

To: Governor LePage  
From: Carlisle McLean and Hank Fenton  
Re: Remonstrance

### **Summary**

It has come to our attention that certain citizens have been claiming the right to what they might call a remonstrance owed to them by you in your official capacity as Governor. Counsel's Office has researched the issue of remonstrance and the following is the result of that research.

The citizen's right to remonstrance is the citizen's individual right to send a formal letter or other communication to members of government in order to suggest that legislation should be passed to remedy a harm. The people's right to a remonstrance as stated in the Maine Constitution is part of the broader right to what has come to be known as the right of the people to petition their government for the redress of grievances that is stated in both the Maine and federal constitutions. The right to petition government long predates the founding of our nation and goes far back to the roots of the Anglo-American political tradition. The right predates the Magna Carta of 1215 and in fact, in the Declaration of Independence specifically mentions the founders' petitions to King George III, the frustration of which prompted them to rebel.<sup>1</sup>

However, this right does not include and has never included any rights of citizens to compel legislation or compel the government to act in any certain way. For example, if a citizen believes the government is acting beyond its constitutional scope of authority, then the citizen may send a letter demanding that the government conform its action to how the person remonstrating thinks appropriate. If the government officials do not act on the citizen's demands then this is not a violation of the citizen's right to remonstrance, because the right to remonstrance is simply a right to comment on and inform legislators of the citizen's thoughts concerning current or pending legislation. The right to remonstrance may be violated if the Legislature passed a law that made it a crime to send any politically oriented mail to elected officials. If a citizen then wrote a letter to an elected official, and was successfully prosecuted and imprisoned then in such a scenario the citizen's right to a remonstrance under the general right to petition the government for a redress of grievances would have been violated.

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<sup>1</sup> Jay Alan Sekulow & Erik M. Zimmerman, Weeding Them Out by the Roots: The Unconstitutionality of Regulating Grassroots Issue Advocacy, 19 Stan. L. & Pol'y Rev. 164, 167 (2008)

## **Legal Findings:**

### Relevant Constitutional Provisions:

The people have a right at all times in an orderly and peaceable manner to assemble to consult upon the common good, to give instructions to their representatives, and to request, of either department of the government by petition or remonstrance, redress of their wrongs and grievances.

Me. Const. art. I, § 15.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I

As is evidenced from the above stated portion of the Maine Constitution, the people of Maine have the right to request from their government a redress of their wrongs and grievances through the method of “remonstrance.” Legally, the term “remonstrance” is defined as either (1) A presentation of reasons for opposition or grievance; or (2) A formal document stating reasons for opposition or grievance; or (3) A formal protest against governmental policy, actions, or officials. REMONSTRANCE, Black's Law Dictionary (9th ed. 2009).

The Maine courts have not had the opportunity to interpret the constitutional provision that provides a right to remonstrance. However, Massachusetts, has a very similar provision in its constitution that provides the right of the people to a remonstrance. The Supreme Judicial Court of Massachusetts, in 1916, had the opportunity to decide what if any rights to present legislation were provided to citizens under the remonstrance provision of the Massachusetts Constitution. In the case of *Fuller v. Haines*, the Court held that a municipal charter that invoked what I have been calling the remonstrance provision of the MA Constitution, did not grant citizens the right to present legislation in the form of any referendum or initiative. 112 N.E. 873 (1916). The Court stated:

The purpose of that sentence in general is to enable the voters to have full and free discussion and consultation upon the merits of candidates for public office and of measures proposed in the public interests. Its importance in this respect is of the highest moment. It never has been suggested, so far as we are aware, that the vote of such a meeting had a legally binding force upon the city. It certainly can have no bearing upon its financial obligations . . . The force to be given it rests entirely upon implication. The natural inference is that its force and effect is the same as that of the other form of expression of public opinion with which it stands combined in one section, which is a provision long known in legislation and whose force and effect are well understood. It hardly can be presumed, in the absence of a definite enactment to that end, that the Legislature intended such a vote to bind the city absolutely and to fix finally the municipal policy upon the subject of the vote.

*Id.* (emphasis added). There, the Court held that the right to petition and the right to a remonstrance are all tied together into the people's right to expression of public opinion. While the precedent set by Massachusetts courts would be persuasive to Maine courts, it would not be legally binding. It is then necessary to understand how a Maine court may attempt to interpret Maine's remonstrance provision. When interpreting the meaning of a law a court will look to what is called the plain meaning of the text. By looking at the plain meaning of the text of Article 1 section 15 it seems that a remonstrance is a constitutionally defined and protected method by which a citizen may request their government pass legislation to remedy a harm they believe they have suffered.

We have reviewed several documents sent by Mr. Merletti that were often titled "A Declaration, Remonstrance and Demand Opposing, Stopping and Correcting Ongoing Abuses of the Limited Powers and Authority Delegated to Government by the People of Maine" or similarly "Notice of Service of the People's Remonstrance." The writings appear to be classic examples of citizens exercising their rights as guaranteed to them by both the Constitution of the State of Maine and the Constitution of the United States of America to petition their government to redress their grievances. In each remonstrance the citizen expressed concern that their

government was not looking out for their best interests or indeed in some instances, the author expressed concern that the government was even acting tyrannically. Because the writers were not punished for writing the letters and because the Office of the Governor received them and indeed you having read them, the author's constitutional right to request a redress of grievances was fully honored and upheld in the best traditions of our Republic. No other special process is due to the author or signatories of the remonstrances because the Constitution does not provide that any more process shall be due.<sup>2</sup>

It seems that Mr. Merletti may believe that the Office of the Governor has the power to strike down laws that Mr. Merletti deems to be unconstitutional. As we all know, such is not the case. Neither does the power of the executive extend to providing a mechanism for private citizens to declare laws to be unconstitutional. That being the case, Counsel's Office would recommend that Mr. Merletti look for relief in the third branch of government: the Judiciary. If a citizen can prove in a court of law that a duly passed law is unconstitutional, then that law will be held void by the court's decision. *Marbury v. Madison*, 5 U.S. 137, 2 L. Ed. 60 (1803). The judiciary is the only branch of government that can void a law due to its being unconstitutional. Depending on Mr. Merletti's allegations, he may be able to obtain standing to sue the government and then successfully challenge the laws that he claims infringe on his constitutional rights. However whether he is successful in his suit or even whether a court will hear his case

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<sup>2</sup> In colonial times, some states granted their citizens a right to a response to their petitions from the political branches of government. Since the founding of the United States, what is known as the "petition clause" of the US Constitution has not been interpreted by the Supreme Court to encompass the right of a person who sends a petition or remonstrance to receive a reply, or even for the governing official's attention to the petitions or remonstrances. "Nothing in the First Amendment or in this Court's case law interpreting it suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to individuals' communications on public issues. *Minnesota State Bd. for Cmty. Colleges v. Knight*, 465 U.S. 271, 285 (1984). Maine courts generally interpret the Maine Constitution in accordance with how the Supreme Court of the United States interprets the US Constitution. *State v. Bouchles*, 457 A.2d 798, 802 (Me. 1983). Therefore, no response is due to those who write remonstrances by any government official in Maine unless otherwise mandated by law.

will depend on the judiciary's specific findings. These findings will be made completely independent of the how the Executive Branch would deem appropriate. This is because constitutionally, the courts are a separate branch of government and they decide which cases they will hear. In other words, there is no constitutional method by which the Executive Branch could assist Mr. Merletti in his suit. Additionally, we do not recommend providing legal advice to outside third-parties, such as Mr. Merletti, but are merely advising you of the rights he would have should he choose to exercise them through a separate branch of government.

**Legal Conclusion:**

When citizens send "remonstrances" to the Office, then their right to remonstrance has been fully complied with. They are not entitled to any special process to see their proposed legislation introduced to the Legislature or anything of the sort. The full text of Article 1 section 15 defines an important, fundamental constitutional right of the people.