

STATE OF MAINE

In House _____

WHEREAS, the Constitution of Maine, Article VI, Section 3 provides for the Justices of the Supreme Judicial Court to render their opinion on important questions of law and upon solemn occasions; and

WHEREAS, it appears to the 131st Legislature that the following are important questions of law and that this is a solemn occasion; and

WHEREAS, the Constitution of Maine, Article IV, Part Third, Section 18 provides the ability of electors to propose to the Legislature any bill, resolve or resolution and further provides the procedures to be followed by the initiators, including filing the petition for a direct initiative of legislation, addressed to the Legislature, with the Secretary of State within a specified number of days after the convening of a regular session; and

WHEREAS, the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2 provides in 2 different places that the Legislature must be given the opportunity to act on the measure: "The measure thus proposed, *unless enacted without change by the Legislature at the session at which it is presented*, shall be submitted to the electors together with any ... recommendation of the Legislature" [emphasis added]; and further that "[i]f the measure initiated *is enacted by the Legislature without change*, it shall not go to a referendum vote..." [emphasis added]; and

WHEREAS, for the Legislature to exercise its right under the Constitution of Maine to act on a measure, the measure must be before the Legislature in the form of a legislative document; and

WHEREAS, 4 measures proposed by electors were presented to the Secretary of State; and

WHEREAS, the Secretary of State transmitted 2 of the measures to the Legislature on February 16, 2023 to be produced by the Office of the Revisor of Statutes as legislative documents for consideration by the Legislature and 2 were transmitted to the Legislature on March 22, 2023 to be produced by the Office of the Revisor of Statutes as legislative documents for consideration by the Legislature; and

WHEREAS, before the Legislature was presented with any of the measures produced as legislative documents, the First Regular Session of the 131st Legislature, due to unforeseen circumstances, adjourned on March 30, 2023; and

WHEREAS, prior to its adjournment, the First Regular Session of the 131st Legislature passed a joint order carrying over to a subsequent session of the 131st Legislature "...all matters not finally disposed of at the time of adjournment...in the possession of the Legislature, including working papers and drafts in the possession of nonpartisan staff offices..." [See Senate Paper 594]; and

WHEREAS, among the working papers and drafts in the possession of the nonpartisan staff office the Office of the Revisor of Statutes were the 4 measures, having not yet been prepared as legislative documents; and

WHEREAS, the 131st Legislature convened in special session 6 days after adjournment, on April 5, 2023; and

WHEREAS, on April 10, 2023, 2 of the measures, as prepared by the Office of the Revisor of Statutes, were transmitted to the Clerk of the House, given Legislative Document numbers, L.D. 1610 and L.D. 1611, printed and presented to the Legislature; and

WHEREAS, on April 11, 2023, the Secretary of State issued 4 proclamations of the Governor proclaiming that an election be held for all 4 measures, overlooking the right of the Legislature to consider these measures as provided by the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2; and

WHEREAS, the issuance of these proclamations casts doubt on the ability of the Legislature to legitimately act on the direct initiatives of legislation now before it, including the right of the Legislature to enact the measures without change and prevent the measures from going to referendum vote, as is the Legislature's right under the Constitution of Maine; and

WHEREAS, there are now questions before the Legislature regarding the ability of the Legislature to act on these 4 legislative documents and the consequences of any actions taken to enact these 4 legislative documents; and

WHEREAS, it is important that the Legislature be informed as to the questions raised in this order; now, therefore, be it

ORDERED, the Senate concurring, that, in accordance with the provisions of the Constitution of Maine, the House of Representatives and the Senate respectfully request the Justices of the Supreme Judicial Court to give their opinion to the House of Representatives and the Senate on the following questions of law:

Question 1. Is the mere transmittal of a measure by the Secretary of State to the Legislature's bill production office for preparation as a legislative document sufficient to constitute "presented to the Legislature," thus eliminating the right of the Legislature to act on the measure as specified in the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2?

Question 2. If the answer to Question 1 is in the affirmative, is the 131st Legislature, now assembled in the First Special Session, precluded from acting on such a measure?

Question 3. If the answer to Question 2 is in the negative and the Legislature enacts such a measure without change, is the bill thus enacted by the Legislature considered a competing measure as described in the Constitution of Maine, Article IV, Part Third, Section 18, Subsection 2?

SPONSORED BY: _____

(Speaker TALBOT ROSS, R.)

TOWN: Portland