



May 12, 2023

Testimony of John Brautigam, Esq., Legal Services for the Elderly, in opposition to L.D. 1365.

Senator Hickman, Representative Supica, and members of the Joint Standing Committee on Veterans and Legal Affairs:

Legal Services for the Elderly (LSE) is a nonprofit legal services organization with the mission of providing free legal assistance to Maine's older adults when their basic human needs are threatened. Next year LSE will mark 50 years of service to older Mainers.

Consent of the governed is the key to our system of democracy and that is why our right to vote is considered a fundamental right under both the U.S and Maine Constitution. Courts have made it clear that legislation affecting a fundamental right should be passed only on rare occasions and always as a last resort solution for a major problem. We oppose this bill because we believe that this proposed legislation will reduce access to voting without sufficient justification.¹ Accordingly, it will violate the Constitutional rights of all voters including those who are older adults.

When a court considers cases involving a fundamental right it applies a test called "strict scrutiny" to the facts to determine whether the right has been impermissibly restricted. This is a very high evidentiary threshold and requires proof that the action that is affecting a particular class of people serves a "compelling state interest" and that treating them in this way is "necessary" to serve that interest. In this case, the class is those individuals who have registered to vote and are enrolled voters. But it also would apply to those who wish to register to vote.

Article Two of the Maine Constitution sets forth three basic requirements for becoming a voter. An individual must be a citizen, must be 18 years old, and must be a Maine resident. Our existing statutes provide a process for determining whether an individual meets those requirements and qualifies as an enrolled voter. The individual must appear before the municipal registrar of voters and produce documentary evidence demonstrating their eligibility.

Some of the documents that the prospective voter may offer will contain a photo of the individual and some will not. Statutory provisions currently set forth acceptable documents for

¹ We also testified against LD 34. Our testimony included the text of the current law.
<http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=10010361>

both identity and residence – Title 21-A §112-A “Proof of identity for voting purposes” and Title 21-A§112 “Residence for voting purposes”. Both sections make clear that the Register has the discretion to consider what is offered and determine eligibility accordingly. The following language with either the word “identity” or “residence” as appropriate appears in each section.

“Any of the following forms of documentation may be offered by an applicant and considered by a registrar in verifying the (identity/residence) of an applicant who is registering to vote under this chapter and whose name does not already appear in the central voter registration system as a registered voter. The registrar need not request or consider all of these forms of documentation in order to verify an applicant's identity.”

[Title 21-A §112-A first paragraph, Title 21-A§112 (1)(A)]

Especially appreciated by many older adults is the option to produce documents without a photo that may be considered and may be accepted by the Registrar as sufficient to prove their identity and residence. As the years pass, official documents with photos become invalid and the cost or ability to qualify for them becomes more problematic. Other adults may not have ever had those documents and will be disproportionately affected if the opportunity to prove identity and residence by alternative means is removed.

The proposed legislation requires an individual who is already an enrolled voter to produce a specific type of photo identification before they may cast their vote. These include a current and valid driver's license, a Maine nondriver identification card, a United States passport, military ID, and a permit to carry a concealed handgun with a photograph. But specifically, not a Maine college or university ID. This list is significantly more restrictive than current law and doubtless removes discretion from the registrar.

Many older adult who have been voters for many years will not have current driver licenses or any of the other documents and will be challenged to apply for a nondriver ID. The time and travel expense to obtain this document will be a significant barrier. Not to mention the indignity they will likely feel. Imagine an older adult, perhaps a war veteran, who has been a voter for years now required to prove once again who they are and where they live before they can vote.

It would be difficult to find a clearer example of legislation infringing on an eligible voter’s right to vote. In fact, “infringing” might be an inadequate description because it would effectively disenfranchise anyone who did not have and did not use those specific documents to become a registered voter.

This bill would exclude student IDs entirely and thus disenfranchise students who currently qualify using those documents. We remind the Committee that not some students are older adults within the age group served by Legal Services for the Elderly.

We fail to see a compelling reason for altering the voting process in such an extreme fashion. There is no significant evidence of voting by unqualified persons or of voter impersonation. We have confidence in the judgment of our municipal registrars and do not believe that any changes are necessary to ensure the integrity of elections. We hope that you will agree and vote “ought not to pass.” Thank you.