



**Testimony in Support of LD 14** ["An Act To Require a Two-thirds Vote To Extend a State of Emergency,"](#) **LD 131** ["An Act To Amend the Governor's Emergency Powers,"](#) **LD 608** ["An Act Regarding the Governor's Emergency Powers,"](#) **LD 628** ["An Act To Protect Businesses and Civic and Religious Organizations from Actions Taken Pursuant to an Emergency Proclamation,"](#) **LD 729** ["An Act To Provide Transparency Regarding State Contracts during a State of Emergency,"](#) **LD 955** ["An Act To Narrowly Tailor Emergency Powers of the Governor and Other Public Officials,"](#) **LD 980** ["An Act To Establish Balance in the Governor's Emergency Powers,"](#) **LD 985** ["RESOLUTION, Proposing an Amendment to the Constitution of Maine To Require Legislative Approval of Any State of Emergency Lasting Longer Than 60 Days,"](#) **LD 1019** ["An Act To Promote Transparent Emergency Management,"](#) **LD 1039** ["An Act To Safeguard the People's Voice in a State of Emergency,"](#) **LD 1137** ["An Act To Limit the Governor's Emergency Powers by Requiring a Two-thirds Vote of the Legislature To Continue an Emergency after 90 Days,"](#) **LD 1142** ["An Act To Prohibit the Unequal Restriction of Essential Businesses during a State of Civil Emergency,"](#) **LD 1220** ["An Act To Require a Two-thirds Vote of the Legislature Every 2 Weeks To Maintain a State of Emergency Declared by the Governor,"](#) and **LD 1237** ["An Act To Allow the Governor To Declare a Limited State of Emergency for Federal Aid Purposes"](#)

Senator Baldacci, Representative Matlack, and the distinguished members of the Committee on State and Local Government, my name is Nick Murray and I serve as policy analyst for Maine Policy Institute, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to testify on reforming Maine's process for declaring and sustaining states of emergency.

Many Mainers continue to question the appropriateness of a year-long state of emergency in which a sole political official holds the power to unilaterally alter laws, rules, or regulations, with little coordination with legislators or the public.

The emergency declaration, extension, and termination process should be clear and consistent, no matter the current political makeup of the legislature and executive branch. By requiring periodic legislative approval, as many of these bills propose, the law would require legislators and the governor to convene in public, lay out the facts, and develop a consensus for governing in an extended emergency situation.

It is crucial that this authority be vested primarily with the people's body. The principle of separation of powers must not be forgotten, even during an emergency. Although we are supportive of any reform that requires legislative approval of

emergency executive power, we prefer this vote to take place in the full legislature, not merely the Legislative Council.

In addition to a standard emergency extension process which requires legislative concurrence, either by simple majority or two-thirds of legislators, other reforms would also help safeguard individual liberty and the separation of powers in future emergencies.

These include prohibiting officials other than the governor from making emergency orders, ensuring such orders are “narrowly tailored,” and that challenges to emergency orders receive expedited judicial review, as LD 955 and LD 980 offer (below). This would signal to courts that they should weigh any orders against the liberty of the aggrieved party, not simply chalk it up as a “political question.”

- *Notwithstanding any law to the contrary, an emergency order that is issued by a state or local official that binds, curtails or infringes the rights of private parties must be narrowly tailored to serve a compelling health or safety purpose. Only the Governor may issue an order that infringes constitutional rights, and that order must be narrowly tailored to serve a compelling health or safety purpose. Each emergency order must be limited in duration, applicability and scope in order to reduce any infringement of the rights of private parties or constitutional rights.*
- *A court of this State has jurisdiction to hear a case challenging the legality of an emergency order, including compliance with the limitations imposed on emergency orders pursuant to this subsection. A court shall expedite consideration of a challenge brought pursuant to this paragraph to the extent practicable. Inequality in the applicability of the impact of emergency orders on analogous groups, situations and circumstances may constitute one ground among others for a court to invalidate or enjoin an emergency order, or some of its applications, on the basis that it is not narrowly tailored to serve a compelling public health or safety purpose.*

Legislators should also be able to nullify specific emergency orders from the executive branch with a vote, as the final change in LD 1039 would allow:

- *The Legislature may terminate any specific emergency order of the Governor with respect to a state of emergency by a 2/3 vote of each House. This subsection does not apply to the Governor's powers under chapter 3.*

We support proposed changes in LD 1019 to ensure that emergency orders automatically sunset, or are terminated when the state of emergency is terminated, so that Mainers are not subject to one-person rule for longer than absolutely necessary:

- *An order issued by the Governor pursuant to this subsection following an emergency proclamation expires the soonest of:*
  - *(1) Thirty days following issuance of the order;*
  - *(2) The termination of the state of emergency by the Governor or the Legislature pursuant to section 743; and*
  - *(3) The issuance of a different emergency proclamation by the Governor.*

Other reforms in LD 131 and LD 628 to require a higher threshold of legislative approval for orders that treat businesses, nonprofits, houses of worship, etc. unequally, would protect liberty as well.

Please keep in mind that none of these bills would take away the governor's power to act quickly in situations where time is short; they all maintain an initial window under which the governor may declare an emergency and act to manage it. All but three would take effect 90 days after enactment, likely beyond the scope of the current emergency.

Maine's emergency powers law exists to allow the governor to respond to an imminent threat. It's meant to be used sparingly, and should not allow one person to control all of state government for a year or more. These bills simply require involvement and oversight of the executive branch by the legislative branch.

The appropriate question for this committee is under what condition, if ever, should a governor be able to deem himself or herself fit to exercise near-absolute power for any period of time after that initial window? Shouldn't the legislature -- the people's body -- play a larger role in this process?

We are hopeful that this committee will take the time to consider the danger of concentrating power in the hands of one or a few, even during emergencies, and advance these bills to restore a proper balance of power. Thank you for your time and consideration.

Nick Murray  
Maine Policy Institute

Testimony in Support of LD 14 “An Act To Require a Two-thirds Vote To Extend a State of Emergency,” LD 131 “An Act To Amend the Governor's Emergency Powers”, LD 608 “An Act Regarding the Governor's Emergency Powers,” LD 628 “An Act To Protect Businesses and Civic and Religious Organizations from Actions Taken Pursuant to an Emergency Proclamation,” LD 729 “An Act To Provide Transparency Regarding State Contracts during a State of Emergency,” LD 955 “An Act To Narrowly Tailor Emergency Powers of the Governor and Other Public Officials,” LD 980 “An Act To Establish Balance in the Governor's Emergency Powers,” LD 985 “RESOLUTION, Proposing an Amendment to the Constitution of Maine To Require Legislative Approval of Any State of Emergency Lasting Longer Than 60 Days,” LD 1019 “An Act To Promote Transparent Emergency Management,” LD 1039 “An Act To Safeguard the People's Voice in a State of Emergency,” LD 1137 “An Act To Limit the Governor's Emergency Powers by Requiring a Two-thirds Vote of the Legislature To Continue an Emergency after 90 Days,” LD 1142 “An Act To Prohibit the Unequal Restriction of Essential Businesses during a State of Civil Emergency,” LD 1220 “An Act To Require a Two-thirds Vote of the Legislature Every 2 Weeks To Maintain a State of Emergency Declared by the Governor,” and LD 1237 “An Act To Allow the Governor To Declare a Limited State of Emergency for Federal Aid Purposes”

Senator Baldacci, Representative Matlack, and the distinguished members of the Committee on State and Local Government, my name is Nick Murray and I serve as policy analyst for Maine Policy Institute, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to testify on reforming Maine’s process for declaring and sustaining states of emergency.

Many Mainers continue to question the appropriateness of a year-long state of emergency in which a sole political official holds the power to unilaterally alter laws, rules, or regulations, with little coordination with legislators or the public.

The emergency declaration, extension, and termination process should be clear and consistent, no matter the current political makeup of the legislature and executive branch. By requiring periodic legislative approval, as many of these bills propose, the law would require legislators and the governor to convene in public, lay out the facts, and develop a consensus for governing in an extended emergency situation.

It is crucial that this authority be vested primarily with the people’s body. The principle of separation of powers must not be forgotten, even during an emergency. Although we are supportive of any reform that requires legislative approval of emergency executive power, we prefer this vote to take place in the full legislature, not merely the Legislative Council.

In addition to a standard emergency extension process which requires legislative concurrence, either by simple majority or two-thirds of legislators, other reforms would also help safeguard individual liberty and the separation of powers in future emergencies.

These include prohibiting officials other than the governor from making emergency orders, ensuring such orders are “narrowly tailored,” and that challenges to emergency orders receive expedited judicial review, as LD 955 and LD 980 offer (below). This would signal to courts that they should weigh any orders against the liberty of the aggrieved party, not simply chalk it up as a “political question.”

Notwithstanding any law to the contrary, an emergency order that is issued by a state or local official that binds, curtails or infringes the rights of private parties must be narrowly tailored to serve a compelling health or safety purpose. Only the Governor may issue an order that infringes constitutional rights, and that order must be narrowly tailored to serve a compelling health or safety purpose. Each emergency order must be limited in duration, applicability and scope in order to reduce any infringement of the rights of private parties or constitutional rights.

A court of this State has jurisdiction to hear a case challenging the legality of an emergency

order, including compliance with the limitations imposed on emergency orders pursuant to this subsection. A court shall expedite consideration of a challenge brought pursuant to this paragraph to the extent practicable. Inequality in the applicability of the impact of emergency orders on analogous groups, situations and circumstances may constitute one ground among others for a court to invalidate or enjoin an emergency order, or some of its applications, on the basis that it is not narrowly tailored to serve a compelling public health or safety purpose. Legislators should also be able to nullify specific emergency orders from the executive branch with a vote, as the final change in LD 1039 would allow:

The Legislature may terminate any specific emergency order of the Governor with respect to a state of emergency by a 2/3 vote of each House. This subsection does not apply to the Governor's powers under chapter 3.

We support proposed changes in LD 1019 to ensure that emergency orders automatically sunset, or are terminated when the state of emergency is terminated, so that Mainers are not subject to one-person rule for longer than absolutely necessary:

An order issued by the Governor pursuant to this subsection following an emergency proclamation expires the soonest of:

- (1) Thirty days following issuance of the order;
- (2) The termination of the state of emergency by the Governor or the Legislature pursuant to section 743; and
- (3) The issuance of a different emergency proclamation by the Governor.

Other reforms in LD 131 and LD 628 to require a higher threshold of legislative approval for orders that treat businesses, nonprofits, houses of worship, etc. unequally, would protect liberty as well.

Please keep in mind that none of these bills would take away the governor's power to act quickly in situations where time is short; they all maintain an initial window under which the governor may declare an emergency and act to manage it. All but three would take effect 90 days after enactment, likely beyond the scope of the current emergency.

Maine's emergency powers law exists to allow the governor to respond to an imminent threat. It's meant to be used sparingly, and should not allow one person to control all of state government for a year or more. These bills simply require involvement and oversight of the executive branch by the legislative branch.

The appropriate question for this committee is under what condition, if ever, should a governor be able to deem himself or herself fit to exercise near-absolute power for any period of time after that initial window? Shouldn't the legislature -- the people's body -- play a larger role in this process?

We are hopeful that this committee will take the time to consider the danger of concentrating power in the hands of one or a few, even during emergencies, and advance these bills to restore a proper balance of power. Thank you for your time and consideration.