Digital Equity as a Civil Right in Maine

Report of the
Maine Advisory Committee to the
U.S. Commission on Civil Rights

January 2022

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Letter of Transmittal

Maine Advisory Committee to the
U.S. Commission on Civil Rights

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The Maine Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, "Digital Equity as a Civil Right in Maine." The report was unanimously adopted by the Advisory Committee.

Sincerely,

Diane Khiel, *Chairperson*
Maine Advisory Committee

Maine Advisory Committee to the U.S. Commission on Civil Rights

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I. Introduction

Digital equity is defined as "a condition in which all individuals and communities have the information technology needed for full participation in our society, democracy, and economy."[1] To achieve digital equity, all individuals must have access to reliable broadband, internet-capable devices, digital literacy training, and adequate funding. Digital inequity, on the other hand, refers to the inaccessibility to these aforementioned components.

The consequences of long-standing digital inequity became glaringly apparent throughout the COVID-19 pandemic beginning in 2020. It exacerbated limited access to the necessary resources for education, civic and cultural participation, employment, lifelong learning, and access to essential services, such as telemedicine. In particular, Maine's rural communities, communities of color, immigrant communities, older adult populations, individuals with disabilities, and lower income individuals and families suffered. Digital inequity has, in effect, led to inequitable experiences both nationally and in Maine, and the pandemic brought these disparities into sharp focus.

As such, these inequities warrant a deeper examination by both state and local governments in Maine, as well as an examination by the federal government. The Committee encourages a state-federal partnership to work with the communities impacted by inadequate services to ensure that programs and policies reflect their experiences, needs, and support their long-term goals.

The activities and programs that encompass digital inclusion often provide underprivileged homes with broadband devices and digital technology assistance, including training.[2] To reach digital equity, it is critical to ensure that these steps are made available. The interplay between digital equity and digital inclusion is at the heart of this report, as digital equity cannot exist without digital inclusion.[3] In essence, "Digital Equity is the 'what' (goals) and Digital Inclusion is the 'how' (activities)."[4]

This report will demonstrate that U.S. law supports the proposition that digital equity should be deemed a civil right in the realm of compulsory education, and that the effects of the COVID-19 pandemic have strengthened that position.

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[1] Susan Corbett, Director, National Digital Equity Project, "Digital Equity in Maine," Briefing Before the Maine Advisory Committee to the U.S. Comm'n on Civil Rights, July 16, 2020, transcript, p. 3 [hereinafter cited as Maine July Briefing Transcript].
[2] Angela Siefer, Executive Director, National Digital Inclusion Alliance, testimony before the Maine Advisory Committee to the U.S. Comm'n on Civil Rights, Sept. 16, 2020, transcript, p. 15 [hereinafter cited as Maine September Briefing Transcript].
[3] *Id.*
[4] Angela Siefer, *Digital Equity Is the "What" and Digital Inclusion is the "How"* (Aug. 24, 2016), https://www.digitalinclusion.org/blog/2016/08/24/digital-equity-and-digital-inclusion/.

II. Summary of the Briefings

The first panel, held on July 16, 2020, included subject-matter experts in both digital equity in education and digital resources in Maine. Speakers included Susan Corbett, Director the National Digital Equity Center; Peggy Schaffer, Executive Director of ConnectME Authority; and Jennifer Alvino, Director of the Windham Public Library and President of the Maine Library Association. Panelists discussed the issues students and low-income families face with respect to digital inequity, the role libraries can play in bridging the digital divide, the importance of access to internet, an internet-capable device, and digital literacy training, and the particulars of broadband services.

The second panel, held on September 17, 2020, comprised of experts familiar with the importance of using the internet as a tool, such as serving as a method of community engagement, providing essential services, promoting racial and socioeconomic equity and inclusion, and allowing for efficient and far-reaching business ventures. Speakers included Nick Battista, Senior Policy Officer of The Island Institute; Andrew Butcher, Director of Innovation and Resilience at the Greater Portland Council of Government; Kerem Durdag, President and CEO of Great Works Internet; Beth Lambert, Direct of Innovative Teaching and Learning at the Maine Department of Education; and Angela Siefer, Executive Director of the National Digital Inclusion Alliance. Panelists also addressed accessibility issues with broadband service for both residential and commercial consumers, and disparities in federal coverage maps and funding.

The third panel, held on November 19, 2020, featured organizations and advocates for protected classes and individuals in Maine. Speakers included Benjamin Jones, Attorney at Disability Rights Maine; Lori Parham, State Director of AARP Maine; and Michelle Probert, Director of MaineCare Services.

The fourth panel, held on December 11, 2020, included affected persons and those who work with them: educator Linda Mosley, Special Education Teacher for Kindergarten through Second Grade students at Lewis S. Libby School in Milford, Maine; and Heinrich Snyder, Student at Harford Seminary pursuing a Graduate Certificate in Religious Studies.

The fifth and final panel, held on December 17, 2020, highlighted advocates for persons of color and immigrants: Grace Valenzuela, District Director for Communications and Community Partnerships for Portland Public Schools; and Pious Ali, Director for the Portland Empowered Program at the Muskie School for Public Service.

The briefings concluded with questions and comments between Advisory Committee members and panelists, illustrating the need for more affordable access to broadband and digital devices, a need for increased digital literacy training, and increased federal and state funding for broadband infrastructure.

A list of speakers is provided in the Appendix.

A. An overview of broadband internet in Maine and nationally

Broadband refers to the delivery of perpetual, high-speed internet access to individuals or households. It serves as a central piece of how people work and connect with one another.[5] Broadband also enables the global network of interconnected computers, which is commonly referred to as the internet.[6] Broadband internet access supports education, telehealth, and employment opportunities, and is important for both civic and social engagement.[7] In 2015, broadband was defined as 25/3 megabits per second (mbps) download speed and upload speed, respectively, by the Federal Communications Commission (FCC).[8] According to the Fourteenth Broadband Deployment Report, "the number of Americans living in areas without access to at least 25/3 Mbps (the Commission's current benchmark) has dropped . . . to fewer than 14.5 million Americans."[9]

Wired broadband servers use three basic technologies: (i) copper over telephone lines, also known as digital subscriber lines (DSL); (ii) coaxial, which is similar to cable delivery; and (iii) fiber, which is delivered by tiny, perfect pieces of glass that transmit light and deliver technology through that light into homes or businesses.[10] Other services that provide access to the internet include: cell service, which provides a mobile wireless connection; fixed wireless, which is a wireless connection attached to a pole and shipped into a home; and satellite service, which is delivered from miles above the earth by satellite, bringing some level of broadband to individuals living in rural areas that would otherwise lack access.[11] However, according to panelist Peggy Schaffer, Director of ConnectMaine Authority, "it's important to know that everything goes to fiber. When you're on a cell service, about 99 percent of your conversation is on cell, and the rest of it is on fiber."[12]

One key factor in addressing digital inequity is accessibility. Individuals must have access to critical technological devices such as a computer, laptop, or tablet, while also having access to stable internet service.[13] Access must also include training on how to use internet-capable devices, as well as the various platforms.[14] For this reason, true digital equity cannot exist without access, and access must include devices, stable internet access, and digital literacy.[15]

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[5] Peggy Schaffer, Executive Director, ConnectMaine, *Maine July Briefing Transcript*, pp. 2-3.
[6] *Id*. at 2.
[7] *Id*. at 3.
[8] FEDERAL COMMUNICATIONS COMMISSION, FCC 19-44, 2019 Broadband Deployment Rep. (May 29, 2019), https://docs.fcc.gov/public/attachments/FCC-19-44A1.pdf.
[9] FEDERAL COMMUNICATIONS COMMISSION, FCC 21-18, FOURTEENTH BROADBAND DEPLOYMENT REP. (Jan. 19, 2021), https://docs.fcc.gov/public/attachments/FCC-21-18A1_Rcd.pdf.
[10] Schaffer Testimony, *Maine July Briefing Transcript*, p. 2.
[11] *Id*. at 2.
[12] *Id*.
[13] *Id*.
[14] *Id*.
[15] *Id*.

Digital literacy is defined as the "ability to use information and communication technologies to find, evaluate, create, and communicate information, requiring both cognitive and technical skills."[16] There is a substantial need for digital literacy training, particularly among communities of color, immigrant communities, older adult populations, and lower income households.[17] Panelist Jen Alvino, Director of the Windham Public Library, highlighted the common misconception that most individuals know how to use the internet, as well as email, but in reality, many people visit the library seeking assistance in using their phones and downloading applications for reading.[18] Digital literacy training would increase confidence and proficiency when it comes to using a digital device.[19]

In October of 2018, the National Digital Equity Center created a program specific to Maine residents called the Maine Digital Inclusion Initiative. Panelist Susan Corbett, Director of the National Equity Center, explained that the Maine Digital Inclusion Initiative provides greater access to the components necessary to achieve digital equity, such as the ability to connect to affordable broadband, access to affordable equipment to use the internet, digital literacy training, and public computer access.[20] The Digital Equity Center also utilizes community planning grants to "encourage communities to discuss why they would like broadband, how they're going to get it, how they're going to use digital inclusion, and how they're going to use digital literacy to make sure people in their community not only have access to the broadband but will use it."[21]

To promote digital literacy training, the Maine Digital Inclusion Initiative hosts free, public digital literacy classes, with 150-200 classes available online.[22] Of the students who participate, the statistics show that on average 30 percent are unemployed, 30 percent are retired, and over 57 percent are age 50 and older.[23] Additionally, about 48 percent of students have a family median income of $34,900 or less, 17 percent are non-white, and over 50 percent have a high school diploma or less.[24]

Local libraries serve as another tool in combating digital illiteracy. Libraries in Maine have a role in improving digital equity, especially for lower income households. Libraries identify the needs of the community regarding digital equity, and they work hard to address them.[25] Libraries provide stable 24/7 Wi-Fi access, computer equipment, digital literacy and other educational instruction, as well as a number of one-on-one learning opportunities.[26] Through technology at the library, people can search and apply for jobs, create resumes, apply for public benefits such

[16] American Library Association, *Digital Literacy*. https://literacy.ala.org/digital-literacy/ (last visited Aug. 11, 2021).
[17] Shaffer Testimony, *Maine July Briefing Transcript*, p. 6; *see also* Corbett Testimony, *Maine July Briefing Transcript*, p. 18.
[18] Jennifer Alvino, Director, Windham Public Library, *Maine July Briefing Transcript*, pp. 8-9.
[19] *Id*.
[20] Corbett Testimony, *Maine July Briefing Transcript*, p. 3.
[21] Schaffer Testimony, *Maine July Briefing Transcript*, p. 7.
[22] Corbett Testimony, *Maine July Briefing Transcript*, p. 4.
[23] *Id.*
[24] *Id*.
[25] Alvino Testimony, *Maine July Briefing Transcript*, p. 10.
[26] *Id*.

as unemployment and food assistance, apply for fishing licenses – anything that can or is required to be done online.[27]

Higher education institutions also play a key role in combatting present and future digital illiteracy through degree programs, such as information technology (IT). There is a significant need to promote and increase the availability of IT degree programs at community colleges and universities due to the number of vacant IT jobs.[28] To promote digital literacy and IT education, students must have access to adequate internet and an internet-capable device.[29] If schools lack equitable access to broadband internet and internet-capable devices, the availability of coding camps and IT-related clubs diminishes.[30] The establishment of public and private partnerships utilized by community colleges and universities, such as internships or co-ops, could also increase participation in IT.[31]

Additionally, the lack of funding for digital literacy programs in Maine greatly contributes to digital inequity. The two major federal agencies that fund broadband connectivity – the FCC and United States Department of Agriculture (USDA) – are not required to fund digital literacy programs.[32] Only recently did conversations regarding affordability and literacy begin at the national level, though not seriously.[33] Furthermore, there are few outreach efforts in communities affected by disenfranchisement and low-income communities to expand digital literacy.[34] In order to increase digital literacy, federal and state funding must be made available and distributed to agencies that actively seek to bridge the digital divide.[35]

Access to digital literacy training is essential to attain digital equity. Without digital literacy skills, having adequate broadband and an internet-capable device has no advantage. For equitable digital literacy, policymakers must work to expand digital literacy training to all individuals, regardless of socioeconomic status, proficiency in the English language, age, or ability.

The ConnectMaine Authority, a public instrumentality of the Maine State government, facilitates universal access to broadband to all Maine households and businesses.[36] The ConnectMaine Authority is tasked with six major initiatives: (i) establishing criteria to define unserved and underserved areas; (ii) promoting the use of broadband service; (iii) supporting investment in broadband access; (iv) facilitating state support of the development of broadband infrastructure; (v) collecting and disseminating information; and (vi) administering funds.[37] According to

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[27] *Id*.
[28] Kerem Durdag, President and CEO, Great Works Internet Testimony, *Maine September Briefing Transcript*, p. 29.
[29] Durdag Testimony, *Maine September Briefing Transcript*, p. 30.
[30] *Id*.
[31] *Id*. at pp. 29-30.
[32] Schaffer Testimony, *Maine July Briefing Transcript*, p. 6.
[33] *Id*.
[34] *Id*.
[35] See Section IV of this report.
[36] ConnectME Authority, *About*, https://www.maine.gov/connectme/about (last visited Nov. 19, 2021).
[37] *Id*.

panelist Jen Alvino, the ConnectMaine Authority estimates "that 83,000 households in Maine do not have access to high-speed internet," which is equivalent to one in six households lacking access.[38]

When it comes to achieving digital equity, affordability remains the most prominent barrier for those who lack access. Panelist Peggy Schaffer, Director of ConnectMaine Authority, explained that a household with an income of $30,000 per year or less can afford to pay an estimated amount of $10 per month for internet service.[39] However, internet providers rarely offer reliable or adequate connection for $10 per month.[40] As such, affordability is crucial to achieve digital equity.[41]

The aforementioned concerns beg the question: should high-speed internet access be regulated as a utility, like water, electricity, and gas, in order to achieve digital equity?[42] To be a connected, active, and productive individual, access to adequate broadband internet is essential.[43] While a number of individuals and organizations are working to increase broadband accessibility, there is a high price in increasing infrastructure and promoting accessibility.[44] As broadband access expands, interagency and organizational partnerships are essential in making sure that everyone in Maine has access to the tools and educational training required to make the most use of their broadband internet access.[45]

When towns in Maine spend money on broadband infrastructure, they invest in their communities and promote equality for all residents.[46] Low-income individuals, individuals with disabilities, rural communities, immigrant communities, and communities of color are generally less likely to have access to high speed internet and are often connected to infrastructure that does not meet modern standards of use.[47] In fact, rural Americans are ten times more likely than their urban counterparts to be unserved by a broadband internet connection that meets FCC requirements.[48] In 2017, an average of 80 percent of Maine households had broadband internet access, which is 0.4 percent below the national average.[49] However, Maine's rural counties fell well below the average with only 69 percent of households having access to broadband internet.[50]

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[38] Alvino Testimony, *Maine July Briefing Transcript*, p. 8.
[39] Schaffer Testimony, *Maine July Briefing Transcript*, p. 3.
[40] *Id.*
[41] *Id*.
[42] Lori Parham, State Director, AARP Maine, testimony before the Maine Advisory Committee to the U.S. Comm'n on Civil Rights, Nov. 19, 2020, transcript, p. 16 [hereinafter cited as Maine November Briefing Transcript].
[43] Parham Testimony, *Maine November Briefing Transcript*, p. 16.
[44] Corbett Testimony, *Maine July Briefing Transcript*, p. 4; Schaffer Testimony, *Maine July Briefing Transcript*, pp. 4-6.
[45] Parham Testimony, *Maine November Briefing Transcript*, p. 16.
[46] Nick Battista, Senior Policy Officer, Island Institute, Testimony, *Maine September Briefing Transcript*, p. 4.
[47] Battista Testimony, *Maine September Briefing Transcript*, p. 4.
[48] *Id.*
[49] Measures of Growth: Performance Measures and Benchmarks to Achieve a Vibrant and Sustainable Economy for Maine. https://www.mdf.org/wp-content/uploads/2019/01/MOGReport2017-WEB_1493056448.pdf.
[50] *Id*.

B. Digital Inequity in Education in Maine

Before the COVID-19 Pandemic

Maine has an innovative history of promoting digital literacy among its elementary- and high school-aged students. In 2002, the Maine Learning Technology Initiative (MLTI), under the direction of then-Governor Angus S. King, Jr. sought to invest in the education of Maine students by providing every seventh and eighth grader a laptop for educational use, both in and out of the classroom.[51] The MLTI later provided laptops to high school students in 2009 via a separate wireless network infrastructure.[52] In addition to providing personal computing devices to students, the MLTI financed positive changes to infrastructure in Maine, including wireless networks and technology directors, as well as in-school training for teachers.[53] After 18 years of the MLTI, the Maine Department of Education leadership is currently redesigning the program to better reflect current learning needs.[54]

Students experience digital inequity in both urban and rural areas. Prior to the pandemic, the Maine Department of Education estimated that 20 percent of the state's 180,000 pre-kindergarten to twelfth grade students did not have access to broadband internet at home.[55] Panelist Jen Alvino noted that, in her children's school system, 350 families out of 6,700 reported not having internet at home, with broadband internet access also unavailable at the homeless shelter.[56]

Panelist Linda Mosley, Special Education Teacher for kindergarten through second grade students at Dr. Lewis S. Libby School in Milford, Maine, shared her perspective on the hardships faced by students in rural areas. Prior to the COVID-19 pandemic, Greenfield Township had little to no broadband internet access, and many families relied on dial-up.[57] At Lewis S. Libby School, 25 percent of students did not have access to the internet and 25 percent of students did not have access to a digital device, with the two statistics not always representing the same families.[58] The low socioeconomic status of many families and households surrounding Milford resulted in many families being unable to afford internet-capable devices or broadband connectivity.[59]

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[51] Maine Department of Education, *MLTI History*, https://www.maine.gov/doe/learning/ltt/mlti/history (last visited Aug. 4, 2021).
[52] Beth Lambert, Direct or Innovative Teaching and Learning, Maine Department of Education, Testimony, *Maine September Briefing Transcript*, p. 13; *see also* Katie Ash, *State Laptop Program Progresses in Maine amid Tight Budgets*, Educ. Wk. (Sept. 1, 2009), http://www.edweek.org/ew/articles/2009/09/02/02laptop.h29.html.
[53] Lambert Testimony, *Maine September Briefing Transcript*, p. 13.
[54] *Id.*
[55] Alvino Testimony, *Maine July Briefing Transcript*, p. 8.
[56] *Id*. at p. 9.
[57] Linda Mosley, Special Education Teacher, Lewis S. Libby School in Milford, Maine, testimony before the Maine Advisory Committee to the U.S. Comm'n on Civil Rights, Dec. 11, 2020, transcript, p. 2 [hereinafter cited as *Maine December 11 Briefing Transcript*].
[58] Mosley Testimony, *Maine December 11 Briefing Transcript*, p. 2.
[59] *Id*.

During the COVID-19 Pandemic

In March 2020, the first recorded case of COVID-19 was diagnosed in Maine. This led to the transition to online-only or hybrid in-person/online learning for a majority of Maine schools. Prior to the pandemic, little data existed on the disparities in broadband, but lawmakers and advocates quickly discovered that these disparities affect health, commerce, and, particularly, education.

According to panelist Jen Alvino, after schools made the online transition, many parents and students sat in library parking lots to access free internet.[60] This lack of access to internet at home "disproportionately impact[ed] low-income families, rural residents, travel communities, African Americans, Latinos, and people with disabilities."[61]

The COVID-19 pandemic prompted Portland Public Schools to provide thousands of hotspots to student families who did not have reliable internet access at home.[62] The District Director for Communications and Community Partnerships, Grace Valenzuela, emphasized that while the additional technology helped numerous families, it remained inaccessible for many English language learners due to limited translation services for instructions, helplines, and the technology itself.[63] To promote digital literacy and utilization of the hotspots, Portland Public Schools offered videos in a variety of languages on how to properly run the hotspots.[64] Panelist Grace Valenzuela contends that without having a system in place to provide digital literacy training for everyone regardless of English proficiency, students and families will struggle to use essential technology.[65]

During the transition to remote learning at the start of the pandemic, students with disabilities faced significant setbacks. Prior to March 2020, many students with disabilities lacked internet access and a digital device at home.[66] The pandemic not only prevented them from attending school, their primary access to internet, it closed public places, such as libraries, universities, and community centers, their only other means of accessing online coursework.[67] Further, many of these places took months to reopen and often limited their hours.[68]

While Maine has a history of attempting to provide devices, device education, and increased internet connectivity to Maine students, at the time of this briefing, around 5,339 of Maine's

[60] Alvino Testimony, *Maine July Briefing Transcript*, p. 8.
[61] *Id.* at pp. 8-9.
[62] Grace Valenzuela, District Director for Communications and Community Partnerships, Portland Public Schools, testimony before the Maine Advisory Committee to the U.S. Comm'n on Civil Rights, Dec. 17, 2020, transcript, p. 2 [hereinafter cited as *Maine December 17 Briefing Transcript*].
[63] Valenzuela Testimony, *Maine December 17 Briefing Transcript*, pp. 2-3.
[64] *Id*.
[65] *Id*.
[66] Benjamin Jones, Attorney, Disability Rights Maine, testimony, *Maine November Briefing Transcript*, pp. 2-3.
[67] Jones Testimony, *Maine November Briefing Transcript*, p. 5.
[68] *Id.*

171,132 students "live[d] in areas where broadband access is not available."[69] Of those 5,339 students, the Maine Department of Education estimates that around 1,000 students were not able to receive any cellular service in their area.[70]

Following the passage of the CARES Act by Congress, Governor Janet Mills allocated $5.6 million to increase access to high-speed broadband internet access in rural areas, increasing access to broadband to more than 730 Maine students through the "ConnectKidsNow!" initiative.[71] While this initiative decreased the number of Maine students without access to broadband internet, "only 84 percent of schools responded to the offer of free [broadband devices]for students,"[72] leaving many students without access to such devices.[73]

In a series of five surveys, Maine schools were asked if their students needed internet access, a device, or both: "549 out of our 583 schools reported their students' needs, and we were able to meet all reported needs, providing 28,875 students with six months of cellular internet service and a mobile learning device.... Unfortunately, this does not account for the students who do not have access to broadband and are not able to receive a cellular signal at their home."[74] However, the previously discussed MLTI program implemented in 2002 helped Maine students to quickly transition to online learning at the start of the COVID-19 pandemic.[75] The program further allowed the Maine Department of Education to provide most students with a high speed internet connection at home within weeks of the transition.[76]

Additionally, curriculum leaders, educators, and educational community organizations collaborated with the Maine Department of Education to create "a library of asynchronous learning modules that are open source [called] MOOSE, Maine's Online Opportunities for Sustained Education. This resource is being used by students, families, and teachers as they provide hybrid and remote instruction this fall."[77] While some positive efforts have already been made in Maine, around 1,000 students remain without access to any cellular service.[78]

Panelist Linda Mosley saw first-hand how the COVID-19 pandemic affected elementary school students and their families. Many families lost their jobs as schools transitioned to online learning, leaving parents and guardians of school-aged children in a position where it was

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[69] Lambert Testimony, *Maine September Briefing Transcript*, p. 13.
[70] *Id*.
[71] David Marino, Jr. *Janet Mills puts $5.6M toward bringing broadband to rural areas*, Bangor Daily News, Nov. 20, 2020, https://bangordailynews.com/2020/11/20/politics/janet-mills-puts-5-6m-in-cares-act-funding-toward-rural-broadband/.
[72] Jones Testimony, *Maine November Briefing Transcript*, p. 6.
[73] *Id*.
[74] Lambert Testimony, *Maine September Briefing Transcript*, p. 14; *see also* Eesha Pendharkar. Maine is using $9M to help 24,000 students connect to the internet, Bangor Daily News, May 5, 2020, https://bangordailynews.com/2020/05/05/news/maine-is-using-9m-to-help-24000-students-connect-to-the-internet/.
[75] Lambert Testimony, *Maine September Briefing Transcript*, p. 13.
[76] *Id*. at p. 14.
[77] *Id*.
[78] *Id*. at 13.

difficult to put food on the table, let alone pay for access to reliable broadband internet.[79] Likewise, many elementary school children had not received prior or sufficient instruction on how to use a keyboard, making assignments and class engagement more difficult.[80]

Students without internet access quickly fell behind in their coursework, given the nature of online learning. Many students in Mosley's school would drive upwards of 45 minutes into town to utilize free Wi-Fi at fast food establishments just so they could complete their schoolwork on time.[81] In Spring 2020, Lewis S. Libby School provided hotspots for students, but many families struggled to set them up, and too often student devices did not work properly.[82] The state offered additional devices to those who lacked access.[83] As a result, the Dr. Lewis S. Libby school implemented a program where older students received new devices and younger students received old devices, if they received them at all.[84] Many families and students struggled to set up the devices without proper training, making it harder for full class participation.[85] Mosley also noted that when teachers and family members moved to remote learning, there was a struggle to maintain an adequate and stable internet connection, often not having enough bandwidth to support everyone in their household.[86]

Another student population adversely affected by inequity with online access and learning are students with disabilities. Children with special needs, such as autism, often require routines to promote a positive learning environment.[87] When schools switched to remote and hybrid learning, any semblance of a routine was upended, inhibiting the students' ability to learn.[88] Accessibility for special education students is incredibly important, and poor internet connections and a lack of digital literacy training for both the student and their parents made it difficult to focus and to learn in general.[89]

Adult students in post-secondary educational institutions struggled to adjust to online schooling as well. Panelist Heinrich Snyder stated that while he has a cellphone, laptop, and tablet, he is forced to go to his sister's house to access Wi-Fi, as he has connectivity issues at home.[90] Due to these connectivity issues, Snyder often sits in his car at the University of Maine at Augusta in Bangor to use his cellphone, as he says the spot has the best cellphone service in his area.[91] Additionally, even when Snyder has access to the internet, he often experiences issues using his

[79] Mosley Testimony, *Maine December 11 Briefing Transcript*, p. 2.
[80] *Id*.
[81] *Id*. at p. 3.
[82] *Id*. at p. 2.
[83] *Id*.
[84] *Id*. at p. 3.
[85] *Id*. at p. 2.
[86] *Id*. at p. 4.
[87] *Id.* at p. 3.
[88] *Id*.
[89] *Id*. at pp. 4-5.
[90] Heinrich Snyder, Graduate Student, Hartford Seminary, testimony, *Maine December 11 Briefing Transcript*, p. 6.
[91] Snyder Testimony, *Maine December 11 Briefing Transcript*, p. 6.

tablet, as his tablet will not allow him to fully interact with his course work due to a lack of specific software and applications.[92]

C. Digital Inequity among Immigrants and Communities of Color

Inequitable broadband infrastructure greatly affects immigrant communities and communities of color.. Panelist Kerem Durdag, President and CEO of Great Works Internet, explained that, while immigrants often live in urban environments, they generally have limited access to broadband.[93] This inhibits their ability to participate in the infrastructure most predominant to modern living – if they cannot participate broadband discussions, they become "othered," often leading to objectification.[94]

Panelist Lori Parham, State Director of AARP Maine, provided multiple statistics regarding access to home broadband connection for immigrant communities and communities of color at a national level.[95] Parham quoted an editorial in Essence magazine which noted:

> "An astonishing 34 percent of Black adults, 39 percent of Latino adults, and 47 percent of those on tribal lands do not have a home broadband connection. This compares with the 21 percent of white adults who do not have broadband at home. We must acknowledge that systemic barriers, including affordability, are preventing communities of color from adopting broadband. Digital literacy and the lack of access to computers are also significant factors. Our remedy must be bold and expansive in enacting inclusive connectivity policies that center on communities of color."[96]

Individuals and students with limited English proficiency often lack access to digital literacy instructions in their preferred language, thus limiting the overall capacity of achieving digital equity. To obtain digital equity, communities of color and immigrant communities must be included in the conversations concerning digital literacy.[97] Panelist Grace Valenzuela explained that, in the absence of an interpreter, digital literacy trainings prove difficult for English language learners and, as a result, demonstrates a lack of equity in instruction.[98] Schools, businesses, and other institutions must consider ELLs in digital literacy instruction in order for it to be equitable.[99] Often, it is simply a lack of effort in conveying the importance and type of service available in these communities.[100] Some immigrant communities and communities of color lack trust regarding services and devices, particularly if there is not a proper explanation about the

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[92] *Id*.
[93] Durdag Testimony, *Maine September Briefing Transcript*, p. 10.
[94] *Id*.
[95] Parham Testimony, *Maine November Briefing Transcript*, p. 9.
[96] Al Sharpton, Geoffrey Starks, et al. *Broadband Access Is A Civil Right We Can't Afford to Lose—But Many Can't Afford To Have*, Essence (July 28, 2020), https://www.essence.com/news/broadband-access-is-a-civil-right-we-cant-afford-to-lose-but-many-cant-afford-to-have/.
[97] Schaffer Testimony, *Maine July Briefing Transcript*, p. 6.
[98] Valenzuela Testimony, *Maine December Briefing Transcript*, p. 2.
[99] *Id*.
[100] Schaffer Testimony, *Maine July Briefing Transcript*, p. 6.

benefits of using digital technology or if the technology itself is poorly explained.[101] This can result in low response rates and may be construed as an absence of interest, which perpetuates the cycle of digital inequity.[102] The Maine Community Foundation has focused on providing small grants for digital literacy in immigrant communities as a helpful step in furthering digital inclusion.[103]

Panelist Pious Ali, Director of the Portland Empowered Program at the Muskie School of Public Service, a group dedicated to closing the gap between immigrants and Portland Public Schools administrators, explained that most of the students and families he works with often have just one laptop or phone for the entire household, which is typically in the possession of the parent.[104] For the households with only one cellphone, children usually do not have access while the parent is at work or away, leaving them at a significant disadvantage if classwork must be completed online.[105] For households that have access to two phones, the oldest child tends to have access to the second phone, which they use to complete classwork available exclusively online.[106] Pious Ali explained that typing homework assignments and reading course work on a small smartphone screen can be incredibly difficult and time-consuming for even the most digitally literate student.[107]

D. Low Income Households and the Urban-Rural Divide

Rural and urban areas alike face unequal access to reliable broadband. In rural areas, a lack of infrastructure and a lack of affordable alternatives to a wired broadband internet connection lead to significant disadvantages in connectivity.[108] While access to broadband internet may be more accessible in urban areas, internet speeds often vary and are misrepresented in broadband connectivity data.[109]

Low-income neighborhoods in both rural and urban areas are fundamentally affected by "digital redlining," which occurs when internet providers deem certain communities unprofitable, and therefore do not offer internet access.[110] Panelist Angela Siefer, Executive Director of the National Digital Inclusion Alliance, highlighted an example of digital redlining, noting that when AT&T rolled out their newer DSL service, they only offered it to higher income communities, effectively overlooking low-income communities.[111] This issue greatly affects a number low-

[101] *Id*.
[102] *Id*.
[103] *Id*.
[104] Pious Ali, Director, Portland Empowered Program at the University of Southern Maine Muskie School for Public Service, testimony, *Maine December 17 Briefing Transcript*, p. 4.
[105] *Id*.
[106] *Id*.
[107] *Id*.
[108] Alvino Testimony, *Maine July Briefing Transcript*, pp. 8-9.
[109] Durdag Testimony, *Maine September Briefing Transcript, p. 9.*
[110] Schaffer Testimony, *Maine July Briefing Transcript*, p. 5.; *see also* Schaffer Testimony, *Maine July Briefing Transcript*, p. 12.
[111] Siefer Testimony, *Maine September Briefing Transcript*, p. 17.

income areas in Maine.[112] Because broadband access is not considered a household utility, it is acceptable for digital redlining to occur as part of a business' profitability analysis.[113]

For low-income households, achieving digital equity requires policymakers address the barrier of affordability. As income declines, so too does the level of high-speed internet access adoption.[114] Providers are less likely to deploy advanced high speed internet access, such as fiber-based services, in low-income areas, communities of color, and rural areas.[115] Less affluent, older, non-white adults are the least likely to have access to high-speed internet in their homes.[116]

The lack of a reliable broadband internet connection disproportionately affects lower-income individuals and can increase the potential for social isolation, as Snyder and his wife experienced.[117] The social isolation that many individuals experienced during the pandemic can impact an individual's health as much as smoking and heart disease.[118] In addition, isolation can increase the risk of mortality by 29 percent on average.[119] For these reasons, digital connection should be considered vital for an individual's health and wellbeing during public emergencies, such as the COVID-19 pandemic.[120]

In Maine, the Island Institute works with 120 island and coastal communities to build community sustainability and share solutions for addressing coastal Maine's most critical issues.[121] According to panelist Nick Battista, Senior Policy Advisor for the Island Institute, increasing broadband infrastructure is crucial for achieving digital equity in rural communities.[122] When considering the consequences of digital inequity, concerns usually focus on individuals and families; however, small business owners in both rural and urban areas also experience the consequences of digital inequity, as they often depend on high-speed internet for conducting business or creating jobs.[123] The modern necessity of credit card machines, online advertising, and online job postings all require access to adequate broadband internet access and are essential for business success.[124]

When companies and internet service providers seek to spend capital to build broadband infrastructure, they often consider premise density, the number of premises per mile;[125] the take

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[112] Schaffer Testimony, *Maine July Briefing Transcript*, p. 12.
[113] *Id*.
[114] Parham Testimony, *Maine November Briefing Transcript*, p. 9.
[115] *Id.*
[116] *Id*.
[117] Snyder Testimony, *Maine November Briefing Transcript*, pp. 7-8.
[118] *Id.* at p. 8.
[119] Kim Tingley, *We Need to Understand the Difference Between Isolation and Loneliness*, N.Y. TIMES, Aug. 18, 2021, https://www.nytimes.com/2021/08/18/magazine/isolation-loneliness-health.html.
[120] Snyder Testimony, *Maine November Briefing Transcript*, p. 8.
[121] Island Institute, *Mission*, Islandinstitute.org/about/mission/ (last visited Aug. 23, 2021).
[122] Battista Testimony, *Maine September Briefing Transcript*, p. 2.
[123] *Id*.
[124] *Id*. at p. 3.
[125] *Id.*

rates, the percentage of potential customers who will sign up for internet service;[126] and the percentage of people who subscribe to internet services.[127] These considerations can adversely affect Maine, since over one third of Maine's road miles, roads with people living on them, have a poor case for broadband infrastructure.[128] Three main policy changes can address the dynamic between road miles and investment, including: (i) changing the take rates, (ii) providing a grant or subsidy to reduce the initial private capital expenditure, and (iii) providing ongoing subsidies to support providing service or to entice private investors to make an investment in that infrastructure.[129]

The lack of infrastructure and number of service providers, particularly in rural communities, leads to a lack of adequate internet access.[130] Many households in these areas are forced to rely on an internet connection that does not fit their needs, which limits access to education, telehealth, employment opportunities, and other essential services.[131] Without broadband internet access, many households must rely on mobile wireless or satellite service, which is often expensive and subject to data caps, keeping individuals and families from being able to fully participate in modern society.[132] In June 2020, Maine voters approved a $15 million bond for broadband expansion, but the total still fell short of the amount that would be necessary to reach digital equity in all of Maine's unserved and underserved communities.[133]

Federal broadband coverage maps serve as one of the most significant issues contributing to the urban-rural divide. Current broadband maps provide inadequate data due to the methods used by the FCC to determine coverage.[134] The FCC provides data by internet service provider for the maps, but data speed estimates are self-reported.[135] In addition, the government uses census blocks to estimate the number of households that have access to broadband internet, further skewing the data.[136] This means that if one household in a given block receives internet services or is noted as having had internet service, the government determines that the entire block has service.[137] To correct this discrepancy, those with an internet connection should test their speed, allowing the federal government to create a common aggregated map that denotes internet speed and availability relative to a particular location.[138] This would permit government agencies to

[126] Jase Wilson, *A New Model for Broadband Network Success*, MEDIUM, Apr. 23, 2019, https://medium.com/@jase/the-great-take-rate-debate-calculating-open-access-network-success-bdcfc31c27d3.
[127] Battista Testimony, *Maine September Briefing Transcript*, p. 3.
[128] *Id*.
[129] *Id*.
[130] *Id*.
[131] *Id*.
[132] *Id*.
[133] Lambert Testimony, *Maine September Briefing Transcript*, p. 13.
[134] Durdag Testimony, *Maine September Briefing Transcript*, p. 17.
[135] *Id*.
[136] *Id*.
[137] *Id*.
[138] Andrew Butcher, Director of Innovation and Resilience, Greater Portland Council or Government, testimony, *Maine September Briefing Transcript*, p. 21.

better collect comprehensive community-based data to understand real-time speed, given that speed indicates availability and quality of service.[139]

E. Older Adults

Like socioeconomic status, age also serves as a significant barrier to adequate broadband internet access. Statistics show that as age increases, the adoption of high-speed internet decreases.[140] Only 59 percent of adults ages 65 and older adopt high-speed internet in their homes, compared to between 75 percent and 77 percent of adults ages 18 to 64.[141]The high price can discourage many, but a lack of familiarity with internet-based applications, as well as a lack of the necessary equipment to take advantage of those applications, can be a barrier to adoption, too.[142]

The AARP maintains that an internet-capable device, along with affordable and reliable internet service, helps older adults age in place productively and safely.[143] Providing adequate broadband internet access and internet-capable devices to older adults enhances access to telemedicine, civic engagement, friends and family, entertainment, online learning, and other internet-based applications that provide social interaction and help with health challenges.[144] The COVID-19 pandemic emphasized the importance of universal access to digital devices and internet, particularly as the nation witnessed the crisis in our nursing homes, when families struggled to see their loved ones if they lacked an internet-capable device and reliable internet service.[145]

F. Individuals with Disabilities

Individuals with disabilities also lack access to adequate broadband, ultimately impacting their ability to communicate. According to panelist Ben Jones of Disability Rights Maine, while teletypewriter (TTY) services are still available, a majority of deaf individuals have moved to smart phones with the ability to use video calling.[146] Additionally, new advances in technology have increased the number of medical services offered through telehealth, which benefits disabled individuals with mobility issues and those without easy access to transportation.[147]

Available Maine statistics quantify the lack of adequate devices for individuals with disabilities. The Maine Department of Labor conducted a survey over the course of four years, from 2014 to 2018, that found "56 percent of working-age Mainers with a disability lived in or near poverty."[148] Moreover, in a survey regarding the use of digital device accessibility, 61 percent of people with disabilities answered yes to having a laptop or desktop, while 81 percent of people

[139] Butcher Testimony, *Maine September Briefing Transcript*, p. 21.
[140] Parham Testimony, *Maine November Briefing Transcript*, p. 9.
[141] *Id.*
[142] *Id*.
[143] *Id*. at p. 8.
[144] *Id*.
[145] *Id*.
[146] Jones Testimony, *Maine November Briefing Transcript*, p. 3.
[147] *Id*.
[148] *Id*.

without disabilities responded in the affirmative.[149] Similarly, 57 percent of people with disabilities said they had access to broadband compared to 76 percent of people without disabilities.[150]

In order to increase equity for all individuals with disabilities, digital devices and services must have a universal design.[151] "Universal design" refers to the design of products, environments, programs, and services that all people can use to the greatest extent possible without the need for adaption or specialized design.[152] Closed captioning serves as an example of universal design.[153] Although individuals with disabilities, such as those who are deaf or hard of hearing, created closed captioning out of need, every person can use this service, regardless of ability status.[154] Therefore, when creating devices and software, universal design should be considered, as these inclusive design features benefit everyone.[155]

Panelist Heinrich Snyder explained that the transition to online medical appointments made it difficult for him and his wife, as neither consider themselves digitally literate.[156] As a husband of a woman with a disability, Snyder shared that while he has the necessary devices for his wife to use to attend occasional telehealth appointments, the devices and applications are often difficult for her to manage independently.[157] The sudden shift to accessing appointments online left Snyder's wife concerned about missing appointments or having access to her medical provider, primarily because she lacked access to the necessary web application.[158]

G. The COVID-19 pandemic increased the urgency for digital equity

The pandemic quickly changed the speed at which federal and state governments should address digital equity, as medical appointments, education, and employers attempted to quickly transition to online. Limited access to digital devices and reliable broadband led to increased instances of social isolation and restricted opportunities for individuals to participate in community and civic activities, such as city council meetings or religious gatherings.[159] All of these quickly moved to being only accessible online, adding to the importance of each person having stable, reliable broadband internet and a device they know how to use that could connect to the internet.

Panelist Andrew Butcher, Director of Innovation and Resilience at the Greater Portland Council of Governments, explained that between March 2020 and September of 2020, they had "seen a number of municipalities go from almost entirely in-person volunteer and commission and

[149] *Id*.
[150] *Id*.
[151] *Id*. at p. 6.
[152] *Id*.
[153] *Id*.
[154] *Id*. at p. 7.
[155] *Id*.
[156] Snyder Testimony, *Maine December 11 Briefing Transcript*, p. 7.
[157] *Id*. at pp. 5-6.
[158] *Id*. at p. 7.
[159] Corbett Testimony, *Maine July Briefing Transcript*, p. 3.

committee engagement to entirely virtual domain."[160] Butcher stated that being able to continue attending and volunteering at this level as intrinsically tied to "the very definition of our civic and democratic society and fabric."[161]

Panelist Heinrich Snyder gave a first-hand account of the struggles faced by Mainers who lack access to adequate and reliable broadband internet, exacerbated by the pandemic.[162] Snyder explained that because COVID-19 stopped all church-related gatherings, he had to experiment with online services and Bible study.[163] Due to the quality of his internet connection, he had to frequently change locations because he would often lose connection.[164] His struggle to maintain connectivity ultimately led him to purchase an antenna costing over $400, and even then, he was unable to maintain a consistent stable internet connection.[165]

As stated above, the ability to attend and participate in public sector events is the very definition of our civic and democratic society.[166] The pandemic limited in-person access to state and local government services, including in-person voter registration, absentee ballot requests, and other civil and social engagements.[167] The pandemic also negatively impacted access to legal assistance and due process, given that most cannot navigate the legal system remotely.[168] For those who lack the ability to connect to a reliable broadband internet, as well as a device to connect, participating in public sector events can be nearly impossible.[169]

Individuals without access to computing devices and reliable internet access also struggled to access critical federal agencies and government services during the COVID-19 pandemic. For example, following the passage of the CARES Act by Congress in 2020, the Internal Revenue Service (IRS) introduced the "Get My Payment" tool on the IRS website.[170] This allowed individuals the opportunity to check the status of their Economic Impact Payment (EIP), though the website discouraged individuals from further contacting the IRS by stating, "Do not call the IRS."[171]

For individuals who lacked a computing device or reliable internet access, it remained nearly impossible to check on the status of their much-needed economic relief or obtain information on how to reconcile the payment if they did not receive it. Additionally, "In FY 2020, the IRS

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[160] Butcher Testimony, *Maine September Briefing Transcript*, p. 6.
[161] *Id*. at pp. 6-7.
[162] Snyder Testimony, *Maine December 11 Briefing Transcript*, p. 6.
[163] *Id*.
[164] *Id*.
[165] *Id*.
[166] Butcher Testimony, *Maine September Briefing Transcript*, pp. 6-7.
[167] Corbett Testimony, *Maine July Briefing Transcript*, p. 3.
[168] Roger Smith, *Remote Courts and the consequences of ending 'practical obscurity',* L., TECH. & ACCESS TO JUST., (July 24, 2020), https://law-tech-a2j.org/remote-courts/remote-courts-and-the-consequences-of-ending-practical-obscurity/.
[169] Butcher Testimony, *Maine September Briefing Transcript*, pp. 6-7.
[170] Internal Revenue Service, *Get My Payment*, https://www.irs.gov/coronavirus/get-my-payment (last visited July 20, 2021).
[171] *Id*.

received 100.5 million telephone calls. Employees answered only 24 percent of those calls, with hold times averaging 18 minutes. Put differently, IRS employees did *not* answer more than 75 million telephone calls from taxpayers seeking help in complying with their tax obligations."[172] Due to the lack of internet access or an internet-capable device, "many taxpayers called the IRS or [Taxpayer Advocate Service] simply to get information because they did not have access to the IRS website. . . ."[173] This is just one example of the failure of government agencies to consider digital equity, leading to unequal access to services, exacerbated during the pandemic.

As for access to medical services during the pandemic, many hospitals and medical practices drastically changed how they conducted routine appointments. Prior to the COVID-19 pandemic, the use of telehealth programs through MaineCare were rarely utilized, even though they were covered under multiple circumstances.[174] According to Michelle Probert, Director for MaineCare, the use of telehealth pre-pandemic accounted for an average of approximately 1,000 claims per week.[175] When the pandemic began to affect routine medical services, MaineCare saw a drastic increase in weekly claims, reaching a peak of close to 90,000 claims per week.[176]

Due to changes in Medicare reimbursement, hospital systems and physicians are now able to access Medicare to help cover the costs for telehealth.[177] The AARP panelist, Lori Parham, related that a physician with the Northern Light medical system reported an exponential increase in the number of people who have been using telehealth and telemedicine since the start of the pandemic, especially Mainers in rural areas who have to travel great distances to receive basic medical care.[178]

III. Digital Equity in Education as a Civil Right

A. McKinney-Vento Act - Digital Equity Necessary to Ensure Equal Access to Education

Access to adequate broadband internet, the skills to use a digital device, and owning an internet-capable device are so integrated in modern living that individuals without these things face a significant disadvantage in obtaining employment, healthcare, essential resources, and most notably, education. Children, especially, need adequate access to education in order to allow equal opportunity for future success, regardless of socioeconomic status.

Every minor in the United States must participate in compulsory education.[179] While there is no constitutional right to compulsory education, the United States Supreme Court, in the case of

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[172] TAXPAYER ADVOC. SERV., ANN. REP. TO CONGRESS (2020), at vi, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_FullReport.pdf.
[173] *Id*. at v.
[174] Michelle Probert, Director, MaineCare Services, testimony, *Maine November Briefing Transcript*, pp. 11.
[175] *Id*. at pp. 11-12.
[176] Probert Testimony, *Maine November Briefing Transcript*, pp. 11-12.
[177] Parham Testimony, *Maine November Briefing Transcript*, p. 9.
[178] *Id*.
[179] EDUC. COMMISSION OF THE STATES, 50-STATE REVIEW (March 2016), https://www.ecs.org/wp-content/uploads/2016-Constitutional-obligations-for-public-education-1.pdf.

Plyler v. Doe, recognized the importance of public education, stating: "[E]ducation has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests."[180] In recognition of the importance of education, every state and the District of Columbia has a constitutional provision that outlines the requirement for compulsory elementary education.[181] In Maine, the state constitution sets forth the right to education and allows the legislature to require towns to support public schools due to "the advantages of education being essential to the preservation of rights and the liberties of the people."[182] Under Maine law, public education is compulsory for individuals "6 years of age or older and under 17 years of age."[183]

For compulsory elementary education to be considered equitable in the modern technological age, digital equity is necessary for ensuring both equal opportunity and access to learning and classroom resources. The "homework gap" is a term commonly used to describe the plight of school-age children who cannot complete schoolwork due to lack of digital devices and internet access at home.[184] These students tend to rely on the use of a cellphone or must rely on public devices and internet access outside the home to complete everyday coursework. Studies have shown that the "homework gap" leads to lower grade point averages, a lack of understanding of digital devices, and a reduction in the amount of course work that a student completes.[185] The "homework gap" is an example of digital inequity, which was faced by approximately 15 percent of students prior to the COVID-19 pandemic.[186]

In a National Public Radio *On Point* segment on November 30, 2020, in the midst of the pandemic, a panel of educators spoke about the education crisis facing homeless students, citing the 1987 McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), the first and only federal legislation aimed at addressing homelessness.[187] The presenters in the segment asserted that McKinney-Vento's provision for equal access to an adequate home environment for all students, one which allows for every student to fully participate in his or her education, supports the proposition that digital equity (access to internet connection, devices and literacy) is a form of access to education that falls under the purview of the act.[188]

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[180] Plyler v. Doe, 457 U.S. 202, 221 (1982).
[181] EDUC. COMMISSION OF THE STATES, 50-STATE REVIEW (March 2016), https://www.ecs.org/wp-content/uploads/2016-Constitutional-obligations-for-public-education-1.pdf.
[182] ME. CONST. art. VIII, pt. 1, § 1.
[183] ME. STAT. tit. 20-A § 5001-A(1).
[184] Brooke Auxier and Monica Anderson, *As schools close due to the coronavirus, some U.S. students face a digital 'homework gap'*, PEW RES. CTR., (Mar. 16, 2020), https://www.pewresearch.org/fact-tank/2020/03/16/as-schools-close-due-to-the-coronavirus-some-u-s-students-face-a-digital-homework-gap/.
[185] Quello Center Media and Information Policy, *Broadband and Student Performance Gaps*, https://quello.msu.edu/broadbandgap/ (last visited Nov. 19, 2021).
[186] Brooke Auxier and Monica Anderson, *As schools close due to the coronavirus, some U.S. students face a digital 'homework gap'*, PEW RES. CTR., (Mar. 16, 2020), https://www.pewresearch.org/fact-tank/2020/03/16/as-schools-close-due-to-the-coronavirus-some-u-s-students-face-a-digital-homework-gap/.
[187] *On Point: The Education Crisis Facing Homeless Students*, WBUR (Nov. 30, 2020), https://www.wbur.org/onpoint/2020/11/30/the-education-crisis-facing-homeless-students.
[188] *Id*.

Originally called the "Stewart B. McKinney Homeless Assistance Act," the Act, signed into law by the Reagan administration, provided urgent assistance to improve the lives and safety of homeless individuals, with a particular focus on handicapped persons, older adults, and families with children.[189]

In 2015, Congress reauthorized the McKinney-Vento Act as part of the Every Student Succeeds Act to address challenges faced by homeless children and youths when enrolling, attending, and succeeding in school.[190] Homeless children and youths, according to the McKinney-Vento Act, are defined as "individuals who lack a fixed, regular, and adequate nighttime residence,"[191] and includes "children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings."[192] The McKinney-Vento Act defines "enroll" and "enrollment" to "include attending classes and participating fully in school activities."[193] Students under the McKinney-Vento Act are guaranteed the right to attend school, regardless of their living situation, if a parent or guardian is present, or if they possess the necessary paperwork.[194]

The ultimate goal of the McKinney-Vento Act is to provide equal access to resources so that all students, regardless of the status of their nighttime residence, have access to the same resources and opportunities. In order for a school to be eligible for grant funding under the McKinney-Vento Act, the school must provide "homeless children and youths . . . comparable services described in subsection (g)(4), including transportation services, educational services, and meals through school meals programs."[195] The Act requires that states who wish to receive funding under the Act provide a plan to ensure that homeless children and youths "do not face barriers to accessing academic and extracurricular activities, including . . . online learning . . . if such programs are available at the State and local levels."[196] While the McKinney-Vento Act states that the law supports access to online learning if it is available on the state and local level, the Act does not direct funding to provide a student with a digital device, the training to use that digital device, or the funding required to obtain reliable broadband access from their evening residence.[197]

The Maine Advisory Committee supports the position that because the McKinney-Vento Act authorizes funding for accessing academic and extracurricular activities, i.e., funding for "full participation" in a student's education, it follows that students living without digital access – where they do not have access to digital devices, training to use those digital devices, or access to broadband internet – should be deemed deprived of full participation in their education, under

[189] Wm. & Mary Sch. of Educ., *History of the McKinney Act*, (last visited Nov. 19, 2021), https://education.wm.edu/centers/hope/specialtopics/mckinneyact/index.php.
[190] McKinney-Vento Act, 42 U.S.C. § 11431—35.
[191] 42 U.S.C. § 11434a(2)(A).
[192] 42 U.S.C. § 11434a(2)(B)(iii).
[193] 42 U.S.C. § 11434a(1).
[194] Cory Turner, *Homeless Families Struggle With Impossible Choices As School Closures Continue*, NPR (Oct. 7, 2020), https://www.npr.org/2020/10/07/920320592/an-impossible-choice-for-homeless-parents-a-job-or-their-childs-education.
[195] 42 U.S.C. § 11432(e)(3)(C)(i)(III)(cc).
[196] 42 U.S.C. § 11432(g)(1)(F)(iii).
[197] 42 U.S.C. § 11432—33.

the Act. Moreover, the McKinney-Vento Act authorizes support for students living in "substandard housing," and given the modern necessity of digital access, children whose nighttime living accommodations do not include such access should be considered eligible for digital access under the McKinney-Vento Act.[198] While the act does not define "substandard housing," guidance from the U.S. Department of Education suggests that local educational institutions "may consider whether the setting in which the family, child, or youth is living lacks one of the fundamental utilities such as water, electricity, or heat."[199] As an educational tool, broadband internet access enables children to learn new skills, connect with classmates to limit social isolation, and provides better access to necessary resources, such as medical care.

Furthermore, the McKinney-Vento Act supports digital equity as a civil right because it works to create equal access to resources for education regardless of the student's socioeconomic status.[200] The Act mandates that certain accommodations must be made for students living in substandard housing, such as access to food, transportation, and other resources that are essential to a student's wellbeing and success.[201] A lack of broadband access outside the classroom significantly disadvantages students compared to their peers living in housing which includes an internet-capable digital device and broadband internet access. Internet access for students can no longer be considered a privilege in the modern age and must instead be a right to stop further inequity not just in education, but for their future wellbeing and chance for success.[202] For this reason, digital equity in education should be mandated to comply with the McKinney-Vento Act.[203]

As previously discussed, the federal government, through the McKinney-Vento Act and the Every Student Succeeds Act, provides a number of supports for equity in education, including funding for transportation, educational services, and nutritional needs among students in substandard housing and by allowing allocated funding for state educational agencies under the Act for digital learning.[204] However, the sudden change from in-person learning to distance learning implemented nationally due to the COVID-19 pandemic demonstrated how current laws are more relevant to in-person educational settings; they do not clearly and directly address digital inequity in non-traditional educational settings caused by the upheaval of students' living and financial situations.

At the beginning of the COVID-19 pandemic, whether a student had access to a digital device and adequate broadband access at home ultimately determined if the student had access to education and educational resources. A Pew Research study conducted in April 2020, shortly after the majority of the United States shifted to remote learning, found that "59 [percent] of parents with lower incomes who had children in schools that were remote at the time said their

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[198] 42 U.S.C. § 11434a(2)(B)(iii).
[199] Education for Homeless Children and Youths Program Non-Regulatory Guidance. p. 6. (July 27, 2016), https://mckinney-vento.org/wp-content/uploads/2020/02/Level1_Lesson7_Step-4_Education_For_Homeless_Children_And_Youth_Program_NonRegulatory_Guidance.pdf.
[200] McKinney-Vento Act, 42 U.S.C. § 11431—35.
[201] *Id*.
[202] See Section IV of this report.
[203] *Id.*
[204] McKinney-Vento Act, 42 U.S.C. § 11431—35; Every Student Succeeds Act, Pub. L. 114-95, 129 Stat. 1802 (codified as amended in scattered sections of 20 U.S.C.).

children would likely face at least one of three digital obstacles."[205] The three digital obstacles addressed by the study were whether their children would: (i) "have to use public Wi-Fi to finish their schoolwork because there was not a reliable internet connection at home"[206]; (ii) "not be able to complete their schoolwork because they do not have access to a computer at home"[207]; and (iii) "have to do their schoolwork on a cellphone."[208]

While funding from the federal government has helped to address some of the issues caused by digital inequity during the pandemic, going forward digital equity in education must be considered a civil right if every student is expected to be given an equal opportunity to succeed.[209] Digital inequity existed prior to the pandemic, but the pandemic proved that digital inequity among students is more widespread than previously acknowledged.[210] Even with the transition back to in-person learning, students without broadband internet access are not treated equally to their peers if their socioeconomic status or nighttime residence does not allow them to complete course work at home.[211] The Maine Advisory Committee is of the opinion that ignoring this inequity should be deemed a violation of an individual's civil rights.

B. The COVID-19 pandemic exascerbated digital inequity among individuals with disabilities because online schooling is not considered a place of public accommodation

While many students struggled to adapt to online learning due to lack of access to a digital device, reliable broadband internet connection, and digital literacy training, students with disabilities faced additional struggles compared to their peers. Under Title III of the Americans with Disabilities Act (ADA), individuals with disabilities are protected from discrimination "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."[212] Under normal circumstances, schools are required to provide support to students with disabilities.[213] However, as shown below, the transition to online learning during the COVID-19 pandemic lead to major flaws in accommodations for non-in-person learning environments.

The ADA defines "public accommodations" to include educational institutions from nursery school through postgraduate education.[214] However, the Supreme Court has yet to decide on whether public accommodation includes online access to the physical establishment, and there is currently a split in opinion between the Third, Sixth, Ninth, and Eleventh Circuits, and the First

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[205] Emily A. Vogels, *59% of U.S. parents with lower incomes say their child may face digital obstacles in schoolwork*, PEW RES. CTR., (Sept. 10, 2020), https://www.pewresearch.org/fact-tank/2020/09/10/59-of-u-s-parents-with-lower-incomes-say-their-child-may-face-digital-obstacles-in-schoolwork/.
[206] *Id*.
[207] *Id*.
[208] *Id*.
[209] See Section IV of this report.
[210] *Id.*
[211] *Id.*
[212] 42 U.S.C. § 12182(a).
[213] Section 504 of Rehab Act; IDEA; Title II of ADA
[214] 42 U.S.C. § 12181(7)(J).

and Second Circuit courts.[215] According to a recent law review article by Constancio Paranal III, an argument could be made that given the modern reliance on the internet, the internet should be considered a place of public accommodation.[216] This is supported by the fact that the COVID-19 pandemic forced students with disabilities to be removed from their in-person public accommodation to their nighttime residence, which does not guarantee accommodation for their disability.[217]

Individuals with disabilities often struggle to acquire equal access to basic services compared to non-disabled individuals. A Pew Research study conducted in April 2017 found that Americans with disabilities are three times more likely to have never gone online compared to individuals without a disability.[218] Additionally, the study also found that "Disabled Americans are less likely than those who don't have a disability to report using the internet on a daily basis (50% vs. 79%). They are also less likely to say that having a high level of confidence in their ability to use the internet and other communication devices to keep up with information describes them 'very well' (39% vs. 65%)."[219]

The lack of education regarding digital devices and lack of access to adequate broadband could significantly restrict a disabled individual from gaining access to important information and services. For example, in the recent case of *Martinez v. Cuomo*, the Southern District of New York held that a lack of in-frame American Sign Language interpretation during Governor Andrew Cuomo's COVID-19 briefings was a violation of the ADA.[220] The four plaintiffs in this case were all deaf with varying degrees of English proficiency, did not own a computer, and three out of four of the plaintiffs did not have readily available internet access.[221] The court granted the Plaintiff's motion for a preliminary injunction and the Defendant was ordered to immediately integrate the use of in-frame ALS interpretation to press briefings.[222] While the lack of internet access and computing devices did not influence the outcome of the holding, it is worth noting that many individuals with disabilities who lack a digital device and adequate broadband are unable to equitably obtain necessary information and services compared to non-disabled individuals.

As previously discussed, allowing digital inequity to persist in education unfairly disadvantages a student both in school and their ability to succeed in the future. For students with disabilities who require accommodation inside the classroom, the transition to remote learning likely created

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[215] Constancio Paranal III, *The Internet as a Public Accommodation and Its Impact on Higher Education*, 22 ASIAN-PAC. L. & POL'Y J. 143, 170-71 (2021).
[216] *Id*. at 144—45, 184—85.
[217] Angela Nelson, *How COVID-19 has affected special education students*, TUFTS NOW, (Sept. 29, 2020), https://now.tufts.edu/articles/how-covid-19-has-affected-special-education-students.
[218] Monica Anderson & Andrew Perrin, *Disabled Americans are less likely to use technology*, PEW RES. CTR., (Apr. 7, 2017), formerly available at https://www.pewresearch.org/fact-tank/2017/04/07/disabled-americans-are-less-likely-to-use-technology/.
[219] *Id*.
[220] Martinez v. Cuomo, 459 F.Supp.3d 517, 527 (S.D.N.Y 2020).
[221] *Id*. at 521.
[222] *Id*. at 527.

instability and difficulty with day-to-day educational needs. To create an inclusive learning environment and an equal opportunity to participate in school-related activities, all students must be guaranteed the right to reliable broadband internet, an internet-capable device, and the training to utilize both. For this reason, the Maine Advisory Committee is of the opinion that digital equity must be a civil right.

IV. Findings and Recommendations

Since the completion of this report, Congress has passed the American Rescue Plan, which according to U.S. Senator Angus S. King, Jr., "include[s] $10 billion for broadband development and infrastructure, and will provide more than $7 billion to expand educational connectivity and close the 'homework gap.'"[223] Additionally, Congress has also passed the Infrastructure and Jobs Act, which includes "$65 billion to expand affordable broadband and digital equity across the country."[224] The additional funding may help remedy some of the issues identified by the Maine Advisory Committee in its findings and recommendations.

1. **Finding: There is a significant lack of training available in Maine to promote digital literacy. Digital literacy assessment and skills training play a critical role in technology and workforce skills development that increase employability of program participants, improve job-seeking skills, and create a more highly skilled, job-ready workforce across Maine. Therefore, it is essential to expand access to digital literacy training.**

The committee recommends the state legislature and state agencies:

a. Allocate federal and state funding to provide professional learning for educators to close the digital divide in education and implement digital skills education at a regional and local level.
b. Train teachers at all levels on the devices used at school and have familiarity with devices used by students at home, including knowledge about updating of software programs and devices.
c. Work toward accessibility and consistency of software in schools when offering lessons, offer digital literacy training to students and parents, and create interactive online learning modules for Maine schools.
d. Provide training through AARP Maine and the state's agencies on aging to enable increased access to telemedicine, civic engagement and participation, government services, and online shopping for older adults.
e. Use 2020 Census data to identify vulnerable populations and to estimate the scope of literacy classes needed and what outreach efforts are most appropriate, particularly in communities of color for purposes of educational access and economic opportunities.
f. Enhance existing information technologies coursework and degree offerings at Maine higher learning institutions.
g. Consider regional hubs for literacy training.
h. Train librarians on the devices used by their communities, including knowledge about updating of software programs and devices.

[223] Angus S. King, Jr., 2 historic broadband investments will be transformational for Maine. Bangor Daily News, Nov. 22, 2021, https://bangordailynews.com/2021/11/22/opinion/opinion-contributor/2-historic-broadband-investments-will-be-transformational-for-maine-joam40zk0w/.
[224] *Id.*

2. Finding: Current access to reliable broadband is insufficient in both urban and rural areas.

The committee recommends the state legislature and state agencies:

a. Determine whether "digital redlining" occurs in Maine, where service providers avoid providing service in low-income areas or in areas with high communities of color. Because 34 percent of Black Mainers, 39 percent Latino Mainers and 47 percent Native Americans in Maine do not have broadband, a concerted effort must be made to reach those communities.
b. Determine that broadband is a public utility, subject to regulation that would promote equal access.
c. Provide guidance for Maine towns, including island communities, that want to build their own networks, including whether paying for outside Internet Service Providers is feasible.
d. Ensure Maine public libraries have sufficient broadband services to provide community internet access for job searches, governmental services, and information.
e. Update Lifeline and create other funding programs that meet today's affordability and connectivity challenges. The Lifeline benefit should reflect the modern use of the internet and be at least $50 a month ($75 in Tribal areas).
f. Update the program known as E-Rate to allow connections to student homes. Currently, the Universal Service Program for schools and libraries commonly known as "E-Rate," provides discounts of up to 90 percent to help eligible schools and libraries in the United States obtain affordable telecommunications and internet access. The program is intended to ensure that schools and libraries have access to affordable telecommunications and information services.
g. Update telemedicine programs to allow connections to patients' homes
h. Ensure that the definition of adequate broadband is a minimum of 100 mbps download speed/100 mbps upload speed.
i. Update disability rights statutes to include internet access, as they currently include only phone and mail access.

The committee recommends the federal government:

j. Update federal coverage maps annually to provide accurate mapping of real availability across the country. This would allow urban areas that are often ignored in broadband conversations, yet are just as underserved as many rural areas, to have access to federal funding. This would also disallow self-reporting by internet providers. Federal coverage maps should be refined to show that not all residences in a given block have service.

3. **Finding: There is a significant need for devices for protected status individuals,[225] older adults, and English language learners.**

The committee recommends that the state legislature and state agencies:

a. Require universal design of products, programs, and services related to digital access, which takes into consideration those with disabilities.
b. Consider providing tablets to older adults that are preloaded with e-mail accounts, videoconference, and telemedicine access.
c. Provide devices to low-income older adults to use for telehealth and decrease social isolation. As the oldest state in the nation with approximately 20 percent of the population over 65, it would be economical for Maine.
d. Consult with Disabilities Maine to ensure that new devices and training meet the needs and legal requirements of students with disabilities. For example, cameras for students with special needs to communicate with teachers would enable full participation for those who rely on visual learning and specialized keyboards for physical disabilities.
e. Provide foreign language translation capabilities for devices, training, software, and infrastructure for students and parents in school assignments as well as translation services for students and parents to communicate with teachers and other school officials.

4. **Finding: Before federal stimulus funds were available, Maine lacked the funding and infrastructure to bring digital equity to fruition. The stimulus funds alone will not resolve these funding and infrastructure insufficiencies.**

The committee recommends the state legislature and state agencies:

a. Include components of digital inclusion when awarding federal funds for broadband expansion: affordability, devices, and educational support for use.
b. Develop processes and infrastructure through ConnectMaine Authority to create a bridge between the planned digital expansions and Maine's communities of color.
c. ConnectMaine Authority should work directly with Maine's Permanent Commission on the Status of Racial, Indigenous and Maine Tribal Populations to consider the impacts on racial equity in the disbursement of funds and the implementation of the planned improvements.

[225] 5 M.R.S.A § 4552. The Maine Human Rights Act is Maine's anti-discrimination law. It prohibits discrimination on the basis of protected class in employment, housing, places of public accommodation, education, and extension of credit. Protected classes include: race, color, ancestry, national origin, sex, sexual orientation (which includes gender identity and expression), physical or mental disability, religion, age, and other categories in certain contexts.

d. Prioritize federal funds for digital equity and broadband access to state and local governments instead of funds directed to internet service providers.
e. Provide professional learning for educators when providing funding to close the digital divide in education.
f. Fund state agencies and community-based organizations to collect data to enable the state to set policy priorities and make decisions on where to spend available funds based on local data, not outdated national maps. Use state collected data to inform the national data.
g. Ensure the application process for community-planning grants in Maine regarding digital inclusion is fair, accessible, and culturally-tailored to serve community-based organizations/groups.
h. Dedicate funding to increase accessibility and support for students with disabilities. Accessibility is crucial as almost 20 percent of Maine students are disabled, and poverty and disability often overlap.
i. Provide stipends to enable parents/guardians to attend digital literacy training.

APPENDIX

List of Speakers in Alphabetical Order:

Pious Ali
Director for the Portland Empowered Program at the Muskie School for Public Service

Jennifer Alvino
Director of the Windham Public Library and President of the Maine Library Association

Nick Battista
Senior Policy Officer of the Island Institute

Andrew Butcher
Director of Innovation and Resilience ay the Greater Portland Council of Government

Susan Corbett
Director of the National Digital Equity Center

Kerem Durdag
President and CEO of Great Works Internet

Benjamin Jones
Attorney at Disability Rights Maine

Beth Lambert
Director of Innovative Teaching and Learning at the Maine Department of Education

Linda Mosely
Special Education Teacher for Kindergarten through Second Grades at Lewis S. Libby School in Milford, Maine

Lori Parham
State Director of AARP Maine

Michelle Probert
Director of MaineCare Services

Peggy Schaffer
Executive Director of ConnectME Authority

Angela Siefer
Executive Director of the National Digital Inclusion Alliance

Heinrich Snyder
Student at Hartford Seminary pursuing a Graduate Certificate in Religious Studies

Grace Valenzuela
District Director for Communications and Community