were narrowly and precisely drawn to deal with the particular demonstrated evil.

The committee concluded that it would not recommend the imposition of any limitations on contributions and expenditures in these campaigns. The committee had made no investigation of

possible abuses in these campaigns nor had it received any evidence of these. It would have been virtually impossible to draft such legislation even if the committee had considered it advisable. The committee did decide that the present statute should be amended to delete the meaningless reference to initiative and referendum campaigns.

16) The local initiative and referendum ordinances in Portland and some other Maine cities require ten voters, instead of one, to initiate the process. These ten are required to sign in person in the city clerk's office. (At least one state has a similar provision.) It was suggested that such a requirement be adopted for this state and that the ten voters who begin the process be required to sign an application in person at the Secretary of State's office.

The committee agreed to recommend this proposal. It was felt that this would limit frivolous or crank campaigns, but would not be a hindrance to campaigns that had any genuine popular support. This would involve an amendment to the Constitution, Art. IV, Pt. 3, §20, which would provide that petition drives could be started only by ten or more registered voters who must sign an application in the office of the Secretary of State. Further changes in the statutes would be required if this amendment were approved.

17) The sponsor or sponsors of a petition drive should be identified on the petition itself, so that the public could know what persons or groups are supporting the drive. The name of a special committee organized for a petition drive should not be used, since that would be deceptive.

The committee agreed to recommend legislation to require that each petition contain in bold type or capital letters the name and address of the sponsor or sponsors of the petition, whether person, corporation or association. In the alternative, the legislation would require the petition to contain the name and address of the first person on the list of ten or more sponsors who would be required under the previous suggestion. Because of this alternative, the legislation to accomplish this could not be introduced until after final approval of the constitutional amendment to require ten or more sponsors.

18) The Legislature should not be able to amend or repeal a law initiated by the people or approved in referendum for a period of five years. Any repeal or amendment during such period should be referred to the people for a vote. Alternatively, the Legislature should be able to amend or repeal such laws only by a 2/3 vote. At present, there are no such restrictions on the power of the legislature, and a change would require amending the Constitution.

The committee agreed to support this suggestion, on the theory that legislation which has gone through these processes should not be subject to change or repeal as other laws are.

The committee recommends an amendment to the Constitution, Art. IV, Pt. 3, §19, to provide that initiated laws or laws approved in referendum may be amended or repealed only by either a vote of the people or a two-thirds vote of all the members of each house of the Legislature, substantially the same requirement for legislative votes on emergency legislation and constitutional amendments.

19) A uniform method for the initiative and referendum in local affairs should be established. At present, cities which have established these processes vary widely in their local ordinances. The Legislature is empowered, under the Constitution, Art. IV, Pt. 3, §21, to establish a uniform method by statute.

The committee voted against this suggestion. It had not considered whatever problems the cities might have with these processes, and the subject does go beyond the scope of the study order. In addition, the committee felt that, although the Legislature does have the express authority under the Constitution to enact such a statute, to do so would be a violation of the spirit in which a newer constitutional provision, Art. VIII, Pt. 2, the "Home Rule for Municipalities" amendment, was passed.

20) Violations of the law on the petition process should be spelled out clearly in the statutes.

The committee agreed to this recommendation and proposes a new statute making it a felony for a circulator to make a false oath about the validity of signatures, for a person who administers oaths to falsely acknowledge the oath of a circulator and for the signer of a petition to sign a name other than his own or to sign more than once.

22) The form of a petition should contain a warning notice to prospective signers about the penalty for unlawful signatures. This is a provision of the law in a number of states.

The committee agreed to recommend legislation to require such a notice for prospective signers to appear on the bottom of each page of a petition that includes signatures.

The proposed constitutional and statutory amendments to implement the committee recommendations are attached to this report as Appendix B and Appendix C.

Appendix A

(1/6)

STATE OF MAINE

In House June 27, 1973

Ordered,

WHEREAS, the right of Maine citizens to initiate legislation by process of petition was added by amendment to the Constitution of Maine in 1873; and

WHEREAS, there are statutory and constitutional procedures which must be observed to properly exercise this constitutional right; and

WHEREAS, doubts have been recently cast as to the validity of procedures used in the preparation, circulation and verification of petitions; now, therefore, be it

ORDERED, the Senate concurring, that the Legislative Research Committee is authorized and directed to study the petition process pursuant to the Constitution of Maine for the express purpose of recommending all necessary changes in the law, rules or regulations which would tend to safeguard against future abuse of this constitutional process ; and be it further

ORDERED, that the committee report the result of its study at the next special or regular session of the Legislature.

HOUSE OF REPRESENTATIVES
READ AND PASSED
JUN 27 1973
SENT UP FOR CONCURRENCE
CLERK

HP1614

IN SENATE CHAMBER Read and
TABLED BY SEN.
JUN 28 1973
Legislative Research Table
Pending Passage
PENDING

RESOLUTION, Proposing Amendments to the Constitution to Establish Filing Dates for Initiative and Referendum Petitions; Clarify When the Effective Date of a Bill is Suspended by the Filing of a Referendum Petition; Clarify the Process of Calling a Special Election for an Initiative or Referendum Vote; Limit Legislative Amendment and Repeal of Laws Initiated or Approved by the People; Clarify the Petition Process; and Provide for Review of the Validity of Petitions.

Constitutional amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Art. IV, Pt. 3, §17, is amended to read:

Section 17. Upon written petition of electors, the number of which shall not be less than ten percent of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition, and addressed to the Governor and filed in the office of the Secretary of State ~~within ninety days~~ by the hour of five o'clock, p.m., on the ninetieth day after the recess of the Legislature, or if such ninetieth day is a Saturday, a Sunday, or a legal holiday, by the hour of five o'clock, p.m., on the preceding day which is not a Saturday, a Sunday, or a legal holiday, requesting that one or more Acts, bills, resolves or resolutions, or part or parts thereof, passed by the Legislature, but not then in effect by reason of the provisions of the preceding section, be referred to the people, such Acts, bills, resolves, or resolutions or part or parts thereof as are specified in such petition shall not take effect until thirty days after the Governor shall have announced

by public proclamation that the same have been ratified by a majority of the electors voting thereon at a general or special election. The effect of any Act, bill, resolve or resolution or part or parts thereof as are specified in such petition shall be suspended upon the filing of such petition. If it is later finally determined, in accordance with any procedure enacted by the Legislature pursuant to the Constitution, that such petition was invalid, such Act, bill, resolve or resolution or part or parts thereof shall then take effect upon the day following such final determination. As soon as it appears that the effect of any Act, bill, resolve, or resolution or oart or parts thereof has been suspended by petition in manner aforesaid the Governor by public proclamation shall give notice thereof and of the time when such measure is to be voted on by the people, which shall be at the next general election not less than sixty days after such proclamation, or in case of no general election within six months thereafter the Governor may, or if so requested in said written petition therefor, shall order such measure submitted to the people at a special election not less than four nor more than six months after his proclamation thereof. If the Governor is requested in the written petition to order such measure to be submitted to the people at a special election and if he fails to do so in the public proclamation giving notice that the effect of an Act, bill, resolve or resolution or part or parts thereof has been suspended by petition, the Secretary of State shall, by

proclamation, order such measure to be submitted to the people at a special election as requested, and such order shall be sufficient to enable the people to vote.

Constitution, Art. IV, Pt. 3, §18, is amended to read

Section 18. The electors may propose to the Legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment of the State Constitution, by written petition addressed to the Legislature or to either branch thereof and filed in the office of the Secretary of State ~~or presented to either branch of the Legislature within forty-five days~~ by the hour of five o'clock, p.m., on the forty-seventh day after the convening of the Legislature in regular session. If the forty-seventh day is a legal holiday, the period runs until the hour of five o'clock, p.m., of the next day. Any measure thus proposed by electors, the number of which shall not be less than ten percent of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition, unless enacted without change by the Legislature at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the Legislature, and in such manner that the people can choose between the competing measures or reject both.

When there are competing bills and neither receives a majority of the votes given for or against both, the one receiving the most votes shall at the next general election to be held not less than sixty days after the first vote thereon be submitted by iteself if it receives more than one-third of the votes given for and against both. If the measure initiated is enacted by the Legislature without change, it shall not go to a referendum vote unless in pursuance of a demand made in accordance with the preceding section. The Legislature may order a special election on any measure that is subject to a vote of the people. The Governor may, and if so requested in the written petitions addressed to the Legislature, shall, by proclamation, order any measure proposed to the Legislature as herein provided, and not enacted by the Legislature without change, referred to the people at a special election to be held not less than four nor more than six months after such proclamation, otherwise said measure shall be voted upon at the next general election held not less than sixty days after the recess of the Legislature, to which such measure was proposed. <u>If the Governor is requested in the written petition to order a measure proposed to the Legislature and not enacted without change to be submitted to the people at such a special election and if he fails to do so by proclamation within ten</u>

days after the recess of the Legislature to which the measure was proposed, the Secretary of State shall, by proclamation, order such measure to be submitted to the people at a special election as requested, and such order shall be sufficient to enable the people to vote.

Constitution, Art. IV, Pt. 3, §19, is amended by adding at the end a new paragraph to read:

Within a period of five years from the effective date of a measure approved by vote of the people or initiated by the people and enacted without change or approved by vote of the people, the Legislature may enact a bill amending or repealing such measure only by a vote of two-thirds of all the members elected to each house or by a bill expressly conditioned upon the people's ratification by a referendum vote.

Constitution, Art. IV, Pt. 3, §20, is amended to read:

Section 20. As used in ~~either~~ any of the three preceding sections or in this section the words "electors" and "people" mean the electors of the State qualified to vote for Governor; "recess of the Legislature" means the adjournment without day of a session of the Legislature; "general election" means the November election for choice of presidential electors, Governor and other state and county officers; "measure" means an Act, bill, resolve or resolution proposed by the people, or two or more such, or part or parts of such, as the case may be;

"circulator" means a person who solicits signatures for written petitions, and who must be a resident of this state and whose name must appear on the voting list of his city, town or plantation as qualified to vote for governor; "written petition" means one or more petitions written or printed, or partly written and partly printed, with the original signatures of the petitioners attached, verified as to the authenticity of the signatures by oath of ~~one of the petitioners certified thereon~~ the circulator that all of the signatures to the petition were made in his presence and that to the best of his knowledge and belief each signature is the signature of the person whose name it purports to be, and accompanied by the certificate of the ~~clerk~~ official authorized by law to maintain the voting list of the city, town or plantation in which the petitioners reside that their names appear on the voting list of his city, town or plantation as qualified to vote for Governor. The oath of the circulator must be sworn in the presence of a person authorized by law to administer oaths. Written petitions must be submitted to the appropriate officials of cities, towns or plantations for determination of whether the petitioners are qualified voters by the hour of five o'clock, p.m., on the tenth day before the petition must be filed in the office of the Secretary of State, or, if such tenth day is a Saturday, a Sunday, or a legal holiday, by five o'clock, p.m., on the next day which is not a Saturday,

a Sunday or a legal holiday. The petitions shall set forth the full text of the measure requested or proposed. Petition forms shall be furnished or approved by the Secretary of State upon written application signed in the office of the Secretary of State by not fewer than ten persons, who must be residents of this state and whose names must appear on the voting list of their city, town or plantation as qualified to vote for governor. The full text of a measure submitted to a vote of the people under the provisions of the Constitution need not be printed on the official ballots, but, until otherwise provided by the Legislature, the Secretary of State shall prepare the ballots in such form as to present the question or questions concisely and intelligibly.

Constitution, Art. IV, Pt. 3, §22, is amended by adding at the end two new sentences to read:

The Legislature may enact further regulations not inconsistent with the Constitution to establish procedures for determination of the validity of written petitions. Such regulations shall include provision for judicial review of any determination, to be completed within one hundred days from the date of filing of a written petition in the office of the Secretary of State.

Form of question and date when amendment shall be voted upon. Resolved: That the aldermen of cities, the selectmen of towns and the assessors of the several plantations of this State are empowered and directed to notify the inhabitants of their respective cities, towns and plantations to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives at the next general election in the month of November or special state-wide election on the Tuesday following the first Monday of November following the passage of this resolution to give in their votes upon the amendment proposed in the foregoing resolution, and the question shall be:

"Shall the Constitution be amended as proposed by a resolution of the Legislature to establish filing dates for initiative and referendum petitions; clarify when the effective date of a bill is suspended by the filing of a referendum petition; clarify the process of calling a special election for an initiative or referendum vote; limit legislative amendment and repeal of laws initiated or approved by the people; clarify the petition process; and provide for review of the validity of petitions?"

The inhabitants of said cities, towns and plantations shall vote by ballot on said question, and shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same. The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the office of the Secretary of State in the same manner as votes for Governor and Members of the Legislature, and the Governor and Council shall review the same, and if it shall appear that a majority of the inhabitants voting on the question are in favor of the amendment , the Governor shall forthwith make known the fact by his proclamation, and the amendment shall thereupon, as of the date of said proclamation, become a part of the Constitution.

Secretary of State shall prepare ballots. Resolved: That the Secretary of State shall prepare and furnish to the several cities, towns and plantations ballots and blank returns in conformity with the foregoing resolution, accompanied by a copy thereof.

STATEMENT OF FACT

This resolution is the result of a study assigned by the 106th Legislature to the Joint Standing Committee on Judiciary. It represents that committee's recommendations for amendments to the Constitution to reform and improve the initiative and

referendum processes, as described in further detail in the committee's report to the 107th Legislature.

The basic changes are as follows:

1) The deadline for filing both initiative and referendum petitions in the office of the Secretary of State are changed only so that the office will not have to stay open until midnight on weekends to accept petitions.

2) It is made clear that the effect of a law is suspended when referendum petitions are filed in the Secretary of State's office, and a procedure is established to have such laws become effective if the petitions are later determined to be invalid. This clarifies a questionable area in the Constitution.

3) A procedure is established for the Secretary of State to schedule a special election on an initiative or referendum question in the event that the Governor refuses or neglects to so schedule a special election after having been properly requested to do so by the petitions, as happened in a recent case.

4) Under a new provision, a law initiated or approved by vote of the people could be amended only by either another vote of the people or by a two-thirds vote of both houses of the Legislature.

5) The signature-gathering process is improved and tightened in several ways. Any registered voter, not just a person who is one of the signers of a petition, may circulate petitions. The duties of the circulator are spelled out clearly in the oath he or she would be required to take. Local officials would be allowed ten days to certify signers as registered voters instead of having to do so at the last minute. Frivolous or crank petitions would be limited by the requirement that at least ten voters must sign an application in person at the Secretary of State's office in order to start the signature-gathering process.

6) The Legislature is given authority to establish a statutory procedure for review of the validity of petitions. The procedure must provide for some form of judicial review of any administrative determination of validity, and the procedure must be completed within one hundred days from the date of filing of petitions.

AN ACT Relating to the Initiative and Referendum Processes.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 21 M.R.S.A. §1354- §1356, are enacted to read:

§1354. Violations

Whoever commits any act described in this section shall be punished by a fine of not more than $2,000 or by imprisonment for not more than 2 years, or by both.

1. A circulator of an initiative or referendum petition who willfully and falsely swears that one or more signatures to the petition were made in his presence or that one or more signatures are those of the persons whose names they purport to be;

2. A person authorized by law to administer oaths who willfully and falsely acknowledges the oath of a circulator of an initiative or referendum petition that was not made in his presence;

3. A person who knowingly signs an initiative or referendum petition with any name other than his own;

4. A person who knowingly signs his name more than once on initiative or referendum petitions for the same measure.

§ 1355. Warning to circulators and persons administering oaths to be printed on.

The following words, in the following form, shall be printed in bold type or capital letters immediately after that portion of an initiative or referendum petition containing the oath of the circulator and the acknowledgement of his oath:

WARNING

It is a felony for the circulator of a petition to sign the above oath if one or more of the signatures to the petition were not made in his presence or if, to the best of his knowledge and belief, one or more signatures are not those of the persons whose names they purport to be. It is a felony for the person who administers the above oath to the circulator to do so if the circulator is not in his presence when the oath is taken.

§ 1356. Warning to petitioners to be printed on.

The following words, in the following form, shall be printed in bold type or capital letters at the bottom of each page which is to contain signatures to an initiative or referendum petition:

WARNING

It is a felony for any one to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure.

Sec. 2. 21 MRSA §1391, last sentence, as repealed and replaced by PL 1973, c. 756, §1, is amended to read:

Any references in this chapter to the promotion or defeat of a candidate includes the promotion or defeat or a party, or ~~principal~~ principle, ~~initiative or referendum question~~.

STATEMENT OF FACT

This bill is the result of a study of the initiative and referendum process assigned to the Joint Standing Committee on Judiciary. It represents the committee's recommendations to the 107th Legislature for changes in the statutes to improve the initiative and referendum processes, as further detailed in the committee's report on the study.

The bill establishes, for the first time, what are violations of the law in the initiative and referendum processes, and sets penalties for violations.

The bill requires that warnings to potential signers, to circulators and to persons who administer oaths of these violations to be prominently printed on all petition forms.

The bill clarifies the recent law on campaign spending limitations by deleting a meaningless reference to such a limitation on initiative and referendum campaigns, which might be unconstitutional.

The Honorable Jon A. Lund, Attorney General
Department of the Attorney General
State House
Augusta, Maine

Re: Spending Limitations on Initiative and Referendum Campaigns

Dear Mr. Lund:

The Committee on Judiciary of the 106th Legislature is now studying the initiative and referendum process under the Constitution of Maine and is considering a number of suggestions to improve the operation of the process. The study is being conducted pursuant to H.P. 1644.

One of the proposals concerns placing limits on expenditures on initiative and referendum campaigns. The committee wishes to resolve this matter, and therefore requests your opinion on the interpretation of present statutes in this area and on certain constitutional questions which have been raised.

21 M.R.S.A. § 1391 states that:

> Any references in this chapter to the promotion or defeat of a candidate includes the promotion or defeat of a party, principal, initiative or referendum question.

This chapter goes on to state different limitations on expenditures for different offices. Which of these limitations, if any, apply to initiative and referendum campaigns?

If a limitation does apply, how does it apply when more than one person or organization is working on one side of such an issue and their efforts are not co-ordinated?

21 M.R.S.A. § 1391-A requires monthly reporting of contributions and expenses "to initiate, promote or defeat" initiative and referendum questions. Does the coverage of this statute extend to reporting contributions and expenses during the period when signatures are being gathered for petitions to initiate these processes?

Do limitations on spending in the initiative and referendum processes violate the provisions of the First Amendment of the United States Constitution and of Article I of the Constitution of Maine?

Can limitations be placed, without violating these constitutional provisions, on the spending of individuals, organizations or corporations who wish to express their views on issues, but who do not coordinate their actions with or seek the approval of the organizers of initiative and referendum campaigns?

Thank you for your attention.

Very truly yours,

Wakine G. Tanous
Chairman, Committee on Judiciary

WGT:d
cc: Committee on Judiciary

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04330

JON A. LUND
ATTORNEY GENERAL

October 24, 1974

Honorable Wakine G. Tanous
Chairman, Judiciary Committee
State House
Augusta, Maine 04330

Dear Senator Tanous:

Thank you for your recent letter concerning spending limitations on initiative and referendum campaigns.

I understand your first question to be what, if any, spending limitations are presently imposed by Chapter 35, Title 21 M.R.S.A., upon initiative and referendum campaigns? The answer to that question is none.

21 M.R.S.A. § 1391-A requires the reporting of receipt of all contributions and expenditures made in connection with any public referendum of direct initiative legislation or the state-wide public referendum of any statute. Chapter 35 of Title 21 makes neither an explicit nor an implicit limitation on the amount of such contributions or expenditures. The last paragraph of § 1391 provides:

> "Any references in this chapter to the promotion or defeat of a candidate includes the promotion or defeat of a party, principal, initiative or referendum question."

Such a reference to candidates cannot be construed as an adoption by reference of the limitation upon expenditures imposed upon candidates in § 1395, sub-§ 3, for several reasons.

First, § 1395 specifies a variety of limitations--one set for primaries and another set for general elections; the limitation also varies in accordance with the number of votes cast for each such office in the preceding general election. Such a variety does not lend itself to adoption by reference. It also does not seem likely that the Legislature intended by the reference in the last paragraph of § 1391 to equate the total prior vote for the same office with the total prior vote for the same referendum question in view of the singularity of such questions.

Second, the questioned limitation may constitute a restriction upon the right of the general citizenry to freedom of speech. This right is guaranteed by the First Amendment, Constitution of the United States, and by Article I, Section 4, Constitution of Maine. This has long been deemed a preeminent right and one which is fundamental to a free society. See, e.g., NAACP v. Button, 371 U.S. 415, 433; NAACP v. Alabama, 357 U.S. 449, 463, 464; Healy v. James, 408 U.S. 169; U.S. v. Robel, 389 U.S. 258; Sweezy v. New Hampshire, 354 U.S. 234, 250, 265; Miller v. Alabama, 384 U.S. 214, 218; Monitor Patriot Co. v. Roy, 401 U.S. 265, 272; Dombrowski v. Pfister, 380 U.S. 479, 486; Pickering v. Board of Education, 391 U.S. 563, 573; Wood v. Georgia, 370 U.S. 375; Organization for a Better Austin et al v. Keefe, 402 U.S. 415; N.Y. Times Co. v. U.S., 403 U.S. 713; U.S. v. C.I.O. 335 U.S. 106, 121; Talley v. Cal., 362 U.S. 60; Schneider v. State, 308 U.S. 147; and Opinion of the Justices, Me., 306 A. 2d 18.

All laws in restraint of liberty are to be strictly construed. In re Pierce, 16 Me. 255.

Your second question is: "Does the coverage of this statute extend to reporting contributions and expenses during the period when signatures are being

gathered for petitions to initiate these processes?" The answer to that question is affirmative.

21 M.R.S.A. § 1391-A, in pertinent part, reads:

> "Notwithstanding any other provision of law, any person, corporation, public or private utility, association, governmental agency or political committee accepting or expending money, to initiate, promote or defeat the public referendum of direct initiative legislation within the meaning of the Constitution of Maine or the state-wide public referendum of any statute shall be required starting on July 1, 1973 to file a report detailing the source, amount and date of receipt of all contributions and expenditures made in connection with any such referendum thereafter at the end of each month during such activity to file a report similarly detailing all such contributions and expenditures for that month."

Thus, the statutory reporting requirement includes "accepting or expending money, to initiate . . . . the public referendum of direct initiative . . . . or the state-wide public referendum of any statute . . . ." The phrase, "to initiate," encompasses the process of circulating petitions for the requisite signatures.

I understand your third question to be: Would limitations on spending in the initiative and referendum processes violate the provisions of the First Amendment of the United States Constitution and of Article I of the Constitution of Maine? In my opinion, it is quite likely that any statute which imposed any limitation on spending in the initiative and referendum processes would raise a grave question of violation of the right

of free speech guaranteed by the First Amendment, Constitution of the United States, and by Article I, Section 4, Constitution of Maine. As stated by the Supreme Court of the United States in Mills v. Alabama, 384 U.S. 214, at 218, "a major purpose of that Amendment was to protect the free discussion of governmental affairs." In that case, the Court struck down a statute which made it a crime for a newspaper editor to publish an editorial on election day urging people to vote a particular way, stating, at 219:

> "It is difficult to conceive of a more obvious and flagrant abridgment of the constitutionally guaranteed freedom of the press."

In Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, the Court said:

> "Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity." Also see N.Y. Times Co. v. U.S., 403 U.S. 713, 714; U.S. v. C.I.O., 335 U.S. 106, 121; and Schneider v. State, 308 U.S. 147; and Valley v. California, 362 U.S. 60, 66.

Such a restriction upon the full exercise of speech would require a clear showing of a compelling governmental interest to sustain it. See Opinion of the Justices, Me., 306 A. 2d 18, 21. A mere assertion that such a statute was enacted to maintain the purity of the electoral process would not necessarily suffice. The report of the Legislative Committee investigating this problem should clearly establish the nature of the evil and the proposed Act should deal narrowly and precisely with that demonstrated evil. In this connection, it should be noted that there may be

significant differences between an office candidacy campaign and a referendum campaign. For example, political activity in connection with referenda is expressly excepted from the prohibition of the Hatch Act. See 5 U.S.C. § 7326, and CSC v. Letter Carriers, 413 U.S. 548, and Broadrick v. Oklahoma, 413 U.S. 601.

I trust that the foregoing comments will aid your Committee in its deliberations. If I can be of any further aid to you in this matter, please advise me.

Yours very truly,

JON A. LUND
Attorney General

JAL/jwp

cc: Honorable Wakine G. Tanous
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