

ELECTION OF MAINE'S ATTORNEY GENERAL

The State of Maine elects its Attorney General along with two other constitutional officers -- the Secretary of State and the State Treasurer -- and one statutory officer -- the State Auditor-- in a manner unique in the nation: election by secret ballot at a joint session of the Legislature. The overwhelming majority of states choose their chief legal officers through a direct statewide election; in a few states, the Governor appoints the Attorney General; in Tennessee, the State Supreme Court appoints the Attorney General.

The problem of how to choose the Attorney General is a difficult one. The principal functions of the office are to provide advice to the executive branch, to represent the executive branch in court, and to prosecute crimes that may be committed by executive officials. When all voters elect the Attorney General, a candidate has to mount a statewide campaign, which means raising a substantial amount of money and assembling a campaign staff. As a result, a successful candidate enters office with campaign contributors who may seek influence over the exercise of the office's powers, and campaign workers who may seek positions in the office, requiring the discharge of existing staff. The objectivity of the Attorney General's advice, positions in court and prosecutorial decisions may be severely compromised by such campaign activities. When the Attorney General is appointed, these problems are even greater, since s/he has no independence from the executive branch, and can be discharged if s/he takes positions that incur the displeasure of the chief executive. The most notorious example of this was the firing of Special Prosecutor Archibald Cox by President Nixon, when Mr. Cox's investigation of crimes in the executive branch got too close to the White House.

The Maine system avoids both these dangers. In order to be elected in Maine, a candidate must secure the support of a majority of the members of his or her party who are elected to the Senate and the House of Representatives every two years, so that he or she will be that party's nominee at the joint convention held in early December, and will become the Attorney General if his or her party is in the majority. There is thus no need for a statewide campaign, and the Attorney General's continuance in office does not depend on the pleasure of the chief executive.

The consequences of this system for the conduct of the affairs of the office are profound, because when a new Attorney General takes office s/he is not beholden to campaign contributors, nor is there any pressure on him or her to discharge existing staff to make way for campaign workers. All that changes is the person of the Attorney General. As a result,

there have never been any political firings in the Maine Office of the Attorney General, and the office is run by professional lawyers who invariably survive from one administration to the next. This means that the office's functions described above are discharged in as professional manner as possible.

The problem with the Maine system is the lack of public awareness of the process of choice of the Attorney General. There are 186 total seats in the Legislature (35 in the Senate and 151 in the House), and the party with the majority of those seats must necessarily have at least 94, and probably more. This means that to be the chosen candidate from the majority party, one must secure the support of 50 to 55 current or prospective legislators. The process of doing so is intensely personal, for each candidate must contact each member of his or her party individually to learn the conditions of that person's vote. For example, it was widely known some years ago that, in order to have a chance for the support of a certain legislator from a remote part of the state, a candidate for Attorney General was obliged to drive out to the legislator's house and talk to him in his kitchen.

Usually the campaign for the next Attorney General begins once the current Attorney General is chosen, particularly if it is known that the seat will be vacant in two years either because the incumbent is known to be running for other office or because the incumbent is barred from seeking a fifth term because of term limits. The candidates are self-proclaimed and almost invariably consist of current or recent members of the Legislature, usually the House, where most of the votes reside. Although there is no constitutional requirement that the Attorney General be a lawyer, s/he always has been, and there are very few lawyers in the Legislature. Thus, the field of prospective candidates is extremely small, consisting of lawyer members of the majority party.

There is no public aspect to the process. None of the candidates is required to disclose publicly what his or her policies would be with regard to the discharge of the powers of the Attorney General. It is difficult to see what would lead any of the candidates to expose the process to more public scrutiny. The position of the Attorney General is one of the most important in state government, and the state would benefit if more were known about the persons who seek it before they take office and if the process were more open to the public.

*- Cabanne Howard,
Assistant Professor of Law and Public Policy, University
of Maine Law School*

Privatization and Health Care on Democracy Forum

Privatization is the topic for the August Democracy Forum produced by the Downeast League in cooperation with WERU-FM community radio in East Orland. Guest experts will be Paul Verkuil, author of *Outsourcing Sovereignty: Why Privatization of Government Functions Threatens Democracy and What Can We Do about It*, and Si Kahn, co-author of *The Fox in the Henhouse*. Paul Verkuil is a professor at the Benjamin Cardozo School of Law and is a leading scholar on law and regulation; Si Kahn is founder and executive director of Grassroots Leadership and a long-time activist in civil rights and labor issues. At this time, when even our nation's security is being outsourced, our experts will help us understand how this is affecting our democracy.

Our *Privatization* program follows recent programs on *Lobbying at the Federal Level* and on *Corporations*. This sets the scene for the September discussion on *Health Care* that will explore how privatization and corporate lobbying advance or hinder the nation's search for a better health care delivery system.

Since you will read this after the broadcast date of August 2, you can find the archived program as Weekend Voices at www.weru.org. Our programs are also linked to the WERU archives through lvme.org/forum.html. Democracy Forum is moderated by Ann Luther, produced by Marge May, and broadcast at WERU - 89.9 FM on the first Saturday of each month at 3 pm during this election year. The *Health Care* program is scheduled for September 6.

- Linda Hoskins, Downeast LWV
For Ann Luther, Marge May, Bonnie Preston, Pam Person, and Linda Washburn

Easy to Read Voter Guide

In a cooperative effort with the Maine Elections Division, Literacy Volunteers of Maine, and the Disabilities Rights Center, the League of Women Voters of Maine is creating a Maine *Easy to Read Voter Guide*. The 20-page, non-partisan guide will cover the voting process including: registering,

absentee ballots, voting, what to keep in mind when you go to the polls, political parties, the presidential race, the races for senate and the two house seats, and any statewide ballot or bond issues. The text will be at or below a fifth grade reading level.

The plan is to distribute at least 15,000 free paper copies of the *Easy to Read Voter Guide* for the November 4, 2008, General Election to citizens throughout Maine. LWV Maine's Education Fund and the Emily Farley Fund have provided funds for the project. The *Guide* will be posted on the LWV of Maine website, www.lvme.org. If you know anyone who could be a distribution partner or who may be interested in helping with distribution from late September into October, please contact Barbara McDade bmcdade@bpl.lib.me.us from LWVME, or Sarah Robinson sarah@lvmaine.org from LV Maine!

One in seven Maine adults cannot read this sentence. Approximately 150,000 people in Maine are functioning at the lowest level of literacy. Adults with low literacy skills have trouble with everyday activities such as reading a consent form at the doctor's office or a prescription label, completing a job application, registering to vote, or helping kids with homework. If you want more information about Literacy Volunteers of Maine please go to www.lvmaine.org.

The idea for the guide came from Sarah Robinson's colleague Elizabeth Raymond at Oregon Literacy, who partnered with LWV of Oregon to produce their guide www.oregonliteracy.org/news/ervg.php. LWV of California was the first to produce a low literacy guide, which can be viewed at www.easyvoter.org.

- Barbara McDade
Co-President LWV-Maine

Maine Clean Elections Act - Legislative Summary

The last legislative session, the 123rd, saw several changes to the Clean Elections Act, mostly focused on improvements to the gubernatorial system. The supplemental budget included language to restore funds to the Clean Election Fund in time for the 2010 election, funds that had been previously "borrowed" to fund other state programs. Concerns raised during the 2006 gubernatorial race led to several other changes, the most significant being an increase in the number of Qualifying Contributions

required for gubernatorial candidates and a new ban on paying family members.

One concern raised during the last gubernatorial race was that it might be too easy for candidates to qualify for public funds. After much discussion and analysis, the legislature responded by raising the qualifying bar from 2,500 to 3,250 Qualifying Contributions for gubernatorial candidates – a 30 percent increase over 2006. This change will help to ensure that candidates running for Maine’s highest office demonstrate the in-depth public support that marks a viable candidacy before receiving Clean Election funds.

In response to the high-profile controversy that followed the revelation that gubernatorial candidate Barbara Merrill had paid her husband more than \$100,000 from her Clean Election funds, the Legislature imposed a ban on paying family members out of public funds. The ban applies broadly to household members and businesses in which the candidate has a significant interest except under very narrow circumstances. Payments to family members are allowed only if the payment is a legitimate campaign expense and is paid to someone who demonstrates that the work done – and the rate charged – is consistent with their normal course of business for other clients. Reimbursement for out of pocket expenses is still allowed. This bill, LD 2015, also requires more disclosure of expenditures made to family or household members by all candidates.

Other policy changes were enacted to preserve the integrity and viability of the system and to strengthen the Ethics Commission’s ability to identify non-viable candidates. The Commission now has clear authority to decertify candidates, new protections are in place to make sure qualifying contributions can be verified, and it is illegal to assist an opponent in order to get more Clean Election funding. All gubernatorial candidates will be audited and will begin their campaigns with much clearer expectations for reporting.

The distribution scheme for gubernatorial candidates was also changed to put more money up front and less in matching funds. In 2006, Clean Election gubernatorial candidates received most of their funding in the final weeks of the campaign. Allowing candidates to receive more of the funds sooner means more certainty for participating candidates who will be better able to plan their general election campaigns. Because the overall cap is unchanged, this modification is not expected to raise the cost of the program at all.

In addition, the Legislature took steps to move Clean Elections into the Information Age by permitting candidates to accept Qualifying Contributions over the Internet for the first time. It is a convenient and cost-effective way for candidates to reach supporters and engage new voters in the electoral process. There is some concern that the online option will make the qualifying process much too easy. While the Ethics Commission reports a lot of interest in this new feature, few candidates in 2008 used it to raise a significant portion of their Qualifying Contributions. MCCE supports the option but considers the concern legitimate, and will closely monitor its use over the next election cycle.

Finally, in a nod to the tough economic times, the Legislature insisted that 2008 candidates tighten their belts along with everyone else. The Legislature approved a one-time 5 percent reduction in general election distributions to Clean Election candidates this year. House candidates will receive \$218 less this year, and Senate candidates will receive \$1004 less.

While the Legislature did a good job making appropriate revisions to the Clean Elections Act in response to concerns from the last gubernatorial election, they failed to take up PAC reform in a meaningful way. Disappointingly, several bills seeking to address the influence of PACs, such as setting contribution limits, were not considered.

The Maine Clean Election Act is a citizen-initiated law that is successful because of the strong support it enjoys from citizens and candidates alike. We closely follow the budget process and all legislation that deals with Maine’s campaign finance system with a mission of preserving and strengthening Maine’s groundbreaking Clean Election system. As MCCE gears up for the 124th Legislature, we encourage everyone to sign up for our email action list. We rely on a grassroots lobby corps of Maine citizens to contact legislators when important bills are debated. Please join us today at www.mainelection.org!

- Alison Smith and Jill Ward at MCCE

National Popular Vote

Should every vote cast for the President of the United States be of equal weight? In 2000, each vote cast in Wyoming was worth three times as much as a vote cast in Minnesota, California, or Oregon.¹ This is due to the way states have allocated their presidential electors. Each state has the constitutional authority to specify how its electors are chosen and instructed to vote. Most states award all of their electors to the candidate with the most votes within that state. Each state has a number of electors equal to the number of their congressional districts plus two; this gives each vote in less populous states more weight than a vote in more populous states. The LWV has long called for the Electoral College system to be abolished and replaced by a direct popular vote.

The LWVUS convention in June '08 voted to conduct an expedited study of the National Popular Vote compact among the states as a method of electing the President of the United States. The New York State League began such a study last year but suspended it when the national League decided that this was a federal issue, not appropriate for an individual state League program, and that it could be in conflict with the longstanding League position that calls for abolishing the Electoral College as the means to direct popular vote. The League position as it appears on pages 18 and 19 of the 2006-2008 *Impact on Issues*² states that, "The League of Women Voters of the United States believes that the direct-popular-vote method for electing the President and Vice-President is essential to representative government. The League of Women Voters believes, therefore, that the Electoral College should be abolished." The National Popular Vote (NPV) legislation does not abolish the Electoral College; instead, it provides that the electors of each state cast their votes for the Presidential (and Vice-Presidential) candidate that wins the most votes nation-wide. The NPV plan would take effect only when the NPV legislation has been enacted by states collectively possessing a majority of the electoral votes—that is 270 of the 538 electoral votes.

A national campaign to enlist states in this plan is well under way. As of July 4, 2008, four states had enacted the legislation, and the legislation had been introduced in forty-five states. The Maine Senate

¹ 2000 Official Presidential General Election Results, 4 July 2008

<<http://www.fec.gov/pubrec/2000presgeresults.htm>>

² Search for "Impact on Issues" at <<http://lwv.org>>

passed the National Popular Vote bill ([LD 1744](#))³ on April 7, 2008, but the House indefinitely postponed the bill.⁴ Since we may not have a League position on NPV before the Maine State Legislature next considers this question, I urge us to learn more about NPV well before our next legislative session begins in January 2009. The New York State League has an excellent Study Guide at lwvny.org/npv.html that contains many helpful references, resources and tips.

- Martha Dickinson
Downeast LWV

The League and Global Democracy

For the past four years, the League of Women Voters has hosted delegations of Russians to the US as part of the Open World Leadership Center. Now, members and friends of the League have an opportunity to discover Russia for themselves. In cooperation with Friendship Force International (FFI), the League is sponsoring a delegation to Russia in May 2009. For more information, check out the LWVUS online at www.lwv.org. Look under Members, and then click on Projects and Programs.

- Barbara McDade
Co-President, LWV of ME

Portland Area League

Last year I spent a few days in the Greenville area. One afternoon a friend and I drove to a nearby hamlet announcing itself to the world this way: "Welcome to Kokadjo! Population *not many*." It is said by some that Kokadjo is a place worth slowing down for. Despite eighty-plus members, the few active Portland Area Leaguers harbor such thoughts about our diminutive status. Like the people of Kokadjo, though, we have come to believe that nothing is more unattractive than self-pity, even in small doses. Hence, we offer no apologies for trying to make the most of the single thing we do and invite others to slow down and join us in celebrating the success of our only project: launching new Americans along the journey to the power and simplicity of voting.

³ An Act To Join the Interstate Compact on the National Popular Vote, 4 July 2008

<<http://www.mainelegislature.org/legis/bills/billtexts/LD174401.asp>>

⁴ National Popular Vote, 4 July 2008

<<http://www.nationalpopularvote.com/>>

Our partnership with the United States Citizenship and Immigration Services in South Portland is, yes, a little demanding. Events occur twice a month and require from two to four hours for either one or two people, depending on the location. Yet, each experience brings renewed exhilaration and enormous satisfaction along with enthusiasm for the next one. Now let us share the numbers. In the period of October 5, 2007-July 11, 2008, we introduced voting to naturalized Americans as follows:

Naturalization Events	No. of Ceremonies*	No. of Voter Registration Cards Distributed
Judicial	2	109
Administrative	34	713
Others**		56
Totals	36	878

*Most events have more than one ceremony.
 **These are Americans who were not registered to vote.

Recently, the Maine Office of USCIS began providing back-up for the New Hampshire Office. (It is a busy year for the naturalization industry.) But ME voter registration cards won't work in NH. Apparently, NH voting officials do not allow groups such as the League to handle voter registration. Supported by the NH State League, we created a postcard with registration and voting information for NH voters. Twenty-five new Americans from NH took the oath in the last two events (numbers are included in the above). Our postcard seems to fill this gap. We plan something similar for new citizens in ME confirming the content of our 30-second conversations with new citizens as they rush from events. The contacts go something like this:

- Congratulations!
- What town do you live in?
- Do you know the location of your town hall?
- Please become familiar with this voter registration card and take it to your town hall to register to vote in the upcoming election. Also, take your citizenship certificate.
- When do you think you will be able to do this?
- Have you any questions?

One final point: Kokadjo has a hydroelectric dam controlling the Roach River's level as it threads through and around the village. And the wee little dam has enough power to get the job done.

- Colleen Sanders
 Portland Area LWV

Strategies for a Secure World —Assumption-Based Planning

LWVUS and the RAND Corporation — it may sound like a far-fetched collaboration, but at the June 2008 LWVUS Convention, members from the League's program on Liberty and Security teamed with James Dewar of the RAND Corporation to report on the use of Assumption-Based Planning (ABP) in a model discussion on overcoming terrorism. The RAND Corporation designed ABP for the military to evaluate competing solutions to public problems. The League sees ABP as a way to engage people who hold deeply held divergent views on a subject in a systematic and civil dialog.

ABP public discussions do not concentrate on the solutions to a problem, but on the assumptions underlying the various solutions. The "underlying assumption" of ABP is that one must understand the reasoning of the other person to have a productive discussion. By identifying and defining the assumptions of a proposed solution, the heat is taken away from the conversation and a productive dialog can take place.

There are five steps in the ABP process. The first step is to identify the assumptions in the solution under discussion. This is the most crucial step. Many assumptions will be explicitly spelled out and easy to identify, however, a key contribution of ABP is to uncover assumptions that are implicit or unvoiced. The second step is to take the agreed upon assumptions and identify those that are load-bearing and those that are vulnerable. Load-bearing assumptions are those that if the assumption does not turn out to be true, the solution under discussion cannot succeed. Vulnerable assumptions are those that could be overturned by plausible, future events. Assumptions that are both load bearing and vulnerable are the ones most likely to produce

surprises as a plan unfolds. To deal with potential surprises, the ABP process subjects the assumptions to the next three steps: signposts, shaping actions, and hedging actions. Signposts are warning signs that can be used to monitor those assumptions that are most likely to produce surprises. Signposts are events or thresholds that, if detected, signify that a vulnerable assumption is broken or dangerously weak and that a planning action is called for. Shaping actions are intended to help shore up uncertain assumptions, to control the future to the extent possible. Planners generally know how they would like an assumption to play out. Shaping actions are designed to help make that happen. Hedging actions help prepare for the possibility that an assumption will fail despite efforts to shore it up. Hedging actions typically result from thinking through a plausible scenario in which an assumption collapses and asking what might be done now to prepare for that scenario.

A simple example may be an exercise in transportation. You and your spouse may be thinking about buying a car. Your spouse may want to buy an SUV and you may want to buy a VW Passant. In identifying the assumptions that an SUV is your new vehicle solution, you might assume that it will fit in your garage, it will hold all the neighborhood kids that are on your child's soccer team that need a ride to practice, and that it's affordable. Some of the underlining assumptions for the VW are that it gets good gas mileage, it is safe and it will hold lots of cargo—groceries, luggage, skis, etc. You might agree that affordability is a load-bearing assumption. As the price of gas goes up, the selling price for the SUV may go down and the selling price of the VW go up, but the cost to operate the SUV will go up and the cost to operate the VW will go down. A vulnerable assumption is that there will be gas available to run either vehicle. One could then go through the other steps: what would you do in either case if gas became \$6 a gallon? Perhaps

the underlying assumption that your family needed to buy a car is one that needs to be examined—perhaps there is another form of transportation that would meet your family's needs, and why are you taking all those kids to soccer practice anyway?

The RAND Corporation and the League gathered a group of citizens to discuss an issue using ABP. The test group considered several approaches to a policy problem (in this case the problem was terrorism) by identifying and comparing key underlying assumptions and actions of several competing plans. The results of the test are still pending. People did engage in a systematic and civil manner, but, alas, no minds were changed because of the discussion. The project, however, still seems to be an interesting way to structure a discussion.

- Barbara McDade
Co-President, LWV of ME

Light Pollution Study

The night sky in Ellsworth is so bright with artificial lighting that it is visible from as far away as Hancock and Sullivan. Bright lights shining in all directions are a danger to drivers and wildlife, waste energy, and are an annoyance to many residents who enjoy gazing at the night sky. Some complain that the bright lights interfere with their sleep. The Downeast LWV is set to begin a brief study to educate our members and the public about the impact of light pollution and some options available for reduction of light pollution while preserving business and safety interests. This would include a survey of best practices in municipal ordinances. We envision working with our local planning committees and city councils to work out better ordinances. We can also work with local businesses and homeowners to increase public understanding of dark sky friendly lighting. We maintain a web page on Light Pollution that contains links to relevant information. See <http://home.gwi.net/~marthad/LightPollution.html>. We welcome participation from others.

- Ann Luther and Martha Dickinson
Downeast LWV