

LEGAL SERVICES FOR THE ELDERLY, INC.

5 Wabon Street, Augusta, Maine 04333

(207) 621-0087 • Fax (207) 621-0742

Offices in Augusta, Bangor, Lewiston, Biddeford and Presque Isle

•••

LSE Helpline 1-800-750-5353 (Voice/TTY)

www.mainelse.org

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Testimony of Leo J. Delicata, Esq., Legal Services for the Elderly, in opposition to L.D. 34 An Act An Act to Require a Person to Show Photographic Identification for the Purpose of Voting before the Joint Standing Committee on Veterans and Legal Affairs

Senator Hickman, Representative Lupica and members of the Joint Standing Committees on Veterans and Legal Affairs

Legal Services for the Elderly (LSE) is a Maine nonprofit legal services organization founded in 1974. Since then our mission has been to provide free civil legal assistance to Maine's older adults when their basic human needs and their civil rights are threatened. On behalf of LSE I would like to offer comments in opposition to LD 34.

Consent of the governed is the key to our system of democracy and 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. 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 analysis requires a high level of proof that the governmental action 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, individuals who have registered to vote are members of that class.

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

Some of the documents that the prospective voter may offer will contain a photo of the individual and some will not. We have attached the sections of the statutes setting out the acceptable documents for both for 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 Registrar has the sole 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."

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 of documents is significantly more restrictive than current law and, as importantly, it applies to individuals

who have already satisfied the Constitutional requirements for becoming a voter. This is the crux of the Constitutional violation. Treating enrolled voters as unenrolled, screening them again with more restrictive evidence and removing any discretion from registrars to assess the evidence will unquestionably decrease the ability of individuals to exercise their right to 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. Of particular mention, it would exclude student IDs entirely and thus disenfranchise students of all ages who currently qualify using those documents.

To support this level of interference as a necessary step to safeguard our election laws the State would have to prove that there is a serious and pervasive problem involving ineligible individuals voting in our elections. There is no evidence that the present system is producing individuals not qualified to vote. There is also no evidence that voter impersonation is a problem. Failing a demonstration of that evidence we do not see a compelling reason for altering the voting process in such an extreme fashion. We continue to have confidence in the judgment of our municipal registrars and do not believe that any changes are necessary to ensure the integrity of our elections.

We hope that you will agree and vote "ought not to pass" on this bill. Thank you for letting me share our thoughts with you today.

§112-A. Proof of identity for voting purposes

Any of the following forms of documentation may be offered by an applicant and considered by a registrar in verifying the identity 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.

1. Government-issued photograph identification document or credential. A government-issued photograph identification document or credential, including, but not limited to, a current and valid United States passport, military identification, driver's license, state identification or identification card issued by a federally recognized Indian tribe;
2. Other government-issued identification document. A government-issued identification document without a photograph, including, but not limited to, a certified birth certificate or a signed social security card;
3. Other official documents. An official document, including, but not limited to, a document confirming eligibility determinations for public benefits, a utility bill, a bank statement, a government check, a paycheck or other government document that shows the name and address of the voter;
- 3-A. Student photograph identification document. A student photograph identification document that is issued by a state-approved public or private school located in this State or that is issued by a duly authorized institution of higher learning that operates in this State; or
4. Verified unique identifier for new voters. A verified unique identifier for new voters, including the voter's Maine driver's license number, Maine identification number or the last 4 digits of the voter's social security number that are successfully verified through the central voter registration system verification.

§112. Residence for voting purposes

Voting residence is governed by the following provisions.

1. Residence. 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.

A. The following factors may be offered by an applicant and considered by a registrar in determining a person's residence under this section. The registrar need not find all of these factors to be present in order to conclude that an applicant qualifies to register to vote in the municipality:

- (1) A direct statement of intention by the person pursuant to section 121, subsection 1.
- (2) The location of any dwelling currently occupied by the person;
- (6) The place where any motor vehicle owned by the person is registered;
- (8) The residence address, not a post office box, shown on a current income tax return;
- (9) The residence address, not a post office box, at which the person's mail is received;
- (10) The residence address, not a post office box, shown on any current resident hunting or fishing licenses held by the person;
- (12) The residence address, not a post office box, shown on any motor vehicle operator's license held by the person;
- (14) The receipt of any public benefit conditioned upon residency, defined substantially as provided in this subsection; or
- (16) Any other objective facts tending to indicate a person's place of residence.

2. Change. A change of residence is made only by the act of removal, joined with the intent to remain in another place. A person can have only one residence at any given time.

3. Residence retained. A person does not lose the person's residence if the person temporarily leaves home and goes to another country, state or place in this State with the intent of returning.

4. Separate residence. The place where a person's family resides is presumed to be the person's place of residence, but a person may acquire a

separate residence if the person takes another abode with the intention of remaining there. This subsection does not apply to uniformed service voters, students and others covered by subsection 7.

5. Spouse may have separate residence. A married person may be considered to have a residence separate from that of the person's spouse for the purposes of voting or holding office. For those purposes, residence is determined as if the person were single.

6. Voting in another state. A person loses the person's voting residence in this State if the person registers to vote in another state or votes in another state's election, either in person or by absentee ballot. That person is not eligible to register or vote in this State until the person again qualifies under section 111.