April 19, 2023

Sen. Anne Carney, Chair
Rep. Matt Moonen, Chair
Joint Standing Committee on the Judiciary
Maine State Legislature
100 State House Station
Augusta, ME 04333

Re: LD 1468, An Act to Ensure Equal Treatment by the Law Court by Requiring 7 Justices to Decide All Cases.

Dear Sen. Carney, Rep. Moonen, and Members of the Judiciary Committee:

On behalf of the Board of Governors of the Maine State Bar Association, we write in respectful opposition to LD 1468, An Act to Ensure Equal Treatment by the Law Court by Requiring 7 Justices to Decide All Cases.

About us. The Maine State Bar Association is a statewide trade association chartered in 1891 by the Maine Legislature. The Association currently represents approximately 3,000 attorneys in the State in both public service and private practice. The Association maintains 28 separate sections covering nearly every field of law practiced in Maine, from Administrative Law to Workers’ Compensation Law.

Background. By way of background, the Maine Supreme Judicial Court is the State’s highest court and is responsible for governing the State’s Judicial Branch, one of Maine’s three branches of government. See Me. Const. art. VI, § 1. This responsibility includes making policy and procedural rules that govern all State courts, admitting attorneys to the practice of law in State courts, and regulating conduct of lawyers and judges in Maine. The Supreme Judicial Court is comprised of seven justices, one of which is the Chief Justice, who are appointed by the Governor for seven-year terms. The Supreme Judicial Court is the court of last resort and decides appeals on questions of law that arise in cases in the State’s Superior, District, and Probate Courts. Additionally, the Supreme Judicial Court also decides appeals on questions of law that arise in some administrative agencies. When the Court exercises its appellate jurisdiction and decides appeals, it is said to be “Sitting as the Law Court.”

What does LD 1468 do? LD 1468 proposes that, when the Supreme Judicial Court is “Sitting as the Law Court” to determine questions of law arising in any civil or criminal action or proceeding, the case must be decided by all seven Justices of the Court if they are available to sit and qualified to act on the proceeding. Additionally, the bill provides that, if less than all seven Justices of the Court are available to sit and qualified to act, the clerk of the Law Court must randomly assign a sufficient number of Active Retired Justices of the Supreme Judicial Court to serve on the Law Court panel to ensure that the panel of the Law Court is composed of seven Justices. Further, LD 1468 provides similarly detailed requirements for situations that may arise in the event that there are not seven Justices or Active Retired Justices available or qualified to act on a proceeding.

Discussion. As mentioned, the power to oversee and govern the State’s Judicial Branch constitutionally rests with Maine’s Supreme Judicial Court. The Legislature is a separate branch of government from the Judiciary and may not govern the operations of the Judicial Branch in carrying out its constitutional duties.
– other than its role in holding confirmation hearings and voting on justices nominated to the Judiciary by the Governor. Additionally, it makes practical sense for the Court to govern its own procedures given its expertise and familiarity with court procedures.

With that said, we do appreciate the sentiment behind the bill that the Court should strive to have a full complement of Justices participate in decisions while Sitting as the Law Court. We also recognize that there may be numerous reasons why this goal cannot be achieved, notwithstanding the importance of such goal. Those reasons include conflicts of interest, health, availability, and other practical reasons that may prevent a sitting Justice or an Active Retired Justice from participating in a matter.

Likewise, when decisions need to be made about the assignment of a particular Justice to sit on a matter before the Law Court, that authority rests with the Court and the Chief Justice. It is not the most effective nor the most appropriate course of action for the Legislature to statutorily assign that function to the chief clerk of the Court in a separate branch of government.

**Conclusion.** In short, while we appreciate the goal behind LD 1468, we do not think it is the most appropriate course of action for the Legislative Branch to impose such requirements on the separate Judicial Branch. We therefore encourage the Committee to vote against LD 1468. If you have questions or need additional information, please do not hesitate to let us know.

Sincerely,

Stacy O. Stitham
President, Board of Governors

cc:  Angela Armstrong, Executive Director  
Rachel Okun, Chair, MSBA Legislative Committee  
James I. Cohen, Verrill Dana, LLP  
Clara McConnell, Maine Street Solutions