

Montell, Karen

From: MaryAnn Lynch <mary.ann.lynch@courts.maine.gov>
Sent: Thursday, April 20, 2017 7:38 PM
To: Mason, Garrett; Luchini, Louis; Montell, Karen; Fox, Danielle; McCarthyReid, Colleen
Cc: Kim Monaghan; Carpenter, Mike; Collins, Ronald; Finn, Julia
Subject: LD 1411, Resolution, proposing An Amendment To the Constitution of Maine To Limit Petitions For Direct Initiatives That would violate the Constitution of Maine

I write, on behalf of the Maine Judicial Branch, to oppose LD 1411, *Resolution, Proposing an Amendment To the Constitution Of Maine To Limit Petitions for Direct Initiatives That Would Violate the Constitution Of Maine*. We oppose this bill for 3 reasons.

First, this bill will greatly upset the carefully constructed balance of powers embodied in the separation of powers among the three branches of Maine's state government. The Legislature is the "law-making" branch of government. The Legislature, and the people through the initiative process, make the laws for the state. This bill would insert the Judicial Branch, the the one non-political (or the least political) branch into the very political process of law-making. The threshold for inserting the Judicial Branch is very low: one third of the two legislative bodies, a small minority, can seek an opinion of the justices, or 500 citizens. Frankly, anyone can get 500 signatures in a morning, outside of a local grocery store in one of Maine's cities. A paid canvasser will have no problem meeting this threshold. Giving the Supreme Judicial Court the power to opine on the constitutionality of proposed legislation (albeit citizen initiated) would be an extraordinary transfer of power from the legislature and the people, to the Judiciary.

The current Maine Constitution contains a very limited provision for an advisory opinion when requested by a majority of either body of the Legislature, or the Governor. This is further limited by the constitutional requirement that such request can only be made if a "solemn occasion" exists. This bill provides no additional limitation. Five hundred voters, or a minority of the Legislature, can demand that the Supreme Judicial Court ("SJC") give an advisory opinion on proposed legislation.

Any court's power usually is limited to the "case or controversy" before it. Maine, almost unique among the states, has a very limited constitutional provision for advisory opinions on a "solemn occasion." This bill would provide the opportunity for 7 unelected judges to opine, in an advisory manner, on every citizen initiated bill. With all due respect to the sponsor, we believe that this proposal greatly upsets the separation of powers and involves the Judicial Branch, to a great extent, in law-making, a power that is now, and should be, reserved to the Legislature and the people.

Second, If this resolution were to pass and be adopted in referendum, this bill will have the effect of delaying other cases. Last year the Supreme Judicial Court had 652 appeals, including: 89 child protection cases, 174 criminal, 103 divorce or other family matters, and 27 protection from abuse cases. Another 150 cases were "general civil," most likely involving Maine business and employers and/or

employees. The work of the SJC is important. It is vitally important to the 1304+ parties involved in the 652 cases before it. Passage of this bill will delay the SJC's ability to reach a decision in the hundreds of important cases that come before it each year.

Lastly, the provision that the SJC reach a decision in 30 days is completely unrealistic. Thirty days is an insufficient period of time to set a question for hearing, invite briefs, hold a hearing and issue one or more opinions on the question presented. Take the recent ranked choice voting question as an example. On February 2, 2017, the Court received the question and on Feb. 7th issued a procedural order. Briefs were due on March 17th, and an oral argument was scheduled for April 13th. As I write this, on April 20th, no opinion has been issued by the Court. By any measure, the Court has proceeded with due diligence to respond to the question propounded, and yet it is well outside of the 30 days required in this bill for the Court to issue an opinion.

For these reasons, we respectfully request that you give this proposal a unanimous Ought Not to Pass Report.

I apologize for being unable to attend the hearing. I plan to be at the work session. And I am available at your convenience to answer any questions you may have. Thank you for your attention to this testimony.

Mary Ann Lynch, Esq.
Government and Media Counsel
Administrative Office of the Courts
Maine Judicial Branch
P.O. Box 4820
Portland, ME 04112
mary.ann.lynch@courts.maine.gov
[207-592-5940](tel:207-592-5940)

"The administration of justice is the firmest pillar of government" - George Washington

On Tue, Apr 11, 2017 at 2:19 PM, Mary Ann Lynch <mary.ann.lynch@courts.maine.gov> wrote:
Please accept this email as late filed testimony in opposition to the above captioned legislation.

This bill requires the Legislature to request an advisory opinion of the Justices regarding all initiated bills, and further requires that such opinion, when issued shall be printed on the ballot.

Courts only have jurisdiction when there is an actual case or controversy before the court. No principle is more fundamental to limiting the power of courts than to say there must be a case or controversy before a court may act or advise. Generally speaking, a court

does not issue advisory opinions, especially regarding legislation. Such an opinion would arguably violate the separation of powers and interfere with the legislative power. The Maine Constitution, however, has carved out an exception: upon the request of the Governor, Senate or House of Representatives, "upon solemn occasion" the Supreme Judicial Court may issue an advisory opinion. This is an express provision of the Maine Constitution. In order to expand this power of the Court to issue advisory opinions the Maine Constitution needs to be amended.

Second, as a practical matter, opinions of the Supreme judicial Court can run 25 or more pages. It would be impossible to print such opinions on a direct initiative ballot.

It is for these reasons we respectfully request that you vote ought not to pass on this bill.

Mary Ann Lynch, Esq.
Government and Media Counsel
Administrative Office of the Courts
Maine Judicial Branch
P.O. Box 4820
Portland, ME 04112
mary.ann.lynch@courts.maine.gov
[207-592-5940](tel:207-592-5940)

"The administration of justice is the firmest pillar of government" - George Washington

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy/delete all copies of the original message.