

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twenty-Eighth Legislature
State of Maine

Daily Edition

Second Regular Session
beginning January 3, 2018

beginning at Page 1451

**STATE OF MAINE
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
SECOND REGULAR SESSION
JOURNAL OF THE SENATE**

In Senate Chamber
Monday
April 2, 2018

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

Prayer by Pastor Arthur Fairbrother, Jr., Royal Ridge Church of God in Scarborough.

PASTOR FAIRBROTHER: Thank you for the opportunity to be here. Thank you for your service to our wonderful state. Let's pray. Precious, heavenly Father, Lord, we thank You for the privilege and the opportunity to be here. Lord, I thank You for these wonderful men and women who are serving our state. Lord, I pray blessing upon them and their family. Lord, I pray today, Lord, as they make decisions, God, that they will make them based on Your will and not on the individual needs, Lord, God, of what they want but what's best for our state and best what's best for our region. Lord, God, I just pray that everything that is said and done today, Lord, will be done to help Maine, Lord God, and to just bring us to the place that You want us to be. In Your precious and holy name, Amen.

Pledge of Allegiance led by Senator Shenna L. Bellows of Kennebec County.

Reading of the Journal of Thursday, March 29, 2018.

Doctor of the day, Marc Miller, M.D., of South Freeport.

Off Record Remarks

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

PAPERS FROM THE HOUSE

Non-Concurrent Matter

HOUSE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Safeguard the Rights of Private Child Care Businesses"

H.P. 811 L.D. 1148

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought to Pass** (6 members)

In Senate, March 28, 2018, on motion by Senator **BRAKEY** of Androscoggin, the Minority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED** in **NON-CONCURRENCE**.

Comes from the House, that Body having **INSISTED** on its former action whereby the Majority **OUGHT NOT TO PASS** Report was **READ** and **ACCEPTED**.

On motion by Senator **BRAKEY** of Androscoggin, the Senate **INSISTED**.

Non-Concurrent Matter

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act To Eliminate Inactive Boards and Commissions"

H.P. 1286 L.D. 1849

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-671)** (4 members)

In Senate, March 28, 2018, on motion by Senator **DAVIS** of Piscataquis, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-671)** in **NON-CONCURRENCE**.

Comes from the House, that Body having **INSISTED** on its former action whereby the Majority **OUGHT NOT TO PASS** Report was **READ** and **ACCEPTED**.

On motion by Senator **DAVIS** of Piscataquis, the Senate **INSISTED**.

Joint Resolution

The following Joint Resolution:

H.P. 1324

**JOINT RESOLUTION
RECOGNIZING 2018 AS THE YEAR OF THE BIRD
AND THE CENTENNIAL OF THE FEDERAL
MIGRATORY BIRD TREATY ACT**

WHEREAS, 2018 has been designated the Year of the Bird by National Geographic, the Cornell Lab of Ornithology, the National Audubon Society and more than 100 other organizations; and

WHEREAS, the Year of the Bird marks the centennial of the federal Migratory Bird Treaty Act, the most powerful and important bird protection law ever passed; and

WHEREAS, migrant bird species play an important economic role in our State, controlling insect pests and generating millions in recreational dollars statewide; and

WHEREAS, the Stanton Bird Club of the Lewiston-Auburn area has been devoted to stimulating an interest in birds, maintaining Thorncrag Nature Sanctuary, a 450-acre sanctuary in Lewiston, and inculcating a love of nature and science through its outreach to school children and adults alike; and

WHEREAS, the Auburn Public Library has been a resource for the City of Auburn and the surrounding communities for over 125 years with a mission of engaging, enlightening and enriching the community; and

WHEREAS, the Auburn Public Library in partnership with the Stanton Bird Club is celebrating the Year of the Bird with programs designed to focus public awareness on the importance of migratory bird conservation and habitat protection as well as on the need to take steps to mitigate environmental threats along migratory bird routes and to their summer and winter homes; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Twenty-eighth Legislature now assembled in the Second Regular Session, on behalf of the people we represent, take this opportunity to recognize 2018 as the Year of the Bird and the centennial of the federal Migratory Bird Treaty Act; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Stanton Bird Club and the Auburn Public Library.

Comes from the House, **READ** and **ADOPTED**.

READ and **ADOPTED**, in concurrence.

COMMUNICATIONS

The Following Communication: S.C. 931

**STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE**

March 28, 2018

The Honorable Michael Thibodeau
President of the Senate
3 State House Station
Augusta, Maine 04333

Dear President Thibodeau:

This is to inform you that I am today nominating Frederick C. Dey of Portland for appointment to the Board of Trustees, Maine Maritime Academy.

Pursuant to P&SL 1975, Chapter 771 §428, this appointment is contingent on the Maine Senate confirmation after review by the Joint Standing Committee on Education and Cultural Affairs.

Sincerely,

S/Paul R. LePage
Governor

READ and **ORDERED PLACED ON FILE**.

The Following Communication: S.C. 932

**STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE**

March 28, 2018

The Honorable Michael Thibodeau
President of the Senate
3 State House Station
Augusta, Maine 04333

Dear President Thibodeau:

This is to inform you that I am today nominating Anne R. Devine of Portland for appointment to the Board of Trustees, Maine Maritime Academy.

Pursuant to P&SL 1975, Chapter 771 §428, this appointment is contingent on the Maine Senate confirmation after review by the Joint Standing Committee on Education and Cultural Affairs.
Sincerely,

S/Paul R. LePage
Governor

READ and **ORDERED PLACED ON FILE**.

The Following Communication: S.C. 933

**STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE**

March 28, 2018

The Honorable Michael Thibodeau
President of the Senate
3 State House Station
Augusta, Maine 04333

Dear President Thibodeau:

This is to inform you that I am today nominating Brandon St. Germain of Ellsworth for appointment to the Board of Trustees, Maine Maritime Academy.

Pursuant to P&SL 1975, Chapter 771 §428, this appointment is contingent on the Maine Senate confirmation after review by the Joint Standing Committee on Education and Cultural Affairs.

Sincerely,

S/Paul R. LePage
Governor

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 934

**STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE**

March 28, 2018

The Honorable Michael Thibodeau
President of the Senate
3 State House Station
Augusta, Maine 04333

Dear President Thibodeau:

This is to inform you that I am today nominating Dr. Fernande Desjardins of St. Agatha for appointment to the State Board of Education.

Pursuant to Title 20-A, MRSA §401, this appointment is contingent on the Maine Senate confirmation after review by the Joint Standing Committee on Education and Cultural Affairs.

Sincerely,

S/Paul R. LePage
Governor

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 935

**STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE**

March 28, 2018

The Honorable Michael Thibodeau
President of the Senate
3 State House Station
Augusta, Maine 04333

Dear President Thibodeau:

This is to inform you that I am today nominating Jaylee E. Rice of St. Albans for appointment to the State Board of Education.

Pursuant to Title 20-A, MRSA §401, this appointment is contingent on the Maine Senate confirmation after review by the Joint Standing Committee on Education and Cultural Affairs.

Sincerely,

S/Paul R. LePage
Governor

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 938

**STATE OF MAINE
128TH LEGISLATURE
OFFICE OF THE PRESIDENT**

March 29, 2018

The Honorable Heather J.R. Priest
Secretary of the Senate
3 State House Station
Augusta, ME 04333

Dear Secretary Priest:

Pursuant to my authority under Senate Rule 201.3, I have appointed Senator Roger J. Katz of Kennebec to the Joint Standing Committee on Veterans and Legal Affairs. With this appointment Senator Katz will be replacing Senator Ron Collins of York.

Sincerely,

S/Michael D. Thibodeau
President of the Senate

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 940

**STATE OF MAINE
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
COMMITTEE ON ENERGY, UTILITIES, AND TECHNOLOGY**

March 21, 2018

Honorable Michael D. Thibodeau, President of the Senate
Honorable Sara Gideon, Speaker of the House
128th Legislature
State House
Augusta, Maine 04333

Dear President Thibodeau and Speaker Gideon:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Energy, Utilities and Technology has voted unanimously to report the following bill(s) out "Ought Not to Pass":

- L.D. 131 An Act To Protect the Biomass Industry
- L.D. 1224 An Act To Allow for Greater Energy Competition in Maine by Amending the Law Governing Electric Generation or Generation-related Assets by Affiliates

This is notification of the Committee's action.

Sincerely,

S/Sen. David Woodsome Senate Chair S/Rep. Seth A. Berry House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

The Following Communication: S.C. 941

**STATE OF MAINE
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE
COMMITTEE ON HEALTH AND HUMAN SERVICES**

March 29, 2018

Honorable Michael D. Thibodeau, President of the Senate
Honorable Sara Gideon, Speaker of the House
128th Legislature
State House
Augusta, Maine 04333

Dear President Thibodeau and Speaker Gideon:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Health and Human Services has voted unanimously to report the following bill(s) out "Ought Not to Pass":

- L.D. 1527 An Act To Ensure Safety, Quality and Transparency in the Medical Marijuana Market and To Ensure Sufficient Funding for Regulation and Enforcement with Respect to the Retail Marijuana Industry

This is notification of the Committee's action.

Sincerely,

S/Sen. Eric L. Brakey Senate Chair S/Rep. Patricia Hymanson House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

The Following Communication: S.C. 936

**STATE OF MAINE
128TH LEGISLATURE
OFFICE OF THE SECRETARY**

March 29, 2018

The Honorable Michael Thibodeau
President of the Senate
3 State House Station
Augusta, Maine 04333

Dear President Thibodeau:

Pursuant to Joint Rule 310, the Joint Standing Committee on Health and Human Services has approved the requests by the following sponsors:

Representative Hymanson of York, to report the following "Leave to Withdraw":

- L.D. 562 An Act Concerning the Department of Health and Human Services;

Representative Gattine of Westbrook, to report the following "Leave to Withdraw":

- L.D. 186 An Act To Improve Peer Support Services.

Sincerely,

S/Heather J.R. Priest
Secretary of the Senate

READ and with accompanying papers **ORDERED PLACED ON FILE.**

The Following Communication: S.C. 939

**STATE OF MAINE
128TH LEGISLATURE
OFFICE OF THE SECRETARY**

March 29, 2018

The Honorable Michael Thibodeau
President of the Senate
3 State House Station
Augusta, Maine 04333

Dear President Thibodeau:

Pursuant to Joint Rule 310, the Joint Select Committee on Marijuana Legalization Implementation has approved the requests by the following sponsors:

Representative Corey of Windham, to report the following "Leave to Withdraw":

L.D. 164 An Act To Require Tamper-evident Packaging for Recreational Marijuana Products;

Representative Battle of South Portland, to report the following "Leave to Withdraw":

L.D. 215 An Act To Require a License for the Possession, Sale, Cultivation or Transportation of Marijuana for Recreational Use;

Senator Gratwick of Penobscot, to report the following "Leave to Withdraw":

L.D. 387 An Act To Provide for Oversight of Maine's Recreational Marijuana Laws;

Representative Austin of Skowhegan, to report the following "Leave to Withdraw":

L.D. 499 An Act To Allow Municipalities To Prohibit Retail Marijuana Facilities in Safe Zones;

Representative Corey of Windham, to report the following "Leave to Withdraw":

L.D. 596 An Act To Promote Highway Safety by Restricting the Use of Marijuana and Possession of an Open Marijuana Container in a Motor Vehicle:

Representative Stetkis of Canaan, to report the following "Leave to Withdraw":

L.D. 626 An Act To Provide Funding for County Jails from Sales Tax Collected on Retail Sales of Marijuana and Marijuana Products;

Senator Libby of Androscoggin, to report the following "Leave to Withdraw":

L.D. 806 An Act To Provide Tax Fairness and To Lower Medical Expenses for Patients under the Maine Medical Use of Marijuana Act

Representative Harrington of Sanford, to report the following "Leave to Withdraw":

L.D. 1448 An Act To Clarify Certain Provisions of the Marijuana Legalization Act and To Deter the Use of Marijuana by Minors (EMERGENCY).

Sincerely,

S/Heather J.R. Priest
Secretary of the Senate

READ and with accompanying papers **ORDERED PLACED ON FILE.**

The Following Communication: H.P. 1298

**STATE OF MAINE
OFFICE OF THE
SECRETARY OF STATE
AUGUSTA, MAINE 04333-0148**

March 5, 2018

Honorable Robert B. Hunt
Clerk of the House
2 State House Station
Augusta, Maine 04333

Dear Clerk Hunt:

Enclosed please find my official certification to the 128th Legislature of the citizen initiative petition entitled "An Act To Establish Universal Home Care for Seniors and Persons with Disabilities".

Sincerely,

S/Matthew Dunlap
Secretary of State

**STATE OF MAINE
SECRETARY OF STATE**

I, Matthew Dunlap, Secretary of State, hereby certify that written petitions bearing valid signatures of 64,842 electors of this State were addressed to the Legislature of the State of Maine and were filed in the office of the Secretary of State on January 26 and 29, 2018, requesting that the Legislature consider an act entitled, "An Act To Establish Universal Home Care for Seniors and Persons with Disabilities".

I further certify that the number of signatures submitted is in excess of ten percent of the total votes cast in the last gubernatorial election preceding the filing of such petitions, as required by Article IV, Part Third, Section 18 of the Constitution of Maine, that number being 61,123.

I further certify this initiative petition to be valid and attach herewith the text of the legislation circulated on the petition's behalf.

In testimony whereof, I have caused the Great Seal of the State of Maine to be hereunto affixed. Given under my hand at Augusta on the fifth day of March in the year two thousand and eighteen.

S/Matthew Dunlap
Secretary of State

Comes from the House, **READ** and **ORDERED PLACED ON FILE.**

READ and **ORDERED PLACED ON FILE**, in concurrence.

The accompanying Bill:

An Act To Establish Universal Home Care for Seniors and Persons with Disabilities

I.B. 3 L.D. 1864

Comes from the House with the Bill and accompanying papers **INDEFINITELY POSTPONED**.

On motion by Senator **DOW** of Lincoln, **REFERRED** to the Committee on **TAXATION**, in **NON-CONCURRENCE**.

Sent down for concurrence.

All matters thus acted upon were ordered sent down forthwith for concurrence.

Senate at Ease.

The Senate was called to order by the President.

SENATE PAPERS

Bill "An Act To Improve Efficiency through Electric Rate Design and Advanced Technology"

S.P. 726 L.D. 1896

Presented by Senator **BRAKEY** of Androscoggin. (GOVERNOR'S BILL)

Cosponsored by Representative **FARRIN** of Norridgewock and Representatives: **CHAPMAN** of Brooksville, **GROHMAN** of Biddeford, **HANLEY** of Pittston, **HARLOW** of Portland, **MALABY** of Hancock, **O'CONNOR** of Berwick, **RYKERSON** of Kittery, **SAMPSON** of Alfred.

On motion by Senator **WOODSOME** of York, **REFERRED** to the Committee on **ENERGY, UTILITIES AND TECHNOLOGY** and ordered printed.

Ordered sent down forthwith for concurrence.

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Provide Incentives To Attract Trained Firefighters to Maine and To Retain Trained Firefighters by Expanding the Provision of Live Fire Service Training"

H.P. 1282 L.D. 1845

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-695)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-695)**.

Report **READ** and **ACCEPTED**, in concurrence.

Bill **READ ONCE**.

Committee Amendment "A" (H-695) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, Bill **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

The Committee on **ENVIRONMENT AND NATURAL RESOURCES** on Bill "An Act To Amend the State's Electronic Waste Laws"

H.P. 1284 L.D. 1847

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-696)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-696)**.

Report **READ** and **ACCEPTED**, in concurrence.

Bill **READ ONCE**.

Committee Amendment "A" (H-696) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, Bill **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

Divided Report

The Majority of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** on Bill "An Act To Align the Criteria Used by the Maine Public Employees Retirement System in Determining Veterans' Disability Claims with the Criteria Used by the United States Department of Veterans Affairs"

H.P. 365 L.D. 521

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-688)**.

Signed:

Senators:
BREEN of Cumberland
KATZ of Kennebec

Representatives:

GATTINE of Westbrook
FREY of Bangor
HUBBELL of Bar Harbor
JORGENSEN of Portland
MARTIN of Eagle Lake
TEPLER of Topsham

The Minority of the same Committee on the same subject reported that the same **Ought Not To Pass.**

Signed:

Senator:

HAMPER of Oxford

Representatives:

SEAVEY of Kennebunkport
SIROCKI of Scarborough
TIMBERLAKE of Turner
WINSOR of Norway

Comes from the House 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" (H-688).**

Reports **READ.**

On motion by Senator **HAMPER** of Oxford, **TABLED** until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT.**

Senate

Ought to Pass As Amended

Senator BRAKEY for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act Regarding the Limit on the Number of Children Who May Be Placed in a Single Foster Home" (EMERGENCY)

S.P. 708 L.D. 1863

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-430).**

Report **READ** and **ACCEPTED.**

Bill **READ ONCE.**

Committee Amendment "A" (S-430) **READ** and **ADOPTED.**

Under suspension of the Rules, Bill **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED.**

Sent down for concurrence.

All matters thus acted upon were ordered sent down forthwith for concurrence.

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Resolve

Resolve, To Designate a Bridge in Gorham the Corporal Joshua P. Barron Memorial Bridge

H.P. 1260 L.D. 1818

FINALLY PASSED and, having been signed by the President, was presented by the Secretary to the Governor for his approval.

Ordered sent down forthwith.

Senator **ROSEN** of Hancock requested and received leave of the Senate that members and staff be allowed to remove their jackets for the remainder of this Legislative Day.

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

COMMUNICATIONS

The Following Communication: S.C. 942

**STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE**

30 March 2018

The 128th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 128th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 1444, "An Act to Prohibit Gross Metering."

I have fought long and hard to reduce subsidies paid by ratepayers through utility rates, including those from Net Energy Billing (NEB) that subsidize energy installations of the affluent on the backs of hard-working Mainers who can least afford higher electricity bills.

The Public Utilities Commission (PUC) adopted a rule that will start reducing the NEB subsidies over time through a gradual step-down of the amount of generation allowed and used to offset a NEB customer's usage. While proponents of LD 1444 suggest it only prohibits the PUC's rule from requiring separate metering of the generation (gross metering), the bill does much more.

By defining "net energy" in a way that is inconsistent with the PUC's rule, the bill's language likely prohibits the rule's step-down of the subsidy. In addition, even if the language is interpreted to allow a step-down of the subsidy, it severely limits (or eliminates) the applicability of the step-down by allowing the reduction to apply only to the excess generation at the end of the month. Since many (or perhaps most) NEB systems are sized to be equal to, or less than, the customer's usage, there may be no excess at the end of the month. This would effectively undo the PUC's decision to reduce the subsidy over time.

The bill also increases the number of customers who can share a single NEB facility from the current level of 10 to 50. Such shared ownership arrangements allow NEB customers to use the utility's poles, wires, transformers, and other equipment to bring the NEB facility generation to them from anywhere in the service territory, but without paying for that use of the system. This is outrageous and I will not support a bill that further expands this practice.

As I have noted many times, NEB subsidizes the cost of solar panels for the rich at the expense of the elderly and poor who can least afford it. Making a bad situation worse is not the answer. For these reason, I return LD 1444 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

S/Paul R. LePage
Governor

READ and ORDERED PLACED ON FILE.

The accompanying Bill:

An Act Regarding Large-scale Community Solar Procurement
S.P. 499 L.D. 1444

The President laid before the Senate the following: "Shall this Bill become law notwithstanding the objections of the Governor? In accordance with Article IV, Part Third, Section 2 of the Constitution, the vote will be taken by the Yeas and Nays. A vote of yes will be in favor of overriding the veto of the Governor. A vote of no will be in favor of sustaining the veto of the Governor."

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#567)

YEAS: Senators: BELLOWS, BREEN, CARSON, CHENETTE, CHIPMAN, DAVIS, DESCHAMBAULT, DIAMOND, DION, DOW, GRATWICK, HILL, JACKSON, KATZ, KEIM, LANGLEY, LIBBY, MAKER, MILLETT, ROSEN, SAVIELLO, VITELLI, VOLK, WOODSOME

NAYS: Senators: BRAKEY, COLLINS, CUSHING, CYRWAY, HAMPER, MASON, MIRAMANT, WHITTEMORE, PRESIDENT THIBODEAU

EXCUSED: Senators: CARPENTER, DILL

24 Senators having voted in the affirmative and 9 Senators having voted in the negative, with 2 Senators being excused, and 24 being more than two-thirds of the members present and voting, it was the vote of the Senate that the veto of the Governor be **OVERRIDDEN** and the Bill become law notwithstanding the objections of the Governor.

Senator **MIRAMANT**: Mr. President, my vote was recorded inaccurately.

THE PRESIDENT: Would leadership approach the Rostrum.

On motion by Senator **JACKSON** of Aroostook, the Senate **RECONSIDERED** whereby the Veto was **OVERRIDDEN**.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Miramant.

Senator **MIRAMANT**: Thank you, Mr. President. Men and women of the Senate, I apologize. My fat fist punched the wrong button a couple times there. When I realized, I tried to get that green to go and I even started pounding on it. I suppose that didn't help the electronics, but in any case I plan to vote for the override of this veto and I appreciate the time.

The President laid before the Senate the following: "Shall this Bill become law notwithstanding the objections of the Governor? In accordance with Article IV, Part Third, Section 2 of the Constitution, the vote will be taken by the Yeas and Nays. A vote of yes will be in favor of overriding the veto of the Governor. A vote of no will be in favor of sustaining the veto of the Governor."

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#568)

YEAS: Senators: BELLOWS, BREEN, CARSON, CHENETTE, CHIPMAN, COLLINS, DAVIS, DESCHAMBAULT, DIAMOND, DION, DOW, GRATWICK, HILL, JACKSON, KATZ, KEIM, LANGLEY, LIBBY, MAKER, MILLETT, MIRAMANT, ROSEN, SAVIELLO, VITELLI, VOLK, WOODSOME

NAYS: Senators: BRAKEY, CUSHING, CYRWAY, HAMPER, MASON, WHITTEMORE, PRESIDENT THIBODEAU

EXCUSED: Senators: CARPENTER, DILL

26 Senators having voted in the affirmative and 7 Senators having voted in the negative, with 2 Senators being excused, and 26 being more than two-thirds of the members present and voting, it was the vote of the Senate that the veto of the Governor be **OVERRIDDEN** and the Bill become law notwithstanding the objections of the Governor.

The Secretary has so informed the Speaker of the House of Representatives.

Ordered sent down forthwith.

Off Record Remarks

The Following Communication: S.C. 943

**STATE OF MAINE
OFFICE OF THE GOVERNOR
AUGUSTA, MAINE**

30 March 2018

The 128th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 128th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 1816, "An Act Regarding the Penalties for Hunting Deer over Bait."

I am concerned that this bill's change in penalty to a suspension of just two years for a second conviction for hunting deer over bait does not go far enough to provide a strong deterrent to dissuade hunters inclined to violate hunting regulations.

Hunting deer over bait prosecutions have steadily increased since 2004. More than 100 hunters a year are prosecuted for this violation, and I believe stricter penalties are needed to reduce this noncompliance.

For these reasons, I return LD 1816 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

S/Paul R. LePage
Governor

READ and ORDERED PLACED ON FILE.

The accompanying Bill:

An Act Regarding the Penalties for Hunting Deer over Bait
S.P. 684 L.D. 1816

THE PRESIDENT: The Chair recognizes the Senator from Piscataquis, Senator Davis.

Senator **DAVIS:** Thank you, Mr. President. I didn't have my light on but since you recognized me I might as well speak. This matter has somewhat of a tortured mass, ladies and gentlemen. I have always believed that when a crime is committed that the punishment must fit the crime. This, the current law, which is not in the message from the Chief Executive, is that if you get caught baiting deer a second time it is a lifetime suspension. Now I would say to you that you could do a lot of things, driving cars and shooting people and all sorts of things, and you wouldn't lose all your rights to pursue different things for the rest of your life. Also on the law right now, and I know this is true because it has happened in my own district, people who have the funds to do it buy a large track of land and they can put in what's called a food plot, and the sole purpose of the food plot is to attract deer, and it is all legal and they do it. We have a couple that bought 500 acres in my district and they spent thousands of dollars putting food plots in for the sole purpose of attracting deer and shooting the deer when they came to the plot. It's all legal. However you happen to work at True Textiles in Guilford and you lug a barrel, or five gallon bag, of apples twice you lose your right of hunting for the rest of your life, forever. So I would urge, folks, that you vote to override this matter. Thank you very much.

The President laid before the Senate the following: "Shall this Bill become law notwithstanding the objections of the Governor? In accordance with Article IV, Part Third, Section 2 of the Constitution, the vote will be taken by the Yeas and Nays. A vote of yes will be in favor of overriding the veto of the Governor. A vote of no will be in favor of sustaining the veto of the Governor."

ROLL CALL (#569)

YEAS: Senators: BELLOWS, BRAKEY, BREEN, CARSON, CHENETTE, CHIPMAN, COLLINS, CUSHING, CYRWAY, DAVIS, DESCHAMBAULT, DIAMOND, DION, DOW, GRATWICK, HAMPER, HILL, JACKSON, KATZ, KEIM, LANGLEY, LIBBY, MAKER, MASON, MILLETT, MIRAMANT, ROSEN, SAVIELLO, VITELLI, VOLK, WHITTEMORE, WOODSOME, PRESIDENT THIBODEAU

NAYS: Senators: None

EXCUSED: Senators: CARPENTER, DILL

33 Senators having voted in the affirmative and no Senator having voted in the negative, with 2 Senators being excused, and 33 being more than two-thirds of the members present and voting, it was the vote of the Senate that the veto of the Governor be **OVERRIDDEN** and the Bill become law notwithstanding the objections of the Governor.

The Secretary has so informed the Speaker of the House of Representatives.

Ordered sent down forthwith.

ORDERS OF THE DAY

Unfinished Business

The following matters in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later Assigned (3/20/18) matter:

HOUSE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act To Streamline Advocacy for Maine Small Businesses by Relocating the Bureau of the Special Advocate within the Department of the Secretary of State to the Department of Economic and Community Development"
H.P. 1218 L.D. 1764

Majority - **Ought Not to Pass** (6 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-638)** (4 members)

Tabled - March 20, 2018 by Senator **CUSHING** of Penobscot

Pending - motion by Senator **DAVIS** of Piscataquis to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in concurrence

(In House, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

Senator **DAVIS** of Piscataquis requested and received leave of the Senate to withdraw his motion to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

Same Senator moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**.

On motion by Senator **JACKSON** of Aroostook, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **JACKSON:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I just want to rise quickly to say that I think this is a position I was put in 2010. It seems to have worked extremely well across the State for small businesses regardless of the administration or the makeup of the House and Senate. This position has done a lot of good work for people across the State and I really don't see any reason to mess around with how its housed or where its housed. So that is why I will be voting in opposition to the report we have before us.

THE PRESIDENT: The pending question before the Senate is acceptance of the Ought to Pass as Amended by Committee Amendment "A" Report. If you are in favor of accepting that report you will be voting yes. If you are opposed you will be voting no.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#570)

YEAS: Senators: BRAKEY, COLLINS, CUSHING, CYRWAY, DAVIS, DOW, HAMPER, KATZ, KEIM, LANGLEY, MAKER, MASON, ROSEN, SAVIELLO, VOLK, WHITTEMORE, WOODSOME, PRESIDENT THIBODEAU

NAYS: Senators: BELLOWS, BREEN, CARSON, CHENETTE, CHIPMAN, DESCHAMBAULT, DIAMOND, DION, GRATWICK, HILL, JACKSON, LIBBY, MILLETT, MIRAMANT, VITELLI

EXCUSED: Senators: CARPENTER, DILL

18 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 2 Senators being excused, the motion by Senator **DAVIS** of Piscataquis to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE, PREVAILED**.

Bill **READ ONCE**.

Committee Amendment "A" (H-638) **READ**.

On motion by Senator **CUSHING** of Penobscot, Senate Amendment "A" (S-426) to Committee Amendment "A" (H-638) **READ** and **ADOPTED**.

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

Senator **CUSHING:** Thank you, Mr. President. Mr. President, ladies and gentlemen of the Senate, I apologize for the lateness of this amendment but it has been brought in to make some adjustments to the bill. In essence it strips the language of the currently passed committee report and adds the following; 'The amendment removes the provisions which eliminates the bureau. It moves this position to the Department of Economic and Community Development and renames the position as a small business'- excuse me while I put my glasses on, Mr. President. The amendment designates the Director of the Office of Small Business Entrepreneurship in the Department of Economic and Community Development as a Small Business and Entrepreneurship Special Advocate. The amendment names the Small Business and Entrepreneurship Special Advocate as a member of the Small Business and Entrepreneurship Commission in place of the Commissioner of Economic and Community Development or the Commissioner's designee. The amendment retains the provisions that relocate the Regulatory

Fairness Board from the Department of the Secretary of State to the Department of DECD and it also changes the date of this position to February 1, 2019 so the next administration and their staff can build out the team appropriately. In my opinion, Mr. President, having also been here in the 125th when we passed this, this is an economic development position. It truly remains there in the department where it should have been and I believe that it gives us the opportunity to expand the scope and the abilities of that position. I thank you for the time to address this issue and for your consideration.

Committee Amendment "A" (H-638) as Amended by Senate Amendment "A" (S-426) thereto, **ADOPTED**.

Under suspension of the Rules, Bill **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-638) AS AMENDED BY SENATE AMENDMENT "A" (S-426)** thereto, in **NON-CONCURRENCE**.

Ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later Assigned (3/22/18) matter:

SENATE REPORTS - from the Committee on **INSURANCE AND FINANCIAL SERVICES** on Bill "An Act To Ensure Protection and Health Insurance of Patients"

S.P. 339 L.D. 1032

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-394)** (6 members)

Tabled - March 22, 2018 by Senator **WHITTEMORE** of Somerset

Pending - **ACCEPTANCE OF EITHER REPORT**

Senator **WHITTEMORE** of Somerset moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

On motion by Senator **GRATWICK** of Penobscot, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **GRATWICK:** Thank you very much, Mr. President. Ladies and gentlemen of the Senate, I rise today in support of the minority Ought to Pass as Amendment by Committee Amendment "A". Just to speak very briefly to this- I think you have a handout, floor sheet that has been given to you. The purpose behind this bill is to make life easier for your practitioner, for your health practitioner and for that individual not to have to spend so much time with insurance company details and data. It's going to decrease the waste of time, the waste of money that's already integral to our health care system which is not helping patients. It has two things here. One - I'm sorry back up - this is part of a multipronged bill that has been introduced and part of

this will be a steady talking about prior authorizations. Prior authorizations are apparently you have to go to an insurance company before the provider can actually give you the treatment, order your MRI, order your physical therapy. It has to be prior-authorized. It's an incredible waste of time and then this part that is coming forth now as you see under the first section here requires two very simple things, requires the adoption of electronic prior authorization protocols between providers and insurance companies. These are already part of the existing national standards. They are already part of the existing national standards so why is this necessary? The answer is because the insurance companies are not doing this. It's a nice law out there but the insurance companies are still delaying a great deal, taking your doctors, your provider's time and energy to do it. The second there requires accurate and current prescription drug formularies to be available electronically to practitioners at all times. Again, this is a current rule. Why is it not being done? The answer is because it's not being done. So these are two very common sense things that should be done which we aren't doing and we are trying to tidy up here and make sure the insurance companies do the right thing here in Maine. As you see down below there a survey of 1,000 physicians by the American Medical Association released this month, it was actually released in March not April, and you will see if you read down through that the very difficult time that physicians and other providers have with this whole concept of prior authorization. It has a negative impact on clinical outcomes. It takes a lot of time. It delays care. I suspect many people have experienced these kinds of things. You have to wait one to three to five days. It takes twenty-nine average prior authorizations per week. That is a lot of time you spend on this. I have to say that fifteen years ago I never had to deal with this at all. It was zero back then and this is now a growth industry. And finally, 34% of physicians have a staff who work exclusively on prior authorizations and I have - had, past tense - office of two doctors and we had ten employees and of those two worked on prior authorizations and trying to look at how to get around the insurance company, how to fulfill all of the insurance company's mandates. On the back you will see several comments, and these were done last month. So if you think that the insurance companies are adhering to the proper rules I would have you read, 'thirty to forty surgeries are pre-certified per week with an average call time of thirty-five to forty minutes if a good rep is reached who knows the information. Sometimes after checking benefits the authorization they are told they need to call another number. It's exceedingly frustrating adding to the time, hassle, calls for medical care.' The second one you can read for yourself. So the potential counterargument for this quote insurance companies are already doing it. The fact is they are not. This is a very small; this is a tweak to our health care system. It is certainly going to help move us in the right direction. I urge you to follow my light. Thank you, Mr. President.

THE PRESIDENT: The pending question before the Senate is the acceptance of the Majority Ought Not to Pass Report. If you are in favor of accepting that report you will be voting yes. If you are opposed you will be voting no. The Roll Call has been ordered.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#571)

YEAS: Senators: BRAKEY, COLLINS, CUSHING, CYRWAY, DAVIS, DOW, HAMPER, KEIM, LANGLEY, MASON, VOLK, WHITTEMORE, PRESIDENT THIBODEAU

NAYS: Senators: BELLOWS, BREEN, CARSON, CHENETTE, CHIPMAN, DESCHAMBAULT, DIAMOND, DION, GRATWICK, JACKSON, KATZ, LIBBY, MAKER, MILLETT, MIRAMANT, ROSEN, SAVIELLO, VITELLI, WOODSOME

ABSENT: Senator: HILL

EXCUSED: Senators: CARPENTER, DILL

13 Senators having voted in the affirmative and 19 Senators having voted in the negative, with 1 Senator being absent and 2 Senators being excused, the motion by Senator **WHITTEMORE** of Somerset to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report **FAILED**.

The Minority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

Bill **READ ONCE**.

Committee Amendment "A" (S-394) **READ** and **ADOPTED**.

Under suspension of the Rules, Bill **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later Assigned (3/22/18) matter:

SENATE REPORTS - from the Committee on **TAXATION** on Bill "An Act To Create the Hire American Tax Credit for Businesses That Hire Residents of the United States"

S.P. 643 L.D. 1744

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-395)** (8 members)

Minority - **Ought Not to Pass** (4 members)

Tabled - March 22, 2018 by Senator **LIBBY** of Androscoggin

Pending - motion by Senator **DOW** of Lincoln to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report (Roll Call Ordered)

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#572)

YEAS: Senators: COLLINS, CUSHING, CYRWAY, HAMPER, HILL, KATZ, KEIM, LANGLEY, MASON, ROSEN, VOLK, WOODSOME, PRESIDENT THIBODEAU

NAYS: Senators: BELLOWS, BRAKEY, BREEN, CARSON, CHENETTE, CHIPMAN, DAVIS, DESCHAMBAULT, DIAMOND, DION, DOW, GRATWICK, JACKSON, LIBBY, MAKER, MILLETT, MIRAMANT, SAVIELLO, VITELLI, WHITTEMORE

EXCUSED: Senators: CARPENTER, DILL

13 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 2 Senators being excused, the motion by Senator **DOW** of Lincoln to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report **FAILED**.

The Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

Bill **READ ONCE**.

Committee Amendment "A" (S-395) **READ**.

On motion by Senator **JACKSON** of Aroostook, Senate Amendment "A" (S-412) to Committee Amendment "A" (S-395) **READ** and **ADOPTED**.

Committee Amendment "A" (S-395) as Amended by Senate Amendment "A" (S-412) thereto, **ADOPTED**.

Under suspension of the Rules, Bill **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-395) AS AMENDED BY SENATE AMENDMENT "A" (S-412)** thereto.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later Assigned (3/27/18) matter:

HOUSE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Improve Housing Support in the Bridging Rental Assistance Program"

H.P. 1193 L.D. 1713

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-663)** (7 members)

Minority - **Ought Not to Pass** (6 members)

Tabled - March 27, 2018 by Senator **VOLK** of Cumberland

Pending - motion by Senator **BRAKEY** of Androscoggin to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**

(In House, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-663).**)

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

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

Senator **CHIPMAN:** Thank you, Mr. President. Men and women of the Senate, today we are discussing the Bridging Rental Assistance Program otherwise known as BRAP. BRAP appears to be the only rental assistance program in the country that requires recipients to spend 51% of their income on housing. The program should be used to alleviate severe rent burdens not perpetrated them. This bill brings Maine's BRAP program into alignment with nearly every other rental assistance program in America by assuring that recipients are not severely rent burdened. BRAP recipients in Maine are some of our most vulnerable residences, homeless and mentally ill, and their average income is \$7,500 per year forcing them to spend 51% of these extremely low incomes on housing is unconscionable. BRAP recipients would require under this bill to both apply for federally funded rental assistance and then accept federal assistance if and when their names come up on the waiting list. BRAP would continue to simply be a bridge to federally funded assistance as it was always intended to be. Please join me in opposing this motion.

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

Senator **BRAKEY:** Thank you, Mr. President. I rise in support of the Ought Not to Pass Motion before us, and I will just start by saying the Bridging Rental Assistance Program, also known as BRAP, is a very effective program. We have heard amazing testimony over the years on how well this program is working. There is an old saying, you know, if it's not broken don't fix it. This program, so Bridging Rental Assistance, emphasis on the word bridging, this program is designed to be a bridge not a landing zone. Not someplace where you land and you are there for a long term solution. This is intended to be a bridge, helping people who are coming out of institutions bridging that period of time where they can find a more permanent solution for housing. Now for many people that permanent solution, or more permanent solution, may be Section 8 Housing. The concern with this legislation is it would take the reimbursement rate and put it right up to where Section 8 currently reimburses at. If you do that you are taking away the incentive that is built into the system for people to go out and proactively search for a more permanent solution. You do this and you are going to see some of the funds drying up more in this program, so there will be less funds available for people who are new coming into the program because people will be in this program for more of the long term which is not what it is intended for. I should add that this is also a \$1.5 million fiscal note. That should be considered as well. Again, I'll just go back and say the BRAP program is working

incredibly well. We don't need to fix something that is working incredibly well. Thank you very much, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator **KATZ:** Thank you, Mr. President. I would like to pose a question to the Chair if I might.

THE PRESIDENT: The Senator may proceed.

Senator **KATZ:** I understand the argument that we don't want to do anything which is going to create an incentive where people are not applying for Section 8 Housing if they are a participant of the BRAP program. My question is: is there any requirement that if somebody is a BRAP recipient that they must also have an application for a Section 8 Housing at the time?

THE PRESIDENT: The Senator from Kennebec, Senator Katz, has posed a question through the Chair to anyone who may care to answer. Chair recognizes the Senator from Cumberland, Senator Volk.

Senator **VOLK:** Thank you Mr. President. I too would like to pose a question through the Chair.

THE PRESIDENT: The Senator may proceed.

Senator **VOLK:** Thank you. I am wondering - I heard the Senator from Cumberland say that this is the only program in the country that requires this level of funding. I'm wondering how many other similar programs there are in the country.

THE PRESIDENT: The Senator from Cumberland, Senator Volk, has posed a question through the Chair to anyone who may care to respond.

On motion by Senator **JACKSON** of Aroostook, **TABLED** until Later in Today's Session, pending the motion by Senator **BRAKEY** of Androscoggin to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**. (Roll Call Ordered)

Senate at Ease.

The Senate was called to order by the President.

Off Record Remarks

RECESSED until 4:00 in the afternoon.

After Recess the Senate was called to order by the President.

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

ORDERS

Senate Order

On motion by Senator **KATZ** of Kennebec, the following Senate Order:

S.O. 28

**STATE OF MAINE
128TH LEGISLATURE**

WHEREAS, Article III, Section 1 of the Constitution of Maine expressly divides the sovereign power of the people of Maine among the Legislative, Executive and Judicial departments; and **WHEREAS**, pursuant to Article IV, the Constitution of Maine allocates legislative power to the Maine Legislature, including the House of Representatives and the Senate; and **WHEREAS**, Article IV of the Constitution of Maine allocates legislative power to the people of Maine pursuant to Article IV, Part Third, Sections 17 to 19; and **WHEREAS**, Article V, Part Second, Sections 1 to 4 of the Constitution of Maine set forth and delimit the authority of the Secretary of State; and **WHEREAS**, Article III, Section 1 of the Constitution of Maine expressly bars any person belonging to one department of the government of Maine from exercising the powers properly belonging to either of the other departments of the government of Maine; and **WHEREAS**, the separation of the powers of the government of Maine is essential to the integrity of the government of Maine and the welfare, safety and preservation of the liberties of the people of Maine; and **WHEREAS**, the legislative power of the State of Maine may be exercised only by the Legislature of Maine or the people of Maine in accordance with Article IV of the Constitution of Maine; and **WHEREAS**, appropriations of public money may be made only through the exercise of legislative power as provided for and in accordance with Article IV of the Constitution of Maine; and **WHEREAS**, when money is appropriated by the Legislature, the concurrence of both the Senate and the House of Representatives is required, which concurrence is subject to a veto by the Governor; and **WHEREAS**, on November 16, 2016, the voters of the State approved a measure referred to the people pursuant to Article IV, Part Third, Section 18 of the Constitution of Maine entitled An Act To Establish Ranked-choice Voting, referred to in this order as "the Act," which creates new methods of casting ballots and counting, sorting and declaring votes for the offices of Governor, State Senator and State Representative, as well as for the offices of United States Senator and Representative to the United States House of Representatives, which applied to elections held on or after January 1, 2018; and **WHEREAS**, the Act as approved by the voters did not appropriate or otherwise authorize the expenditure of money to implement ranked-choice voting; and **WHEREAS**, the Office of Fiscal and Program Review estimated the cost of implementing ranked-choice voting at \$1,500,000; and **WHEREAS**, in a sworn affidavit submitted to the Justices of the Supreme Judicial Court, the Secretary of State, through Deputy Secretary of State Julie Flynn, cited and relied upon the cost

estimate in the fiscal note of the Office of Fiscal and Program Review; and **WHEREAS**, in its brief to the Justices of the Supreme Judicial Court, the Office of the Attorney General also cited the cost estimate in the fiscal note of the Office of Fiscal and Program Review; and **WHEREAS**, the Office of Fiscal and Program Review provided a fiscal note to L.D. 1646 of the 128th Legislature "An Act To Implement Ranked-choice Voting in 2021," referred to in this order as "L.D. 1646," as introduced of \$684,790 for the Secretary of State to develop, implement and administer ranked-choice voting in fiscal year 2017-18, and provided a fiscal note of \$96,768 for the Department of Public Safety as well as \$52,106 from the Highway Fund for fiscal year 2017-18; and **WHEREAS**, in a public interview after certifying that the petitions for the exercise of a veto pursuant to Article IV, Part Third, Section 17 of the Constitution of Maine included sufficient signatures, Secretary of State Matthew Dunlap advised that the Legislature had not provided funding to implement ranked-choice voting and asked the Legislature to appropriate such funding in the amount of \$1,500,000 to implement ranked-choice voting; and **WHEREAS**, in paragraph 54 of its complaint against the Secretary of State in *The Committee for Ranked-Choice Voting, et al. v. Matt Dunlap, as Maine Secretary of State*, Civil Action Docket No. CV-18-24, the plaintiffs alleged that the Secretary of State had "sufficient authority and financial means to timely implement the [Ranked-Choice Voting] Law for the 2018 elections" and, in answering this allegation by pleading dated March 16, 2018, the Secretary of State asserted that he had sufficient authority but denied all other allegations in that paragraph of the plaintiffs' complaint; and **WHEREAS**, the Secretary of State's denial of all other allegations in paragraph 54 of the plaintiffs' complaint means that, in a formal pleading filed with the Superior Court, the Secretary denied that he had the financial means to timely implement the ranked-choice voting law; and **WHEREAS**, no bill seeking an appropriation to develop, implement and administer ranked-choice voting has been submitted to the Legislature since that time by the Secretary of State and no such bill has been approved for introduction to the Legislature; and **WHEREAS**, the Secretary of State and the Deputy Secretary of State have testified that the Office of the Secretary of State will be expending public money to develop, implement and administer ranked-choice voting without an express appropriation by the Legislature; and **WHEREAS**, the commitment and expenditure of public money without authorization by the Legislature violates the separation of powers and is prohibited by the Constitution of Maine, including but not limited to Article III and Article IV as well as the statutes of Maine; and **WHEREAS**, the Act as approved by the voters did not provide for the implementation of ranked-choice voting; in particular the Act did not set forth which officials were charged with implementing ranked-choice voting or how it was to be implemented; and **WHEREAS**, the Constitution of Maine has always placed primacy on the importance of the electoral process and the integrity of that process; and **WHEREAS**, voting is a fundamental right and is at the heart of the democratic process of Maine; and **WHEREAS**, the Constitution of Maine and the statutes set forth in Title 21-A of the Maine Revised Statutes demonstrate that the

Constitution of Maine and the Legislature have placed the public's trust in the integrity of the election process at the forefront of constitutional and legislative concern; and

WHEREAS, Article II, Section 1 of the Constitution of Maine recognizes Maine citizens voting in elections as constitutional officers designated as "electors" and Article II of the Constitution of Maine provides electors with limited immunity in the exercise of their right to vote; and

WHEREAS, Article IV, Part First, Section 5 of the Constitution of Maine requires that elections for Governor, State Senator and State Representative be conducted at the municipal level of government and that particular municipal officials receive, sort and count ballots and attest to the results of elections in an open and public manner; and

WHEREAS, when voting machines were considered as a means of accepting and counting votes, the Constitution of Maine was amended to add Article II, Section 5 for the purpose of authorizing the use of voting machines; and

WHEREAS, the procedures set forth in Article II and Article IV of the Constitution of Maine are intended to ensure integrity and openness in elections and to promote public confidence in the electoral process; and

WHEREAS, the procedures set forth in Article IV, Part First, Section 5 of the Constitution of Maine have served as the basis for the statutory process by which primary elections are held; and

WHEREAS, the only authority that the Legislature has provided to the Secretary of State is the authority to "adopt rules for the proper and efficient administration of elections determined by ranked-choice voting," including the development of procedures for "requesting and conducting recounts," the Maine Revised Statutes, Title 21-A, section 723-A, subsection 5-A, which authority was, as originally enacted, contingent on the Secretary of State making a full report to the Legislature on how ranked-choice voting should be implemented, which requirement has been suspended by the submission of a petition pursuant to Article IV, Part Third, Section 17 of the Constitution of Maine, the suspension of which will be decided in the June 12, 2018 election; and

WHEREAS, without the report required pursuant to Public Law 2017, chapter 316, section 13, the direction set forth in the Maine Revised Statutes, Title 21-A, section 723-A, subsection 5-A lacks sufficient standards to constitute a lawful delegation by the Legislature to the Secretary of State to develop and issue rules over the electoral process; and

WHEREAS, neither the Legislature nor the people of Maine acting pursuant to Article IV of the Constitution of Maine have authorized any executive officer to develop election procedures without first specifying to such executive officer measures binding on that officer that would ensure that the elections have the integrity and openness required by Article IV, Part First, Section 5 of the Constitution of Maine; and

WHEREAS, except for recounts provided for in the Maine Revised Statutes, Title 21-A, section 737-A, neither the Legislature nor the people of Maine have authorized any persons, including law enforcement officers, to take custody of ballots that have been cast in municipalities and which, by law, have been commended to the possession, custody and control of particular and designated municipal officials; and

WHEREAS, except for recounts provided for in the Maine Revised Statutes, Title 21-A, section 737-A, neither the Legislature nor the people of Maine acting pursuant to Article IV of the Constitution of Maine have authorized any executive

officer, including the Secretary of State, to order municipal officials to relinquish custody of ballots to any person or official or to allow municipal ballots to be removed from those municipal officials or to be delivered to any other person, including the Secretary of State; and

WHEREAS, in testimony before a committee of the Legislature, the Secretary of State and the Deputy Secretary of State asserted that the Office of the Secretary of State would seek to enlist the assistance of law enforcement officers, including members of the Maine State Police, wardens of the Department of Inland Fisheries and Wildlife and other law enforcement officers from departments, agencies or political subdivisions yet to be identified to remove ballots from the possession, custody and control of the designated municipal officials charged with maintaining such possession, custody and control; and

WHEREAS, neither the Legislature nor the people of Maine acting pursuant to Article IV of the Constitution of Maine have authorized the Office of the Secretary of State to exercise such authority either over the ballots cast in municipalities or the municipal officials charged by law with the possession, custody and control of such ballots; nor has the Legislature nor have the people of Maine pursuant to Article IV of the Constitution of Maine authorized any executive branch officials, including members of the Maine State Police, wardens of the Department of Inland Fisheries and Wildlife or any other law enforcement officers from departments, agencies or political subdivisions yet to be identified, to exercise such authority; and

WHEREAS, the assertion by the Office of the Secretary of State over municipal officials and law enforcement officers, without the express authority of the Legislature or the people of Maine pursuant to Article IV of the Constitution of Maine, exceeds the authority invested in the Secretary of State by the Constitution of Maine and the statutory laws of Maine; and

WHEREAS, the primary elections held under Maine statutory laws are elections within the meaning of Article IV, Part First, Section 5 of the Constitution of Maine; and

WHEREAS, as elections within the meaning of Article IV, Part First, Section 5 of the Constitution of Maine, Maine primaries must comply with the plurality requirement of the Constitution of Maine for the offices of Governor, State Senator and State Representative; and

WHEREAS, the measure of November 8, 2016 did not change the wording of the Maine Revised Statutes, Title 21-A, section 723, subsection 1 requiring that primary elections be determined by a plurality; and

WHEREAS, a proposal to amend the Maine Revised Statutes, Title 21-A, section 723, subsection 1 as set forth in section 5 of L.D. 1646 as introduced was removed in committee, struck from the bill and not enacted into law; and

WHEREAS, L.D. 1646 as enacted into law did not change the plurality requirement of the Maine Revised Statutes, Title 21-A, section 723, subsection 1 for elections held in Maine prior to 2021, and the plurality requirement of section 723, subsection 1 for primaries remains the law of Maine, fully in effect; and

WHEREAS, notwithstanding the Maine Revised Statutes, Title 21-A, section 723, subsection 1, the Secretary of State and the Deputy Secretary of State have testified before a committee of the Legislature that they intend to develop, implement and conduct the June 12, 2018 primary under ranked-choice voting; and

WHEREAS, by conducting the June 12, 2018 election using ranked-choice voting, the Office of the Secretary of State will be

acting outside of the authority vested in that office by the legislative authority of Maine; now, therefore, be it **ORDERED**, that the Senate authorizes the President of the Senate to represent the interests of the Senate and take all appropriate action, including the retention of outside counsel, on its behalf in any matter related to advocating for and defending the interests of the Senate, preserving the integrity of the separation of powers provided for in the Constitution of Maine, and preserving the integrity of the election process of Maine, and to raise all appropriate claims and defenses and to seek all appropriate manner of relief, including but not limited to seeking injunctive relief against any state official or private person seeking to exercise powers relegated to the legislative power of Maine not duly and properly extended to such official or officials or person or persons or any of them.

On motion by Senator **KATZ** of Kennebec, the Joint Order was **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator **KATZ:** Thank you, Mr. President. Men and women of the Senate, as we enter this discussion this afternoon I would ask everybody to keep an open mind and not be wrapped up in a couple things. First of all, it may be hard for some of us to think about this issue this afternoon because we have strongly held feelings about the policy of ranked-choice voting, one way or the other. There are many ardent supporters in this room of the policy of ranked-choice voting and I, myself, think that it has much to recommend itself. There are others who are vigorous opponents, again, of the policy. But no matter what view you have on this subject, I ask you to put that aside for now. Second, this whole subject is become white hot partisan, politically, in this building, not just between the two parties but even within the parties, and I ask you to put that aside and suggest that of all the important things we do this session, Mr. President, there will be no more important one than this. It's not about the policy of ranked-choice voting, it's about trying to avoid a chaotic situation and a potential train wreck that I would suggest is right around the corner if we do nothing. As we consider the pending motion, I think the discussion really goes back in history, way back to 1780, 46 years before we even became a state, and we remember John Adams. John Adams was a brilliant man, and he became the second president of the United States. By the way, his cousin, his first cousin, was Samuel Adams who later went on his own notoriety on beer bottles. But that is his first cousin. But the important thing here is that John Adams was the primary author of the Massachusetts's Constitution that largely became our Constitution. During the drafting of that he became a key voice for the proposition that this whole new experiment of democracy would only work if people had absolute confidence in the integrity of our election system and that without that confidence, and without that continuing confidence, that the democratic experiment would certainly fail. That principle shows up in a couple of parts of our State Constitution, again largely coming from Massachusetts. One is the separation of powers, and this is, I think, really critical to what we consider here this afternoon. I would like to read you the section of our Constitution that talks about that. It is in Article III, Section 1, it says, 'the powers of this government shall be divided into three distinct departments; the Legislative, Executive, and Judicial.' In Section 2, 'no person or

persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted,' and that is expressly directed or permitted in the Constitution. The other, the second provision that's in our Constitution, which was important at the time and still is, is the in concept of where power lies. Does it lie mostly with the state? In the election process the framers of the Constitution made a conscious decision that the power stays local. Right in our Constitution it talks about the local control of elections, and I will come back to that in a minute. So here we are. We have gone through the initial referendum process. We have gone through the opinion of the Justices. We have gone through a separate bill this last session, the people's veto gathering and last week's confusing state of events, and here we are, looking for the first time at the Secretary of State's composed rules about how we are going to conduct this year's primary. For the first time, we can finally see how this system is all going to work and, for the first time, we can see the significant flaws, the warts, and the serious constitutional problems with what is about to happen. The discouraging thing is, I think, looking back to the beginning of this, this was all predictable. The first conflict, and this is the one that the Secretary of State brought to our attention last week, is the fact that there are two statutes in Maine which are exactly in opposition here, Title 20 about how we conduct primary elections. This is the - if you remember, this is the issue that the analysis, Danielle Fox, found last week. Lots of great people have been thinking about this, nobody picked it up until last Thursday. But Title 21-A, Section 723, talks about primary elections and it says, 'in a primary election the person who received a plurality of the votes casted for nomination to any office is the winner.' That statute is good Maine law. That's never been changed by anything, all this history over the last couple of years, that remains in effect. Now that's not the only thing on this subject because there is another statute which passed as part of the, what I will call the moratorium law, which sought to provide that primaries will be conducted under ranked-choice voting. So we have two statutes in direct contradiction, although even the second one doesn't say the majority winner. It's a little bit more obtuse than that, but two statutes in contradiction. And so what happens? Well, we'll just say that the later in time controls, and that ought to control. Maybe so, but then we got a third thing that happened, and that is in the, what I'll call the moratorium bill, the good bill Representative Ackley presented, there was a clause which fixed this which repealed the original bill which says that primary elections are governed by plurality, and I don't know what happened in committee but that clause, that portion of the bill, never made it out of committee, never got adopted by us, and never was voted into law. So we are left with a clear conflict between statutes with no real guidance about which one's right, and we ought to have the judges, we ought to have the court, decide that. That's a statutory problem, but there are larger constitutional issues here again, and again, Mr. President, we are talking not about some arcane technical rules that we just found some technicality somewhere. This goes to the very basic integrity of the voting system. Our Constitution is clear and unambiguous about the process, and here we are going to go back to the local control issue. The question is: who gets to count the ballots? Now we might - that's something that might be done by statute, I suppose, but it's right in our Constitution. The framers of our Constitution decided that the ability to count ballots was going to be left with municipal officials, and it's in Article III - excuse me, Article IV, Part 1, Section 5 of the Constitution. Right

from the beginning of our statehood, it talks about how the votes of all qualified electors are going to be counted by municipal officials, electors are voters. So the Constitution says local municipal officials, clerks, count those ballots. And it's so important that when someone actually invented voting machines we had to amend the Constitution to allow for the use of voting machines because otherwise we would run afoul of that clear constitutional system. So the voting system now presented to us, through the ranked-choice voting and the Secretary of State, just blatantly ignores that part of the Constitution. No matter that for 200 years ballots have been counted locally by clerks, we now have this entirely new system where all the ballots are going to be transported to Augusta, more on that in a moment, but counted by the Secretary of State. That's a problem. Now the Ranked-Choice Voting Committee says, 'well, no it's not a problem because a primary is not an election.' Well, I understand the question. I don't think that's right but, again, this is something we ought to have the court weigh in on. We don't have a separate set of statutes for primaries and a separate set of statutes for the elections in November. We have election statutes, and for over 100 years that we have had primaries in the State, those have always been conducted pursuant to election law. So it is, I would suggest, an election. Secondly, and maybe somebody may disagree, but if it's not an election I don't know what it is. The other problem is even if the court were to determine that the primary election is not an election, then we really get back into thinking about the whole issue of separation of powers, again, which is fundamental to our democracy and guarantees that no one Body or, in this case, no one person will have too much power. The Secretary of State, and I think we have an excellent one, doesn't have the authority to do what he has done. If I were going to give it to any one person I would give it to Matt Dunlap, but he can't do it. He doesn't have the authority. The only thing the Secretary was delegated, was in the moratorium bill, was to be able to make - this is amazing - routine and technical rules about how we are going to do this. Now why would we have done that, in our wisdom of passing this bill? Well, at the time, the bill contemplated a very different future going forward. That moratorium bill tasked the Secretary of State with setting up a committee and studying this whole issue and making recommendations back to the Legislature on how we would proceed, and then, and only then, would he be able to propagate these rules. Well, the way that the people's veto works, and we are all learning this as we go, is that the people's veto authors can cherry-pick to repeal this section of the law but not that section of the law. And that's exactly what they did. They took out the whole part about studying the issue and coming back to the Legislature and they left in the part about the Secretary of State just going ahead and making rules. You just can't delegate that sort of authority to the Secretary of State, no matter how smart they are, and have that be constitutional. It's just offensive to the concept of separation of the powers to say that the Legislature can just turn over the entire design of something as important as an election system to the Secretary, any more than it would be okay to say to the Commissioner of Public Safety, 'You know what, you come up with what are going to be crimes in Maine, and what the penalties are going to be, and that's fine and that's the way we will do it.' We would never do that, and we shouldn't do it here. It's a legislative function, either to be exercised by the people in a referendum, and there was no enabling legislation attached to this referendum, or by the Legislature. But not by the Secretary of State, no matter how

good he is. But there are more problems, Mr. President, that implicate the separation of powers here, and I apologize for going on for so long but this is important and I know we all know it's important.

Let's talk about counting and gathering the ballots. The system designed by the Secretary of State says that the State Police, or public safety, is to go to the 500 political subdivisions, municipalities of the State of Maine, and gather all the ballots from Aroostook to York County and bring them all, physically, to a central voting - central counting place in Augusta. Well, this is an entirely new process which the Legislature has never authorized. The Secretary of State can't order the State Police to do anything and the State Police, and there is a letter which I'm not sure has made its way to your desks or not, but there is a letter from the Executive Department today saying that the State Police aren't going to do it because they don't have any authority to do it. I mean, since when is it okay for police to start seizing ballots without the Legislature saying it's okay. So they're not going to do it. So at the VLA, at the Veterans and Legal Affairs hearing last week we asked Julie Flynn, 'Well, you know if the State Police aren't going to, or can't, or won't pick up the ballots, how are we going to get all those ballots back to Augusta?' And she - Julie is great, she is probably the best person in the country on this stuff, but Julie Flynn didn't know the answer, didn't know how we would do it and said, 'Well, maybe the clerks from each of the municipalities, they can come and deliver the ballots to Augusta.' Well, again, we run into the same problem. There is no - the Secretary of State can't order our town officials to do anything, and there is nothing in the law which allows, again, municipal officials to take these ballots, which are pretty darn sacred, to take these ballots and do anything with them. There is no Legislative authorization for that at all. Even municipal clerks can't bring ballots here for recounts. The State Police can, but that's because we gave them the specific right to do that. So we are going to have some system now where some clerk in Senator Davis' county is going to put all the ballots in the back of her Subaru and bring them down here to Augusta, or some clerk up in Aroostook is going to load the ballots into the back of their Ford F-150 pickup and bring them down to Augusta? That sounds like something that happens in a Banana Republic, not in a democracy with the maturity of ours. And there is nothing, whatsoever, which authorizes that. Just think of the chain of custody problems with a system like that. So right now there is no plan for how these things are even going to get here, and I don't think it is even a solvable problem unless the Legislature were somehow to act.

The next big problem is funding and, again, we have rules that we all live by in the separation of powers. Only the Legislature, or the people, but only the Legislative Body can authorize funding, and I draw your attention to the whole set of statutes in Title 5 that we look at in Appropriations all the time. 1582, Section 1, 'A State department may not establish a new program, or expand an existing program, beyond the scope of the program already established.' I'm going to skip a little bit here, 'until the program and method of financing are submitted to the Department of Administrative and Financial Services for evaluation and recommendation of the Legislature and until the funds are made available for the program by the Legislature.' So there's never been an appropriation of money here. It could have been in the original referendum question I guess. There is no appropriation of money in that referendum. The moratorium bill, I suppose that could have contained an appropriation. As it came

out of committee, it didn't. The people's veto doesn't have an appropriation, it couldn't, by the way, but it doesn't. And we just can't spend money without legislative authorization. So what we know, we have heard a lot of different numbers of what this is going to cost. OFPR estimated it was going to cost \$1.5 million. Julie Flynn, in an affidavit to the law court, said it was going to cost \$1.5 million. The Secretary of State said it was going to, in a public release or an interview, said it was going to cost \$1.5 million, and he was going to submit legislation making a request to us to appropriate it, which hasn't happened. It's never been done. We still haven't seen a bill to authorize the spending of this money and, given that, there's just no authority to spend it. Beyond that, there's no money to spend, period, even if there were authority. The cupboard is bare. Julie Flynn came in front of VLA last week and agreed that it would have to come from a particular fund within the Secretary of State's budget and said, essentially, that there's very, very little money there, not nearly enough to cover what this program is going to cost. So how are you going to do it, the question was asked. Well, we'll find it somewhere. Maybe we'll pay some bills late. Maybe we'll rob Peter to pay Paul for the next year. That's not okay. The money isn't there to do it, even if the authority were there and the authority isn't there. And, by the way, it's no longer a \$1.5 million. Now they are talking \$350,000 or so for the primary. So we got a stripped down version of what they originally were talking about. The reason is that some of the machines we were going to get to do a certain function here, locally, in counting the ballots is now going to be sluffed off on the municipalities. So another municipal mandate, which is completely unfunded in this bill, which, again not to get too technical, would, at a minimum, require not routine or technical but substantive rules, rulemaking which we don't have here. So there isn't any money, and this is just not - this just isn't a way to run a railroad.

Look, there are no heroes here. We bare part of the blame but, you know what, we are concerned with a lot of things here. We're talking about workforce development. We're talking about marijuana. We're talking about the budget and all sorts of things. But we just haven't really focused on these things until we were able to see the entire program last week. So as of April 2, clearly, we are nowhere near ready to do this. We are two months away from chaos and the election system is a mess and there are serious, again, constitutional issues here. We got statutes in conflict. We have six or seven serious constitutional issues, that might go one way or might go the other, but we need to have them resolved. I mean, last Thursday, and again I can't say enough good things about our Secretary of State, but last Thursday at 9:00 in the morning he was saying, 'There's problems here. Unless the Court steps in or the Legislature steps in, we are not proceeding with ranked-choice voting in June', and by 3:00, the Secretary of State was saying, 'We've got massive problems here. Unless the Legislature steps in or the Court steps in, we are proceeding with ranked-choice voting unless somebody steps in.' If he doesn't know which direction is up, how are we supposed to know which direction is up? We need to seek, Mr. President, it seems to me, judicial clarity. I think we have been headed, with all due respect to some not in this Chamber, I think we are headed for this train wreck right from the beginning, right from the first day that the Ranked-Choice Voting Committee trotted out a referendum proposal that they knew was almost certainly unconstitutional, and we have been dealing with the fallout from that ever since. But now it's our problem, and now I think we recognized it. I think we're all confused. I think the

Secretary of State is confused, and if he's confused and we're confused, how do you think our constituents feel? What kind of confidence do we think people now have in what we are doing with our election system? So, Mr. President, I would suggest that we have a lot of important things to do this year, but maybe this is the most crucial thing in how we will be judged. I'm going to ask you to look at it from two perspectives. One is the ethical and the other is the practical. Time and time again, we, in the 128th Legislature in the Senate, we have stood up for what is right, collectively, and this time it is the most fundamental principal of our democracy, the integrity of the election system. It's the most basic of our responsibilities and I hope that again, collectively, we will choose to stand up for this institution, and also for the Constitution. But there's also a practical side. Let's go forward, and say we do go forward with ranked-choice voting, it doesn't mean it's not going to get challenged. You darn well know that some disgruntled candidate, who ends up on the wrong end of this, is going to challenge this after June. So let me just pose the following hypothetical. On the Republican side, the person who gets the most votes also wins under ranked-choice voting. No problem, we know who the Republican candidate is. On the Democratic side, the person who gets the most votes does not win under ranked-choice voting. Somebody else wins. That's why we have ranked-choice voting. So now we have a conflict, and the person who finished first in the votes says, 'You know what? This system is wrong and I'm going to challenge it in court,' and they would have every right to do so at that point. So under that scenario, we've got a Republican candidate out there campaigning who knows who he is or who she is, and we've got a Democratic candidate - we don't know who the Democratic candidate is for six weeks, eight weeks, how long? Republican candidate has a huge head start on the General Election. This is a screwed up way to do business and we can do better.

So thank you for your patience, Mr. President. For some this will be easy. I mean, there is a part of me that wants to say, and I know we're always accused that we're meddling with the will of the people, and I think there are some of us who are increasingly coming to the point where people say they want it, even if we think there're problems, and we are going to go ahead and let it happen. But this one is more important. I would ask you to just, again, recall John Adams, who cautioned us to be careful and diligent and protective of our Constitution. So the right path isn't always the easiest path. This isn't the easiest path to take here today, but I would suggest to you that it is the right path. Let's let the courts decide this. The order before you is tailored to allow the President to do essentially two things: to intervene in the existing lawsuit to make these points and/or to bring a separate action to make to make things points, whichever appears more appropriate. So, again, I thank you for your patience, and I hope that this will not be a partisan issue, and I hope that the Senate will, once again, once again rise to the occasion. Thank you, Mr. President.

On motion by Senator **LIBBY** of Androscoggin, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

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

Senator **JACKSON:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I certainly appreciate the good Senator

from Kennebec's speech. I don't know if I agree with it all, but I do appreciate it. The one thing, though, that I did want to say was that, Mr. President, yesterday you called me about this issue. I understand yours' and other peoples' concern about the issue before us. Now, for me, ranked-choice voting is something that I supported. I didn't support it wholeheartedly. But today we're, in my opinion, dealing with something much more than ranked-choice voting. You know, when we spoke yesterday at 6:00, you know, you talked forthright about what you were concerned about and I felt, at the time, that we were talking about asking for solemn occasion again. What we have before us today, I think, your Chief of Staff provided to us at 1:40 and at 2:13 the Revisor's Office actually let it out. Yesterday, I knew about this issue but I also knew that our Lead on the Committee, Senator Carpenter, would not be here today. I spoke to him, again, thinking that we were talking about a solemn occasion, for the Senate asking, and I felt that, even if I didn't agree with it, that would be appropriate. But today, again, this order I find is so large and expansive that, in my mind, it hasn't not even as much to do about ranked-choice voting as what we could be doing with elections overall, and that concerns me greatly. I mean, clearly, if you're the person that is making the decisions then that's all well and good. But if you are standing on the sidelines, and you don't have the authority, then that is very concerning because this order doesn't even, in the end, talk about ranked-choice voting. It talks about advocating and defending the interests of the Senate and preserving the integrity and separation of power of the Constitution of the State. I mean it's way too broad, in my opinion. You could do anything with this order and that is something that I've never seen in the 14 years that I have been here, that one person would have the ability to take up whatever they thought was the best interest of the Senate in all matters, in reality, not just on voting. So while I appreciate people's concerns about ranked-choice voting and, quite possibly there might have been many of us that would have supported looking at this issue, the broadness of this order concerns all of us to such great regard that there's no way that we can support something like this. It doesn't even give an ending date of when this order will go away. I mean, what I understand is that the Court is going to decide on this, quite possibly tomorrow, but this order will go on throughout this Legislature. And even in Senator Katz's eloquent floor speech he talked about it being offensive to the design, that we just turn this over. Well, I think that it is offensive to the design, that the entire Senate just turns over complete ability to look at all election laws to one person. I mean we are a Senate Body. We decide things. We could have decided many of these things in here but we chose not to. Even a couple weeks ago, we had a bill before Legislative Council to fund ranked-choice voting and we didn't support that, and now we're concerned that we're not going to do this and we're going to give a joint order to allow one person to decide what the future of ranked-choice voting, and all other election laws is, according to their interpretation. I've never seen anything like that. I mean, again, this comes down to, quite honestly, if we are going to just have one person decide this, I guess the other 34 might as well go home. If every time we can't come up to an agreement, then one person will just decide from now on what it's going to be. I'm not going to support that. I think that this is extremely harmful to the integrity of the Senate. I understand and I think, on record, the Senate President has great motives, but his motives are different than mine on this issue, and I don't know where the line is going to be drawn. I'm just supposed to blanketly decide that you should just take care of this

and I'll, I guess, just stand down. I'm not going to do that. That's not what my role is as State Senator for the State of Maine, for the people of the State of Maine. I mean, we have debate in this Chamber, and talk about the issues, and sometimes you win, sometimes you lose. Well, I'm never going to support one person having the say over all these things, much less. You know, we have this with sometimes the Chief Executive. This is just going way, way further than I ever expected we were going to be discussing this afternoon and that, I think, is part of the problem too is if we would have - and I understand that some people want to have this decision much sooner than later, and I can appreciate that, but if we would have had time to, possibly, have some of our people craft something that was narrower, you maybe would have got support from this side of the Chamber. But this is way too broad and, Mr. President, while I respect what you're trying to do, and please believe me I do, I cannot support something this expansive.

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

Senator **DION:** Good afternoon, Mr. President. First, I want to say I have a lot of respect for the Senator from Kennebec. Together we've worked on some very difficult issues, and often times those issues have to do, Mr. President, with language and their intent. I can't tell you how many times the good Senator and I had to retire and discuss what our intent was and what was the best language possible to achieve that intent, and then, the second part, which I think the Senator from Aroostook is speaking to, whether we could convince others to join us in that particular understanding of language, and that's how we are able to move forward legislation. This particular order has 45 items listed. A bill of particulars, fundamentally proposed as critiques, assessments, and evaluations of decisions, conduct, or otherwise, engaged in by the Secretary of State. Some of them may be factual. Some may be open to contest. But more importantly to me, Mr. President, is the last paragraph where there're orders. Now, in the spirit of complete candor, I discussed that paragraph with my good friend from Kennebec, and we wrestled around with the ideas. Who actually was going to have standing? Was it the Senate, as a Body? I asked that in the sincerity of one attorney talking to another. No partisan intent, just simply trying to understand the mechanics of what the President was hoping to accomplish with this order, and I was assured that, in consult with other parties, there was some substantiation in other states that a Senate could act as a party in a lawsuit. But now I find myself in this Chamber, and it appears that my understanding was in error, that the order is designed to grant the Office of President standing as a party singular in a case. The reason to bring this up - this is complicated stuff. Alright, this is not something that should be passed on in a few minutes' vote. If I was representing any one of you in a court outside of this Chamber, it would be expected of me that my due diligence would have you understand each and every one of those 45 particulars to the satisfaction of the court. That you clearly and fundamentally understood what was in contest and, therefore, if I expressed your decision on the matter, the court would have confidence that you agree to the propositions outlined in those particulars. I'm not sure we have that today. I can't speak for both sides of this Chamber but I will venture a guess that there are some that are struggling with this language. What does it mean? There are cross-references to other statutes and

provisions of the Constitution, and I and others worked on this, Mr. President, in the short time referred to by the Senator from Aroostook, and it raised more questions than others. And I'm just simply say that when I was a freshman in the other Body I brought forward a request for a solemn occasion and the Speaker at that time, not a member of my own Body, brought me into his office and said, 'You may have legitimate questions here, but if the language is not accepted by this entire Body, you are on an errand with no positive outcome.' We worked on that language, Mr. President, and the entire Body voted to send that request for a solemn occasion forward. They recognized the responsibility, as members of the House, as we should recognize our responsibilities as Senators. But we should do so with a clear mind and a complete understanding of what's in contest in this particular document, and I would hope that the President if he too believes, as I know he does, that the just way is to lay back on this proposition. Table it, if it must be. Grant us the time to fully evaluate it so we can get the language that satisfies every member of this Chamber because, if we do so, then we would grant your office a legitimate and righteous authority to undertake whatever task we think is relevant at this time. This order, the first paragraph, ladies and gentlemen, is simply too broad. If, in fact, the Secretary of State acted outside the guardrails, this order has no guardrails, and that's our first reading of it. Maybe with some modification of language, and revision of some phrases, we can settle down and agree to this outcome but I'm telling you this isn't ready, not to this one Senator's mind. Thank you, Mr. President.

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

Senator **LIBBY:** Mr. President, thank you. I rise to pose a question to the Chair.

THE PRESIDENT: The Senator may proceed.

Senator **LIBBY:** Mr. President, Senate Rule 201.11 gives you the authority to appoint legal counsel, and so my question, Mr. President, is why is the order necessary given that fact?

THE PRESIDENT: The Chair would advise members that he believes he does not need this order to hire legal counsel. The Chair recognizes the Senator from Androscoggin, Senator Libby.

Senator **LIBBY:** Mr. President, thank you. I rise to pose a question through the Chair.

THE PRESIDENT: The Senator may proceed.

Senator **LIBBY:** Thank you, Mr. President. Where will the appropriation for the outside counsel come from and how much money is available in the Senate President's legal fund?

THE PRESIDENT: The answer to that question, I believe, is that there is \$10,000 available in the legal fund and I'm sure that my office can provide you with exactly what line item that comes from if you're interested. The Chair recognizes the Senator from Androscoggin, Senator Libby.

Senator **LIBBY:** Mr. President, thank you. I request to pose a question through the Chair.

THE PRESIDENT: The Senator may proceed.

Senator **LIBBY:** To anyone who may answer, does the Senate, as a legislative chamber, have standing to sue a constitutional officer, any governmental official or private citizen, and how would you argue that the Senate has standing?

THE PRESIDENT: The Senator from Androscoggin, Senator Libby, has requested or presented a question through the Chair to anybody who wishes to respond. The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator **KATZ:** Thank you, Mr. President. In answer to that question, and I'm far from a constitutional scholar, but here's my understanding, Senator Libby, that our best legal advice we received is that the Senate does have standing because we can demonstrate a particularized injury, that is the encroachment on our legislative authority, by power being placed in a single individual. So we feel pretty clearly that we do have standing and there's a couple of cases I can cite to you if you care. But we think we have standing. Secondly, the President of the Senate would not be the party here. The President is being authorized to act on behalf of the Senate, so that the party would be the Senate of Maine. With respect, if I could, Mr. President, with respect to the other issues raised above the broadness of this order; this Senate Order is entirely about ranked-choice voting. There are 45 'whereas.' There's nothing here about anything other than ranked-choice voting. Ranked-choice voting is mentioned 14 times in the body of this order. What's clear here, just so that there's no confusion, there is one or two things the President would do, either, A, intervene in the existing suit which is pending in Kennebec County Superior Court, or, B, bring a separate suit. If there is any doubt in anybody's mind about that I hope that clears that up. It doesn't - it won't authorize, and doesn't authorize, him to do anything else. This is all about ranked-choice voting. It's about nothing else about the electoral system, and I would ask a question through the Chair, and that is with the respect to the statutory conflict we raised in the seven or eight constitutional issues we raised, I haven't heard anybody quarrel with the realness of those issues or express a contrary opinion about the constitutionality of those problems. My question is: does anybody have them? Thank you, Mr. President.

THE PRESIDENT: The Senator from Kennebec, Senator Katz, has posed a question through the Chair to anybody who cares to respond. The Chair recognizes the Senator from Aroostook, Senator Jackson.

Senator **JACKSON:** Thank you, Mr. President. Ladies and gentlemen of the Senate, clearly we have concerns about constitutionality, but our understanding was that Judge Murphy was going to make a ruling on those issues and we were going to wait for the Court to make that ruling before we did anything further. This, again, seems to get way out before - the cart before the horse. I guess the curiosity for me in the order, well it does mention that, when it goes down to what's ordered in the order it does not reference the ranked-choice voting case. It, again, just seems to talk broadly about all election laws. But to answer the original question, yes, we definitely have concerns but I think that's why the case was brought to the court, with Judge Murphy, and why ranked-choice voting advocates and the Secretary of State both asked for clarity from her.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator **KATZ:** Thank you, Mr. President. Thank you for the indulgence to rise a third time. But I thank my friend from Aroostook for raising the issue of what's going on in Superior Court. Just to remind everybody, after the signatures were gathered on the people's veto, but before they were even certified, the Ranked-Choice Voting Committee brought this pending case against the Secretary of State seeking the judge's order that he implement ranked-choice voting in the June election. Okay? So it was probably premature, but that was the suit. Now you got a situation where you've got the ranked-choice voting people saying, 'We want you to implement ranked-choice voting,' and you have got the Secretary of State saying okay. There is no controversy, whatsoever, in that litigation at this point. So these cases get resolved by judges, and you make good law when you have contrary points of view making your arguments in court and the judge has to sort them out. Besides there is no disagreement here in the pending suit between the Ranked-Choice Voting Committee and the Secretary of State. So that is not, I would suggest, that is not a good venue for these complicated issues to be worked out. There is just -the legal word is adversity. There is just no adversity there. Thank you.

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

Senator **LIBBY:** Mr. President, thank you. I request to pose a question through the Chair.

THE PRESIDENT: The Senator may proceed.

Senator **LIBBY:** Thank you, Mr. President. Has the Maine State Senate ever authorized its Senate President, acting on behalf of the Senate, to bring a suit against another agency of government? Thank you.

The President requested the Sergeant-At-Arms escort the Senator from Androscoggin, Senator **MASON**, to the rostrum where he assumed the duties as President Pro Tempore.

The President took a seat on the Floor.

The Senate was called to order by President Pro Tempore **GARRETT P. MASON** of Androscoggin County.

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

Senator **THIBODEAU:** Thank you, ladies and gentlemen of the Senate. Mr. President, just a couple of issues I want to talk about here this afternoon, and I think it's important that everybody understand. You know, we've been through some pretty tough stuff together, both the 127th and 128th Legislature. Each and every time that this institution has been challenged I have stood up, and sometimes folks on the left cheered me and sometimes

folks on the right cheered me. But each and every time I stood up for this institution. And, yes, there is \$10,000 there at the disposal of the Senate President. And, yes, I could go and expend that fund today. But guess what? I do operate in a more collaborate fashion than that. I want this entire Body to have an opportunity to come together and defend the authority of this institution. Yup, I can do it alone if that's what folks want, but it's not the right way to do it. The right way to do it was to bring together a Senate Resolution, to make sure that it is as clear as we can, knowing that it is a very fluid situation, knowing that, literally, the courts have before them a proceeding, as we speak, that is going to have profound impacts on Maine's election system. And I want, more than anything, to bring clarity to the elections that are held in this State. There is nothing more important that we're going to do than to make sure that each and every individual that we represent at home knows that when they go to the polls that their vote is going to count. I don't know which way it's going to count, okay? It isn't about whether I support or oppose ranked-choice voting. It's about having confidence in our elections. There are some significant, unanswered questions that Senator Katz and the other attorney, there - Attorney Woodcock - worked throughout the weekend to try to bring together something that we could vote on. Are all these issues - are you signing up to say all these issues, I think, are exactly right and they are against Maine's Constitution or against statute? That's not what we're asking here today. We're asking for the Senate to defend its own power before the court. I've listened to some of this debate and you would think that I was making a unilateral decision as to election law. I am asking you to join the Senate in going before the court and answering some very specific questions. If anybody in this building has the ability right now to take unilateral action to decide election law it's not me. It's Matt Dunlap, our Secretary of State. And you know something? I have a lot of respect for Mr. Dunlap, a tremendous amount of respect. But, you know, it was John Adams that wrote a lot of the election law that we use today in our State. And as much regard as I have for Matt Dunlap, him writing routine, technical rules to supplant and replace 200 years of history, 200 years of election law, ought to cause us all to take a step back and say, 'What's going on here?' This isn't the way election law is written anyplace in America. Could somebody point to me and tell me one instance where a State said, 'Mr. Secretary of State, go and write, not just small little changes, but enormous sweeping changes to our election laws.' Give me an example of that. Shouldn't that concern us? Don't we want these questions answered? Don't we want to make absolutely certain, for sure, that we have done our very best by the people that have sent us here to bring clarity to the election, to overturn every rock that we could in a very, very condensed time frame. Senator Jackson, I know I called you on Easter evening. I called you because I wanted you to know, not because I wanted to surprise you. I want this Body to know that we need to do this together. And guess what? I can go spend that money alone. But I am an elected official, not only elected by the good people of Waldo County, but I'm elected by each and every one of you here, and you all can hold me accountable. Is there any time - at any time during the 128th Legislature, it simply takes eighteen of you to decide that you ought to have a different Senate President. I would say that's a pretty good check and balance to one person stepping out of line and doing something really, really unreasonable. Might I also suggest to you that I don't intend to be before the court. Okay? You all know me well enough to know Senator Katz is paid a lot of money to stand before people

and talk. I have to pay people a lot of money to listen to me. Okay? Right now I've got a captive audience. I like it. I'm asking each and every member here, it's not an easy decision, but let's, for the people of the State of Maine, let's do this together. Let's ask this court to please give us as clear of a direction as we can, together, and if we do that, and it all fails in June, then we will have a clear conscious that we did the best we could together. If we vote against this, and we simply want to put blinders on to the fact that we all are concerned about where we are at this given moment, then I think we will have failed the people of our State. Thank you.

The President Pro Tempore requested the Sergeant-At-Arms escort the Senator from Waldo, Senator **THIBODEAU**, to the rostrum where he resumed his duties as President.

The Sergeant-At-Arms escorted the Senator from Androscoggin, Senator **MASON**, to his seat on the Floor.

The Senate was called to order by the President.

Senator **BREEN** of Cumberland moved the Joint Order be **TABLED** until Later in Today's Session pending the motion by Senator **KATZ** of Kennebec to **PASS**.

On motion by Senator **MASON** of Androscoggin, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

Senate at Ease.

The Senate was called to order by the President.

THE PRESIDENT: The Secretary has informed me of what I believe is an important issue in that before we can -we shouldn't be passing the order until we consider the amendments. If we are interested in amending it we should do it before we pass it. So, therefore, we are going to put the Senate at ease for a few minutes while we have partisan caucuses to discuss the two amendments that are being - that we have and then we will ring the bell and come back in within five minutes of the bell ringing.

RECESSED until the sound of the bell.

After Recess the Senate was called to order by the President.

THE PRESIDENT: The Chair would remind members that we are currently have a roll call ordered for a tabling motion. If you are in favor of a tabling motion, you'll be voting yes. If you are opposed, you will be voting no. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#573)

YEAS: Senators: BELLOWS, BREEN, CARSON, CHIPMAN, DESCHAMBAULT, GRATWICK, JACKSON, LIBBY, MILLETT, MIRAMANT, VITELLI

NAYS: Senators: BRAKEY, COLLINS, CUSHING, CYRWAY, DAVIS, DIAMOND, DILL, DION, DOW, HAMPER, HILL, KATZ, KEIM, LANGLEY, MAKER, MASON, ROSEN, SAVIELLO, VOLK, WHITTEMORE, WOODSOME, PRESIDENT THIBODEAU

ABSENT: Senator: CHENETTE

EXCUSED: Senator: CARPENTER

11 Senators having voted in the affirmative and 22 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **BREEN** of Cumberland to **TABLE** until Later in Today's Session pending the motion by Senator **KATZ** of Kennebec to **PASS FAILED**.

On motion by Senator **HILL** of York, Senate Amendment "C" (S-437) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Hill.

Senator **HILL:** Thank you, Mr. President. Mr. President and esteemed members of the Senate, a number of concerns were raised earlier during speeches relative to Senate Order 28 and this amendment that I am offering is a result of a bipartisan effort to address such. Effectively, it does three things. The amendment, one, clarifies that the authority granted in the order concerns ranked-choice voting. Two, and that the administration of the ranked-choice voting election process in both the primary and general elections will be addressed. Three, it specifies that any intervention, or commencement of a separate action, must be commenced within twenty-one days of the date of the passage of this order. Thank you, Mr. President.

On motion by Senator **JACKSON** of Aroostook, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Bellows.

Senator **BELLOWS:** Forgive me, Mr. President, I had my light on earlier. I'd like to speak to underlying motion. I'll wait until the amendment is finished.

THE PRESIDENT: The pending question before the Senate is Acceptance of the Senate Amendment "C". If you are in favor of accepting that Senate Amendment you will be voting yes. If you are opposed you will be voting no. Is the Senate ready for the question?

The Senate was called to order by the President.

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

THE PRESIDENT: The pending question before the Senate is Acceptance of Senate Amendment 433. If you are in favor of adoption of this amendment you will be voting yes. If you are opposed you will be voting no. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

The Secretary opened the vote.

ROLL CALL (#575)

ROLL CALL (#574)

YEAS: Senators: BELLOWS, CARPENTER, CARSON, CHIPMAN, DESCHAMBAULT, DILL, DION, GRATWICK, JACKSON, LIBBY, MILLETT

YEAS: Senators: BRAKEY, COLLINS, CUSHING, CYRWAY, DAVIS, DESCHAMBAULT, DION, DOW, HAMPER, HILL, JACKSON, KATZ, KEIM, LANGLEY, MAKER, MASON, ROSEN, SAVIELLO, VOLK, WHITTEMORE, WOODSOME, PRESIDENT THIBODEAU

NAYS: Senators: BRAKEY, BREEN, COLLINS, CUSHING, CYRWAY, DAVIS, DIAMOND, DOW, HAMPER, HILL, KATZ, KEIM, LANGLEY, MAKER, MASON, MIRAMANT, ROSEN, SAVIELLO, VITELLI, VOLK, WHITTEMORE, WOODSOME, PRESIDENT THIBODEAU

NAYS: Senators: BELLOWS, BREEN, CARPENTER, CARSON, CHIPMAN, DIAMOND, DILL, GRATWICK, LIBBY, MILLETT, MIRAMANT, VITELLI

EXCUSED: Senator: CHENETTE

EXCUSED: Senator: CHENETTE

11 Senators having voted in the affirmative and 23 Senators having voted in the negative, with 1 Senator being excused, the motion by Senator **JACKSON** of Aroostook to **ADOPT** Senate Amendment "A" (S-433) **FAILED**.

22 Senators having voted in the affirmative and 12 Senators having voted in the negative, with 1 Senator being excused, the motion by Senator **HILL** of York to **ADOPT** Senate Amendment "C" (S-437) **PREVAILED**.

The pending question before the Senate is **PASSAGE AS AMENDED BY SENATE AMENDMENT "C" (S-437)**.

On motion by Senator **JACKSON** of Aroostook, Senate Amendment "A" (S-433) **READ**.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Bellows.

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

Senator **BELLOWS:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I rise to speak against the order as amended. This discussion is not about the policy of ranked-choice voting. It's not a debate about the motives of the good Senate President. It's a debate about the Constitution of the Maine and the laws of our State. It's about the nature and extent of our constitutional powers as the Maine Senate. It's about whether we have the audacity to think that we could intervene, to interfere, with an election for moving forward under the administration of the Secretary of State. I believe our decision today goes to the very integrity of the voting system. That's why I would urge calm and deliberation rather than a rush to judgement in an attempt to circumvent the court decision, which was schedule to rule today but has now been delayed until tomorrow. I urge everyone in this Body to consider Maine's Declaration of Rights put forth in Article I of the Maine Constitution. Article I is titled 'Power inherent in people' and I quote, 'All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit; they have therefore an unalienable and indefeasible right to institute government, and to alter, reform,

Senator **JACKSON:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I do appreciate the Body's willingness to work towards an order that would be more inclusive. This amendment actually gives the Senate the ability to have two-thirds vote on anything that comes forward. I think, again, this is more of a bipartisan effort and certainly appreciate the effort. I look forward to voting on this amendment.

On motion by Senator **MASON** of Androscoggin, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

Senate at Ease.

or totally change the same, when their safety and happiness require it.' Our power does not supersede the power of the people. The people have spoken. They have said that ranked-choice voting is their will and this Body, against some of our objections, voted to amend the law to delay and repeal the will of the people. And the people rose up and they spoke again. The people's veto is clearly laid out in Article IV, Part Third, Section 17 of the Maine Constitution. This resolve seems to be, yet again, a revivable of a policy debate over ranked-choice voting and a last desperate attempt to try to establish standing to convince a court to suspend ranked-choice voting because a majority of this Body opposes ranked-choice voting even if the people do not. The existence of this resolve, as amended, highlights the Legislature's failure to appropriate additional funds to meet the technical implementation demands of ranked-choice voting. This is a failure that the Legislature can unanimously address tomorrow if the Legislative Council compromised of the leaders of both Chambers would allow. The resolve further illustrates a failure of a good-faith bipartisan effort to implement the will of the people. All of the technical challenges identified last week and today and in this resolve and by opponents of ranked-choice voting could be addressed by this Body, unanimously, tonight if we so chose. But if the Legislature does nothing now, or this spring, the Constitution is clear. The Constitution clearly states the constitutional obligation and responsibility of the Secretary of State to oversee elections. The Legislature cannot seek to stop an election from going forward by refusing to fund said election, nor, if the Legislature simply declined to appropriate money for an election, can elections be cancelled. That would be a coup. Moreover, there is no Constitutional precedent for the Senate having the power to sue the Secretary of State, to interfere with his constitutional duties. Is the Senate, in itself, being harmed by the good Secretary of State's intended objective of fulfilling the will of the people by carrying out elections with full security and integrity? Isn't the Secretary of State doing exactly what the Constitution of the State of Maine directs him to do? I can think of no precedent, and the question was asked today and it was not answered by fact or figure. I can think of no historical precedent whereby the Maine State Senate sued to intervene or change the implementation of the election, or to question the results of the election. This is an attempt to relitigate the lost policy battle. If the Secretary of State were designing measures to prevent foreign powers from hacking into our elections would we, the Senators, have the power to go to court to block those measures? Of course not. The Secretary of State is a constitutional officer laid out in the Constitution, not a servant of the Legislature or of the Governor. To quote the good Senator from Kennebec in quoting John Adams, 'Let us be careful and diligent.' This resolution is hastily written and poorly drafted, wrapped up in whereas clauses that reference the Constitution with seriously problematic, unattended consequences and some errors of summary. For example, the 27th whereas clause states that Article IV, Part Third, Section 5 of the Constitution of Maine requires that elections for Governors, State Senators, and State Representatives be conducted at the municipal level of government and the particular municipal officials receive, sort, and count ballots and attest the results of elections in an open and public manner. That's a summary. That's not a precise summary. I quote from Article IV, Part First, Section 5 which states, 'Fair copies of the list of votes shall be attested to by the municipal officers and the clerks of the cities and towns and the city and town clerks, respectively, shall cause the same to be

delivered into the office of the Secretary of State forthwith.' Article IV, Part First, Section 5 does not raise the questions that this resolve poses. Indeed, under the plan proposed by the Secretary of State, the initial count of ballots would occur at the municipal office. The Secretary of State has presented a plan. It's thoughtful and it's detailed and it will work. I have full confidence in our primary elections under ranked-choice voting. John Adams would likely be rolling over in his grave that the Senate would authorize itself to sue to intervene in a primary election or any election. I've heard the argument made that the Governor will not allow the police to deliver the ballots to Augusta, as has been a time honored tradition, because he has not allowed a separate appropriation, or we have not made a separate appropriation, for police overtime. Is that what we, in this Body, are trying to solve with this unprecedented action of allowing our President to move forward to intervene in a lawsuit against the good Secretary of State? Think about it for a minute. The impact of this action, make no mistake, even in its amended form, is that the Senate will be suing the Secretary of State to stop an election from proceeding as drafted in the Secretary of State's draft plans. That's not usually something that happens in America. It's something we more often associate with Banana Republics. Let's let the elections move forward as the people desire. Let the Secretary of State do his job as specified in Article V of the Constitution. This resolve is a dangerous and unprecedented action. Intentionally destabilizing our elections at this late hour is not in the public interest and I urge us all to vote Ought Not to Pass.

THE PRESIDENT: The Chair would take to remind all the members in the Chamber tonight that it is not okay to question somebody else's motives. The Chair recognizes the Senator from Androscoggin, Senator Libby.

Senator **LIBBY:** Mr. President, I ask a point of inquiry. The roll call that we ordered before taking our break, is that still - does that still apply to our amended order?

THE PRESIDENT: I believe that the roll call was ordered on a tabling motion and not the underlying bill. The Secretary has advised me that there is a roll call in order. The Chair recognizes the Senator from Penobscot, Senator Cushing.

Senator **CUSHING:** Thank you, Mr. President. Mr. President, ladies and gentlemen, I realize the hour is late but I also realize that the issue before us is important. Mr. President, I listened to some of the discussion on this issue. What troubles me is that we, in this branch of government, have a responsibility under our constitutional obligations. Part of that is to protect the overreach of other entities, other sections of government, from making assumptions that they have the right to either expend money or take actions without being explicitly directed either by our Constitution or by statutes that we passed to do so. There's been discussion of failure here, Mr. President, and there may be, and that may be a discussion for a later day. But the one failure that I don't see is the Legislature to act because no request for appropriation or action has come forward from the Secretary of State. We learned of this, as I understand, Mr. President, last week when he and his elections assistant testified before the VLA Committee after dropping the bombshell that he was believing he would be unable to institute this. Now, I think that having served with the Secretary of State in the past, that he is an honorable

and a dedicated individual who wants to do what's right. He takes his job, as do many of the people in that department, very seriously. But, Mr. President, we are faced with a dilemma, which we don't have agreement in this Chamber or in this Body on, let alone the other branch of government, the Chief Executive. When that occurs, Mr. President, as you well know, there is a third co-equal branch of government who has been granted the authority to mitigate and judge on this. And while it may be said that we are suing the Secretary of State, in actuality we are joining a lawsuit that was brought forward by the perpetrators of ranked-choice voting in which the Secretary of State was the party. Since the Secretary of State's comments seemed to have led us to believe that he agrees with those who are the litigants in this case, I believe, Mr. President, that this an appropriate action for us to take so that we can be a party on behalf of the citizens of Maine, who elected us, to join in this proceeding at this time to ensure that the duties incumbent on us are protected and that the use of Executive Branch services or funds are properly dealt with before they are obligated. I also want to, from some research I did, share with you, Mr. President, that there is some fairly recent U.S. Supreme Court decision that speaks to legislative standing in these types of issues. It was 2015 U.S. Supreme Court ruling in *Arizona v. The Arizona Independent Redistricting*, where the majority of the court said that the Arizona Legislature did have standing to sue in cases where they felt that they were obligated. So with that, Mr. President, I won't belabor the point but I appreciate the opportunity to work with our colleagues to make sure that the responsibilities that we have taken an oath for are duly addressed. Thank you, Mr. President.

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

Senator **CHIPMAN:** Mr. President, men and women of the Senate, I rise to speak out of frustration. All of the referendums that were passed in November 2016 have now been amended, altered, delayed, repealed, unfunded, you name it. And I think I speak for a lot of people in this state who are frustrated about this fact, and as I listen to the debate on this, and I read through this document, you know, it seems clear to me that most, if not all, of the issues outlined in this document could be resolved right here. We're not adjourned. We're in session. We have the ability to resolve issues, pass bills, resolve conflicts. We do this all the time, and if we took this document down to the Revisor's Office and said we need all of these issues in this to be resolved, I have no doubt that they could come up with a bill, it might be a long bill, but a bill that could resolve most if not all of these issues. But rather than do that, we spent a lot of energy raising issues and questioning things and running to the courts and asking them to resolve things that we could do ourselves. And I'd just like the Record to reflect that because I wouldn't be surprised if the court ruled against the intervening status that we're requesting this evening and hold us to that very fact, that we have the ability to resolve this ourselves and I hope that they do that. Thank you.

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

Senator **CARPENTER:** Thank you, Mr. President. I apologize, I wasn't able to be here earlier today. I had court business and I rushed, as you can see, I rushed to get here as quickly as I could. You all heard me over the last couple of years, at the risk of some

joking about my stories, but I don't have a story to match this one. I've sat in this Chamber with some awfully fine people, and I'm not questioning anybody's motives here. I know exactly why people are doing what they're doing. But I have never not been proud of this Body. Senator Cushing from Penobscot just spoke about Supreme Court precedent. There's no question the Legislative Branch of government has, typically, had a right to appear before the court, the courts of the country, of the state, and give their views. As important as we may think we are, we are not the Legislative Branch of government. We are going to be, probably here in the next few minutes, a majority, and probably a slim majority, of one half of a branch of government. Now I'm not going to ask the good Senator from Kennebec to give the definition of standing again. I understand he's already given that. I maybe missed something in law school, but I think you have to have more than what we have here in order for us to legitimately be before a court. If I'm wrong, then the courts will accept this intervener status and give us standing and the Senate President may put forth his position. I don't think I'm wrong on that and I think we risk diminishing the status of this Body that I care so much about by going forward with something that I think is inappropriate. I just think this is totally inappropriate and I just want you to stop and think about all of the people who have gone before us and all - I can't think, I can't think of a precedent. The Legislature could pass a rule, a statute, maybe an order that says, in this case, the Senate can stand for all of us. They didn't do that. So we are asking for authority, one half of a Legislative Branch and one half plus of one half of a Legislative Branch, to say that we represent the Legislature, are going to represent in the Legislature, in this matter, and I think we risk getting laughed out of court. And I don't want to see that. So again, I apologize that I rise to speak because I haven't been here earlier. I followed this as I rushed to get here, as best I could. But I just think this is an action that can be dealt with in a different way. The Secretary of State has the authority to conduct elections. If this Legislature, in its wisdom, decides not to fund that so be it. So be it. We control the purse. We have the power of the purse. We can say no we are not going to give you money if you do that. That's not what we are doing here and this is dangerous and I wish you would think seriously before you vote for it. Thank you.

THE PRESIDENT: The pending question before the Senate is Acceptance - Passage of this Joint Order as Amended - Senate Order. The pending question before the Senate is Passage of this Senate Order as Amended by Senate Amendment "C" with a filing number of S-437. If you are in favor of that you will be voting yes. If you are opposed to that you will be voting no. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#576)

YEAS: Senators: BRAKEY, COLLINS, CUSHING, CYRWAY, DAVIS, DESCHAMBAULT, DION, DOW, HAMPER, HILL, KATZ, KEIM, LANGLEY, MAKER, MASON, ROSEN, SAVIELLO, VOLK, WHITTEMORE, WOODSOME, PRESIDENT THIBODEAU

NAYS: Senators: BELLOWS, BREEN, CARPENTER,
CARSON, CHIPMAN, DIAMOND, DILL,
GRATWICK, JACKSON, LIBBY, MILLETT,
MIRAMANT, VITELLI

EXCUSED: Senator: CHENETTE

21 Senators having voted in the affirmative and 13 Senators
having voted in the negative, with 1 Senator being excused, the
Joint Order was **PASSED AS AMENDED BY SENATE
AMENDMENT "C" (S-437)**.

Sent down for concurrence.

Off Record Remarks

All matters thus acted upon were ordered sent down forthwith for
concurrence.

On motion by Senator **MASON** of Androscoggin, **ADJOURNED**
until Tuesday, April 3, 2018 at 10:00 in the morning.