

MEMORANDUM

FROM: Fernand A. Martineau

TO: State and Local Government Committee, Maine
Legislature

SUBJECT: Public Hearing, March 29, 2021, SLG Committee,
RE: Testimony in Support of LD 1039, "An Act To
Safeguard the People's Voice in a State of Emergency"

DATE: March 28, 2021

GREETING

Good morning.

My name is Fernand Martineau. I live at 46 Armington
Road in Lovell.

Before I begin, I want to thank my Senator, Lisa Keim,
for alerting me to this hearing and for inviting me to
testify today. Thank you, Senator.

DESCRIPTION OF THE PROBLEM

I am here today because I believe that the current
emergency management system in its operations does not
adequately preserve and protect our individual rights,
liberties, and freedoms, guaranteed under the
Constitution.

Why is this significant?

It is significant because the unlawful infringement
upon, or curtailment, or loss of these rights, cannot
long be tolerated in a free and open society like ours
before widespread discontentment and chaos inevitably
follow. In America, we live within a constitutional

framework, paid for at great cost by our ancestors and forbears, that guarantees fundamental individual rights like the freedom of speech, religion, association, the right to earn a living, the right to own, use and enjoy property, the right to govern ourselves, the right to bear arms, etc. Under our Constitution, we own and possess these rights individually, not collectively, and as such, we are both morally and legally entitled to have our views considered, and our consent lawfully obtained, whenever the State is contemplating curtailing them for any length of time and for any reason. This applies not only to any original declarations of emergency, but to renewal emergency orders, as well.

Many people today believe that the fundamental rights of people have been violated even as conditions concerning the underlying disease causing the emergency greatly improved, and they are rightfully concerned about the lack of transparency and direct public participation in the emergency response decision-making process.

CURRENT SITUATION

We are now in the second year of the current emergency and we have learned a lot about the disease. For example, we have learned who is vulnerable, who is less vulnerable, and who is not very vulnerable at all. We have learned that certain practices like hand washing and social distancing can mitigate the risk of spreading the disease. And we have not only learned how to immunize people against the disease, but we are currently producing and administering safe and effective vaccines. Moreover, one-fourth to one-third of the State's population has to date been vaccinated, the number of cases and deaths from Covid-19 have significantly declined and are continuing to trend

downwards, and we are rapidly approaching a state of herd immunity, so-called. Finally, we have learned that the disease will not abate entirely, that it will continue to exist and present a risk to society at some level, and that we will nonetheless learn to live with it like we do with other diseases like influenza. Considering these things, I believe that most people agree that society will be able to manage the disease effectively without infringing on fundamental rights, once everyone is vaccinated, and herd immunity is achieved.

Under these circumstances, the question that many people are asking I believe is what the rule is going forward for ending the declared emergency. When will the individual rights, liberties, and freedoms of people be fully restored without restriction? What criteria and metrics are decision makers relying on during their present deliberations? What matters may properly be considered in determining whether to end a declared emergency? Is it appropriate, for example, to artificially extend an emergency primarily to optimize the receipt of Federal emergency funds, if one knows that in doing so there is a reasonable likelihood that the fundamental rights of some people are going to be sacrificed in the process for little expected benefit in return, in terms of reducing the risk of harm presented by the underlying disease?

In my judgment, complex questions like these should not be answered without first consulting with and obtaining the informed consent of the people who most likely will be affected by any decision involving them, otherwise, the procedure being used risks sanctioning using people for the benefit of others without their consent, which I believe would be both morally and legally wrong and a result that the Legislature would and should not tolerate.

This will require I believe making the current emergency management system more transparent which, in turn, may require making necessary structural changes to the existing system. In my view, one such structural change should include providing for one or more public representatives, or advocates, to represent the public's compelling interest in protecting and preserving their fundamental rights, in all relevant bodies, like MEMA, the Office of the Governor and the Legislature. Considering what is at stake, I believe that this degree of public oversight is necessary and appropriate to protect and preserve the fundamental rights of people.

THE WAY FORWARD

There is much to reflect upon, learn and consider about the effectiveness of the existing emergency management system. Accordingly, I urge the Legislature to reflect carefully and deliberately before making any long-term changes to existing laws and structures. During the interim, the present emergency response effort should be thoroughly investigated and the impact of government intervention, both favorable and unfavorable, on fundamental rights determined, described, and quantified as much as possible. This investigation should be non-partisan and the result should be a fair assessment of the facts and circumstances regarding the present emergency. This review should also result in concrete recommendations concerning how to incorporate direct public participation into emergency response processes and procedures.

As discussed earlier, I believe that one such result could be one that places qualified citizens, together with their supporting experts, at every major decision point in the emergency response process including, the point where an emergency is initially declared, the

point where existing emergency orders are extended, and the point when it is necessary to decide whether to end a declared emergency. In addition, the comprehensive study or review that I described earlier should be accomplished not only because the information that will be developed will be useful, but is necessary because I believe that as a society, we owe it to those who have suffered and died, to future generations, and to ourselves, to determine whether government intervention did more harm than good for people.

Who benefits, who bears the risk, and who bears the cost of sacrificing the fundamental rights of people are all significant questions, and I am concerned that the voice of the people most affected may not be taken fully into account, or may even be ignored, when these critical decisions are taken. This is because many factors will ultimately influence decision makers: my goal in this regard, is to ensure that the protection and preservation of the fundamental rights of people, ranks at least as high as the Federal dollars that might be at stake. Moreover, assuming that the quest for dollars is appropriate, experience has shown that sometimes decision makers are influenced by improper motives such as, avoiding legitimate and constructive criticism, or ratifying past acts before there has been a full account of those acts. This would be wrong in my judgment because it would require a segment of our society to continue making sacrifices of their fundamental rights for the benefit of society generally, without any meaningful consent on their part, or proper justification made by decision makers. This will inevitably lead to claims of arbitrary and capricious conduct, and a decline in trust and confidence in government and its leaders. Obviously, I submit that we should mitigate these deleterious effects as much as possible. I believe that optimizing transparency and providing for direct public

participation in the decision-making process are the best ways to address these issues.

CONCLUSION

To me, emergency management is like a medical doctor administering emergency aid to a person, except that instead of just one person, the emergency management system is designed to provide aid to the whole society. A doctor's oath provides that he "first, do no harm". Similarly, the emergency management system, which is intended to help people and society, should do no harm, intentionally or otherwise. Moreover, I believe that government has a moral and legal obligation to avoid or mitigate harm to people when it is reasonably possible to do so and in my opinion, the current emergency situation is such a circumstance.

Thank you. I would be happy to take your questions.