

State of Maine
Kennebec, ss

Superior Court
Civil Action
Docket No. AUGSC-CV-2023-00052

William Clardy of Augusta, ME; and
Does 1-600

Plaintiffs

v.

Troy D. Jackson, in his official
capacity as President of the Senate
of Maine; Rachel Talbot Ross, in
her official capacity as the Speaker
of the Maine House of Representatives; and
Janet T. Mills, in her official capacity as the
Governor of the State of Maine

Defendants

Complaint for Declaratory
Judgment and Injunctive Relief

Now comes William Clardy et al (“Plaintiffs”) and hereby complain against Troy D. Jackson, in his official capacity as President of the Senate of Maine; Rachel Talbot Ross, in her official capacity as the Speaker of the Maine House of Representatives; and Janet T. Mills, in her official capacity as the Governor of the State of Maine, as follows:

Parties

1. William Clardy is a citizen, registered voter, and taxpayer in the State of Maine.
2. Does 1-600 are people of and taxpayers in the State of Maine.
3. Defendant Troy Jackson is the President of the Maine Senate and is sued in his official capacity only. As President of the Senate, Defendant Jackson is a presiding officer in the 131st Legislature of Maine, which ended its first regular session by adjourning *sine die* on March 30, 2023.
4. Defendant Rachel Talbot Ross is the Speaker of the Maine House of

Representatives and is sued in her official capacity only. As Speaker of the House, Defendant Talbot Ross is a presiding officer in the 131st Legislature of Maine, which ended its first regular session by adjourning *sine die* on March 30, 2023.

5. Defendant Janet Mills is the Governor of the State of Maine and is sued in her official capacity only. As the supreme executive power of the State, the Governor is constitutionally barred from exercising any legislative power.

Jurisdiction and Venue

6. This Court has initial civil jurisdiction over Plaintiff's claims under 4 M.R.S.A. §105, although Plaintiff believes that some aspects of allegations are likely to fall within the jurisdiction of Supreme Judicial Court sitting as the Law Court.

7. Initial venue is properly in the Kennebec County Superior Court. Defendants Jackson, Talbot Ross and Mills conduct their official business in Augusta. In addition, Plaintiff Clardy resides within the City of Augusta.

Statement of Facts

1. The date on which the Legislature adjourns *sine die* is legally significant. The Maine Constitution prescribes that, "No Act or joint resolution of the Legislature, . . . , shall take effect until 90 days after the recess of the session of the Legislature in which it was passed, unless in case of emergency, which with the facts constituting the emergency shall be expressed in the preamble of the Act, the Legislature shall, by a vote of 2/3 of all the members elected to each House, otherwise direct." (Me. Const. art. IV, pt. 3, § 16)

2. The Maine Constitution provides that "The Legislature shall enact appropriate statutory limits on the length of the first regular session and of the second regular session." (Me. Const. art. IV, pt. 2, § 1)

3. 3-AM.R.S. § 2 provides that, “The first regular session of the Legislature, after its convening, shall adjourn no later than the 3rd Wednesday in June and the 2nd regular session of the Legislature shall adjourn no later than the 3rd Wednesday in April. The Legislature, in case of emergency, may by a vote of 2/3 of the members of each House present and voting, extend the date for adjournment for the first or 2nd regular session by no more than 5 legislative days, and in case of further emergency, may by a vote of 2/3 of the members of each House present and voting, further extend the date for adjournment by 5 additional legislative days.” (Me. Const. art. IV, pt. 3, § 16)

4. No statutory limits are defined for legislative sessions except for the limits on the First and Second Regular Sessions.

5. In 2023, the third Wednesday of June falls on June 21, 2023.

6. The State of Maine’s fiscal year 2023-24 (“FY 23-24”) begins on July 1, 2023. Fiscal year 2022-2023 (“FY 22-23”) ends on June 30, 2023.

7. If the Legislature adjourned on its statutory final day, no non-emergency appropriation could take effect before the end of FY 22-23.

8. On March 30, 2023, both houses of the 131st Maine Legislature passed “An Act Making Certain Appropriations and Allocations and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2023, June 30, 2024, and June 30, 2025.” L.D. 424 (131st Legis. 2023) At approximately 9:56 p.m., the Maine House voted 76-48 to pass L.D. 424 to be enacted. At approximately 10:31 p.m., the Maine Senate also passed L.D. 424 to be enacted.

9. Having not been passed with a two-thirds majority in the Maine House, L.D. 424 could not become law until 90 days after the Legislature adjourned *sine die*. If the Legislature had

not adjourned until after April 2, 2023, FY 22-23 would expire before L.D. 424's funding provisions for FY 23-24 could take effect, creating a gap where no expenditure of state funds would be legal. If the Legislature had not adjourned until after April 2, 2023, none of L.D. 424's adjustments would take effect in time to affect FY 22-23. The next scheduled meetings of the Senate and the House were past those deadlines.

10. Having voted to enact L.D. 424 with a simple majority, the majority party's only option for making it take effect in time to avoid a majority-induced shutdown was to immediately adjourn the Legislature *sine die*. At approximately 10:52 p.m. on March 30, 2023, the Maine Senate passed a motion to adjourn *sine die*. At approximately 11:04 p.m., the Maine House of Representatives also passed a motion to adjourn *sine die*. At that moment, the First Regular Session of the 131st Legislature was officially adjourned.

11. The Maine Constitution provides that, "The Legislature may convene at such other times on the call of the President of the Senate and Speaker of the House, with the consent of a majority of the Members of the Legislature of each political party, all Members of the Legislature having been first polled." (Me. Const. art. V, pt. 2, § 1)

12. Shortly after 10:00 p.m., almost immediately after the House's vote to pass L.D. 424, Defendant Talbot Ross called for a division of the House to "poll members to reconvene for the 1st Special Session to be held on Wednesday, April 5, 2023." Prior to their adjournment, the next meeting of the House during the First Regular Session was scheduled for April 5, 2023. This means that the presiding officer of the House paused the proceedings to poll the members of the House, asking for their consent to reconvene on the same day they would be meeting if they chose not to adjourn – effectively, asking for their consent to adjourn for no significant length of time.

13. The polling of the members was completed before any motion was made to adjourn. At approximately 10:50 p.m., Defendant Jackson announced the results of that poll: 95 out of 103 members of one party consented to reconvene and none of the 80 members of the other party consented to reconvene. Because only one party consented to reconvene on the date proposed by Defendant Talbot Ross, the Defendants Jackson and Talbot Ross would not be able to immediately reconvene the Legislature on their own authority as presiding officers of the Legislature.

14. On March 31, 2023, Defendant Mills issued a proclamation declaring that, “there exists in the State of Maine an extraordinary occasion arising out of the need to resolve many legislative matters pending at the time of the adjournment of the First Regular Session of the 131st Legislature of the State of Maine.” Predicated on that extraordinary occasion, Defendant Mills’ proclamation called for the Legislature to convene for a special session and to assemble “in their respective chambers” on April 5, 2023, the same day that they had been scheduled to meet prior to their official adjournment. Defendant Mills’ proclamation also added “and whatever other business may come before the legislature” to the matters she mandated the Legislature to address.

15. The Maine Constitution provides that “The Governor may, on extraordinary occasions, convene the Legislature.” Me. Const. art. V, pt. 1, § 13

16. As a comparative standard for “extraordinary occasions,” Plaintiffs note that during the 8½-month interval between the early adjournment of the 129th Legislature’s Second Regular Session on March 17, 2020, and the convening of the 130th Legislature’s First Regular Session on December 2, 2020 – the first several months of the 15-month declared civil emergency declared in response to a pandemic – Defendant Mills declined to use her authority to

convene a special session of the Legislature for extraordinary circumstances at any time during the pandemic, preferring to issue executive orders explicitly suspending and modifying statutes and even unilaterally rescheduling the primary election of that year.

17. Article III, Section 1 of the Maine Constitution provides that “The powers of this government shall be divided into 3 distinct departments, the legislative, executive and judicial.” Article III, Section 2 of the Maine Constitution further provides that “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.” (Me. Const. art. III, § 2)

18. It is constitutionally routine for the Legislature to adjourn their first regular session with unfinished business. The Maine Constitution calls for each Legislature to “convene on the first Wednesday after the first Tuesday of January in the subsequent even-numbered year in what shall be designated the second regular session of the Legislature; provided, however, that the business of the second regular session of the Legislature shall be limited to budgetary matters; legislation in the Governor's call; legislation of an emergency nature admitted by the Legislature; legislation referred to committees for study and report by the Legislature in the first regular session; and legislation presented to the Legislature by written petition of the electors under the provisions of Article IV, Part Third, Section 18.” (Me. Const. art. IV, pt. 3, § 1)

19. On March 30, 2023, both houses of the 131st Maine Legislature jointly ordered that “all matters not finally disposed of at the time of adjournment of the First Regular Session of the 131st Legislature in the possession of the Legislature, including working papers and drafts in the possession of nonpartisan staff offices, gubernatorial nominations and all determinations of the Legislative Council regarding after-deadline bill requests and policies, be held over to a

subsequent special or regular session of the 131st Legislature in the posture in which they were at the time of adjournment of the First Regular Session of the 131st Legislature.” S.P. 594 (131st Legis. 2023) At approximately 10:27 p.m. on that date, the Senate voted to pass S.P. 594 as a joint order. Twenty minutes later, the House of Representatives passed S.P. 594 in concurrence with the Senate, making it official that the intent of the Legislature was to adjourn with unfinished business carrying over to a subsequent session.

20. At approximately 11:00 p.m. on March 30, 2023, Representative Nathan Carlow made a parliamentary inquiry in anticipation of the Maine House’s motion to adjourn *sine die*, “Section 12, Mason’s Manual of Legislative Procedure, states ‘Legislative body cannot make a rule that evades or avoids the effect of a rule prescribed by the Constitution governing it. It cannot do indirectly what it cannot do directly.’ Could the Speaker please provide information to the House how this statute does not violate this provision?” Defendant Talbot Ross responded, “The House is within its bounds to adjourn as it sees fit. Without day. Adjourned without day as it sees fit.”

21. Defendant Mills’ proclamation does not respect the Legislature’s authority to adjourn “as it sees fit.” Instead, Defendant Mills orders the Legislature to remain in session until it resolves all matters which were pending at the time of adjournment and “whatever other business may come before the legislature” to the matters she mandated the Legislature to address, with an admonition to “resolve these pending matters as soon as possible, and in any event prior to the date of the Second Regular Session of the 131st Legislature.” In effect, Defendant Mills’ proclamation replaced the regular session’s restriction that the Legislature adjourn at a specific time to continue their work in the Second Regular Session with a mandate that they not adjourn unless they had no remaining business to conduct, or when they need to adjourn to convene the

Second Regular Session.

22. At the time of this filing, the Maine House of Representatives and the Maine Senate have met twice in their respective chambers, on April 5, 2023, and April 6, 2023, for more than 3 hours each time and voted on numerous legislative items which had not been finally disposed of at the time of their adjournment *sine die*.

23. On April 20, 2022, Defendants Jackson and Talbot Ross were among the Legislators who voted to exercise their emergency authority under 3-AM.R.S. § 2 to extend the Second Regular Session of the 130th Legislature by one day. No emergency was identified in the joint order extending that session, nor in any legislative records pertaining to the passage of that order. The extra day was used to pass numerous bills still pending on the scheduled adjournment date and increase state expenditures by tens of millions of dollars.

24. Based on news reports and public statements by legislators, a simple majority in the Legislature intends to exploit this special session to authorize hundreds of millions of dollars in additional spending and to continue passing non-emergency legislation unabated. Plaintiff Clardy believes that some or all of the additional spending will result in increased taxation, and that some of the legislation will mandate the imposition of costs on the people of Maine – *e.g.*, fee increases, targeted tax increases, unfunded mandates imposed on municipal and county governments, and subsidy programs funded by fees imposed on electricity ratepayers.

25. As an official elected by the Legislature, and being statutorily committed to defending their actions in litigation, the Attorney General cannot be expected to fulfill his normal role as litigant for the public interest when the public interest is at odds with the acts of elected officials whom he is statutorily bound to represent in litigation.

26. In 1983, the Supreme Judicial Court of Maine explicitly rejected requiring that

taxpayers must suffer a special injury to have standing when challenging injurious unconstitutional conduct:

“An argument sometimes advanced for denying standing to taxpayers without special injury is that the denial tends to protect state officials from being harassed by litigation at the instance of plaintiffs who dislike the policies the officials are carrying out, particularly where the plaintiffs have lost in the political arena. The difficulty with this line of thought is that, in effect, it prejudices the very issue sought to be raised: namely, the legality of the governmental acts in question.

Protection of state officials from harassment by litigation is only a by-product of the denial of standing; whether that by-product is desirable in any particular case cannot be determined without examining the merits of the claim. If the official conduct involved is indeed unconstitutional, protecting the officials in question from harassment cannot be deemed a desirable end in itself.” *Common Cause v. State*, 455 A.2d 1, 9 (Me. 1983) (emphasis added)

“It would conflict with the basic theory of American government if two branches of government, the legislative and the executive, by acting in concert were able, unchecked, to frustrate the mandates of the state constitution.

“Second, and equally important, it is a central function of American courts to protect and relieve the individual from injurious unconstitutional conduct by government officials. Where taxpayers offer to show that such conduct has occurred, that it threatens to injure them by increasing their taxes, and that it cannot be stopped except by judicial intervention, a court having all the powers of a court of equity may not turn them away because possible political repercussions

from the ultimate decision on the merits may lead to hostile criticism of the judiciary. We therefore reject the proposition that taxpayers without special injury may never have standing to challenge illegal state action. *Common Cause v. State*, 455 A.2d 1, 9-10 (Me. 1983)

Allegations

27. Plaintiffs allege that Defendants Jackson and Talbot Ross are colluding to frustrate the Constitution's mandate that no non-emergency law may take effect sooner than 90 days after the final adjournment of the session in which it was passed by willfully adjourning the regular session 83 days before the statutory adjournment date with a clear intent to reconvene the following week, on the date of the next then-scheduled meetings of the Senate and the House. This official adjournment triggered the 90-day clock, while Defendant's intended immediate reconvening would render it a *pro forma* adjournment without invoking the legislative inconvenience of a significant recess.

28. Plaintiffs further allege that Defendant Mills is colluding with Defendants Jackson and Talbot Ross in bypassing the Constitution's mandates by issuing a proclamation convening the Legislature immediately after Defendants Jackson and Talbot Ross were unable to obtain the consent of majorities of both parties' members to reconvene in a special session commencing the same day that Defendants had unsuccessfully polled the members of the 131st Legislature for consent to reconvene. Plaintiffs find Defendant Mills' choice of April 5, 2023 – the same date proposed by the presiding officers and rejected by the minority party – indicative of tacit collusion.¹ We find Defendant Talbot Ross' reticence in protesting Defendant Mills' willful

¹ Plaintiff contends that tacit collusion between officials is sufficient to justify intervention to defend constitutional mandates, much as a police officer tacitly colluding with a private person conducting an unwarranted search is sufficient to trigger concerns about unreasonable search in evidentiary hearings.

violation of the minority party's constitutional right to refuse consent even more compelling.

29. Plaintiffs further allege that Defendants Jackson and Talbot Ross are colluding to frustrate the Constitution's mandate that the Legislature adjourn its regular sessions no later than statutory deadlines for adjournment by adjourning the regular session *pro forma* with an intent to reconvene in special session the following week, with the regular session's statutory deadline for adjournment mooted.

30. Plaintiffs further alleges that, if Defendant Mills is not colluding with Defendants Jackson and Talbot Ross, Defendant Mills' proclamation convening the Legislature immediately after their adjournment *sine die* is an unconstitutional usurpation of the Legislature's authority, in direct contradiction of the Legislature's official act to adjourn. Plaintiffs also allege that Defendant Mills' unwillingness to tolerate carrying over "many legislative matters pending at the time of the adjournment" to the next regular session directly usurps the authority of the Legislature's joint order to do so. Defendant Mills' addition of "whatever other business may come before the legislature" to the "matters to be resolved" represents a further insult to the Legislature's authority to define rules for their own proceedings.

31. Plaintiffs allege that, based upon the aforementioned allegations, the Governor's proclamation convening the Legislature lacks constitutional authority and is therefore unlawful to the extent it exceeds the Governor's constitutional authority to call the Senate into session for the purpose of voting upon confirmation of appointments.

32. Plaintiffs allege that the Legislature, when not lawfully convened, does not have the ability to form a quorum when there is no session, and therefore lacks the power to conduct its business assembled as a body outside of a lawfully convened session.

33. Plaintiffs allege that laws enacted during an unconstitutional session of the

Legislature inherit that unconstitutionality. Therefore, continuing to conduct Legislative business as if in session while the legitimacy of that session is being reviewed judicially risks great harm by continuing to enact laws which are at immediate risk of being invalidated.

34. Plaintiffs allege that taxpayers have standing to seek preventative relief without showing special injury, based upon the Supreme Judicial Court's clearly expressed reasoning in *Common Cause v. State*.

35. Plaintiffs also allege that, as litigants, we are not barred from asserting constitutional claims on behalf of absent third parties when those third-party rights are congruent with the interests of both the plaintiffs and the third party. We find it unreasonable to assert that the Attorney General has a monopoly on making constitutional claims when the Attorney General is statutorily obligated to defending state officials against those same claims.

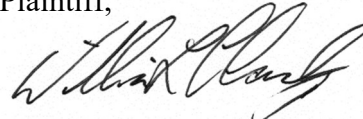
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- (A) Adjudication of this complaint be placed on an expedited schedule;
- (B) A temporary injunction barring Defendants Jackson and Talbot Ross from calling their respective chambers to order in obedience of Defendant Mills' proclamation while that proclamation is undergoing judicial review;
- (C) A declarative judgement that the Defendant Mills' proclamation is unconstitutional, as either intrusion on the Legislature's power to "to adjourn as it sees fit" or as a collusive effort to subvert the Constitution's mandates;
- (D) A declarative judgement that the S.P. 594 remains in effect until the next lawful session of the 131st Legislature, and that all matters not finally disposed of at the time of adjournment of the First Regular Session of the 131st Legislature are to remain held over in the posture in which they were at the time of adjournment of the First Regular Session of the 131st Legislature until the Legislature reconvenes in a manner not offensive to the state Constitution;
- (E) Compensation for reasonable costs incurred in the course of this litigation.
- (F) Any such further and other relief as the Court deems fit and proper.

Dated: April 10, 2023

Plaintiff,



William Clardy
13 Maple Street, Apt 1
Augusta, ME 04330
Tel: (207) 242-7248
william.clardy@mainecandidates.org