

TESTIMONY OF MEAGAN SWAY, ESQ

Ought Not To Pass - LD 1821

**An Act To Make Interfering with an Election Official a Class C Crime**

JOINT STANDING COMMITTEE ON  
VETERANS AND LEGAL AFFAIRS

January 12, 2022

Senator Luchini, Representative Caiazzo, and Members of the Joint Standing Committee on Veterans and Legal Affairs, greetings. My name is Meagan Sway, and I am Policy Director of the ACLU of Maine, a statewide organization committed to advancing and preserving civil liberties in Maine. On behalf our members, I am here to oppose LD 1821 because it creates new felonies for behavior that is already a crime without evidence that it will lead to greater safety for election workers.

As you will hear today, many clerks and elections workers in the state are in fear for their safety. This comes on the heels on threats to some clerks in our state,<sup>1</sup> as well as news reports across the country of threats of violence against election workers.<sup>2</sup> In our opposition to this bill, we do not mean to diminish the real fear that election workers face, or the threats to democracy inherent in much of the reported harassment. However, the method this bill uses to address those threats will not result in greater safety to election workers or integrity of our voting system.

If enacted, this bill would make it a Class C crime, punishable by up to 5 years' incarceration, to "intentionally interfere[] by force, violence or intimidation or by any physical act with any public official who is in fact performing or the person believes is performing an official function relating to a federal, state or municipal election." The behavior that the language of this bill addresses is already a crime. *See* 17-A MRS §751 (obstructing government

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<sup>1</sup> Phil Hirschkom, "Maine election officials face increased threats from voters," *WMTW*, Nov. 16, 2021, available at <https://www.wmtw.com/article/maine-election-officials-threats-voters/38257460#>

<sup>2</sup> *See, e.g.*, Peter Eisler, Jason Szep, Linda So and Sam Hart, "Anatomy of a death threat," *Reuters*, Dec. 30, 2021, [https://graphics.reuters.com/USA-ELECTION/THREATS/mopanwmlkva/?fbclid=IwAR31wZ\\_gbf67PERcJh32gqPGLz62P2h3GbuQqSzTv\\_gAb3nFUq25S15t7NQ](https://graphics.reuters.com/USA-ELECTION/THREATS/mopanwmlkva/?fbclid=IwAR31wZ_gbf67PERcJh32gqPGLz62P2h3GbuQqSzTv_gAb3nFUq25S15t7NQ)

administration). Any violent threats that election workers receive are also already crimes: criminal threatening,<sup>3</sup> terrorizing,<sup>4</sup> and stalking<sup>5</sup> are just a few that already apply.

There is no evidence that making interference with elections a felony rather than a misdemeanor is more likely to deter people from making threats. Nor will it provide greater time or safety to clerks if a person is arrested—there is no legal difference in time a person is held after arrest for a felony versus a misdemeanor.<sup>6</sup>

Our jails are already overfull. We lock up more people in this country than any country in the history of the world, and our incarceration rate in Maine is higher than countries like Turkey, Nicaragua and Russia. The criminal legal system disproportionately arrests people of color as compared to white people, so that while 1.6 percent of Maine’s population is Black, Black people make up 5 percent of all arrests and more than 10 percent of those in Maine’s prisons. It does not have to be this way. A better world begins with making the commitment to stop turning to the criminal legal system to solve society’s problems.

Your committee has the critical responsibility of overseeing the statutes by which our elections are administered in Maine. We urge you in all of your deliberations to seek ways in which to promote rather than restrict participation, and to ensure that the integrity of our elections is protected, so that the elections reflect the will of the citizenry, rather than the power of a few. Unfortunately, because we believe this bill would accomplish neither, we urge you to vote *ought not to pass*.

Thank you for your time and attention.

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<sup>3</sup> 17-A MRS §209 (“A person is guilty of criminal threatening if he intentionally or knowingly places another person in fear of bodily injury,” a Class D crime)

<sup>4</sup> 17-A MRS §210 (“A person is guilty of terrorizing if that person in fact communicates to any person a threat to commit or cause to be committed a crime of violence dangerous to human life...” a Class D or C crime depending on circumstances)

<sup>5</sup> *Id.* §210-A (“A person is guilty of stalking if...[t]he actor intentionally or knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person: (1) To suffer serious inconvenience or emotional distress; (2) To fear bodily injury or fear bodily injury to a close relation...” a Class D crime unless the person has prior convictions for similar behavior, then a Class C crime)

<sup>6</sup> There is a right to bail in Maine except for those accused of formerly capital offenses. Me. Const. art. I, §10. The determination of whether someone accused of a non-capital crime (which would include threats) is released pretrial is based on whether they can comply with the conditions of pretrial release, not whether they are accused of having committed a misdemeanor or felony crime.