



TO: The Honorable Louis Luchini
The Honorable John Schneck, Co-Chairs
Members of the Joint Standing Committee on Veterans and Legal Affairs

DATE: May 15, 2019

RE: LD 1730 An Act To Amend the Laws Governing Elections

Good morning. My name is Ann Luther. I'm the Advocacy Chair of the League of Women Voters of Maine, a volunteer, and a resident of Trenton. The League of Women Voters of Maine submits the following testimony *Neither For Nor Against* LD 1730.

The League of Women Voters of Maine is a nonpartisan political organization that has been working since 1920 to encourage informed and active participation in government, to increase understanding of major public policy issues, and to influence public policy through education and advocacy. We never support or oppose any political party or candidate.

Most of the provisions in LD 1730 are technical or housekeeping in nature and do not require comment. We start from the premise that the Secretary of State does not intend any of these changes to reverse policy decisions incorporated into voting law as written and previously enacted. We have no issue with technical fixes or tweaks to clarify or make it easier to administer the law, but we oppose the process of introduction provisions in an agency omnibus bill that would substitute new policy preferences for those already decided in the policy-making arena or that open new policy areas better handled in stand-alone legislation.

Here are our comments:

Section 2. We can see practical and security reasons for limiting public access and FOA requests for original paper ballots. We are not sure what public interest is served by limiting access to digital ballot images, especially since the term, "ballot image," is sometimes used to cover not only a facsimile image of the completed paper ballot but also a digital representation of the choices made on that ballot. We would absolutely oppose this provision if it prevented the digital cast vote record in ranked choice voting contests from being released to the public as soon as practicable after the election. In the 2018 election, independent third parties sought and obtained the CVR and immediately ran their own tabulations with the data. This did not interfere with the election and did not violate anyone's privacy. Rather, it was a welcomed

opportunity to backstop the work of election officials and add another layer of public confidence to the entire process.

Section 4. It seems a little unclear whether the added language is intended to cover test ballots from all elections or only municipal elections. If the former, it might be clearer to begin a new sentence or to move it up in the paragraph to before, “Notwithstanding ...”

Sections 18, 28, and 29. It appears that the Secretary of State is considering replacing the locks and numbered seals that have long been used to secure the metal boxes containing post-election ballot materials. Since public understanding and observation of these protocols is essential to their effectiveness, we are wondering what the new system will be and how the public will be informed of what to expect. We can see a good reason to allow some flexibility in statute. We hope the specifics can be articulated in rule.

Sections 24 and 25. The repeal of §682 and proposed enactment of §683 open some new policy areas that seem more far-reaching than may be appropriate in this kind of omnibus bill. We would have preferred to see this proposal presented as a stand-alone bill. Some of these provisions may be crafted to address widely publicized issues -- and even litigation -- that arose during the 2018 election cycle. A few points:

- It is not clear whether the traditional practice whereby candidates reach out to shake hands and greet voters at the entrance to the polls would be allowed under paragraph 1. Some might consider these greetings to be “interfere[nce] with the free passage of voters” Given the sensitivities around this topic, we are concerned that anything less than complete clarity in this context will eventually result in problems.
- We support the stipulation in paragraph 2 that permits signature-gathering for citizen initiatives within the voting place, space permitting, with the following caveat. This provision does not appear to allow for activities other than those specified -- signature collection for a people’s veto or citizen initiative. Limiting the permissible activities in this fashion would create a content-based restriction on political activity within this physical space. Courts have often invalidated content-based restrictions on speech -- especially political speech. Moreover, it is not clear what state interest would be served by disallowing them. Would people opposing a people’s veto be allowed to gather signatures on their materials? What about people simply articulating a political view?
- What about other nonpolitical charitable activities that were formerly expressly permitted at the discretion of the clerk or the warden? We know that some of the towns with the most successful records for voter turnout have lively activities at the

polling place on Election Day. We would not want to see these activities curtailed by the state if a town were desirous of allowing them.¹

- Paragraph 3 would prohibit the solicitation of campaign contributions or MCEA qualifying contributions within the voting place, regardless of whether that candidate is on the ballot. We can see a rationale for barring candidates from the voting place if they are on the ballot, but what about other candidates? Although this broader restriction would be generally consistent with the traditional practice in Maine, it raises the same potential free speech issue identified above.

Section 32. We support the language proposed, which clarifies that the certified results of the election are the results prepared by the Secretary of State and that the Governor's role in signing the election certificate is ministerial.

Section 33 begs the question what is a "qualified" courier. The use of couriers is also mentioned in 21-A MRS 712. We suggest that a standard be adopted -- perhaps in rulemaking -- to specify the qualifications referenced here.

Section 41 makes provision for delivery of absentee ballots to a secured drop box, enabling some of the infrastructure that might support evolution to a vote-by-mail system. In the here-and-now, however, this slightly increases the chance of absentee ballots being delivered with an unsigned envelope or other impropriety that might disqualify the ballot, a risk that occurs now with absentee ballots that are delivered through the mail. In an ideal world, we can envision a system whereby voters are automatically notified whether their ballot has been received and approved so that they have a chance to correct any error before Election Day.

Section 43. We wish the notice of early processing would be a public notice provided not only to the Secretary of State and the municipal parties but also to the public at large, including unaffiliated voters in the municipality who might be interested in the conduct of elections in their town.

Thank you for the opportunity to testify on LD 1730.

¹ "Why Hope always has the highest voter turnout at elections," William Jones, PenBay Pilot, November 14, 2018
<https://www.penbaypilot.com/article/why-hope-always-has-highest-voter-turnout-elections/110527>