

Voting Rights in Maine



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

April 2018

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

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Maine Advisory Committee to the
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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, "Voting Rights in Maine." The report was adopted by the Advisory Committee by a unanimous vote of 10 to 0.

Sincerely,

Diane Khiel, *Chairperson*

Maine Advisory Committee

Maine Advisory Committee

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Acknowledgments

The Maine Advisory Committee thanks all of the participants in the April 2018 briefing for sharing their expertise. This report could not have been possible without the guidance and support of Barbara de La Viez, the designated federal official assigned to the Maine Advisory Committee. The Committee thanks Evelyn Bohor and Ivy Davis for their support of the Committee. In addition, the Committee greatly appreciates the contributions of intern Elizabeth Boyle.

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I. EXECUTIVE SUMMARY

The Maine State Advisory Committee to the United States Commission on Civil Rights examined the recent election law changes in Maine in support of the Commission's 2018 Statutory Enforcement Report. The Committee examined election law changes and identifies whether there were efforts to suppress the vote.

The Committee had a briefing on March 21, 2018. It invited experts and knowledgeable individuals to provide information to the Committee to help it better understand voting rights in Maine. The Committee heard from the Maine Secretary of State and representatives from the ACLU of Maine, Disability Rights Maine, the League of Women Voters of Maine, the Maine Heritage Policy Center, and the Portland Branch of the Maine National Association for the Advancement of Colored People.

This review was timely because the day before the briefing the Senate Intelligence Committee released its draft recommendations to address the Russian interference in our 2016 election. The Senate Intelligence Committee offered recommendations for securing American elections from foreign attacks, encouraging states to secure voter databases and to purchase voting machines that produce paper ballots; it also called for better cooperation between state and federal elections officials before November's midterm elections.

The Committee learned that in-person voter fraud is non-existent in Maine. In fact, the state has a statutory, regulatory, and community commitment to participation in elections. It has some of the most inclusive and protective voting laws in the country, making it one of the most democratic states in the United States. Its residents may register to vote on Election Day, there is no photo identification requirement, and those convicted of crimes are not deprived of the franchise.

To ensure Maine continues its commitment to broad participation, the Committee recommends that Maine adopt Automatic Voter Registration. The Committee also recommends that the State continue to allow same day registration.

The Committee also concludes that because voter fraud is essentially nonexistent (there has been only one case of voter fraud prosecuted in over 30 years)¹, there is no basis for imposing Voter ID requirements. It makes additional conclusions about the importance of student voting, the franchise for incarcerated individuals, access to polls for people with disabilities, and election integrity. These can be found in the Assertions and Themes and Conclusions section of the report.

¹ Ann Luther Testimony, testimony before the Maine Advisory Committee to the U.S. Commission on Civil Rights, Mar. 21, 2018, transcript, (Addendum on Photo ID), (hereafter cited as *2018 Transcript*).

II. INTRODUCTION

Maine, like many states, has contemplated making several changes to its election laws in recent years. It also has a changing electorate, which is growing older and more diverse every year. The Maine State Advisory Committee to the United States Commission on Civil Rights, in support of the Commission’s Statutory Enforcement Report in 2018, sought to examine these election law changes and any efforts to suppress the vote. The Committee had a briefing on March 21, 2018; it invited experts and knowledgeable individuals to provide information to the Committee to help it better understand voting rights in Maine.² The efforts of the Advisory Committee could not be timelier; the day before the briefing the Senate Intelligence Committee released its draft recommendations to address the Russian interference in our 2016 election, including a recommendation that states take steps to vote by rapidly replacing outdated and vulnerable voting machines.³

III. BACKGROUND

“Th[e] right to vote is the basic right without which all others are meaningless. It gives people, people as individuals, control over their own destinies.”⁴ The fundamental right to vote for all citizens over the age of 18 is constitutionally guaranteed by the 15th, 19th, and 26th Amendments. These Amendments prohibit franchise discrimination on the basis of race, sex, and age respectively. Nonetheless, various legal and procedural obstacles historically hindered the exercise of this right for certain groups. As a result, equal access to the polls for many voters developed slowly. Federal civil rights legislation enacted during the civil rights movement sought to correct this imbalance, not only by guaranteeing that individuals have the right to vote regardless of their minority status, but also by ensuring they can exercise it by casting a ballot.

Despite great progress in the decades that followed, many recent changes in election laws enacted by state and local governments, as well as Supreme Court decisions, have created or caused barriers to voting for communities of color and other protected groups.

² Appendix I, Agenda

³ Appendix II. “Russian Targeting of Election Infrastructure During the 2016 Election.” Submission by Secretary of State Matthew Dunlap, March 21, 2018.

⁴ Lyndon B. Johnson, President of the United States, Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act (Aug. 6, 1965) (transcript available at <http://www.presidency.ucsb.edu/ws/?pid=27140>).

1. Voting Rights in the United States

The 15th Amendment provides that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude,” and that, “Congress shall have the power to enforce this article by appropriate legislation.”⁵ The Amendment was ratified in 1870 and interpreted narrowly by the Supreme Court only to prohibit laws that used race as a qualification or pre-condition for voting.⁶ As a result, many states enacted various legal and procedural obstacles to prevent Black voters from participating in elections for decades after its ratification. Using techniques such as voter literacy tests, poll taxes, voucher requirements, and grandfather clauses, these states continued to disenfranchise people of color with impunity. In a recent decision by the Supreme Court, Chief Justice Roberts succinctly concluded that, “the first century of congressional enforcement of the [15th] Amendment . . . can only be regarded as a failure.”⁷

The 19th Amendment prohibits discrimination by denying persons the right to vote on the basis of gender.⁸ The 26th Amendment prohibits denying persons over the age of 18 the right to vote on the basis of age.⁹ The Voting Rights Act (VRA) of 1965 sought to correct racially discriminatory practices by prohibiting laws that had the effect of denying or abridging voting rights on the basis of race.¹⁰ This legislation increased voter participation by people of color in part because it included a “preclearance requirement” for certain states and counties that used discriminatory tests and had low voter turnout and registration during the 1964 Presidential Election. The preclearance requirement was a prophylactic measure against state legislation that hindered minority access to polls by requiring specific jurisdictions to submit proposed changes to their voting procedures to the Attorney General or a panel of federal judges for approval. If a state or district wished to remove themselves from the pre-clearance requirement, they could bring a “bailout” action at the U.S. District Court for the District of Columbia.¹¹

⁵ U.S. CONST. amend. XV, §§ 1-2.

⁶ *See, e.g.,* *United States v. Reese*, 92 U.S. 214 (1876).

⁷ *Northwest Austin Municipal Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 197 (2009).

⁸ The 19th Amendment was written by Susan B. Anthony and Elizabeth Stanton, leaders of the National Woman Suffrage Association, after a long and arduous fight for gender equality at the polls. Despite being first introduced in 1878, the amendment was not ratified until 1920.

⁹ It was ratified in 1971 as a response to youth activism during the Vietnam War. Proponents of the amendment argued that youth who were old enough to serve in the military and die for their country should be old enough to vote. Congress and the rest of the country agreed resoundingly.

¹⁰ *See* Voting Rights Act of 1965, 52 U.S.C. § 10301 (a)-(b) (1965). Despite its scheduled expiration date of 1970, the VRA has been amended five times to date: 1970, 1975, 1982, 1992, and 2006. The 2006 amendment stamped the VRA with a 25-year extension until it is to be reviewed for additional amendments. The major provisions of the VRA include Section 2, Section 3, Section 4, Section 5, Section 203, and Section 208.

¹¹ *Id.* at § 5.

When Congress reauthorized the VRA in 2006, it noted in its findings that there had been “significant progress” regarding “minority” voter registration, turnout, and representation in Congress.¹² In Alabama, for example, there was almost a 50 percent disparity between White and Black voter registration in 1965. By 2012, Black voter registration was only seven percent less than White voter registration. Additionally, one percent more Blacks than Whites actually voted in 2012. Congress stated clearly, however, that the VRA still served a vital purpose at the time of reauthorization. “[T]he evidence before Congress reveals that 40 years has not been a sufficient amount of time to eliminate the vestiges of discrimination following nearly 100 years of disregard for the dictates of the 15th amendment and to ensure that the right of all citizens to vote is protected as guaranteed by the Constitution.”¹³ However, there was not always unanimous support for extending the VRA. Senate reports soon began to emerge in which the minority expressed concern over a lack of findings of relevant differences between the covered and uncovered districts and extending the VRA for an additional twenty-five years.¹⁴ The final report makes this dissension apparent, featuring qualms from the minority regarding the unfair geographic reach of the law as well as a limited protection afforded only to majority-minority districts.¹⁵ The constitutionality of this reenactment was challenged in *Northwest Austin Municipal Utility District No 1. v. Holder* in which the Supreme Court made clear that the preclearance stipulation and coverage formula raised significant questions regarding their constitutionality.¹⁶ The Court suggested that the discriminatory practices which Section 5 was created to monitor may no longer exist in the covered districts, and Section 4(b) was based on outdated evidence that could no longer be used in the 21st century.¹⁷

The next challenge to the 2006 VRA reenactment came in 2013 in the Supreme Court case of *Shelby County v. Holder*.¹⁸ In *Shelby*, the Court struck down the coverage formula of the preclearance requirement. The Court reasoned that unequal treatment of states under federal law threatens principles of federalism and equal sovereignty, holding that a federal law should not apply to some states differently than others unless very particular circumstances require it to do

¹² Fannie Lou Hamer, Rosa Parks & Coretta Scott King, Voting Rights Act Reauthorization and Amendments Act of 2006, 109 Pub. L. No. 246, §2(b)(1), 120 Stat. 577 (2006) (amending the Voting Rights Act of 1955, 52 U.S.C. § 10301 (1965)), available at <http://www.gpo.gov/fdsys/pkg/STATUTE-120/html/STATUTE-120-Pg577.htm> (last accessed March 2, 2018).

¹³ *Id.* at § 2(b)(7).

¹⁴ S. Rep. No. 109-295, at 25-26 (2006).

¹⁵ Nathaniel Persily, *The Promise and Pitfalls of the New Voting Rights Act*, 117 Yale L.J. 174, 191 (2007).

¹⁶ *Northwest Austin Municipal Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 204 (2009). *See also* William S. Consovoy & Thomas McCarthy, *Shelby County v. Holder: The Restoration of Constitutional Order*, CATO Supreme Court Review, at 39.

¹⁷ *Id.* at 40.

¹⁸ *Shelby County v. Holder*, 570 U.S. 529 (2013).

so. In order to be constitutional, “a departure from the fundamental principle of equal sovereignty requires showing that a statute’s disparate geographic coverage is sufficiently related to the problem that it targets.”¹⁹ The Court concluded that “[n]early 50 years later, things have changed dramatically.”²⁰ “[V]oter registration and turnout numbers in the covered States have risen... There is no longer such a disparity.”²¹ The Court further explained that although the 15th Amendment gives Congress power to craft legislation to protect voters of color, it “is not designed to punish for the past; its purpose is to ensure a better future.”²² The Court concluded that the preclearance formula was unconstitutional and invited Congress to adjust the coverage formula to current registration and turnout data. Since this decision, states have been prematurely exonerated from their coverage through bailout procedures and have created photo ID requirements, closed polls in areas with large minority populations, and stopped or curtailed early voting.²³

As background for this report, we reference a student voting case decided by the Supreme Court. In the 1979 case of *Symm v. United States*,²⁴ the Court Symm’s practice of refusing to register college dormitory residents to vote unless they established that they would live in the community after graduation violated the 26th Amendment. The *Symm* case involved a tax assessor (Symm) who helped register students, at a local predominantly black college, to vote. The local college where the tax assessor was helping was a predominately black college. A federal district court ruled that Symm violated the Constitution and the 26th Amendment. The Supreme Court upheld this decision, holding that college students can choose to vote in their home state or in the state where they attend college and they should not face any intimidation or retaliation. Furthermore, the Maine Supreme Judicial Court had already ruled that college students could list a dormitory as their primary residence. Despite this ruling, some Maine elected officials have repeatedly sought to intimidate college students by continuing to propose legislation that would be discriminatory towards, and restrict the voting rights of, college students and deny out-of-state students’ right to vote in Maine.

2. Voting Rights in Maine

Maine has been relatively progressive in the field of voting rights access and has boosted strong numbers of voter turnout, having 72.8 percent of the voter eligible population vote in the 2016

¹⁹ *Id.* at 542.

²⁰ *Id.* at 547.

²¹ *Id.* at 551.

²² *Id.* at 553.

²³ Consvooy, *supra* at 61.

²⁴ *Symm v. United States*, 439 U.S. 1105 (1979).

election.²⁵ In 1831, Maine became one of the first states to work towards establishing a secret ballot, eliminating handwritten ballots, and mandated ballots be on white, not colored, paper. Maine was the third New England state to ratify the 19th Amendment in 1919, preceded by New Hampshire and Massachusetts.²⁶ In 1913, part of the Maine Progressive Era, reforms included creating the Initiative and Referendum, the Maine political party primary, and the People’s Veto.²⁷ Significant voting challenges also occurred in the early 21st century. In *Doe v. Rowe*,²⁸ a seminal Americans with Disabilities Act (ADA) voting rights case, the United States District Court of Maine found that the clause of the Maine Constitution that barred persons “under guardianship for reasons of mental illness” from voting was unconstitutional. They found this clause to be a violation not only of the ADA but also a violation of the 14th Amendment.²⁹ The case was later cited by the U.S. Supreme Court in *Tennessee v. Lane*.³⁰

In 2003, Maine House Paper No. 470 was introduced to lower the voting age to 17; today, young people may register to vote at 17 and vote in primaries if they will turn 18 by the general election.³¹ In that same year, Maine House Paper No. 159 was proposed to deny those “convicted of murder or a Class A crime or a crime in another jurisdiction that is comparable to murder or a Class A crime” from voting while they are incarcerated, but that effort failed.³² In 2009, there was a grassroots movement in Portland to allow lawful permanent residents the right to vote in municipal elections, which failed but was reintroduced in January of 2017.³³

To register to vote in Maine, you must be a resident in Maine, be a U.S. citizen, and be at least 17 years old. Additionally, Maine permits absentee voting and early voting, it has same-day voter registration, and it does not have any voter identification laws.³⁴ Furthermore, Maine is one of two states that allows incarcerated citizens full voting rights.³⁵

²⁵ *Maine Shoots to 2 in Nation for Voter Turnout*, U.S. News and World Report (Mar. 17, 2017), <https://www.usnews.com/news/best-states/maine/articles/2017-03-17/maine-shoots-to-2-in-nation-for-voter-turnout>

²⁶ <https://www.usconstitution.net/constamrat.html#Am19>

²⁷ H. Legis. Rec., 118-1013, 2nd Sess. (Me. 1998) (http://maine.gov/legis/lawlib/lld/statprovqipv/elegrec_1998-03-19_hp_ph1760-1762.pdf)

²⁸ *Doe v. Rowe*, 156 F. Supp. 2d 35 (D. Me. 2001).

²⁹ *Id.*

³⁰ *Tennessee v. Lane*, 541 U.S. 509 (2004).

³¹ *Primary Voting at Age 17*, Fairvote (last visited June 6, 2018),

http://www.fairvote.org/primary_voting_at_age_17#facts_17_year_old_primary_voting

³² *The History of Immigrant Voting Rights in Maine*, Immigrant Voting Project, Democracy For All (July 28, 2009),

<https://www.portlandmaine.gov/DocumentCenter/View/1156>

³³ Randy Billings, *Idea to Allow Noncitizen Immigrants to Vote Faces Hurdles*, The Portland Press Herald (Jan. 16, 2017), <https://www.pressherald.com/2017/01/16/idea-to-allow-noncitizen-immigrants-to-vote-in-portland-faces-hurdles/>

³⁴ *Voting in Maine*, Ballotpedia, https://ballotpedia.org/Voting_in_Maine

³⁵ *Criminal Disenfranchisement Laws Across the United States*, Brennan Center for Justice (June 5, 2017),

https://www.brennancenter.org/sites/default/files/analysis/Criminal_Disenfranchisement_Map.pdf

A new voting system, known as ranked-choice voting, was passed by voters in November 2016, and it continues to be refined to conform with the Maine Constitution.

A. Ranked-Choice Voting

Mainers voted in favor of ranked-choice voting (RCV), also known as preferential voting, in November of 2016. Under this system, voters rank the candidates on the ballot. If there are four candidates, then the voter ranks each one, one through four, with number one being their first pick. Ballots are then counted and the candidate with the majority of the votes wins. If there is no majority winner, then the candidate with the least number of votes is eliminated, and votes are reallocated to the electorate's second choice.

The Maine Supreme Judicial Court ruled, on May 23, 2017, that RCV is unconstitutional for state-level general elections; it offered no opinion on the use of RCV in primaries and federal elections. In a unanimous opinion, the Court ruled that the system violates a provision of the Maine Constitution that allows elections to be won by pluralities — and not necessarily majorities — of votes. The Legislature subsequently passed a law that would delay the implementation of ranked-choice voting in primaries and federal elections until 2021.³⁶

Maine voters responded to the Legislature by using the People's Veto, which is permitted under the state Constitution, to place a referendum on the June 2018 ballot. The referendum would overturn the parts of the 2017 law that delay the implementation of ranked-choice voting in primaries and federal elections until 2021; this allows RCV to be used immediately in the June 2018 primaries.

Now that the question is on the ballot for June 12, 2018, the parts of the 2017 law delaying implementation are on hold, and Mainers will decide if the legislature's delays will stand. Even if the People's Veto fails to pass in June, 2018, ranked-choice voting for party primary contests to be decided the same day will be used.

At the 11th hour, however, an apparent typographical error was found in the new law, which threatened a constitutional crisis unless the discrepancy is reconciled within the new law. The day before the Committee voted on the report, April 17, 2018, the Maine Supreme Judicial Court ruled in favor of RCV, allowing it to be used in the June primary.³⁷

³⁶ An Act to Implement Ranked-choice Voting in 2021, H.D. 1137, 128th Leg. (Me. 2017).

³⁷ Maine Senate v. Sec'y of State, 2018 ME 52, ¶ 33.

Advantages

RCV has garnered support from voting rights groups in Maine such as the Maine League of Women Voters, which stated: “It allows voters to vote for their favorite candidate without fear of helping elect their least favorite candidate. It minimizes strategic voting and eliminates the spoiler effect.”³⁸ Advocates believe that preferential voting will increase voter turnout by helping reduce the partisan divides that have occurred over the past few years. Supporters of RCV believe that it “increases civility” in the voting and election processes. RCV requires candidates to reach out to a broader base and forces them to speak to constituents of both political parties with the goal of eliminating some of the intense partisanship that plagues the country. To date, 11 cities throughout the U.S. that have implemented RCVs.³⁹ Where they have been implemented, only 5 percent of the electorate thought that the candidates criticized each other “a great deal of the time” but in jurisdictions without RCV, that number was 25 percent.⁴⁰ Furthermore, 42 percent of respondents in California cities using RCV believed that the 2013 campaigns in California were less negative, whereas 28 percent of respondents without RCV found this to be true.⁴¹ Arguably, this voting style eliminates the possibility of a victorious spoiler candidate. Supporters also herald RCV and its majority system of voting for “hold[ing] the powerful accountable.”⁴²

Studies have shown that when the electorate uses RCV, an overwhelming majority (87 percent) found it easy to understand.⁴³ Fifty-two percent of Maine voters supported it in 2016, as did the state Democratic Party.⁴⁴

Ireland and Australia use RCV in national elections. Maine will be the first state to use it. Perhaps it is used in U.S. cities and not more broadly because it is easy to centralize ballot counting in cities, people live closer together, and the technology to count is readily available. For example,

³⁸ Peter White, *Should We Vote for Candidates in Order Preference?*, Newsweek (Oct. 2016), available at <http://www.newsweek.com/should-we-vote-candidates-order-preference-514528>

³⁹ *Ranked Choice Voting / Instant Runoff*, Fairvote (last visited May 30, 2018), http://www.fairvote.org/rcv#where_is_ranked_choice_voting_used

⁴⁰ *Ranked Choice Voting in Practice*, Ranked Choice Voting Civility Project, FairVote (2014), <https://fairvote.app.box.com/v/APSA-Civility-Brief-2015>

⁴¹ *Id.* at 2

⁴² Howard Dean, *Howard Dean: How to Move beyond the Two-Party System*, The New York Times, Oct. 2016, available at <https://www.nytimes.com/2016/10/08/opinion/howard-dean-how-to-move-beyond-the-two-party-system.html>

⁴³ Francis Neely, *An Assessment of the ranked-Choice Voting in the San Francisco 2004 Election*, Public Research Institute, San Francisco State University (May 2005), available at <https://fairvote.app.box.com/v/2004-SF-rcv-assessment>

⁴⁴ *Maine Question 5 – Allow Ranked-Choice Voting – Results: Approved*, The New York Times (Aug. 1, 2017), <https://www.nytimes.com/elections/results/maine-ballot-measure-5-allow-ranked-choice-voting>

some parts of Maine choose to hand-count the votes while others do not. In cities, all jurisdictions use the same technology, which allows the counting process to be streamlined.

Disadvantages

Opponents of RCV argue that it decreases turnout rates and would lead to more errors when voting.⁴⁵ Many believe that it may be a confusing process, not only for the candidates to advocate but also for the electorate.⁴⁶ Additionally, many towns in Maine still choose to hand-count the votes, and opponents argue that the ranking system will be too confusing for people to record by hand.⁴⁷

There is ongoing debate about RCV's effects on voter turnout. While supporters argue that RCV gives the electorate more meaningful choices and thus increases turnout, opponents have argued the opposite. A study from Minneapolis, Minnesota examining 13 wards found that more affluent and white voters turned out at a higher rate than those of differing socioeconomic and racial backgrounds, despite the implementation of RCV.⁴⁸

As stated, RCV has faced its fair set of obstacles in Maine for a more specific reason –that its use in general elections on the state level has been deemed unconstitutional: the Maine Constitution states that a candidate can win office with a plurality, not necessarily a majority, of votes, but RCV hinges on candidates receiving a majority in order to win. Thus, it would be necessary for Maine to amend its constitution before voting on implementing this preferential voting system for state-level general elections.

3. Voter Suppression Efforts in Maine

Maine's voting laws are relatively unrestrictive and aim to accommodate and encourage voting; however, there have been regular and concerted false allegations of voter fraud committed by college students and persons of color. Investigations have not supported these claims; yet, efforts to suppress these voters have been undertaken at the highest levels of Maine government. The

⁴⁵ Jason McDaniel, *Ranked Choice Voting Likely Means Lower Turnout, More Errors*, Cato Unbound, Dec. 2016, available at <https://www.cato-unbound.org/2016/12/13/jason-mcdaniel/ranked-choice-voting-likely-means-lower-turnout-more-errors>

⁴⁶ Marina Villeneuve, *Maine Lawmakers At odds over Future of Ranked Choice Voting*, The Associated Press (Oct. 2017) available at <https://bangordailynews.com/2017/10/17/politics/maine-lawmakers-at-odds-over-future-of-ranked-choice-voting/>

⁴⁷ Doug Chapin, *Thank But No Thanks: Some Maine Towns Prefer Hand-Counting to New Machines*, University of Minnesota Libraries (March 2013), available at <http://editions.lib.umn.edu/electionacademy/2013/03/18/thanks-but-no-thanks-some-main/>

⁴⁸ Lawrence Jacobs & Joanne Miller, *Ranked-choice Voting: By the Data, Still Flawed*, StarTribune (Feb. 2014), available at <http://www.startribune.com/ranked-choice-voting-by-the-data-still-flawed/245283691/>

details of some of these efforts to suppress voters are described in the Assertions and Themes Section of the report.

IV. ASSERTIONS AND THEMES FROM MARCH 2018 BRIEFING

Maine has a statutory, regulatory, and community commitment to participation in elections. It has some of the most inclusive and protective voting laws in the country, making it one of the most democratic states in the United States. Its residents may register to vote on Election Day, there is no photo identification requirement, and those convicted of crimes are not deprived of the franchise.

Voter Suppression

Despite Maine’s commitment to broad participation, there are “remarkable...[but] predictable, attempts to prevent eligible voters from exercising their most basic democratic rights.”⁴⁹ There are a couple of methods of voter suppression: legislative and government official action.

1. Legislative Efforts

Voter Identification: Every legislative session since 2011 has seen the introduction of virtually the same boilerplate legislation requiring a voter to show a photo ID. A photo ID bill was defeated in the first session of the current legislature; Governor LePage, “in defiance,”⁵⁰ introduced virtually an almost identical bill in the second session. To date, no photo ID bill has passed.

Same Day Voter Registration: For 45 years, Maine voters have had the right to register in person, anytime up to and including Election Day. In 2011, however, the Maine state legislature repealed the same-day registration law. A People’s Veto campaign by voting rights activists successfully reversed the repeal by a 60 percent margin. To date, there has been no attempt to again repeal same-day registration.

Student Voting: Legislation has been repeatedly proposed in Maine that would establish a higher proof-of-residency standard for students residing in campus housing.

⁴⁹ Zachary Heiden Testimony, *2018 Transcript*, p. 27.

⁵⁰ Luther Testimony, *2018 Transcript*, p. 21.

2. Actions by Government Officials

In 2011, Maine Secretary of State Charles E. Summers, Jr., “launched an attack on Maine college students who had registered to vote, sending them threatening correspondence that was likely to deter them from exercising their voting rights.”⁵¹ This effort was prompted by Secretary Summers against 206 University of Maine students after allegations made by the then-chair of the Maine Republican Party, Charles Webster, who claimed, without any actual evidence, that students had voted illegally. An investigation of these allegations failed to produce any evidence of illegal voting or registration by any of these students. Nonetheless, Secretary Summers sent a letter to 191 of the students warning them that they might be violating Maine motor vehicle laws by not registering their vehicles in Maine. Secretary Summers did not enclose any instruction material or forms for registering vehicles or updating registrations with the letters; instead, he enclosed a “Voter Request to Cancel Registration” form that was created solely for the purpose of being sent to students.⁵²

In 2012, Mr. Webster was “more directly involved in efforts to intimidate and harass voters.” As noted in the background section, Mr. Webster claimed that “there were dozens, dozens of black people who came in and voted on Election Day.”⁵³ Webster’s proposed method for rooting out the “dozens of black people” was to send postcards to newly registered voters in certain rural areas with the intent to use any undeliverable postcards as proof of improper voter registration.⁵⁴

On November 7, 2016, the day before the general election, without any evidence, Governor Paul LePage issued a statement accusing Maine college students of committing voter fraud. The Governor alleged that students were voting in both Maine and other states and threatened “students who voted in Maine with investigation and prosecution for offenses related to motor-vehicle registration and ownership, which have nothing to do with the eligibility requirements for voting.” He also implied that the financial aid of students who vote in Maine may be jeopardized. The only group targeted was students.

In February 2018, Mayor Shane Bouchard of Lewiston sent a letter to newly registered voters. He warned residents, “If you drive a car in Maine, you are required to obtain a Maine driver’s license

⁵¹ Heiden Testimony, *2018 Transcript*, p. 28.

⁵² *Id.*

⁵³ Kristen A. Lee, *Maine GOP boss claims ‘hundreds’ of unfamiliar Black Voters flooded rural polls on Election Day*, *New York Daily News* (Nov. 15, 2012), <http://www.nydailynews.com/news/politics/maine-gop-boss-cites-mystery-black-voters-article-1.1202472>

⁵⁴ John Richardson, *Maine ACLU Warning Feds about Webster Comments*, *The Portland Press Herald* (Nov. 16, 2012), <https://www.pressherald.com/2012/11/16/maine-aclu-fears-voter-intimidation-by-republican-chairman>

within thirty days of establishing residency. Driving without a Maine license more than ninety days after establishing residency is a crime under Maine law.”⁵⁵ Essentially, Mayor Bouchard threatened voters with prosecution for not registering their motor vehicles or obtaining Maine driver’s licenses. While there is no disagreement that all drivers in Maine must comply with the motor vehicle laws, there is nothing in those laws that bear upon someone’s eligibility to vote in Maine. In a March 2018 letter to the Mayor, Secretary of State Dunlap rejected the action and responded: “The inaccuracies of your correspondence are undone by the lack of connectivity ... and were not derived from concerns about how Americans participate in democracy. Framing it thusly only arouses unfounded fear in the minds of the voting public, and is a disservice to the public discourse.”⁵⁶

Access to Polls for People with Disabilities.

Maine continues to confront barriers that impact voters with disabilities. The issues include physical barriers, training election officials, and voter education. The types of barriers and obstacles to voting are often things that are readily remedied.

Physical accessibility to polling places is a persistent concern for Mainers with disabilities.⁵⁷ The access problems include inadequate dedicated parking, curb problems, signage issues, as well as steps and high thresholds that make it impossible for a person using a wheelchair to enter the polling station. The Maine Secretary of State works collaboratively with disability groups to survey polling places for accessibility. A recent survey of polling stations found that 15 percent had either steps, high thresholds of several inches, or missing or inadequate ramps, which meant they were completely inaccessible or unsafe to a voter using a wheelchair or a person with a mobility issue using a walker or other device.

There are also barriers when poll workers and election officials are not adequately trained on the rights of these voters. In the past, despite legal provisions that specifically allow assistance, there are challenges by election officials to disabled voters requesting assistance from another person and challenges to the rights of voters on the basis of guardianship.

Felon Enfranchisement

Maine is one of only two states in the country that offers incarcerated citizens full voting rights (both during and after incarceration), *i.e.*, people eligible to vote are not disenfranchised because

⁵⁵ See Appendix III.

⁵⁶ See Appendix IV.

⁵⁷ Richard Langley Testimony, *2018 Transcript*, p. 37.

of a criminal conviction. There have been legislative efforts, however, over the last several years to curtail these rights. To date, these efforts have not prevailed.

Laws in other states that prevent felons from voting are deeply rooted in our country's troubled racial history and have a disproportionate impact on minorities.⁵⁸ This is true in many states; the magnitude of prisoner and ex-felon disenfranchisement elsewhere in the United States has serious implications for democratic process and racial inclusion. A study released in 2010 of New York's constitutional history traces that state's current felony disenfranchisement law to a century-long effort to keep African-American citizens out of the voting booth.⁵⁹

Ranked Choice Voting

Maine will be the first state to implement Ranked Choice Voting, which was passed by a citizens' referendum but has encountered challenges to its constitutionality under the Maine Constitution.

Election Integrity

Election security is a central issue in the public discussion about elections. Maine is continually examining and improving its election security protocols to ensure that its voting systems are protected from interference. In fact, "examining and improving our security protocols and insuring that each vote is counted accurately and verifiably has always been [Maine's] stock and trade."⁶⁰

Automatic Voter Registration

Automatic voter registration system (AVR), as the name implies, automatically registers eligible citizens to vote whenever they interact with government agencies, most notably the department of motor vehicles. Eleven states and the District of Columbia have AVR and it is gaining momentum – 19 states introduced automatic registration proposals in 2018.

Coalitions, which include the League of Women Voters of Maine, support new mechanisms to assist in voter registration, including AVR. These coalitions were part of driving AVR forward in Oregon, Alaska, and Connecticut and paid close attention to the language of the bills to ensure that the new systems of registration did not negatively impact underrepresented communities.

⁵⁸ See generally Erika L. Wood, *Florida: An Outlier in Denying Voting Rights*, Brennan Center for Justice (Dec. 16, 2016), <https://www.brennancenter.org/publication/florida-outlier-denying-voting-rights>

⁵⁹ *Id.*

⁶⁰ Statement of Secretary of State Matthew Dunlap. Available on file.

V. CONCLUSIONS

Voter ID Laws Disenfranchise Eligible Voters and Are Unnecessary and Expensive

According to a report by the Government Accountability Office, between 5 percent and 16 percent of eligible voters do not have the required government ID. This GAO study concluded that between presidential election years 2008 and 2012, voter participation fell in states where photo ID was implemented. More eligible voters are dissuaded from voting than ineligible voters are prevented from casting votes. Moreover, the impact of Voter ID laws is more severe on the elderly, ethnic minorities, and low income voters.⁶¹ Ann Luther of the League of Women Voters told the Committee that this could total twenty thousand voters in Maine's Presidential Election.⁶²

Voter ID laws are designed to address one exceedingly rare kind of voter fraud -- impersonating someone else at the polls. So rare is this phenomenon that a study conducted by Justin Levitt, a professor at the Loyola Law School in Los Angeles, found that out of the more than one billion votes cast between 2000 and 2014 in the U.S., there were 31 credible cases of fraud.⁶³ The Brennan Center for Justice notes that this number is likely high as it counts all credible cases, not only the ones that were prosecuted or which resulted in convictions.

Because voter fraud is essentially nonexistent, there is no cost-benefit to imposing Voter ID requirements. Moreover, when photo ID legislation was debated in the 125th Legislature, then-Secretary of State Charles E. Summers, Jr. convened the 2012 Elections Commission, which found, that “[t]he Commission, by a 4 to 1 vote, finds that the negative aspects of a Voter ID law outweigh its potential benefits and recommends that a Voter ID system not be pursued in Maine.”⁶⁴

Moreover, for people with disabilities and the elderly, who already find voting to be a challenge, there is no basis for creating another barrier to engage in civic life in a meaningful way.⁶⁵ The cost of obtaining documents and the burden of finding readily available public transportation are seemingly small obstacles that are magnified in the rush leading up to election-day.

⁶¹ *Citizens without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, The Brennan Center for Justice (Nov. 2006), http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf.

⁶² Luther Testimony, *2018 Transcript* (Addendum on Photo ID).

⁶³ Debunking the Voter Fraud Myth, The Brennan Center for Justice (Jan. 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>

⁶⁴ 2012 Elections Comm'n, Report of the 2012 Elections Commission, at 6

⁶⁵ Maine's elderly population is increasing. See <http://www.maine.gov/dhhs/oads/trainings-resources/documents/STATEPLANONAGING2016-2020DRAFT.pdf> (noting that “Since the last State Plan on Aging for 2012-2016, Maine's elderly population has increased dramatically. Maine's population has the highest median age in the United States.”).

Same Day Voter Registration Encourages Voter Turnout

Maine adopted same day voter registration in 1973. Prior to 1973, Maine ranked 21st among the states in voter turnout. By 2000, Maine ranked 3rd. Maine has consistently been in the top 5 states for voter participation during the entire period since.

In fact, in 2008, the five states with the highest voter turnout all had Election Day registration. The nine states with Election Day Registration had, on average, a voter turnout more than 7 percent higher than other states. Maine's turnout was more than 9 percent higher than other states.

The value of same day voter registration is clear when looking at the numbers: tens of thousands of Maine voters register during the last five days, including Election Day. In 2008, 55,806 voters registered during that period.⁶⁶ In 2010, 19,382 voters registered during that period.⁶⁷ The Legislature should not attempt to eliminate same day voter registration.

Student Voting

Government actions and deliberate misinformation may be causing confusion on the part of prospective student voters, leading to voter suppression. Legislation has been repeatedly proposed in Maine that would establish a higher proof-of-residency standard for students residing in campus housing. Treating some college students differently than others based on a purely practical choice of housing accommodations seems to be a violation of their Constitutional right to equal protection under the law, although students are not a protected class. For example, if an eligible student lived in a college dorm, she would have to meet the higher residency test. If the same student lived in a private apartment or off-campus home, she would be allowed to register under the same test as any other Maine resident. Such disparate treatment does not pass even a minimal definition of equal protection. Maine should not diminish these established rights.

The proposal that students should face additional voter registration barriers just because they live in college housing is inconsistent with the basic democratic principles of allowing all citizens to exercise the right to vote. It may also open the door to other forms of threat and intimidating messages to these or other voters. Maine should not diminish these established rights.

⁶⁶ Luther Testimony, *2018 Transcript*.

⁶⁷ *Id.*

Access to Polls for People with Disabilities

While Maine continues to confront voting barriers for people with disabilities, there is clearly collaboration between the Secretary of State and disability rights advocacy groups. These groups recommend that municipalities hire poll workers with disabilities and build relationships with existing disability resources to help review the accessibility of facilities, develop plans for compliance, and develop best practices for working with voters with disabilities.

Additionally, there should be training for poll workers, election officials, and others concerning the requirement that municipalities make reasonable modifications to afford equal opportunity to voters with disabilities and that people with disabilities have the right to get help with voting and to decide who will help them vote. A person with a disability can get help from a friend, family member, caregiver, service provider, or almost anyone else of his or her choosing except an employer or union member; he/she can also ask a poll worker for assistance with voting. Moreover, poll workers should be advised that they may not challenge the right of an individual to vote on the basis of guardianship status.

There also should be assistance provided to precincts to develop plans to provide physical and communication access consistent with the Americans with Disabilities Act and the Help America Vote Act.

Franchise for those Incarcerated Strengthens Social Ties and Commitment

In providing incarcerated citizens with the right to vote, Maine recognizes that there is no government interest served by felon disenfranchisement – much less a compelling one. Moreover, “the argument that allowing prisoners to vote would be costly and impractical is ethically unjustifiable. Similarly, the fact that prisoners lose many freedoms does not imply they should lose all their civil rights.”⁶⁸

There is evidence that continuing to recognize the citizenship of criminal offenders offers a viable pathway to rehabilitation and “responsible participation in civil society.”⁶⁹ Among the sentencing options criminal offenders face, loss of citizenship is not one. So long as citizenship pertains, so should the right to vote.

⁶⁸ <https://felonvoting.procon.org/view.resource.php?resourceID=000283> (citing Jeff Manza, PhD, Professor of Sociology and Political Science at the Institute for Policy Research at Northwestern University, and Christopher Uggen, PhD, Distinguished McKnight Professor of Sociology at the University of Minnesota, *Locked Out: Felon Disenfranchisement and American Democracy*, 2006).

⁶⁹ Mandeep K. Dhimi, *Prisoner Disenfranchisement Policy: A Threat to Democracy?*, *Analyses of Social Issues and Public Policy* (Vol. 5) (2005), at 5.

Election Integrity

Our democracy rests not only on the integrity of our election process, but also on the public confidence that citizens have in our elections. Voting systems must be secure, accurate, recountable, accessible, and transparent. “[V]oters tend to be more confident when they don’t wait a long time to vote, when they encounter polling place officials who seem competent, and when they vote in person rather than by mail.”⁷⁰

Maine has a generations-long record of professional, nonpartisan, voter-friendly administration of elections at both the state and municipal level – the town and city clerks are among the most recognized and trusted government officials in Maine’s communities.

Maine should join the other 23 states in subscribing to ERIC, the Electronic Registration Information Center, which can help states maintain accurate registration rolls when voters move between states.

Automatic Voter Registration

Maine should adopt Automatic Voter Registration (AVR). When done correctly, AVR helps “modernize the current paper-based systems with systems that use electronic government data to identify and register eligible Americans to vote.”⁷¹ Moreover, AVR can create governmental efficiencies by “standardizing a single unified change of address system for the benefit of multiple participating state agencies.”⁷²

⁷⁰ *Voter Confidence*, MIT Election Data and Science Lab, <https://electionlab.mit.edu/research/voter-confidence>

⁷¹ Luther Testimony, *2018 Transcript*.

⁷² *Id.*

APPENDICES

Appendix I



Maine Advisory Committee
U.S. Commission on Civil Rights

Briefing on Voting Rights

Wednesday, March 21, 2018

Lewiston City Hall, 27 Pine Street in Lewiston, ME 04240

AGENDA

- I. Welcome and Introductions** 12:45 p.m.
- II. Briefing**
- Panel One: Secretary of State 1:00 p.m.
Matthew Dunlap, Secretary of State, Maine
- Panel Two: Advocates 1:45 p.m.
Terry Brown, Director of Communications, Maine Heritage Policy Center
Zachary Heiden, Legal Director, ACLU of Maine
Ann Luther, Past President, League of Women Voters of Maine
- Panel Three: Advocates 2:50 p.m.
Richard Langley, Deputy Director, Disability Rights of Maine
Kristen Aiello, Managing Attorney, Disability Rights Maine
Rachel Talbot Ross, Past President, Portland Branch, Maine NAACP
- III. Public Comment Session** 4:00 p.m.
- IV. Adjournment**



MATTHEW DUNLAP
SECRETARY OF STATE

Appendix II

STATE OF MAINE

OFFICE
OF THE
SECRETARY OF STATE

Secretary of State Matthew Dunlap Briefing Comments to the Maine Advisory
Committee to the United States Commission on Civil Rights
City Council Chambers, Lewiston, Maine
March 21, 2018

The model of democratic self-governance through voting is elegant in the simplicity of the idea. Making it work requires thought, transparency and accountability; making it *available* has, historically, been where the fight has occurred. In Maine, the Legislature has bent to the work of voter access with zeal, and as a result, we have some of the most accessible elections in the nation.

Since 1973, we've allowed eligible voters to register up to and including Election Day, and in 1999, we stopped asking people to fill out affidavits to obtain an absentee ballot. These and countless other measures consistently result in Maine having among the highest voter turnout for elections in the country: In the last two presidential election cycles, turnout of voter-age eligible citizens exceeded 70%.

Still, we see challenges to making sure all voters are properly informed of their access to the ballot. Earlier this month, I responded to an official letter from the City of Lewiston, sending notice to voters who registered to vote on Election Day that outlined the many obligations of Maine citizenship. While not incorrect in stating that Maine citizens who have established residency are routinely expected to register their vehicles and update their licenses, among other obligations of establishing residency, what was not included in his letter was any information that ties these requirements to voting. Maine residents who are U.S. citizens and have reached the age of majority have an unquestionable right to vote. Other laws regarding residency requirements are not derived from concerns about how Americans participate in their democracy. Framing it thusly only arouses unfounded fear in the minds of the voting public, and is a disservice to the public discourse.

Last year, as a member of the now-defunct Presidential Advisory Commission on Election Integrity, I became similarly concerned that some of my fellow commissioners were seeking to disenfranchise voters under the guise of improving the security of the voting process. The commission was established by executive order in May of 2017 to answer monster-under-the-bed questions about "voter fraud," but the implicit rationale for its creation appears to have been to substantiate President Trump's startling claims that up to 5 million people voted illegally in 2016. Chaired by Vice President Pence, the commission had the chance to answer questions about potential fraud and to highlight best practices to enhance voter confidence in our election systems. Instead, the commission cloaked itself in secrecy – even from its own members.

I feel strongly that recommendations for changes in public policy – whether you agree with them or not – ought to come through an open, public discussion where any American can weigh in. To that end, I filed a lawsuit to obtain the working documents of the commission, but still have not received any response that might shed light on the goals and work of the commission's leadership. That quest is ongoing.

Parallel to the goal of accessibility for the voter is the importance of voter confidence in the administration of the election and the security of the process. In Maine, we adhere to a robust chain of custody of the ballot, to a degree that we can describe with authority the transit of a ballot from the moment it comes off a printing press to when it is finally tabulated and secured in a tamper-proof container under seal.

Election security, especially electronic security, has become a central issue in the public discussion about the conduct of our elections and the public's confidence in them. Examining and improving our security protocols and insuring that each vote is counted accurately and verifiably has always been our stock in trade. Maine's best practices are reflected in recommendations offered forth by the U.S. Senate Intelligence Committee, which came to us just this week. The narrative of those recommendations is a coda of how Maine's legislature has crafted election law.

Of course, we shouldn't pat ourselves on the back too much. As a former commercial cook, I remember well the charge that any cook is only as good as the last meal they prepared. Going forward, we must continue to question and test our processes and as much as possible provide to the public the assurance that our elections are decided by the voters, and not by any outside influence.

In a few months, Maine will be implementing ranked-choice voting on the largest scale the method has ever witnessed. Our current protocols of security and custody will serve the implementation and tabulation of this election very well. It is our conviction that when the tabulation for the June primary nominations are certified, they will enjoy the highest level of public confidence.

That confidence is crucial to the success of the election process. The late charges of meddling in our elections by foreign actors has threatened to greatly undermine the confidence of the public in our democratic processes. I, for one, applaud the U.S. Department of Homeland Security for their outreach these past several months to the several secretaries of state and other chief elections officers, to brief us on their observations and to open lines of communication, utilizing our offices as partners, instead of as adversaries. The strength of these partnerships and the diligence of local elections administrators will undoubtedly result in enhanced public confidence in elections management.

We should not hesitate to argue, disagree and challenge ourselves and each other in this process. Only in the crucible of accountability through discernment and debate will we develop policies and methods that deserve the public support they need to be trusted and successful.

RUSSIAN TARGETING OF ELECTION INFRASTRUCTURE DURING THE 2016 ELECTION

SUMMARY OF DRAFT SSCI RECOMMENDATIONS

The Senate Select Committee on Intelligence has examined evidence of Russian attempts to target election infrastructure during the 2016 U.S. elections. The Committee has reviewed the steps state and local election officials take to ensure the integrity of our elections and agrees that U.S. election infrastructure is fundamentally resilient. The Department of Homeland Security, the Election Assistance Commission, state and local governments, and other groups have already taken beneficial steps toward addressing the vulnerabilities exposed during the 2016 election cycle, including some of the measures listed below, but more needs to be done. The Committee recommends the following steps to better defend against a hostile nation-state who may seek to undermine our democracy:

1. Reinforce States' Primacy in Running Elections

- States should remain firmly in the lead on running elections, and the Federal government should ensure they receive the necessary resources and information.

2. Build a Stronger Defense, Part I: Create Effective Deterrence

- The U.S. Government should clearly communicate to adversaries that an attack on our election infrastructure is a hostile act, and we will respond accordingly.
- The Federal government, in particular the State Department and Defense Department, should engage allies and partners to establish new international cyber norms.

3. Build a Stronger Defense, Part II: Improve Information Sharing on Threats

- The Intelligence Community should put a high priority on attributing cyber attacks both quickly and accurately. Similarly, policymakers should make plans to operate prior to attribution.
- DHS must create clear channels of communication between the Federal government and appropriate officials at the state and local levels. We recommend that state and local governments reciprocate that communication.
- Election experts, security officials, cybersecurity experts, and the media should develop a common set of precise and well-defined election security terms to improve communication.
- DHS should expedite security clearances for appropriate state and local officials.
- The Intelligence Community should work to declassify information quickly, whenever possible, to provide warning to appropriate state and local officials.

4. Build a Stronger Defense, Part III: Secure Election-Related Systems

- Cybersecurity should be a high priority for those managing election-related systems. Basic but crucial security steps like two-factor authentication for those logging into voter databases can improve the overall election security posture. States and localities should also take advantage of DHS offerings, to include DHS's network monitoring capabilities.

- The Committee recommends DHS take the following steps:
 - Working closely with election experts, develop a risk management framework that can be used in engagements with state and local election infrastructure owners to document and mitigate risks to all components of the electoral process.
 - Create voluntary guidelines on cybersecurity best practices and a public awareness campaign to promote election security awareness, working through the U.S. Election Assistance Commission (EAC), the National Association of Secretaries of State (NASS), and the National Association of State Election Directors (NASED).
 - Expand capacity to reduce wait times for DHS cybersecurity services.
 - Work with GSA to establish a list of credible private sector vendors who can provide services similar to those provided by DHS.

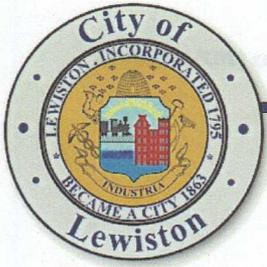
5. Build a Stronger Defense, Part IV: Take Steps to Secure the Vote Itself

- States should rapidly replace outdated and vulnerable voting systems. At a minimum, any machine purchased going forward should have a voter-verified paper trail and no WiFi capability. If use of paper ballots becomes more widespread, election officials should re-examine current practices for securing the chain of custody of all paper ballots and verify no opportunities exist for the introduction of fraudulent votes.
- States should consider implementing more widespread, statistically sound audits of election results.
- DHS should work with vendors to educate them about the vulnerabilities of both the machines and the supply chains.

6. Assistance for the States

- The Committee recommends Congress urgently pass legislation increasing assistance and establishing a voluntary grant program for the states.
 - States should use grant funds to improve cybersecurity by hiring additional Information Technology staff, updating software, and contracting vendors to provide cybersecurity services, among other steps.
 - Funds should also be available to defray the costs of instituting audits.

Appendix III



EXECUTIVE DEPARTMENT

Shane D. Bouchard
Mayor

February 5, 2018 Dear

Resident:

I would like to thank you for registering to vote in last fall's municipal election. Participating in elections is an important measure of a vibrant local community and we are proud of the high level of participation we see in local elections.

I would also like to remind you that along with the right to vote in state and local elections come certain duties and responsibilities. By registering to vote in Lewiston, you have declared residency in Maine, which has consequences for compliance with other Maine laws. If you drive a car in Maine, you are required to obtain a Maine driver's license within thirty days of establishing residency. Driving without a Maine license more than ninety days after establishing residency is a crime under Maine law. In addition, if you own a vehicle here, state law also requires you to register that vehicle in Maine within thirty days of establishing residency. Finally, by declaring Maine as your voting residence, you may be treated as a resident of Maine for income tax purposes and be subject to Maine income tax law.

If you are a new resident to Lewiston and Maine, I would again like to welcome you to our community and thank you for your participation in our civic life.

Sincerely yours,

Shane D. Bouchard
Mayor

Appendix IV



MATTHEW DUNLAP
SECRETARY OF STATE

STATE OF MAINE
OFFICE
OF THE
SECRETARY OF STATE

9. March 2018

The Honorable Shane Bouchard, Mayor
City of Lewiston
27 Pine Street
Lewiston, ME 04240

Dear Mayor Bouchard,

I have come into receipt of a communication distributed by your office to U.S. citizens residing in the City of Lewiston regarding the administrative processes they accessed in order to vote in the November election last. In this communication, which was sent under your hand, you outline in assertive terms the many obligations of citizenship, including but not limited to the payment of excise taxes for vehicle registration, obtaining a Maine driver's license, etc. It is to be understood by this reader that the recipients consist primarily of voters who registered on Election Day and who may have come from different municipalities. While the letter's contents are indeed factual, I must observe that the respective processes are not relational; construing them as such leaves the right to vote as subordinate to bureaucratic checklists – which neither the constitution nor the statutes contemplate – and further, it does seem to be a rather awkward way to welcome new residents to a community.

In contemplating this, we take our guidance from the United States Supreme Court in *Symm v. United States* (439 U.S. 1105 (1979)), which held that denying college students the presumption of *bona fide* residency is a violation of the 26th Amendment to the Constitution.

In voter registration, we understand that residency is something that is established, not chosen; one way to indicate your residency is to register to vote. So is obtaining a driver's license, purchasing a home, renting an apartment, or a host of other routine actions a citizen takes when settling somewhere. But the key in Maine law is found in 21-A MRSA § 112 paragraph 1: "The residence of a person is that place where the person has established a fixed and principal home to which the person, whenever temporarily absent, *intends to return* (emphasis mine)." Election law assumes that residency is that place where you plan on returning to – and leaves to fate the possibility that those plans may change. Practically all of Maine law contemplates this, and further, that compliance with the obligations you cite takes not a little time and effort. Most importantly, those requirements were not crafted with the intent to pose as barriers that must be overcome before a citizen can exercise the right to vote, as described in *Symm*.

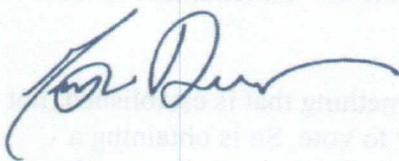
While you cite the requirements in law accurately, what is not included is any information that ties these requirements to voting. U.S. citizens who have reached the age of majority have, in the State of Maine, an unquestionable right to vote. If one does not obtain or update a Maine driver's license, it will almost certainly cause problems for the holder, to be sure. Such inconveniences include being called by Superior Court for jury service in a county in which you no longer live (which I know something about; it happened to me – because I hadn't updated my driver's license!), not receiving important notices from the Bureau of Motor Vehicles, letters from the judicial system, and, as you note, the potential to run perpendicularly to the law. But not updating a driver's license or failing to register a vehicle doesn't prevent one from voting.

Compliance with the laws you cite depends on the individual. There is no mechanism in law to cross-reference the voter file with tax information, vehicle registration, or driver's license information. To do so would be a Herculean task, even if anyone had the clear authority to engage in such a regulatory action. Enforcement of these laws occurs, when applicable, upon receipt of a complaint or during the course of an investigation. I do not believe, in the context of voter participation, that offering foreboding warnings of dire consequences from failing to oblige administrative requirements attendant to establishing residency can be construed as anything other than an effort to discourage our fellow Americans from participating in their constitutional right to self-governance – whether you intend that to be the message or not.

In short, the accuracies of your correspondence are undone by the lack of connectivity between the several titles of Maine law from whence they have been retrieved, as the discrete policy objectives of the penalties you cite were to ensure compliance with motor vehicle and tax laws, and were not derived from concerns about how Americans participate in their democracy. Framing it thusly only arouses unfounded fear in the minds of the voting public, and is a disservice to the public discourse.

I am happy to entertain any questions you may have; and I am thankful for you to consider my observations for what they are intended to be: friendly assistance to a fellow public servant. In that spirit, I am and shall remain

Very sincerely yours,



Matthew Dunlap
Secretary of State

cc: Lewiston City Council, Sen. Nathan L. Libby, Rep. James R. Handy, Rep. Roger Jason Fuller, Rep. Jared F. Golden, Rep. Heidi E. Brooks