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**Joint Standing Committee on Judiciary on
LD 1715, RESOLUTION, Proposing an Amendment to the Constitution of
Maine to Amend the Appointment and Confirmation Process for Certain
Judicial, Civil and Military Officers
Friday, April 25**

Senator Carney, Representative Kuhn, and honorable members of the Joint Standing Committee on Judiciary: I am Senator Rick Bennett of Oxford, and I have the honor of serving 14 communities in Western Maine in the State Senate. I am proud to sponsor LD 1715, "RESOLUTION, Proposing an Amendment to the Constitution of Maine to Amend the Appointment and Confirmation Process for Certain Judicial, Civil and Military Officers."

In the Maine Constitution, the Senate's confirmation power is essentially backwards. After the governor nominates someone for a position, that nominee goes before a committee for a confirmation hearing. That nominee is either supported or opposed by the committee and the committee's vote goes to the Senate, where it stands, unless 2/3 of Senators vote to override the committee's recommendation.

For those of you who have served in the Senate or have watched a nominee get confirmed by the Senate, doesn't it strike you as odd that voting "nay" actually means you support the nominee?

The current language in the Constitution (Art. V, Part First, §8, 2nd ¶) reads:

The committee recommendation shall be reviewed by the Senate and upon review shall become final action of confirmation or denial unless the Senate by vote of 2/3 of those members present and voting overrides the committee recommendation.

But it was not always this way. In the 1820 Constitution of Maine, Article V, Sect. 8 read, "He shall nominate, and, *with the advice and consent of the Council*, appoint all judicial officers, the Attorney General, the Sheriffs, Coroners, Registers of Probate, and Notaries Public; and he shall also nominate, *and with the advice and consent of the Council...*" (emphasis added).

Modeled after the Massachusetts Constitution, Maine originally had an Executive Council (often referred to as the Governor's Council), which shared the power of administering State government. Massachusetts still has such a council. This provision was included due to the severe distrust the founders had of concentrated executive power. In 1975, it was determined that diluting the power was no longer needed and the legislature passed, and the people ratified, an amendment abolishing it.

Despite the agreement to get rid of it, legislators understood the reasoning behind the creation of the Council. Lawmakers agreed that the Council's most important duty was the approval of

gubernatorial appointments. There was disagreement about how to replace the Council's role in confirming appointments. Despite models at the federal level and from other states, Maine decided to forge its own path and a different process for handling nominations: confirmation by a majority vote of a joint committee and final review by the Senate. This decision, a result of the powerful Speakership of John Martin, in my view gives too much power to committees, rather than the Senate. Indeed, it makes the Senate's role almost honorary.

Confirmations of nominees by the Senate should be a weighty process. These nominations deserve more attention and gravity than they currently receive. Requiring a supermajority to override the vote of a committee gives the Senate less power than the committees. The current process does not recognize the seriousness of these appointments.

One brilliance of America's framers was the creation and proliferation of checks and balances throughout the system. Based on their observations of human nature, they believed that members of different branches of government would zealously defend their branch's power and prestige. Unfortunately, they could not foresee the corrupting influence that political parties would have on those charged with defending their branches.

While the Maine State Constitution is modeled after the Massachusetts Constitution, it is also informed by the principles of the U.S. Constitution. When one looks at the Federalist Papers, you will see that the term "coequal" is used only in Federalist Papers twice. Federalist 20 and 63 describe the relationship between the states and the relationship between the House and Senate.

As you probably know, most states, like Congress, have separate committees for the House and Senate. I think the way Maine does joint committees is smart but it gives the House a power advantage when it comes to confirmations. Our average joint standing committee consists of 13 members, 3 from the Senate and 10 from the House.

So even if all three senators on a committee disapprove of a nominee, the nominee could still get an affirmative vote by the committee that would require 2/3 of the Senate to overrule.

The majority of states give this authority to the Senate. So why do the committees, dominated by House members, have such a powerful say in confirmations?

I would like to amend the bill as drafted so it reads: "The Senate may confirm a nomination by vote of a majority of those members present and voting." This proposal aims to put the confirmation power back where it should be by requiring at least half of the Senate to affirm the recommendation of a committee. Majority approval is the standard in many states across the country and in the U.S. Congress.

This is for good reason—recognizing the solemnity and importance in the confirmation of these positions of public trust. Currently, in this respect the Constitution makes promises but doesn't deliver.

Thank you for your time today. I would be happy to answer any questions.