

Senator Baldacci, Representative Matlack, Members of the Committee:

My name is David Manter, and I exist in Fayette and the State of Maine. I swore to uphold the Constitution of the United States.

The 5th Amendment to the US Constitution forbids taking of property without compensation: “No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

The 14th Amendment to the US Constitution forbids any law that infringes on the privileges of citizens:

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Maine Constitution Art. I, Sec. 21 provides: "Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it."

Maine Constitution Art. I, Section 6-A provides:

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of that person's civil rights or be discriminated against in the exercise thereof.

Here is what the Maine Supreme Court has to say about public roads with no public maintenance:

Jordan v. Town of Canton 265 A.2d 96 (1970)

“But cases involving loss of access depend on the practical and factual consequences of governmental action rather than the legal status of the highway. ... In short, it is actual and practical discontinuance rather than technical discontinuance that destroys the easement. The action permitted by [this statute] has precisely this result. The fact that a "limited-user highway"[or a “public easement”] continues to have a legal status as a "public way" over which there continues to be a public easement of travel is meaningless if there is no longer any public responsibility for maintenance and repair. Without maintenance or repair, it is only a question of time before a public road will become impassable or unsafe for travel. The rigors of Maine weather, the action of frost and the erosion from rain and melting snow will speed the process of disintegration. The ability to use the road for vehicular travel and thus the abutter's easement of access to and over the road to the public road system will inevitably be destroyed.”

“The effect of the statute is to permit an actual or ‘de facto’ discontinuance of a public way without any accompanying provision for compensation for the ‘taking’ of private property rights which will almost inevitably result therefrom. In judging whether a statute satisfies constitutional requirements, we look to the possible and not merely the probable consequences which may flow therefrom. ‘It is not what has been done, or ordinarily would be done, under a statute, but what might be done under it, that determines whether it infringes upon the constitutional right of the citizen. The constitution guards against the chances of infringement. It is evident that under this statute the citizen might in some cases be practically deprived of all remedy.’ Bennett v. Davis

(1897) 90 Me. 102, 105, 37 A. 864, 865; Sleeper, Applt. (1952) 147 Me. 302, 308, 87 A.2d 115. Under Sec. 2068 an abutter could be deprived of his sole access to the road system with no statutory method provided for obtaining compensation.

Browne v. Connor, 138 Me. 63 (1941)

“If a statute violates any provision of the state or of the federal constitution, its antiquity will not save it.”

Yet then we have **Town of Fayette v Manter, 528 A.2d 887 (1987):**

“...when a town discontinues a road and retains a ‘public easement,’ the public has an unfettered right of access over that road but the town has no maintenance responsibility.”

This bill is not just a question of what the Manters would like you to do - this is a question of what the US and Maine Constitutions demand you do. The 14th Amendment prohibits states from making or enforcing any law that abridges the privileges or immunities of citizens. The 5th Amendment prohibits the taking of property with out both due process and just compensation. Yet public easements result in uncompensated taking with no due process every time public use damages the road.

This spring I had to York rake half a mile of public easement thirteen times, at two hours each time, because every time I got rid of the ruts, some member of the public used the road again. I have worn several inches off the rake teeth on this road. It will cost \$935 to replace the teeth, plus shipping, plus tax. Add to that the wear and tear on the tractor, plus the operator for 26 hours. Yet I get no compensation for this taking that is the direct result of the public use. If I did NOT rake the road, I would damage my vehicles and then soon lose access, but I would not get compensated for that taking, either. After decades of this abuse, the whole road is in desperate need of a coating of gravel, but none of the abutters can afford to replace what the public has been taking out of the road all this time. This unconstitutional taking is happening to people on public easements all across the state. This was proven wrong in *Jordan v Canton* in 1970, so why are our laws still allowing it?

The US Constitution, Amendment 13, prohibits “involuntary servitude.” Yet I am being forced without compensation to work to maintain a public right for everyone in the public.

When a neighbor of mine had a severe heart attack, the ambulance was able to get in because he and I had plowed the snow, but his wife didn’t know how she was going to get back and forth to the hospital. I kept the road clear (as well as their driveway) for the rest of the winter so she could use the public easement that supposedly gives her an “unfettered right of access.” Am I the only neighbor? Where is the rest of the town? A friend of ours who is a Selectman in another town is fond of saying, “People think it’s the people versus the town. They forget that the people ARE the town.”

We have a law that says it’s okay to form a road association on a public easement, but that simply means that everyone who contributes to the road association is having their private funds, gravel, time, etc. taken for public use without due process or just compensation. If public easements work so well, we should just make ALL our roads public easements. Just think how much money we’d save on our taxes in road maintenance costs! Yet those roads would all

remain open. Right? Isn't this what is meant by the Maine Constitution, Article 1, Section 6A? Everyone equal, no discrimination? I moved here looking for peace and quiet because I have PTSD, and what did I get? More PTSD.

Any citizen of the United States should approve of this legislation. Anyone who doesn't should question his citizenship. Vote LD 1513 "Ought to Pass."