

STATE OF MAINE

SUPREME JUDICIAL COURT
Docket No. SJC-21-4

In re 2021 Apportionment of
Maine House of
Representatives, Maine
Senate, U.S. House of
Representatives, and County
Commissioners

**APPORTIONMENT
COMMISSION'S MOTION TO
JOIN THE PETITION TO
EXTEND CONSTITUTIONAL
DEADLINES FOR
APPORTIONMENT, WITH
INCORPORATED
MEMORANDUM OF LAW**

For the reasons set forth in the incorporated memorandum of law, the Apportionment Commission, duly constituted under article IV, part third, § 1-A, of the Maine Constitution, respectfully moves to join the Petition filed with the Court on May 24, 2021, by President of the Senate Troy D. Jackson, Senate Minority Leader Jeffrey L. Timberlake, Speaker of the House Ryan M. Fecteau, and House Minority Leader Kathleen R. J. Dillingham.

MEMORANDUM OF LAW

Introduction

The current petitioners in this matter—leaders of the Maine House and Senate from both major parties—seek extension of various constitutional deadlines relating to the 2021 apportionment of legislative, congressional, and county commissioner districts. As

explained in the pending petition, those deadlines have become impossible to meet due to a delay in the release of federal census data. The movant Apportionment Commission was subject to the very first of these deadlines—the June 1st deadline to submit proposed apportionment plans to the Legislature. Without the necessary data from “the latest Federal Decennial Census,” Me. Const. art. IV, pt. 1, § 2, to consider, the Apportionment Commission is unable to comply with this deadline. The Apportionment Commission now seeks to join the legislative leaders’ request to extend the June 1st and other constitutional deadlines so that it may carry out its constitutional responsibility to propose apportionment plans to the Legislature.

Background

Movant is the Apportionment Commission of the State of Maine. Under the Maine Constitution, a legislature required to apportion districts for the Maine House of Representatives or Maine Senate must establish an Apportionment Commission. Me. Const., art. IV, pt. 3, § 1-A. Since the Maine Constitution requires apportionment in 2021, Me. Const. art. IV, pt. 1, § 2 & pt. 2, § 2, the current 130th Legislature established the Commission. As required by the Constitution, the

Commission is comprised of legislators from the two largest political parties and members of the public.

On May 24, 2021, President of the Senate Troy D. Jackson, Senate Minority Leader Jeffrey L. Timberlake, Speaker of the House Ryan M. Fecteau, and House Minority Leader Kathleen R. J. Dillingham filed the pending petition asking the Court to extend the deadlines for decennial apportionment of legislative, congressional, and county commissioner districts set forth in the Maine Constitution. The memorandum of law and exhibits accompanying the petition showed that virtually all of the calendar deadlines for apportionment set forth in the Maine Constitution have become impossible to meet due to the failure of the U.S. Census Bureau to timely release the small-area population data required for apportionment. The petition asks for extensions of the multiple constitutional deadlines, including the June 1 deadline for the Apportionment Commission to produce plans to the appropriate bodies to apportion legislative, congressional, and county commissioner districts. *See* Me. Const. art. IV, pt. 1, § 2 & pt. 2, § 2; art. IX, §§ 24(1) & 25(1)(C).

Because the Apportionment Commission had not yet been fully constituted when the petition was filed on May 24, 2021, it was unable at the time to consider whether to join the petition. On May 27, 2021, the Commission convened for its first meeting. At that meeting, the Commission's members voted unanimously to authorize the Office of Attorney General to file this motion requesting that it be joined as a petitioner in the pending petition.

If joined, the Apportionment Commission wishes to seek the same relief requested in the petition for the reasons set forth in that petition. Central to the Apportionment Commission would be the petition's request that the Commission's June 1st deadlines for submitting apportionment plans for legislative, congressional, and county commissioner districts be extended to 45 days following the release of the apportionment data by the U.S. Census Bureau. In addition, as discussed further below, the Commission would request that the Court—should it order the relief sought by the petition—specifically address the Commission's authority to act between June 1, 2021, and the release of the census data.

Argument

Rule 20(a) of the Maine Rules of Civil Procedure provides that “[a]ll persons may join in one action as plaintiffs if they assert any right to relief within the subject-matter jurisdiction of the court jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of these persons will arise in the action.” M.R. Civ. P. 20(a). The Court should apply this sensible standard to determine whether to allow the Apportionment Commission to join this action as a Petitioner.

All of the elements of this standard are met here:

First, the Apportionment Commission seeks relief jointly with the current petitioners. Specifically, it seeks extension of the apportionment deadlines as proposed in Part III of the petition.

Second, the relief requested by the Apportionment Commission arises out of the same occurrence at issue in the existing petition: the impossibility of meeting the constitutional deadlines for apportionment due to the Census Bureau’s inability to release the required census data in the timeframe contemplated in the Maine Constitution based on

federal law and past Census Bureau practice. These deadlines are all part of the same constitutional framework for apportionment and should be considered as a whole.

Finally, the questions of law and fact raised in the petition are identical to the questions that will determine whether the Apportionment Commission is entitled to relief. In both cases, the question at issue is whether the applicable constitutional deadlines may be altered by the Court if compliance with them is impossible due to circumstances beyond the control of the parties and the State.

Because all of the conditions for permissive joinder are met and because joinder at this early stage will not delay the proceedings or prejudice any member of the public who may intend to submit a filing under the Court's procedural order, the Court should permit the Apportionment Commission to join this action as a petitioner.

Request for Additional Relief

Although the Apportionment Commission, if joined, seeks the entirety of the relief sought by the current petitioners, it also seeks one additional element of relief. Now that the Commission is constituted, it intends to hold meetings in the coming months in order to conduct

preliminary work on apportionment in advance of the release of the census data. The Commission thereby hopes to be as prepared as possible to begin constructing apportionment plans as soon as the census data becomes available. However, the expiration of the June 1st deadline could be understood to deprive the Commission of authority to act. If the Court determines that it has the authority to extend the constitutional deadlines, it necessarily also has the authority to recognize the Commission's legal power to act following expiration of its June 1st deadline. The Commission thus respectfully requests that, should the Court grant the petition, it expressly recognize the authority of the Commission to continue to meet and deliberate at all times, and expend funds and retain staff as directed by article IV, part third, § 1-A of the Maine Constitution, following expiration of the June 1st deadline through the expiration of any new deadline the Court sets for the Commission to complete its work.

Conclusion

For the foregoing reasons, the Court should allow the Apportionment Commission to join the current action as a petitioner.

Respectfully submitted,

June 4, 2021

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