

**JOHN MacKNIGHT FITZGERALD**

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Member of the District of Columbia Bar

March 14, 2021

**Written Testimony of John M. Fitzgerald  
on Legislation Affecting Elections and Referenda  
Including the Following:**

LD 194, SP0082An Act To Prohibit Contributions, Expenditures and Participation by Foreign Government-owned Entities To Influence Referenda - Sen. Richard Bennett of Oxford

LD 479, HP0353An Act To Ban Foreign Campaign Contributions and Expenditures in Maine Elections - Rep. Kyle Bailey of Gorham

LD 641, HP0472An Act To Prohibit Contributions, Expenditures and Participation by Foreign Nationals To Influence Referenda - Rep. Walter Riseman of Harrison

[LD 638, HP0469](#)An Act To Ensure the Timely and Transparent Delivery of Unofficial Election Results in Maine - *Rep. Will Tuell of East Machias*

[LD 706, HP0518](#)RESOLUTION, Proposing an Amendment to the Constitution of Maine To Lower the Voting Age to 16 Years of Age - *Rep. Maggie O'Neil of Saco*

Honorable Chairs Senator Louis Luchini and Representative Chris Caiazzo, and Members of the Joint Committee On Veterans and Legal Affairs,

I appreciate the opportunity to submit testimony in writing or during a hearing on relatively short notice. You are to be commended for such open and accessible government practice and the Bangor Daily News and Legislature are both to be commended for publishing the legislative hearing notices as Legal Notices devoting a full page to them.

I support the above bills and suggest below a few specific improvements but my more important point is that this committee can and should use this opportunity to apply the serious lessons learned over the past few years about protecting the

integrity of our elections. Most of those elections are concurrent with Federal elections. As you know a great deal of work and several hearings have gone into the development of H.R. 1 in response to weaknesses in Federal election law and practice since it was first introduced in the first days of 2019 in the previous Congress leading to its recent passage by the House with the strong support of the Maine delegation in the House of Representative.

**I suggest that your committee review H.R. 1, as passed by the House and consult with Senator King who serves on the Senate Rules Committee about improvements he is considering supporting in S.1 in that Committee and with Senator Collins, add such elements as you consider to be appropriate to the consolidated election reform bill(s) that you approve and report to the full Maine Senate and House of Delegates.**

This would put Maine on track to lead the nation again in elections giving far greater meaning to the old saying, "As Maine goes, so goes the nation."

You might also adopt as a part of Maine's civil code all election law obligations and provide for citizen suits to enforce those provisions in case the State Attorney General lacks the resources to do so in a timely manner.

You may want to also direct Maine's Secretary of State to press the national association of state election officials to affirm and demonstrate in every state their full compliance with Federal election law, such as the duty to retain all documents (including modern electronic images and data) pertaining to an election for 22 months after the election to allow for full auditing, recounts, and investigations of any alleged irregularities or civil rights violations. That duty was imposed by the Civil Rights Act of 1960, but it is a Federal criminal code provision that only the U.S. Department of Justice can enforce.

I am grateful, and indeed proud, to say that in the fall of 2018, before I moved back to Maine in the spring of 2019, I suggested to the personal and committee staff of my Congressman at the time, Rep. Jamie Raskin (8th District of Maryland) who serves on the Committee on House Administration with jurisdiction over Election Law that he introduce a comprehensive bill to protect access to voting and the integrity of the election process overall. I further suggested that just as my former boss and I asked Speaker Tip O'Neill for "H.R. 3", for our tax reform bill to support the 3 E's of Enhanced Employment, Energy and Environmental Enhancement, that Rep. Raskin ask Speaker Pelosi to reserve the number H.R. 1 for his bill to show that the integrity of our elections with effective, accountable and universal suffrage is the First Principle of our democracy. As you probably know, his colleague Rep. Sarbanes took up the mantle of original sponsor this year, to help relieve Rep. Raskin of that duty as he dealt with the untimely death of his son and with the demands of being an impeachment manager.

Although I took Legislation in law school from the casebook author,

F. Reed Dickerson, and was Chairman of the D.C. Chapter of Common Cause, and later Counsel to the House Subcommittee with jurisdiction over Government Ethics, the true experts in drafting the first outline of H.R. 1 for Rep. Raskin were Chris Sautter, election law expert and John Brakey, election technology expert, of Audit Elections USA. They have been working for years on this subject. They may be available for consultation on specific questions though they are still working in Arizona and other states.

Specific Comments on the bills before you this week:

I support S.P. 82, An Act To Prohibit Contributions, Expenditures and Participation by Foreign Government-owned Entities To Influence Referenda, Legislative Document No. 479, and recommend that you add to the Whereas section a more detailed explanation of the legislative purpose including the fact that in an increasingly globalized world there are more actors seeking to use their financial leverage and that this is just one way to prevent hidden attempts to do that. Given that the Commission on Governmental Ethics and Election Practices and A.G. will always have limited staff and time you may want to add a "Qui Tam" provision authorizing citizens or not for profit groups to enforce the law by bringing violations to the attention of the Commission or courts as the case may be and keep half of the fines resulting from successful enforcement. The Federal False Claims Act has proven to be a good model for such empowerment.

H.P. 353, An Act To Ban Foreign Campaign Contributions and Expenditures in Maine Elections, requires a clearer set of enforcement procedures, as well as language on legislative findings and/or purpose.

In order to provide enforceable elements in advance in case a court were to find these prohibition measures to be preempted by Federal Communications or Elections law or the 1st Amendment and its parallel requirements for the States, or Federal preemption of international trade or relations, you could add a severability clause and sections requiring disclosure of the chain of funding for contributions to state and local campaigns that may not be limited to foreign actors.

Regarding the posting of unofficial election results, please add an explanation of the purpose and need and how this meets them, as I am sure it may but it seems odd to the average reader. Maine is on a fine track as it unfolds ranked choice voting and a clear exposition of that process will help the nation as well as Maine's citizens.

Regarding LD 706 and lowering the voting age, it seems logical that integrating driver registration and voting registration to save time and money and to encourage all high school students to be active citizens makes all the sense in the world and suggest you amend this bill to do that.

Thank you for taking up these measures and for considering my testimony.



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