

Derek P. Langhauser  
Visiting Professor of Marine Policy  
Williams-Mystic Coastal & Ocean Studies

**Practice**

OFFICE OF MAINE GOVERNOR

OF COUNSEL, 2020-Present. Provide counsel to Governor Janet T. Mills (D) and her Chief Legal Counsel primarily on judicial selection and constitutional matters.

CHIEF LEGAL COUNSEL, 2019-2021. Appointed by Governor Mills to advise and represent the governor on all powers, duties, and issues. Primary tasks included drafting executive orders, bills, and veto messages, and administering pardons, extraditions, and judicial selection. Primary accomplishments included managing the pandemic state of emergency through a complex sequence of executive orders and litigation and authoring and passing gun control legislation.

CHIEF LEGAL COUNSEL, ASSISTANT LEGAL COUNSEL AND LAW CLERK, 1988-92. Appointed by Governor John R. McKernan, Jr. (R) advise and represent the governor on all powers and duties. Primary tasks same as above. Primary accomplishments included managing an 18-day shutdown of state government through emergency executive orders and litigation and authoring landmark abortion rights legislation.

MAINE COMMUNITY COLLEGE SYSTEM

OF COUNSEL, 2020-Present. Appointed by the System president to provide legal and policy counsel to the System.

PRESIDENT, 2015-19. Appointed by the Board of Trustees to be the chief executive officer of the System. Responsible for seven colleges, six centers, 300 academic programs, 18,000 students and trainees, a \$180M annual operating budget, 1500 employees, six collective bargaining agreements, and governmental relations arising from the same.

GENERAL COUNSEL, 1994-2015. Appointed by the System president to be the chief legal counsel for the System. Included all educational, employment, corporate, student, constitutional, and compliance matters.

MAINE MARITIME ACADEMY

SPECIAL COUNSEL, 2012-2022. Bi-partisan appointments by three attorneys general to provide legal counsel to a maritime college with 900 undergraduate and graduate students, 30 academic programs, and a 500-foot training ship.

#### UNITED STATES SENATE

SPECIAL COUNSEL, 1998-2012. Appointed by U.S. Senator Olympia J. Snowe (R) to provide legal counsel re: the Clinton Impeachment Trial, military base closure commission, four Supreme Court nominations, military funeral protests, campaign finance litigation, filibusters, judicial independence, and numerous other constitutional issues.

#### KAPLAN & ASSOCIATES

ATTORNEY, 1993-94. Corporate defense practice in state and federal courts representing primarily Bath Iron Works Corporation in class-action litigation.

#### MAINE SUPREME JUDICIAL COURT

LAW CLERK, 1987-88. Appointed by Justices David A. Nichols and D. Brock Hornby (now inactive U.S. District Court Judge) to research and draft opinions and memoranda for the Court in a wide variety of civil and criminal cases.

### **Teaching**

#### CONSTITUTIONAL LAW

University of Maine School of Law, 2023 (Adjunct Professor)

### **Education**

#### UNIVERSITY OF MAINE SCHOOL OF LAW

J.D., 1987. Research Editor, Maine Law Review; author of 39 Me. L. Rev. 443 (1987); and American Jurisprudence Award.

#### BATES COLLEGE

B.A., 1984. Folsom Foundation Scholar; semesters with the National Maritime Museum in Greenwich, England, and the Williams College Maritime Studies Program.

KINGSWOOD OXFORD SCHOOL

Diploma, 1980. Headmaster, Merritt, and Downs Awards.

**PROFESSIONAL AFFILIATIONS**

CURRENT

American Law Institute, Council Member and Governance Committee Chair  
Governor's Judicial Selection Committee  
Journal of College and University Law, Board of Editors  
ECMC Foundation and Group, Board of Directors

PREVIOUS

National Association of College and University Attorneys Board of Directors,  
Chair  
United States District Court Judicial Nomination Committee, Chair  
United States Attorney and Marshal Nominations Committee, Chair  
Maine Governmental Facilities Authority, Chair  
American Law Institute, Council Governance Committee, Chair  
Cleaves Law Library Board of Directors, Vice Chair  
Education Law Reporter, Authors' Committee  
Mystic Seaport Museum International Council

RECOGNITION

President, National Association of College and University Attorneys  
Fellow, National Association of College and University Attorneys  
Distinguished Service, National Association of College and University  
Attorneys  
Fellow, American Bar Foundation  
Member, Harvard Institute for University Counsel  
Presenter, Oxford Higher Education Law Roundtable  
Advisor, Ford Foundation Difficult Dialogues: Initiative on Academic  
Freedom

BAR ADMISSIONS

Supreme Court of the United States  
United States Court of Appeals for the First Circuit  
United States District Court for the District of Maine

Maine Supreme Judicial Court

**SIGNIFICANT WORK PRODUCT**

LAWS

Over 100 COVID-19 State of Emergency Proclamations and Executive Orders (all of *Me. Exec. Orders No. 14-57 FY 19/20* and many of *1-40 FY 20/21*) and litigation defenses of the same in dozens of cases.

State statute requiring background checks of firearms buyers (*P.L. 2024, ch. 675*, codified at *15 M.R.S. § 395*)

State statute to remove firearms from persons in crisis (*P.L. 2019, ch. 411*, codified at *34-B M.R.S. § 3862-A*, upheld as constitutional in *In Re Weapons Restriction of J.*, 2022 ME 34, and validated by the Independent Commission to Investigate the Facts of the Tragedy in Lewiston (*Me. Exec. Order No. 4 FY 23/24*), Interim Report at 13-14 (Mar. 15, 2024))

Federal statute protecting military funerals from protests (*P.L. 112-154, § 601 (2012)*, codified at *18 U.S.C. § 1388* and *38 U.S.C. § 2413*)

United States Senate procedure used to try the Impeachment Articles for President Clinton (*S. Res. 16 (1999)*)

State statute requiring adult involvement in minors' access to abortions (codified at *22 M.R.S. § 1597-A (1989)*)

Executive Orders to manage government shutdown caused by a substantial revenue shortfall (*Me. Exec. Order Nos. 1-7 FY 91/92*) and curtail allotment of over \$50 million in authorized spending (*Me. Exec. Order No. 10 FY 90/91*)

CASES

OFFICE OF GOVERNOR

*Calvary Chapel of Bangor v. Mills*, 52 F.4<sup>th</sup> 40 (1<sup>st</sup> Cir. 2022) (upholding governor's exercise of COVID emergency power restrictions affecting in-person faith services), cert. denied 142 S.Ct. 71 (Mem.) (Oct. 4, 2021) and application for injunction denied App. No. 21A10 (Aug. 2, 2021), upholding 542 F. Supp. 3d 24 (D. Me. 2021), and following 984 F.3d 21 (1<sup>st</sup> Cir. 2020) that affirmed 459 F. Supp. 3d 273 (D. Me. 2020)

*Bayley's Campground, Inc. v. Mills*, 985 F.3d 153 (1<sup>st</sup> Cir. 2021) (upholding governor's exercise of COVID emergency power restrictions affecting interstate travel), affirming 463 F. Supp. 3d 22 (D. Me. 2020)

*Savage v. Mills*, 478 F. Supp. 3d 16 (D. Me. 2020) (upholding governor's exercise of COVID emergency powers and executive orders against an 11-count omnibus complaint)

*Tiffany Bond v. Mills*, No. 1:20-cv-00216, 2020 WL 4275035 (D. Me. July 24, 2020) (upholding governor's exercise of COVID emergency power restrictions affecting election candidate signature gathering)

*Bureau of Employee Relations v. Maine Labor Relations Board*, CV-94-27 (Me. Sup. Ct. 1994) (upholding governor's exercise of emergency powers affecting state employees during budgetary shutdown of state government)

*Butterfield v. McKernan*, CV-91-29 (Me. Sup. Ct. 1991) (upholding governor's executive order curtailing approximately \$53 million in previously authorized spending during budget shortfall)

*Gallagher v. Diamond*, CV-90-0256-B, 1990 U.S. Dist. LEXIS 20931 (D. Me. Oct. 26, 1990) (recognizing over attorney general's objections the governor's standing to defend constitutionality of state law when the attorney general declines and upholding state election law's minimum vote requirement and the governor's decision not to certify results in compliance with that law), following *Opinion of the Justices*, 578 A.2d 183 (Me. 1990) (upholding over attorney general's objections the state election law's minimum vote requirement)

*Opinion of the Justices*, 571 A.2d 1169 (Me. 1989) (upholding over attorney general's objections the governor's right to be presented bond enactors for approval)

*Opinion of the Justices*, 571 A.2d 805 (Me. 1989) (upholding over attorney general's objections the governor's decision to veto an enactor that violated the Supremacy Clause)

#### SENATE, LAW COURT, AND OTHER

*United States Base Realignment and Closure Commission*, 1 Report to the President (2005) (*inter alia*, rejecting recommendations of the Secretary of Defense to close a \$1B naval shipyard and two other military operations in Maine)

*McConnell v. Federal Election Commission*, 540 U.S. 93 (2003) (upholding Senator Snowe’s Electioneering Communications provision of the Bipartisan Campaign Reform Act)

*In re Joseph Gardner*, 534 A.2d 947 (Me. 1987) (recognizing a right to discontinue life-sustaining care for a persistent vegetative patient)

*In re Hope H.*, 541 A.2d 165 (Me. 1988) (vacating an erroneous termination of parental rights)

*Smith v. Southern Maine Community College*, AP-03-62 (Me. Super. Ct. 2007) (upholding college’s termination of a faculty member’s employment against free speech, academic freedom, and due process claims)

*NECEC Transmission LLC v. Bureau of Parks and Lands*, 2022 ME 48 and *Black v. Bureau of Parks and Lands*, 2022 ME 58 (advisor on the constitutionality of a citizen initiative)

#### OTHER SIGNIFICANT MATTERS

Senator Snowe’s written statements on the nominations of John G. Roberts for Chief Justice of the United States (*109<sup>th</sup> Cong., 1<sup>st</sup> Sess., 150 Cong. Rec. S10408 (Sept. 26, 2005)*) and Samuel A. Alito, Sonia M. Sotomayor, and Elena Kagan for Associate Justices of the Supreme Court of the United States (2006-10)

Senator Snowe’s written statement on the Clinton Impeachment Articles (*106<sup>th</sup> Cong., 1<sup>st</sup> Sess., 145 Cong. Rec. S1669-71 (Feb. 12, 1999)*)

Senator Snowe’s work with Supreme Court Associate Justice Sandra Day O’Connor on preserving judicial independence through improved interbranch communication (2005-06)

Governor Mills’ posthumous pardon of an attorney targeted in 1969 by the state attorney general to convict and disbar that attorney for his work on the federal Maine Indian Land Claims Settlement Act, <https://www.maine.gov/governor/mills/news/governor-mills-issues-posthumous-pardon-former-passamaquoddy-advocate-donald-gellers-2020-01> (2020)

#### **PUBLICATIONS**

#### BOOKS

*Powers and Duties of a Governor: Principles, Laws and Lessons from Maine*, Green Life Press and KDP (2d. ed. (2024) and 1<sup>st</sup> ed. (2022)) (distributed by the National Governors' Association to every governor and governor's counsel in the nation)

#### CONTRIBUTIONS TO BOOKS

THE MAINE SUPREME JUDICIAL COURT & THE MAINE JUDICIARY, 200TH ANNIVERSARY, Alexander (2021) (advisor)

THE NACUA HANDBOOK FOR LAWYERS NEW TO HIGHER EDUCATION, 3d ed., National Association of College and University Attorneys (2009) (author of four entries: (ch. I. A. 7, *Introduction to College Residence Hall Agreements*; ch. V. A. 2, *Faculty Religious Expression on the Public Campus: The Convergence of Free Speech, Academic Freedom and Religion*; ch. VII. 2, *Free and Regulated Speech on Campus: Using Forum Analysis for Assessing Facility Use, Speech Zones, and Related Express Activity*; and ch. VII. 3, *Free Speech: General Counsel's Role as Regulator and Protector*)

FREEDOM OF SPEECH IN HIGHER EDUCATION: IMPORTANT PROTECTIONS AND PERMISSIBLE REGULATIONS, National Association of College and University Attorneys (2008) (editor with Robert M. O'Neil & William E. Thro)

#### ARTICLES IN SCHOLARLY JOURNALS

*An Extraordinary Pardon*, Maine Policy Review 33.1 (2024)

*Taking on the Military Funeral Protest: A Multifarious Statute Leans In*, 61 Harvard Journal on Legislation 60 (2024)

*Legislative Amendment of Citizen Initiatives: Where the "Will of the Voter" Meets the "Consent of the Elector,"* Maine Policy Review 30.1 (2021)

*A Tribute to Vincent L. McKusick*, 15 Journal of Appellate Practice & Process 147 (2015), reprinted in 30 Maine Bar Journal 156 (Summer 2015) and 160 Proceedings of the American Philosophical Society 109 (2016)

*Introduction to Special Edition*, 36 Journal of College and University Law 645 (2010)

*Gun Regulation on Campus: Understanding Heller and Preparing for Subsequent Litigation and Legislation*, 36 Journal of College and University Law 63 (2009)

*Nominations to the Supreme Court of the United States: Historical Lessons for Today's Debate*, 205 Education Law Reporter 553 (2006)

*The 2005 BRAC Process: The Case to Save Maine's Bases*, 14 Maine Policy Review No. 1, at 38 (2006)

*Free and Regulated Speech on Campus: Using Forum Analysis for Assessing Facility Use, Speech Zones and Related Expressive Activity*, 31 Journal of College and University Law 481 (2005), developed from *Freedom and Regulation of Speech on Our Campuses*, 35 Change Magazine No. 3, at 38 (2003)

*Regulating Commercial Speech at Public Colleges*, 8 Higher Education Law Bulletin No. 4, at 1 (2001)

*Campaign Finance Reform, Free Speech, and the Supreme Court*, 12 Maine Policy Review No. 3, at 28 (2004)

*Executive Regulations and Agency Interpretations: Binding Law or Mere Guidance? Developments in Federal Judicial Review*, 29 Journal of College and University Law 1 (2002), reprinted in 176 Education Law Reporter 505 (2003)

*Use of Criminal Convictions in College Admissions*, 155 Education Law Reporter 733 (2001), developed from *Students Who Threaten the College Community*, 7 Higher Education Law Bulletin No. 2, at 1 (1999)

*Implied Warranties of Seaworthiness: Applying the Knowing Neglect Standard in Time Hull Insurance Policies*, 39 Maine Law Review 443 (1987)

## PRESENTATIONS

Over 50 presentations on diverse topics, including:

131<sup>st</sup> Legislature, Criminal Records Review Committee, Resolves 2023, ch. 103, *Separation of Powers* (2024)

National Governor's Association, *Role of the Chief Counsel* (Convening of 65 Governors' Legal Counsels from 28 States and Territories) (2021)

Maine PBS Broadcast, *History and Law of Presidential Impeachments*, <https://www.pbs.org/video/understanding-the-president-trump-impeachment-process-jtq4oc/> (2020)



128<sup>th</sup> Maine Legislature, Joint Leadership and Special Committee of Conference, *The Law and Impact of a Government Shutdown* (2017)

128<sup>th</sup> and 127<sup>th</sup> Maine Legislatures, Joint Sessions, *State of the Maine Community College System Addresses* (2017 and 2015)

#### REFERENCES

Available upon request