

Senator Baldacci, Representative Matlack, Members of the State and Local Government Committee:

My name is David Manter, and I live in Fayette on a discontinued road. I support L.D. 1513 as amended, to form a permanent Commission to work on the problems of abandoned and discontinued roads; however, I am grossly disappointed that this means prolonged infringement of the Constitution, and further delay in getting assistance for residents on such roads. In 1971, the same year I bought my property, the Maine Supreme Court determined in Jordan v Canton that a public road with no public maintenance will inevitably be destroyed, and that destruction of access in the absence of due process and just compensation is UNCONSTITUTIONAL. Public easements are just that - public roads with no public maintenance. And yet fifty years after the Jordan decision, we still have public easements - public roads with no public maintenance. I've been suffering the consequences for FIFTY YEARS.

These roads exist all over the state as a result of abandonment or discontinuance authorized by a legislature that swears to uphold both the U.S. and Maine Constitutions. Even if there had been due process and just compensation at the time of the abandonment or discontinuance, (which in many cases there was not,) that would not compensate the landowner for the repeated destruction of the access due to public use over time, or the involuntary servitude of forced labor caused by the need to recover access. As the Maine Supreme Court said in 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." And again in Brown v. Warchalowski, et al. 471 A.2d 1026 (1984), "Neither public acquiescence nor antiquity supports continued toleration..." of an unconstitutional law.

If you want to know why it would be difficult for the Legislature to spend the time that's needed to understand the issue, there are thousands of discontinued and abandoned roads in Maine, many with special problems. Until you take the time to learn the Constitution as it is written you will never understand the mistakes that have been made, and how these problems can be resolved. With all the bad decisions the courts have made to further confuse what the legislature has done, it would take the legislature all its time to resolve this one problem. A Commission is better suited to do this task.

The reason you need to have a member of the Commission be a resident on a discontinued road is you need the perspective of someone who actually lives with the problem daily, not just someone who owns property on the road. I am sorely aware of the problems these roads cause for the logger who wants access to his land, or the farmer, or the hunter, etc. These things I know, and can understand what their problem is too. But expecting one of these individuals to stay there and keep the road in condition so the resident can use it means you're burdening them too. But if the municipality wants to grow, then everyone has to share in the cost through their tax dollars, not through private pockets. Or maybe we have to return these roads to private status so people can address their particular road's problems without the public using them up.

I support Maine ROADWays' proposed amendment. I agree that the Commission should include a RESIDENT ON such a road, not just a Maine resident who owns property on such a

road. The whole intent of the bill as originally presented was to help RESIDENTS on these roads, but the current wording makes no guarantee they will get ANY representation on the Commission. Out of the currently proposed 12 members, residents stand to get little or no representation, while most of the members will want to use these roads for something other than residential access. How is this fair? Or how does it reflect the original intent of the bill?

I ask you to amend the bill as proposed by Maine ROADWays, and then vote that L.D. 1513 OUGHT TO PASS.

Thank you.