



Administrative Office of the Courts

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Testimony of Maine Judicial Branch against LD 1829 – An Act to Build Housing for Maine Families and Attract Workers to Maine Businesses by Amending the Laws Governing Municipal Land Use Decisions

Senator Curry, Representative Gere and members of the Committee on Housing and Economic Development, I am Barbara Cardone, the Director of Legal Affairs and Public Relations for the Maine Judicial Branch. I am here today to offer testimony against the provisions of LD 1829 that establish a statewide Housing Resolution Board within the Judicial Branch on the grounds that the statute may be an unconstitutional exercise of legislative power.

The Judicial Branch offers no opinion as to whether a statewide Housing Resolution Board should be established within the Executive Branch, and no opinion on the remaining provisions of the bill. We are testifying that the Board cannot be part of the Judicial Branch. If the bill were passed as written, the Supreme Judicial Court would likely decline to implement the provisions that establish the Board.

Article III of the Maine Constitution divides the powers of the state government “into three distinct departments, the legislative, executive and judicial,” and no department “shall exercise any of the powers properly belonging to either of the others.” Me. Const. art. III. That limitation “necessarily requires that a constitutional grant of power to one branch of government effectively forbids the exercise of that power by any other of the three branches of government.” *In re Dunleavy*, 2003 ME 124, ¶ 6, 838 A.2d 338, 343.

The judicial power is not further explained in the Constitution, but it clearly involves the oversight and regulation of courts. See 4 M.R.S. § 1 (“The Chief Justice, as the head of the judicial branch, shall . . . , be responsible for the efficient operation of the judicial branch and for the expeditious dispatch of litigation therein and for the proper conduct of business **in all courts**.”). The Housing Resolution Board described in LD 1829 is not a court and therefore falls outside the constitutional jurisdiction of the Chief Justice and the Judicial Branch to administer.

The Administrative Office of the Courts is established under 4 M.R.S. § 15, and it is “directed by a State Court Administrator who is appointed by and serves at the pleasure of the Chief Justice of the Supreme Judicial Court.” The State Court Administrator supervises “[a]ll

administrative personnel in the Judicial Department.” Id. § 16. The specific duties of the State Court Administrator are further specified in 4 M.R.S. §§ 17, 17-A, 17-B, 24.

The Administrative Office of the Courts handles such functions as supervision of Judicial Branch employees who are not justices, judges or magistrates; Judicial Branch information technology; Judicial Branch Human Resources and Judicial Branch Finance and Accounting. The State Court Administrator holds no power to direct the adjudication of cases.

The various statutory regulatory boards are part of the Executive Branch, not the Judicial Branch. If this Committee wishes to pass out a bill creating a statewide Housing Resolution Board, the Committee should look to amending the bill to create the board within a statutory framework that places the board within the Executive Branch.

I would be happy to respond to questions from the Committee.