

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. KEN 20-262

**ALLIANCE FOR RETIRED AMERICANS; DOUG BORN; DON BERRY; and
VOTE.ORG,**
Appellants/Plaintiffs,

v.

MATTHEW DUNLAP, in his official capacity as the Maine Secretary of State; and **AARON
FREY**, in his official capacity as the Maine Attorney General,
Appellees/Defendants.

AND

**DONALD J. TRUMP FOR PRESIDENT, INC.; REPUBLICAN NATIONAL
COMMITTEE; NATIONAL REPUBLICAN SENATORIAL COMMITTEE; and
REPUBLICAN PARTY OF MAINE,**
Appellees/Intervenor-Defendants.

ON APPEAL FROM THE KENNEBEC COUNTY SUPERIOR COURT

APPENDIX

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APPENDIX

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ALLIANCE FOR RETIRED AMERICANS - PLAINTIFF

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SUPERIOR COURT

KENNEBEC, ss.

Docket No AUGSC-CV-2020-00095

DOCKET RECORD

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PORTLAND ME 04112-9546

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Attorney for: DON BERRY
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Attorney for: VOTE ORG
MATTHEW S WARNER - RETAINED
PRETI FLAHERTY BELIVEAU PACHIOS LLP
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PORTLAND ME 04112-9546

vs
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AARON FREY - DEFENDANT

Attorney for: AARON FREY
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OFFICE OF THE ATTORNEY GENERAL
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AUGUSTA ME 04333-0006

TRUMP FOR PRESIDENT INC - INTERVENOR

Attorney for: TRUMP FOR PRESIDENT INC
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8TH FLOOR SOUTH PMB706
BOSTON MA 02109

Filing Document: COMPLAINT
Filing Date: 06/24/2020

Minor Case Type: CONSTITUTIONAL/CIVIL RIGHTS

Docket Events:

06/24/2020 FILING DOCUMENT - COMPLAINT FILED ON 06/24/2020

06/24/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS
ATTORNEY - RETAINED ENTERED ON 06/24/2020
Plaintiff's Attorney: MATTHEW S WARNER

06/24/2020 Party(s): DOUG BORN
ATTORNEY - RETAINED ENTERED ON 06/24/2020
Plaintiff's Attorney: MATTHEW S WARNER

Party(s): DON BERRY
ATTORNEY - RETAINED ENTERED ON 06/24/2020
Plaintiff's Attorney: MATTHEW S WARNER

06/24/2020 Party(s): VOTE ORG
ATTORNEY - RETAINED ENTERED ON 06/24/2020
Plaintiff's Attorney: MATTHEW S WARNER

06/24/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS
ATTORNEY - RETAINED ENTERED ON 06/24/2020
Plaintiff's Attorney: SEVERIN M BELIVEAU

Party(s): DOUG BORN
ATTORNEY - RETAINED ENTERED ON 06/24/2020
Plaintiff's Attorney: SEVERIN M BELIVEAU

Party(s): DON BERRY
ATTORNEY - RETAINED ENTERED ON 06/24/2020
Plaintiff's Attorney: SEVERIN M BELIVEAU

Party(s): VOTE ORG
ATTORNEY - RETAINED ENTERED ON 06/24/2020
Plaintiff's Attorney: SEVERIN M BELIVEAU

07/09/2020 MOTION - MOTION TO INTERVENE FILED ON 07/06/2020

Defendant's Attorney: PATRICK STRAWBRIDGE
WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING
INTERVENE FILED BY DONALD TRUMP FOR PRESIDENT, INC., REPUBLICAN NATIONAL COMMITTEE,
NATIONAL REPUBLICAN SENATORIAL COMMITTEE, AND REPUBLICAN PARTY OF MAINE.

FILED WITH PROPOSED ANSWER

07/24/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
OTHER FILING - OPPOSING MEMORANDUM FILED ON 07/23/2020
Plaintiff's Attorney: MATTHEW S WARNER
OPPOSITION TO MOTION TO INTERVENE

07/24/2020 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 07/24/2020
WILLIAM STOKES , JUSTICE

07/30/2020 Party(s): MATTHEW DUNLAP, AARON FREY
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 07/27/2020
Defendant's Attorney: PHYLLIS GARDINER
CONSENT MOTION TO ENLARGE TIME TO FILE ANSWER

08/03/2020 Party(s): MATTHEW DUNLAP, AARON FREY
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 08/03/2020
WILLIAM STOKES , JUSTICE
COPIES TO PARTIES/COUNSEL
8/7/2020

ANSWER IS DUE

08/03/2020 Party(s): MATTHEW DUNLAP
ATTORNEY - RETAINED ENTERED ON 07/27/2020
Defendant's Attorney: PHYLLIS GARDINER

Party(s): AARON FREY
ATTORNEY - RETAINED ENTERED ON 07/27/2020
Defendant's Attorney: PHYLLIS GARDINER

08/10/2020 OTHER FILING - OTHER DOCUMENT FILED ON 08/07/2020
S/STRAWBRIDGE
SUPPORT OF MOTION TO INTERVENE FILED ON BEHALF OF DONALD TRUMP FOR PRESIDENT, INC,
REPUBLICAN NATIONAL COMMITTEE, NATIONAL REPUBLICAN SENATORIAL COMMITTEE AND THE
REPUBLICAN PARTY OF MAINE.

REPLY IN

08/10/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
MOTION - MOTION PRELIMINARY INJUNCTION FILED ON 08/07/2020
Plaintiff's Attorney: SEVERIN M BELIVEAU
WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING

08/10/2020 Party(s): MATTHEW DUNLAP, AARON FREY
RESPONSIVE PLEADING - ANSWER FILED ON 08/10/2020
Defendant's Attorney: PHYLLIS GARDINER

08/18/2020 HEARING - PRETRIAL/STATUS SCHEDULED FOR 08/21/2020 at 01:00 p.m.
NOTICE TO PARTIES/COUNSEL

TELEPHONIC

08/18/2020 HEARING - PRETRIAL/STATUS NOTICE SENT ELECTRONICALLY ON 08/18/2020
PARTIES NOTIFIED BY EMAIL.

08/20/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
OTHER FILING - REPLY MEMORANDUM FILED ON 08/18/2020
Plaintiff's Attorney: MATTHEW S WARNER
NOTICE OF NEW EVIDENCE IN SUPPORT OF PLTFS MOTION FOR PRELIMINARY INJUNCTION

08/21/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
MOTION - MOTION TO ADMIT VISIT. ATTY FILED ON 08/20/2020
Plaintiff's Attorney: SEVERIN M BELIVEAU
TO ADMIT MARC ELIAS, JOHN DEVANEY, ALEXANDER TISCHENKO, CHRISTINA FORD, TORRYN TAYLOR
ROGERS AND TRE HOLLOWAY.

08/21/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
MOTION - MOTION TO ADMIT VISIT. ATTY GRANTED ON 08/21/2020
WILLIAM STOKES , JUSTICE
COPIES TO PARTIES/COUNSEL

08/21/2020 HEARING - PRETRIAL/STATUS HELD ON 08/21/2020

08/21/2020 MOTION - MOTION TO INTERVENE GRANTED ON 08/21/2020
WILLIAM STOKES , JUSTICE
COPIES TO PARTIES/COUNSEL
TRUMP FOR
PRESIDENT, REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN PARTY OF MAINE ARE PERMITTED TO
INTERVENE.

08/21/2020 Party(s): TRUMP FOR PRESIDENT INC
ATTORNEY - RETAINED ENTERED ON 08/21/2020
Attorney: PATRICK STRAWBRIDGE

Party(s): REPUBLICAN NATIONAL COMMITTEE
ATTORNEY - RETAINED ENTERED ON 08/21/2020
Attorney: PATRICK STRAWBRIDGE

Party(s): NATIONAL REPUBLICAN SENATORIAL COMMITTEE
ATTORNEY - RETAINED ENTERED ON 08/21/2020
Attorney: PATRICK STRAWBRIDGE

Party(s): REPUBLICAN PARTY OF MAINE
ATTORNEY - RETAINED ENTERED ON 08/21/2020
Attorney: PATRICK STRAWBRIDGE

08/25/2020 Party(s): TRUMP FOR PRESIDENT INC, REPUBLICAN NATIONAL COMMITTEE, NATIONAL REPUBLICAN SENATORIAL
COMMITTEE, REPUBLICAN PARTY OF MAINE
RESPONSIVE PLEADING - ANSWER FILED ON 07/06/2020
Defendant's Attorney: PATRICK STRAWBRIDGE

08/28/2020 Party(s): MATTHEW DUNLAP, AARON FREY, TRUMP FOR PRESIDENT INC, REPUBLICAN NATIONAL
COMMITTEE, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, REPUBLICAN PARTY OF MAINE
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 08/26/2020
Defendant's Attorney: PHYLLIS GARDINER
TO ENLARGE TIME FOR DEFTS AND INTVERVENORS TO FILE OPPOSITIONS TO MOTION FOR PRELIMINARY
INJUNCTION

08/28/2020 Party(s): MATTHEW DUNLAP, AARON FREY, TRUMP FOR PRESIDENT INC, REPUBLICAN NATIONAL
COMMITTEE, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, REPUBLICAN PARTY OF MAINE
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 08/28/2020
WILLIAM STOKES , JUSTICE
COPIES TO PARTIES/COUNSEL

OPPOSITION TO
Printed on: 10/02/2020

PRELIMINARY INJUNCTION IS DUE 9/1/20

08/28/2020 HEARING - MOTION PRELIMINARY INJUNCTION SCHEDULED FOR 09/21/2020 at 09:00 a.m.
GOOGLE MEET

08/28/2020 HEARING - MOTION PRELIMINARY INJUNCTION NOTICE SENT ON 08/28/2020

09/02/2020 MOTION - MOTION FOR LEAVE FILED ON 09/01/2020
S/HEIDEN FOR CIVIL LIBERTIES UNION FOUNDATION AND MAINE CONSERVATION VOTERS
UNOPPOSED MOTION FOR LEAVE TO
FILE AMICI CURIAE BRIEF

09/02/2020 OTHER FILING - OTHER DOCUMENT FILED ON 09/01/2020
S/HEIDEN FOR CIVIL LIBERTIES UNION FOUNDATION AND MAINE CONSERVATION VOTERS
AMICI CURIAE BRIEF

09/02/2020 Party(s): TRUMP FOR PRESIDENT INC, REPUBLICAN NATIONAL COMMITTEE, NATIONAL REPUBLICAN SENATORIAL
COMMITTEE, REPUBLICAN PARTY OF MAINE
OTHER FILING - OPPOSING MEMORANDUM FILED ON 09/01/2020
Defendant's Attorney: PATRICK STRAWBRIDGE
INTERVENORS OPPOSITION TO MOTION FOR PRELIM INJUNCTION

09/02/2020 Party(s): MATTHEW DUNLAP, AARON FREY
OTHER FILING - OPPOSING MEMORANDUM FILED ON 09/01/2020
Defendant's Attorney: PHYLLIS GARDINER
OPPOSITION TO PLTF'S MOTION FOR PRELIMINARY INJUNCTION

09/04/2020 MOTION - MOTION FOR LEAVE GRANTED ON 09/04/2020
WILLIAM STOKES , JUSTICE
ACLU IS PERMITTED TO FILE AMICI CURIAE BRIEF

09/04/2020 OTHER FILING - OTHER DOCUMENT FILED ON 09/01/2020
S/HEIDEN FOR ACLU BRIEF OF ACLU
AND MAINE CONSERVATION VOTERS

09/10/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
MOTION - MOTION FOR LEAVE FILED ON 09/09/2020
Plaintiff's Attorney: MATTHEW S WARNER
PLTF'S MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF PRELIM INJUNCTION THAT IS UP TO 14
PAGES

09/10/2020 Party(s): MATTHEW DUNLAP, AARON FREY
OTHER FILING - REPLY MEMORANDUM FILED ON 09/09/2020
Defendant's Attorney: JASON ANTON
DEFTS MOMORANDUM IN REPLY TO BRIEF OF AMICI CURIAE

09/11/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
MOTION - MOTION FOR LEAVE GRANTED ON 09/10/2020
WILLIAM STOKES , JUSTICE

09/16/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
OTHER FILING - REPLY MEMORANDUM FILED ON 09/15/2020
Plaintiff's Attorney: MATTHEW S WARNER

PLTFS REPLY IN SUPPORT OF MOTION FOR SJ

09/16/2020 MOTION - OTHER MOTION FILED ON 09/16/2020
Defendant's Attorney: ZACHARY L HEIDEN
UNOPPOSED MOTION OF AMICI CURIAE TO PARTICIPATE IN ORAL ARGUMENT

09/16/2020 MOTION - OTHER MOTION GRANTED ON 09/16/2020
WILLIAM STOKES , JUSTICE
UNOPPOSED MOTION OF AMICI CURIAE TO PARTICIPATE IN ORAL ARGUMENT

09/16/2020 Party(s): TRUMP FOR PRESIDENT INC,REPUBLICAN NATIONAL COMMITTEE,NATIONAL REPUBLICAN SENATORIAL
COMMITTEE,REPUBLICAN PARTY OF MAINE
MOTION - MOTION TO ADMIT VISIT. ATTY FILED ON 09/16/2020
Defendant's Attorney: ZACHARY L HEIDEN
WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING

09/16/2020 Party(s): TRUMP FOR PRESIDENT INC,REPUBLICAN NATIONAL COMMITTEE,NATIONAL REPUBLICAN SENATORIAL
COMMITTEE,REPUBLICAN PARTY OF MAINE
MOTION - MOTION TO ADMIT VISIT. ATTY GRANTED ON 09/16/2020
WILLIAM STOKES , JUSTICE
COPIES TO PARTIES/COUNSEL
BALTES IS ADMITTED
ATTORNEY ALEXA

09/18/2020 Party(s): TRUMP FOR PRESIDENT INC,REPUBLICAN NATIONAL COMMITTEE,NATIONAL REPUBLICAN SENATORIAL
COMMITTEE,REPUBLICAN PARTY OF MAINE
OTHER FILING - EXHIBIT LIST FILED ON 09/18/2020
Defendant's Attorney: PATRICK STRAWBRIDGE
INTERVENORS EXHIBIT LIST AND EXHIBITS 1-4

09/18/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS,DOUG BORN,DON BERRY,VOTE ORG
OTHER FILING - EXHIBIT LIST FILED ON 09/18/2020
Plaintiff's Attorney: MATTHEW S WARNER
PLTFS EXHIBIT LIST WITH EXHIBITS 1-42

09/21/2020 Party(s): MATTHEW DUNLAP,AARON FREY
OTHER FILING - EXHIBIT LIST FILED ON 09/18/2020
Defendant's Attorney: PHYLLIS GARDINER
DEF EXHIBITS FOR PRELIMINARY INJUNCTION HEARING

09/21/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS,DOUG BORN,DON BERRY
OTHER FILING - EXHIBIT LIST FILED ON 09/18/2020

09/21/2020 Party(s): MATTHEW DUNLAP,AARON FREY
OTHER FILING - AFFIDAVIT FILED ON 09/21/2020
AFFADAVIT OF DR NIRAV DINESH SHAH MD, JD

09/22/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS,DOUG BORN,DON BERRY,VOTE ORG
LETTER - FROM PARTY FILED ON 09/22/2020
PL SUBMIT LETTER TO NOTIFY THE COURT OF AN OPINION ISSUED JUST AS MONDAYS HEARING
CONCLUDED

09/29/2020 HEARING - MOTION PRELIMINARY INJUNCTION HELD ON 09/21/2020

09/29/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
APPEAL - TRANSCRIPT ORDER FORM SENT TO REPORTER/ER ON 09/28/2020
SENT TO CTA CAT SMITH
AND FORWARDED TO TRANSCRIPT OFFICE 9/29/20 BY CTA CATHERINE SMITH
FORM COMPLETED

09/30/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
MOTION - MOTION PRELIMINARY INJUNCTION DENIED ON 09/30/2020
WILLIAM STOKES , JUSTICE
COPIES TO PARTIES/COUNSEL

09/30/2020 ORDER - COURT ORDER ENTERED ON 09/30/2020
WILLIAM STOKES , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL
INJUNCTION
ORDER ON PRELIMINARY
PRELIMINARY INJUNCTION IS DENIED

09/30/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
APPEAL - NOTICE OF APPEAL FILED ON 09/30/2020
Plaintiff's Attorney: MATTHEW S WARNER

09/30/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 09/30/2020
NOTICE OF APPEAL, TRANSCRIPT ORDER FORM AND DOCKET RECORD SENT TO LAW COURT

09/30/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
APPEAL - TRANSCRIPT ORDER FORM FILED ON 09/30/2020
Plaintiff's Attorney: MATTHEW S WARNER

09/30/2020 Party(s): ALLIANCE FOR RETIRED AMERICANS, DOUG BORN, DON BERRY, VOTE ORG
APPEAL - TRANSCRIPT ORDER FORM SENT TO REPORTER/ER ON 09/30/2020

10/01/2020 TRANSFER - TEMPORARY TRANSFER GRANTED ON 10/01/2020
LAW COURT ON APPEAL

Receipts

06/24/2020	Misc Fee Payments	\$150.00	paid.
06/24/2020	Misc Fee Payments	\$25.00	paid.
08/21/2020	Misc Fee Payments	\$100.00	paid.
08/21/2020	Misc Fee Payments	\$100.00	paid.
08/21/2020	Misc Fee Payments	\$100.00	paid.
08/21/2020	Misc Fee Payments	\$100.00	paid.
08/21/2020	Misc Fee Payments	\$100.00	paid.
08/21/2020	Misc Fee Payments	\$100.00	paid.
08/21/2020	Misc Fee Payments	\$600.00	paid.
08/21/2020	Misc Fee Payments	\$600.00	paid.
08/21/2020	Misc Fee Payments	\$600.00	paid.
08/21/2020	Misc Fee Payments	\$600.00	paid.
08/21/2020	Misc Fee Payments	\$600.00	paid.
08/21/2020	Misc Fee Payments	\$600.00	paid.
09/16/2020	Misc Fee Payments	\$100.00	paid.
09/16/2020	Misc Fee Payments	\$600.00	paid.

09/30/2020	Misc Fee Payments	\$25.00	paid.
09/30/2020	Misc Fee Payments	\$150.00	paid.

A TRUE COPY

ATTEST: _____

Clerk

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-20-95

ALLIANCE FOR RETIRED AMERICANS
DOUG BORN, DON BERRY and
VOTE.ORG,
Plaintiffs

v.

**DECISION ON MOTION FOR
PRELIMINARY INJUNCTION**

MATTHEW DUNLAP
Maine Secretary of State, and
AARON FREY, Maine Attorney
General,
Defendants

and

DONALD J. TRUMP FOR PRESIDENT, INC.,
REPUBLICAN NATIONAL COMMITTEE,
NATIONAL REPUBLICAN SENATORIAL
COMMITTEE, and REPUBLICAN PARTY
OF MAINE,
Intervenor-Defendants

AMERICAN CIVIL LIBERTIES UNION OF
MAINE FOUNDATION and MAINE
CONSERVATION VOTERS,
Amici Curiae

INTRODUCTION

This matter is before the court on the Plaintiffs' Motion for a Preliminary Injunction seeking to have the court declare that certain provisions of Maine's Election Code (Title 21-A) are unconstitutional in light of the COVID-19 pandemic and amid questions as to the ability of the United States Postal Service to deliver

absentee ballots in a timely fashion. The Plaintiffs seek to enjoin the Secretary of State and Attorney General from enforcing or applying certain provisions of Maine law, while they also request a mandatory injunction requiring the Secretary of State to perform certain acts that are arguably not consistent with current law. Given the limited time before the November 3, 2020 general election, the court will dispense with a lengthy explanation of the procedural history of this case or a detailed description of the extensive evidence (both documentary and live testimony) presented during the hearing on the Plaintiffs' Motion for Preliminary Injunction held on September 21, 2020. Nevertheless, the court has heard and reviewed the live testimony of Professor Michael Herron, Ph.D. of Dartmouth College and that of former Deputy Postmaster General Ronald Stroman. The court has reviewed, multiple times, the exhibits admitted at the hearing, namely, Plaintiffs' Exhibits 1-42, Defendants' Exhibits 1-17, and Intervenor's Exhibits 1, 2 (pages 45-47 only), and 3-4. The court will make any necessary findings of fact to elucidate its conclusions. Oral argument on the motion was heard on September 22, 2020. The following brief procedural background is provided in order to place the claims and arguments advanced by the Plaintiffs (and Amici) in context.¹

PROCEDURAL BACKGROUND

On June 24, 2020, the Plaintiffs filed their complaint in this action. The detailed complaint was 55 pages in length and contained 232 numbered paragraphs. The Plaintiffs, a non-profit social welfare organization, a non-profit, non-partisan voter registration organization, and two individuals, have challenged numerous provisions of Maine's Election Code pertaining to voter registration and absentee

¹ Amici Curiae, ACLU of Maine and Maine Conservation Voters, have also raised an intriguing argument based upon Art. I, § 1 of the Maine Constitution, that Maine voters have a state constitutional right to vote "safely." None of the Plaintiffs, however, have embraced that argument and the court, although it has considered the argument, will not discuss it further.

ballots. On August 7, 2020, the Plaintiffs moved for a preliminary injunction against the Secretary of State and the Attorney General. In essence, the Plaintiffs' arguments may be summarized as follows.

In normal times, the various aspects of Maine's election laws that are challenged in this litigation, would be viewed as relatively benign and would impose no constitutionally significant burden on the right to vote or the right to organize and associate for political purposes. The times we are living in, however, are by no means normal. Due to the health risks associated with the COVID-19 global pandemic and the more recent issues surrounding changes at the USPS that might affect delivery of the mail for the November 3, 2020 general election, the Plaintiffs contend that the challenged provisions of Maine law now impose "severe," and for some, insurmountable burdens on their ability to cast a valid vote at that election. The court has been asked to declare the challenged provisions of Maine law unconstitutional for the November 3, 2020 election only, and to enjoin the Defendants from applying the law or to do certain acts that the law presently proscribes. In particular, the Plaintiffs challenge the following aspects of Maine's Election Code:

Voter Registration Laws

- A. The Plaintiffs challenge the requirement, as interpreted by the Secretary of State, that voter registration forms be completed and signed in ink and submitted on paper, rather than electronically. 21-A M.R.S. §152(1) & (5).
- B. The Plaintiffs challenge the requirement, as interpreted by the Secretary of State, that first-time voter registrants provide photocopies of certain identification documents, if they are registering by mail. 21-A M.R.S. § 122(5).

Absentee Voter Laws

- A. The Plaintiffs challenge the prohibition against paid absentee ballot collectors. 21-A M.R.S. § 791(2)(A). They also challenge one of the options available to return an absentee ballot, which involves the presence of a notary, a clerk or two witnesses. 21-A M.R.S. § 754-A(2).
- B. The Plaintiffs challenge the requirement that to be valid, an absentee ballot must be “delivered to the municipal clerk at any time before the polls are closed,” i.e., 8:00 p.m. on election day. 21-A M.R.S. §§ 755 & 626(2).
- C. The Plaintiffs challenge those provisions of Maine law providing for the rejection of an absentee ballot because it: (a) was unsigned; (b) contained what appeared to be a mismatched signature, or (c) was otherwise defective. 21-A M.R.S. §§ 756 & 759. In particular, the Plaintiffs challenge the lack of any statutory procedure to notify absentee voters of a defect with their ballot envelope or affidavit or to provide an opportunity to correct or cure the defect.
- D. The Plaintiffs challenge the lack of any provision in Maine law that requires the government to pay the postage for the return of an absentee ballot. The Plaintiffs assert that this burdens their right to vote and also constitutes a “poll” tax under the 24th Amendment to the United States Constitution.

THE PRELIMINARY INJUNCTION STANDARD

A party seeking injunctive relief by a temporary restraining order or a preliminary injunction has the burden of demonstrating to the court that four criteria are met. The moving party must demonstrate that: (1) it has a likelihood of success on the merits (at most, a probability; at least, a substantial possibility); (2) it will suffer irreparable injury if the injunction is not granted; (3) such injury outweighs any harm which granting the injunctive relief would inflict on the other party; and (4) the public interest will not be adversely affected by granting the injunction.

Bangor Historic Track, Inc. v. Dep't of Agric., Food & Rural Res., 2003 ME 140, ¶ 9, 837 A.2d 129.

The Law Court has also instructed that in the case where a request for injunctive relief has “mandatory aspects” to it, the burden of proof is even higher. *See Dep't of Envtl. Prot. v. Emerson*, 563 A.2d 762, 768 (Me. 1989) (“Because the requested preliminary injunction had mandatory aspects, the [plaintiff] had to show a clear likelihood of success on the merits, not just a reasonable likelihood”).

The court does not consider these criteria in isolation, but weighs them together to determine whether injunctive relief is appropriate to the specific circumstances of the case. *Id.* Nevertheless, “[f]ailure to demonstrate that any one of the criteria is met requires that injunctive relief be denied.” *Bangor Historic Track, Inc.*, 2003 ME 140, ¶ 10. It has been observed that “historically, the Maine courts have taken a conservative attitude towards injunctions, holding the injunction to be ‘an extraordinary remedy only to be granted with utmost caution when justice urgently demands it and the remedies at law fail to meet the requirements of the case.’” *Saga Communs. of New England, Inc. v. Voornas*, 2000 ME 156, ¶ 19, 756 A.2d 954 (quoting Andrew H. Horton & Peggy L. McGehee, MAINE CIVIL REMEDIES § 5.1, at 5-2 to 5-3 (1991)).

Likelihood of Success on the Merits

The Plaintiffs’ claims that various provisions of Maine’s Election Code are unconstitutional (at least for the November 3, 2020 general election) must be evaluated in light of the familiar principle that “all acts of the Legislature are presumed constitutional.” *Bouchard v. Dep't of Pub. Safety*, 2015 ME 50, ¶ 8, 115 A.3d 92 (internal quotation marks omitted). One who claims that a statute is unconstitutional has a “‘heavy burden’” of showing that there “‘are ‘no circumstances in which it would be valid.’” *State v. Weddle*, 2020 ME 12, ¶ 12, 224 A.3d 1035 (quoting *Conlogue v. Conlogue*, 2006 ME 12, ¶ 5, 890 A.2d 691).

Moreover, in the particular context of this challenge to the validity of Maine's code governing how elections in this state are to be conducted, the United States Constitution expressly grants to the Legislature the authority to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives," subject to the power of Congress to regulate in this area. U.S. Const. Art. I, § 4, Cl. 1. The parties appear to agree that, for the most part, the analysis this court must employ is articulated in *Burdick v. Takushi*, 504 U.S. 428 (1992) and *Anderson v. Celebrezze*, 460 U.S. 780 (1983), commonly referred to as the *Burdick/Anderson* standard of review.

In *Anderson*, the Court reaffirmed that state election laws can burden two separate, but overlapping, rights, namely, the right to associate to advance political beliefs and the right of voters to effectively cast their votes. 460 U.S. at 787 (quoting *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968)). While recognizing that these rights are "fundamental," the Court also pointed out that not all restrictions imposed by state election laws "impose constitutionally suspect burdens on voters' rights." *Id.* at 788. This is so because "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974). Accordingly:

To achieve these necessary objectives, States have enacted comprehensive and sometimes complex election codes. Each provision of these schemes, whether it governs the registration and qualification of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects – at least to some degree – the individual's right to vote and his right to associate with others for political ends. Nevertheless, the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions.

Anderson, 460 U.S. at 788.

There is no “litmus paper test” to distinguish valid from invalid election law restrictions. *Id.* at 789. Rather, the *Anderson* Court described a process by which a court “must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments.” *Id.* Next, “the precise interests put forward by the State as justifications for the burden imposed by its rule” must be identified and evaluated. *Id.* As part of this calculus, a court must not only assess the “legitimacy and strength” of the State’s interests, but also “the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Id.*

In *Burdick*, the Court rejected the suggestion that every voting regulation be subjected to a strict scrutiny analysis, requiring that the regulation be narrowly tailored to advance a compelling governmental interest. To insist that state election regulations meet such a high standard “would tie the hands of States seeking to assure that elections are operated equitably and efficiently.” *Burdick*, 504 U.S. at 433. Rather, under the standard explicated in *Anderson*, the level of scrutiny depends upon the extent to which First and Fourteenth Amendment rights are burdened. *Id.* at 434.

Thus, as we have recognized when those rights are subjected to ‘severe’ restrictions, the regulation must be ‘narrowly drawn to advance a state interest of compelling importance.’ But when a state election law provision imposes only ‘reasonable nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters, ‘the State’s important regulatory interests are generally sufficient to justify’ the restrictions.

Id.

More recently, the Supreme Court in *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008), a case in which Indiana’s voter identification law was upheld, emphasized that a reviewing court “must identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule, and then

make the ‘hard judgment’ that our adversary system demands.” *Id.* at 190. Any burden, “[h]owever slight” it might appear, must be “justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’” *Id.* at 191.

The First Circuit Court of Appeals has described the tension between holding free and open elections and the need to regulate those elections in order to avoid utter confusion.

Fair, honest, and orderly elections do not just happen. Substantial state regulation is a prophylactic that keeps the democratic process from disintegrating into chaos. Consequently, there is a strong state interest in regulating all phases of the electoral process

Perez-Guzman v. Gracia, 346 F.3d 229, 238 (1st Cir. 2003).

It is for this reason that the *Burdick/Anderson* line of analysis has sometimes been referred to as a “sliding scale” standard of review, because the court must weigh the nature and magnitude of the burden on the right to vote by a state’s regulation against the nature and strength of the state’s interest served by that regulation. With this background in mind, the court now proceeds to evaluate the particular provisions of Maine’s Election Code that are challenged here by the Plaintiffs.

Voter Registration

The Plaintiffs challenge two aspects of Maine’s voter registration law. The first, referred to as the “pen and paper” requirement, is based on 21-A M.R.S. § 152(1), which permits a person to register to vote by completing an application that contains the “signature” of the voter. The Plaintiffs challenge the Secretary’s interpretation that the “signature” must be an original, inked signature. The second law challenged by the Plaintiffs is based on 21-A M.R.S. § 112-A and is referred to as the “photocopier” requirement. The Plaintiffs challenge the Secretary of State’s instruction on the voter registration form that requires first-time registrants who register by mail to include a “photocopy” of certain types of identification.

A. “Pen and Paper” Requirement

Title 21-A M.R.S. § 152(1) provides that a person may register to vote by completing an application containing a number of items of information about the voter. The application must contain the “signature” of the applicant. 21-A M.R.S. § 152(1)(K). The Secretary of State has construed this requirement to mean an original, inked signature. The Plaintiffs have described this requirement in the following terms:

To register to vote remotely, the Secretary requires voters to complete a mail voter registration form and return a paper copy of the form signed in pen ink to the voter’s local election official. As a direct result, a Mainer seeking to register remotely must have access to a computer printer, or must engage in a multi-day, multi-step process of requesting the delivery of a voter registration application from their town clerk. Once the voter prints or receives the paper application, they must complete it, sign it, and then obtain an envelope and a stamp to mail it back. These additional steps make it less likely that Mainers will register to vote.

Pls.’ Mem. at 4.

The Plaintiffs, and Vote.org in particular, argue that Maine should adopt an online voter registration procedure using an electronic signature.

The Secretary counters that Maine’s voter registration system is simple and easy to use, as reflected by the fact that 96% - 97% of eligible voters in Maine are registered. Moreover, an inked signature supports a significant governmental interest in that it “is an important record for the municipal registrar to keep on file because it serves as a reference against which future signatures of the same voter are compared.” *Def.’s Ex. 6 (Flynn Aff.) at 4-5*. The Secretary has asserted that he has not found an electronic voter registration system that, so far, “would serve as an adequate substitute for the paper record.” *Id. at 6*.

The court finds that the “pen and paper” requirement for voter registration imposes a minor burden on the right to vote, which is clearly outweighed by the State’s important interest in an original, inked signature.

In the court’s view, Maine’s voter registration procedure is, indeed, simple and easy to follow. Although the Plaintiffs tend to describe the process as full of obstacles, it only requires an applicant to either appear in person to register or to complete the form and mail it with an inked signature. This can hardly be described as a severely burdensome process.

The Plaintiffs’ chief complaint is that an electronic signature is just as good as the pen and paper requirement. That policy argument, however, is one that the Legislature has already addressed. The Secretary of State may “design an application that can be completed electronically and that substantially meets the requirements of this section.” 21-A M.R.S. § 152(5). The court rejects the argument that the Secretary’s interpretation of current law as requiring an inked signature is wrong. On the contrary, the Secretary’s interpretation is reasonable and is consistent with the legislative language. The Legislature has granted the Secretary of State the authority to design an electronic application process, but has not mandated it at this time, leaving it to the Secretary’s discretion.

Finally, to the extent Vote.org contends that the “pen and paper” requirement violates its right to “core political speech,” the court is unpersuaded. The Secretary of State is charged with the responsibility of designing the voter registration application and nothing about the design of that application or the requirement of an inked signature limits any First Amendment free speech rights. *New Ga. Project v. Raffensperger*, 2020 U.S. Dist. LEXIS 159901, *71-72 (N.D. Ga. 2020).

As to the “pen and paper” requirement, the Plaintiffs have not shown a likelihood of success on the merits.

B. “Photocopier” Requirement

Those persons who are registering to vote for the first time must provide satisfactory proof of identity. *See* 21-A M.R.S. § 112-A. If the voter appears in person to register, there is no need to photocopy any documents. If the registration is done by mail, the Secretary of State instructs the voter to include a photocopy of one of the acceptable forms of identification such as a driver’s license, a state ID, a current utility bill or bank statement, or a government document “that shows your name and address.” *Def.’s Ex. 8* If the applicant fails to include such proof of identity with the mailed registration form, he or she may still show up on election day, provide the requisite proof of identity and then vote. 21-A M.R.S. § 121(1-A).

The Plaintiffs assert that a requirement to include a photocopy of identification documents is unnecessarily burdensome because the voter either has to own a copier, have access to one or travel somewhere to make a copy.

Once again, the court finds that any burden imposed by the “photocopier” requirement is minimal at best. The State has a strong interest in requiring proof of identity for first-time voter registrants. For those who choose to use the mail to complete the registration process, it is a minor but necessary inconvenience to include a copy of the identity document, which can be viewed by the local election official if the registration is done in person. Moreover, the provisions of Maine law on the subject of proof of identity appear entirely consistent with federal law. *See* 52 U.S.C. § 21083. *See generally Crawford*, 553 U.S. 181; *Democracy N.C. v. N.C. State Bd. of Elections*, 2020 U.S. Dist. LEXIS 138492, *104-05 (M.D.N.C. 2020).

Absentee Ballot Regulations

The Plaintiffs challenge a number of provisions pertaining to absentee voting in Maine. These include: (A) the prohibition on receiving any compensation to deliver, receive, accept, notarize or witness an absentee ballot; (B) the requirement that if a third party, who is not an immediate family member, returns an absentee

ballot, the ballot must be signed before a court or municipal clerk, a notary or two other witnesses; (C) the requirement that a voter affix postage to an absentee ballot envelope, if the voter is using the mail to return an absentee ballot; (D) the rejection of absentee ballots involving “mismatched” signatures or other correctible defects, and the failure to provide a statutory procedure for notice to the voter of the rejection and an opportunity to cure the defects, and; (E) the requirement that an absentee ballot be “delivered” to the municipal clerk “before the polls are closed” in order for that absentee ballot to be valid.

A. 21-A M.R.S. § 791(2)(A) – The Ban on Compensation

Maine law makes it a Class D crime if a person “[d]elivers, receives, accepts, notarizes or witnesses an absentee ballot for any compensation.”² 21-A M.R.S. § 791(2)(A). The Plaintiffs complain that “[b]y prohibiting paid and trained organizers from providing this service and in the process, providing an additional check to ensure that the voter has signed their ballot envelope – the state has unnecessarily cut off an important avenue of assistance for voters.” *Pls.’ Mem. at 14.*

The court concludes that the burden on the right to vote imposed by the prohibition on “paid” handlers or collectors of absentee ballots is slight. Maine law provides a variety of methods for the return of an absentee ballot. The voter may return the absentee ballot in person, by mail, by depositing it into a secured lockbox, by having it delivered by an immediate family member,³ or by having it delivered

² This prohibition “does not apply to a governmental employee handling ballots in the course of that employee’s official duties or a person who handles absentee ballots before the unvoted ballots are delivered to the municipality or after the voted ballots are returned to the clerk.” 21-A M.R.S. § 791(2)(A).

³ The term “immediate family” is defined to mean “a person’s spouse, parent, grandparent, child, grandchild, sister, half-sister, brother, half-brother, stepparent, stepgrandparent, stepchild,

by someone else provided the ballot has been marked in the presence of a clerk, a notary or two other witnesses. 21-A M.R.S. § 754-A. In accordance with the Governor's Executive Order, a voter may also vote in-person by absentee ballot up until 5:00 p.m. on Friday, October 30, 2020. *Def.'s Ex. 4.*

In light of these alternatives, the slight burden on the right to vote imposed by the prohibition on paid deliverers of absentee ballots is clearly outweighed by the State's compelling interest in forbidding the payment of compensation to those handling another person's ballot. Such a prohibition serves the State's important interest in deterring and preventing election fraud.

The Plaintiffs have not shown a likelihood of success on the merits in their challenge to 21-A M.R.S. § 791(2)(A).

B. Absentee Voter Assistance

As noted above, Maine law allows the return of an absentee ballot in a number of different ways. It can be returned in person to the local clerk or to a secure lockbox. It can be mailed. It can be returned by an immediate family member, the definition of which is quite broad. If a person chooses not to use any one of these methods, the voter's absentee ballot may be delivered by any other third person provided the voter marks the ballot in the presence of a municipal clerk, a clerk of courts, a notary or two other witnesses. 21-A M.R.S. § 754-A(2)(A).

The Plaintiffs attack this optional method of delivering an absentee ballot on the following basis:

. . . requiring voters who need assistance to recruit multiple individuals to witness the ballot adds a burdensome, unnecessary, and now dangerous step to returning absentee

stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, domestic partner, the half-brother or half-sister of a person's spouse, or the spouse of a person's half-brother or half-sister. 21-A M.R.S. § 1(20).

ballots. The State has no sufficient justification for imposing such burdensome hurdles on returning ballots.

Pls.' Mem. at 14.

In support of their position, the Plaintiffs rely upon *Perez-Guzman v. Gracia*, 346 F.3d 229 (1st Cir. 2003). But *Gracia* involved a requirement that all signatures on a petition to form a new political party in Puerto Rico had to be sworn to before a lawyer-notary. Similarly, other cases where a witness requirement was found to be a severe burden on the right to vote (during the COVID-19 pandemic), involved a witness requirement for all absentee ballots. *See, e.g., League of Women Voters of Va. v. Va. State Bd. of Elections*, 2020 U.S. Dist. LEXIS 152120, *8-9 (W.D. Va. 2020) (consent agreement); *Common Cause R.I. v. Gorbea*, 2020 U.S. App. LEXIS 135267, *2 (D.R.I. 2020) (consent agreement); *Mich. Alliance for Retired Americans v. Benson*, 20-000108-MM (Mich. Ct. of Claims 2020) (as applied challenge based on Michigan's constitutional right to vote absentee). *But see Democracy N.C. v. N.C. State Bd. of Elections*, 2020 U.S. Dist. LEXIS 138492, *103 (M.D.N.C. 2020); *New Ga. Project v. Raffensperger*, 2020 U.S. Dist. LEXIS 159901, *69-70 (N.D. Ga. 2020).

Maine law, however, does not require an absentee voter to have any witnesses. Utilizing the services of a clerk, a notary or two other individuals, as allowed by section 754-A(2)(A), is simply another option for an absentee voter to use in deciding how to return the ballot. The State has a strong interest in deterring and preventing fraud in connection with the handling of absentee ballots. Although there has been considerable discussion and debate about the prevalence (or lack thereof) of voter fraud, there can be no question as to the State's compelling interest in reasonably regulating how a ballot is handled, and by whom, when the voter chooses not to appear for in-person voting. *See State v. Sproul*, 544 A.2d 743, 744-46 (Me. 1988) (tampering with absentee ballot).

Given the numerous alternatives available to an absentee voter to return the voter's ballot that do not involve the need for any witnesses, the burden is minor and is outweighed by the State's strong interest.

As to the witness assistance provision in 21-A M.R.S. § 754-A(2)(A), the Plaintiffs have not shown a likelihood of success.

C. First Class Postage Requirement

If a Maine voter wishes to vote absentee and also wishes to return the ballot by using the United States Postal Service, the voter must affix sufficient postage. The State of Maine does not pay for such return postage and the Election Code does not mandate that local municipalities pay for it either.

The Plaintiffs contend that the failure of the government to pay the postage for the return of an absentee ballot imposes a severe burden on the right to vote. They also assert that it constitutes a Poll Tax in violation of the Twenty-Fourth Amendment to the United States Constitution. In sum and substance, the Plaintiffs maintain that obtaining and paying for postage during the COVID-19 pandemic and the well-publicized difficulties being experienced by the Postal Service, has "exacerbated" the burden of paying for postage and will deter people from voting, either by mail or by going to the polls where they may risk in-person interactions and exposure to the coronavirus. *Pls.' Mem. at 10-11.*

This issue has been litigated in other courts throughout the nation. In every case of which this court is aware, claims similar to those being raised by the Plaintiffs have been rejected. Most courts have described the postage burden as, at most, moderate. In light of the alternatives to voting by mail, including in-person, by delivery of the ballot by an immediate family member, by depositing one's ballot into a secured lockbox or by delivery by some other third person, and given the State's strong interest in maintaining fiscal responsibility of taxpayer resources, the courts have concluded that the State's interests outweigh any burden on the right to

vote as a result of having to pay the postage to use the mail. The courts have also rejected the argument that paying for postage to mail an absentee ballot amounts to a Poll Tax. *See, e.g., Raffensperger*, 2020 U.S. Dist. LEXIS 159901, *63 (moderate burden); *League of Women Voters v. LaRose*, 2020 U.S. Dist. LEXIS 91631, * 21 (S.D. Ohio 2020) (minimal burden); *Black Voters Matter Fund v. Raffensperger*, 2020 U.S. Dist. LEXIS 143209, *104 (N.D. Ga. 2020) (moderate burden); *DCCC v. Ziriox*, 2020 U.S. Dist. LEXIS 170427, *68 (N.D. Okla., 2020) (light burden); *League of Women Voters of Mich. v. Sec’y of State*, 2020 Mich. App. LEXIS 4454, *34 (Mich. Ct. App. 2020) (minimal burden).

The court agrees with these decisions and concludes that paying for postage to return an absentee ballot by mail represents, at most, a moderate burden and, more likely, only a slight burden that is outweighed by the State’s interest. Moreover, the court concludes that paying for such postage is not a Poll Tax.

The Plaintiffs have not shown a likelihood of success on the merits on their postage claim.

D. Notice of Rejection and Opportunity to Cure

Upon receiving a return envelope apparently containing an absentee ballot, the local municipal clerk must examine the envelope to determine if the signature on the envelope and the signature on the absentee ballot application “appear to have been made by the same person and if the affidavit is properly completed.” 21-A M.R.S. § 756(2). When it comes time to count absentee ballots, the election warden is directed to reject the absentee ballot envelope (without opening it) if: (a) the signatures do not appear to have been made by the same person or (b) the affidavit is not properly completed.⁴ 21-A M.R.S. § 759(3). A rejected ballot is not counted.

⁴ The term “[a]ffidavit, with respect to an absentee ballot envelope means that portion of the envelope that includes the voter’s signature, the aide certificate and the witness certificate.” 21-A M.R.S. § 1 (1-A)

21-A M.R.S. § 759(5). Maine law directs that an absentee ballot may not be rejected for any “immaterial irregularity in completing the application or affidavit on the return envelope.” 21-A M.R.S. § 762. Certain information, however, must be on the envelope for the ballot to be accepted, to wit: name and address, voter’s signature and witness signature, if required. *Id.*

There is no procedure spelled out in Maine’s Election Code that requires local election officials to notify an absentee voter that there is some type of defect with the absentee ballot envelope or affidavit such as, for example, the lack of a signature or signatures that appear mismatched. Nevertheless, within a matter of days after the complaint in this matter was filed, and in preparation for the July 14, 2020 primary election, the Secretary of State provided “instructions” to municipal election officials that absentee voters whose return envelopes or affidavits were defective for some reason, should be notified and given the opportunity to cure or correct the defect. The Secretary has refined those instructions for the November 3, 2020 general election. Those instructions were admitted into evidence as Defendants’ Exhibit 17.

The instructions embodied in Defendants’ Exhibit 17 provide detailed, step-by-step procedures for local election officials in the following situations: (a) mismatched signatures; (b) missing voter signature; and (c) defective aide or witness certificate that is incomplete or incorrect.

The Plaintiffs acknowledged during closing argument that the Secretary’s instructions are a substantial improvement over the absence of any statutory procedure for notification and opportunity to cure. They contend, however, that the instructions are merely guidance and the court should issue an order making them “binding” on municipal officials. In addition, the Plaintiffs argue that the instructions do not go far enough and should include a post-election day deadline cure opportunity.

There is a substantial body of caselaw addressing the issue of what procedural due process applies where there appears to be some type of curable defect on an absentee ballot envelope or affidavit. Most of that caselaw stands for the proposition that, at least where the defect is an apparent mismatch of signatures, the absentee voter is entitled to be notified of the defect and given the chance to correct it. *See, e.g., Frederick v. Lawson*, 2020 U.S. Dist. LEXIS 150995, *50-51 (S.D. Ind. 2020); *Democracy N.C. v. N.C. State Bd. of Elections*, 2020 U.S. Dist. LEXIS 138492, *147-56 (M.D.N.C. 2020); *Self Advocacy Solutions, N.D. v. Jaeger*, 2020 U.S. Dist. LEXIS 97085, *29 (D.N.D. 2020); *Fla. Democratic Party v. Detzner*, 2016 U.S. Dist. LEXIS 143620, *16-26 (N.D. Fla. 2016); *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 222 (D.N.H. 2018); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1337-41 (N.D. Ga. 2018); *Raetzel v. Parks/Belmont Absentee Election Bd.*, 762 F. Supp. 1354, 1358 (D. Ariz. 1990). *But see Memphis A. Phillip Randolph Inst. v. Hargett*, 2020 U.S. Dist. LEXIS 156759, *65-66 (M.D. Tenn. 2020).

In view of the fact that the Secretary of State has created a process to notify absentee voters of a defect on the envelope/affidavit, and to provide them with an opportunity to correct the defect prior to the close of the polls on election day, the court must decide whether that procedure provides adequate due process. The court is satisfied that it does. The Secretary's instructions direct, in bold-face type, that **"the clerk must make a good faith effort to notify the voter as quickly as possible (within one business day at a minimum) that the ballot may be rejected or challenged unless the defect is cured."** *Def.'s Ex. 17*. The instructions further state: "If the ballot is received on election day or less than 24 hours before election day, the clerk should make a good faith effort to notify the voter as quickly as possible." *Id.*

In the case of apparent mismatched signatures and the voter cannot be reached or does not cure the defect before 8:00 p.m. on election day (the close of the polls),

the ballot will be counted as a challenged ballot according to the procedure established in 21-A M.R.S. § 673.⁵ *See Def.'s Ex. 17*. In the case of a missing signature or an incomplete or incorrect aide or witness certificate, if the voter cannot be reached or does not cure the defect by the close of the polls on election day, the ballot will be rejected as required by 21-A M.R.S. §§ 759(3) & 762. Moreover, in the latter two situations, the voter, if reached, may take steps to cure the defect over the phone without having to come to the town office or to complete a duplicate ballot. When that option is used, the ballot will be counted as a challenged ballot.

The court finds that the Secretary's instructions and the process his office has developed to provide notice and an opportunity to cure or correct is adequate for procedural due process purposes. The Secretary's process emphasizes the need to notify a voter of a defect "as quickly as possible," and the instructions provide a variety of ways a defect can be cured. It is also significant to the court that the Secretary has launched an online absentee ballot tracking system that will allow voters who choose to take advantage of absentee voting to follow the journey of their ballot from the time of their request for an absentee ballot to its delivery and receipt by the clerk, including whether it has been rejected.

Procedural due process is a flexible concept and what process is due depends on what the particular situation demands. *Gonzalez-Droz v. Gonzalez-Colon*, 660 F.3d 1, 13 (1st Cir. 2011). Three factors must be balanced; the private interest affected; the risk of erroneous deprivation of such interest through the procedures used, and the value, if any, of additional procedural safeguards, and; the government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). The

⁵ A "[c]hallenged ballot means a ballot cast by one whose eligibility to vote has been questioned during election day." 21-A M.R.S. § 1(7). A challenged ballot "must be counted the same as a regular ballot. The validity of a challenged ballot need not be determined unless it affects the results of the election." 21-A M.R.S. § 696(1).

interest affected here is significant as it involves the right to vote and to have one's vote counted. The Secretary's procedures for notification and an opportunity to cure have greatly reduced the risk of an erroneous deprivation. The court rejects the Plaintiffs' argument that the Secretary's process is not adequate because it does not include an opportunity to cure after the polls have closed, when the voter could not be reached or has otherwise failed to cure the defective ballot. This argument, in reality, is only applicable to defects other than apparent mismatched signatures, because in that case the ballot is counted as a challenged ballot if it has not been cured. Presumably, the Secretary's procedure treats mismatched signatures differently because the voter has complied with the law by delivering a completed absentee envelope and ballot before the close of the polls on election day and it contains a signature. Where the voter has not signed the ballot envelope at all or there is a defect in the aide or witness certificate that is not corrected by the close of the polls on election day, the ballot will be rejected because a completed envelope and affidavit has not been delivered to the clerk before the close of the polls. In those circumstances, there is a greatly reduced risk of an "erroneous" deprivation because the defects that remain uncured are not the result of a clerk's subjective opinion that signatures do not match.

As will be discussed further in the section of this Decision dealing with the Absentee Ballot Delivery Deadline (8:00 p.m. on election day), the State has a strong interest in its election day deadline. Balancing all the factors of *Mathews v. Eldridge*, the court finds that the Secretary's notification and opportunity to cure procedure as detailed in Defendants' Exhibit 17 provides adequate and appropriate due process under the circumstances.

The court sees no need to issue any type of order directed at the Secretary of State, Attorney General or local election officials to treat the instructions as "binding." The court is confident that the Secretary of State and the Attorney

General, both constitutional officers, will implement the Secretary's procedure and that local election officials will do so as well. Accordingly, the Plaintiffs have failed to demonstrate their entitlement to injunctive relief on this issue.

E. The Absentee Ballot Delivery Deadline

Maine law provides: "In order to be valid, an absentee ballot must be delivered to the municipal clerk at any time before the polls are closed." 21-A M.R.S. § 755. Furthermore, by law "[t]he polls must be closed at 8:00 p.m. on election day" 21-A M.R.S. § 626(2).

The Plaintiffs have asked the court to declare that the Absentee Ballot Delivery Deadline is an unconstitutional burden on the right to vote in the November 3, 2020 general election. They are seeking to enjoin the Secretary of State and the Attorney General from enforcing the requirement that absentee ballots must be delivered before the polls are closed on election day. Instead, the Plaintiffs have asked the court to declare that, to be valid, an absentee ballot must be postmarked on or before election day and counted if it is delivered to the municipal clerk after election day. The Plaintiffs prefer at least 7 days after election day for absentee ballots to be counted, assuming they are postmarked by November 3, 2020, but they have essentially left the number of days up to the court.

The Plaintiffs contend that the COVID-19 pandemic will result in a massive surge in absentee voting and voting by mail in particular. Combined with the difficulties being experienced by the United States Postal Service in meeting its on-time delivery standards, the Plaintiffs argue that the COVID-19 pandemic has greatly amplified the burden on absentee voters who choose to use the mail to return and deliver their ballots. According to the Plaintiffs, the risk of disenfranchisement of absentee voters whose ballots are not delivered on time is "severe." The Plaintiffs contend that the unprecedented

circumstances in which the November 3, 2020 general election will be held has made the Delivery Deadline for absentee ballots unconstitutional because many voters will not have their votes counted due to lateness in their delivery to the town clerk.

The court is satisfied that absentee voting in Maine dramatically increased for the July 14, 2020 primary election. Indeed, over 182,000 voters (approximately 58% of all votes cast) chose to utilize absentee voting for that primary election. It is anticipated that at least an equal percentage of voters, (i.e., hundreds of thousands of Maine voters) will vote absentee and/or by mail for the November 3, 2020 general election. Further, the court has no doubt that this surge in absentee voting is the direct result of the COVID-19 pandemic. Voters in Maine have been strongly encouraged by their elected and appointed leaders to vote by absentee ballot and to do so as soon as possible once absentee ballots become available in early October.

The court is also satisfied that with the increased use of absentee voting in Maine for the general election comes the increased risk that some voters will fail to have their absentee ballots delivered on time so as to be counted. Precisely how many absentee votes will be rejected due to lateness is debatable – the Plaintiffs' expert suggests somewhere in the area of 2400 or more, while the Defendants estimate 600-700.

The Postal Service's on-time delivery standards call for first-class mail to be delivered in-state within 2 – 5 days. Mr. Stroman testified that he advises voters to mail an absentee ballot at least 7 days before election day in order to make sure it is delivered by the close of the polls.

The Plaintiffs acknowledge that in normal times – pre-COVID-19 – Maine's Delivery Deadline is reasonable and non-discriminatory and imposes only a relatively light burden on the right to vote. During a viral pandemic

and delayed mail delivery, however, the Plaintiffs argue that the burden on the right to vote is severe and not justified by a compelling state interest.

The court agrees that COVID-19 and the issues with the Postal Service have complicated voting in the year 2020. The court is not convinced, however, that Maine's Delivery Deadline is the cause of any increased burden on the right to vote. The Delivery Deadline has been in existence for many years and, as far as the court can tell, has never been viewed as imposing an unreasonable burden on the right to vote. It is a deadline, and just like any deadline, there can be serious consequences if it is not met.

Courts that have considered the constitutionality of delivery or receipt deadlines for absentee ballots have reached different conclusions for different reasons. Some have agreed with the Plaintiffs that a deadline for the delivery or receipt of an absentee ballot is a severe burden on the right to vote that cannot be justified by any compelling governmental interest. As a result, those courts have judicially modified the statutory deadlines, typically by ordering that absentee ballots be counted if they are postmarked by election day and received within a certain period of time (usually a week) afterwards. *See, e.g., New Ga. Project v. Raffensperger*, 2020 U. S. Dist. LEXIS 159901, **88-90 (N.D. Ga. 2020); *Democratic Nat'l Comm. v. Bostlemann*, 20-CV-249-WMC (W.D. Wis. 2020); *Pa. Democratic Party v. Boockvar*, J-96-2020 (Pa. 2020) (invoking its "extraordinary jurisdiction" and at the request of the Secretary of State); *Mich. Alliance for Retired Americans v. Benson*, 20-000108-MM (Mich. Ct. of Claims 2020) (based on Michigan's constitutional right to vote absentee and by mail); *Driscoll v. Stapleton*, DV-20-408 (13th Jud. Dist. Ct., Yellowstone Cty. 2020) (based on Montana state constitution).

The federal district court in Oklahoma, on the other hand, found the delivery deadline for absentee ballots to be "no more than a minimal burden

on voters,” particularly in light of the available options for voting on time. *Ziriox*, 2020 U.S. Dist. LEXIS 170427, *25. The Court of Appeals in Michigan also ruled that the state’s election day receipt deadline was facially constitutional and did not place an undue burden on the right to vote absentee under the state constitutional provision guaranteeing the right to vote by mail. *League of Women Voters*, 2020 Mich. App. LEXIS 4454, *24, 26.

Of significance to the court is the fact that at least two of the cases in which the delivery or receipt deadline for absentee ballots was deemed to be a severe burden originated in states that had well-publicized problems in conducting primary elections earlier this year during the early stages of COVID-19, namely, Georgia and Wisconsin. By contrast, Maine’s July 14, 2020 primary election appears to have been conducted with little controversy. The Secretary of State and the Governor have promulgated detailed guidance, based on CDC recommendations, as to how polling places must be designed and arranged in order to mitigate exposure to COVID-19 during the general election. Local elections officials have taken the steps necessary to implement and enforce that guidance in preparation for the election, including limiting the number of voters at any one time and mandating social distancing and the wearing of face coverings. It is true, of course, that Maine has seen recent outbreaks of COVID-19 in certain areas of the State, but it remains the lowest, or next to lowest, State in its COVID-19 positivity rate as well as its death rate from the disease per 100,000 people. Moreover, the State of Maine, through the Attorney General, has joined in litigation in federal courts in Washington and Pennsylvania, and has obtained relief to enjoin the Postal Service from implementing changes to its policies and operations that may have contributed to mail delays.

The decision of the Pennsylvania Supreme Court ordering that a postmark date should replace the receipt deadline was at the request of the Secretary of State there. And the decision by a single judge of the Michigan Court of Claims was based on an “as applied” challenge to the receipt deadline, and the court there did not believe it was bound by the contrary decision of the Michigan Court of Appeals, which involved a facial challenge to the deadline. Finally, this court does find the recent decision of the Montana District Court persuasive, as the court there completely discounted the state’s interest in the integrity of elections and maintaining voter confidence in the integrity and legitimacy of elections.

The Plaintiffs claim that Maine law is out of alignment with the delivery standards of the Postal Service because it permits a voter to request and obtain an absentee ballot on the Thursday before election day (5:00 p.m. on October 29, 2020). Plaintiffs argue that an absentee ballot obtained that soon before election day cannot be mailed and be delivered by the close of the polls on November 3, 2020. But allowing voters to obtain an absentee ballot as close to election day as the previous Thursday is not necessarily tied to the use of the mail. Rather, it permits a voter to obtain an absentee ballot that can be delivered in person or to a secure lockbox or delivered by a third party. The fact that Maine allows voters to request and obtain an absentee ballot on the Thursday before election day does not somehow render Maine’s Delivery Deadline unconstitutional because the Postal Service cannot guarantee delivery through the mail by November 3, 2020.

After careful consideration of the evidence, the arguments of counsel and the relevant caselaw, the court finds that the Maine Absentee Ballot Delivery Deadline, even in 2020, imposes only a modest burden on the right to vote. As explained by the Michigan Court of Appeals:

We acknowledge that it [the receipt deadline] does affect when an absentee voter must mail their ballot so that it arrives by the deadline. But the fact that a voter must act sooner when they choose to mail in their ballot rather than deliver it does not deprive them of the choice; rather, it merely affects how and when that choice must be exercised.

League of Women Voters of Mich., 2020 Mich. App. LEXIS 4454, *17.

It is the Maine Legislature that has established the Absentee Ballot Delivery Deadline in 21-A M.R.S. § 755. It is perfectly sensible that there be a deadline of some kind: “Obviously . . . there must be a deadline – at some point, the ballots must be counted and a winner declared. What that deadline should be is a policy decision.” *Id.* at *19. The Absentee Ballot Delivery Deadline does not exist in a vacuum. Rather, it is part of Maine’s comprehensive Election Code that contains a number of time-sensitive activities that elections officials must adhere to in order to make sure that the winners in an election are declared in a timely fashion and are seated.

For this court to unilaterally discard the statutory deadline and impose a deadline of its own choosing, would amount to a judicial re-writing of the election laws. Moreover, any deadline has aspects of arbitrariness to it, including one crafted by the court. Such a judicial modification of the deadline risks severe disruption of Maine’s electoral process, under circumstances where the burden on the right to vote as a result of the Delivery Deadline is slight. *See Ziriox*, 2020 U.S. Dist. LEXIS 170427, *31.

Because the State offers voters wishing to vote by absentee ballot options to ensure their votes are timely returned, voters who fail to ensure timely return of their ballots should not blame the law for their inability to vote. The Supreme Court similarly observed that voters who wait weeks into absentee voting and request a ballot at the last minute are suffering the typical burden of a late-requesting voter, not a burden imposed by the state law. An absentee voter is responsible for acting with sufficient time to

ensure timely delivery of her ballot, just as a voter intending to vote in-person must take appropriate precautions by heading to the polls with a sufficient cushion of time to account for traffic, weather, or other conditions that might otherwise interfere with their ability to arrive in time to cast a ballot.

Id. at *58 (internal citations omitted)

The State has weighty interests that justify the Absentee Ballot Delivery Deadline. Clearly, the State has a significant interest in “providing order, stability, and legitimacy to the electoral process.” *Utah Republican Party v. Cox*, 885 F.3d 1219, 1228 (10th Cir. 2018). *See also Mays v. LaRose* 951 F.3d 775, 792 (6th Cir. 2020); *Thomas v. Andino*, 2020 U.S. Dist. LEXIS 90812, *66-67 (D. N.C. 2020). Part of that important state interest is the need to secure and maintain voter confidence in the integrity and legitimacy of elections. A deadline such as Maine’s Absentee Ballot Delivery Deadline serves that interest by demonstrating to all voters that election day is a watershed event because it is the day when all votes are cast and counted. A judicial declaration that the statutory deadline is not really a deadline at all, and can be altered and extended for a week or more, risks undermining voter confidence that the law means what it says and that the voting and the election are over. In this court’s view, and based on the evidence presented in this case, a judicial extension of the statutory deadline is neither warranted nor appropriate.

Accordingly, the Plaintiffs have not shown a likelihood of success on the merits that the Absentee Ballot Delivery Deadline is unconstitutional.

Irreparable Harm, Balancing the Harms and the Public Interest

The court has already engaged in the balancing analysis required by *Burdick/Anderson*, and has concluded that the burdens on the right to vote imposed by the challenged provisions of Maine’s election laws are slight or moderate, and that the State’s interests outweigh any burdens. Furthermore, given the strength of the State’s interests, the court has already addressed why it would not be in the public

interest to grant injunctive relief as requested by the Plaintiffs. It would be unnecessarily redundant to repeat that analysis here. Suffice it to say that the court is not persuaded that withholding injunctive relief to the Plaintiffs will result in irreparable harm. Likewise, the harm to the State's electoral process outweighs the minor burdens imposed by those laws on the right to vote. Finally, it would not be in the public interest to grant injunctive relief against state officials responsible for the implementation and enforcement of Maine's election laws for the November 3, 2020 general election.

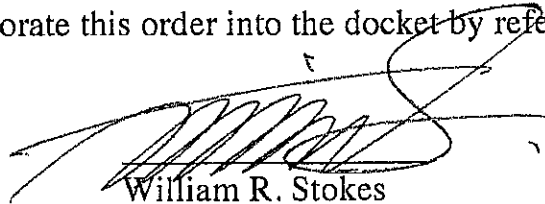
CONCLUSION

The entry is:

The Plaintiffs' Motion for a Preliminary Injunction is DENIED.

The clerk is directed to incorporate this order into the docket by reference pursuant to M.R. Civ. P. 79(a).

Date: September 30, 2020



William R. Stokes
Justice, Superior Court

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DKT NO. _____

ALLIANCE FOR RETIRED AMERICANS;
DOUG BORN; DON BERRY; and VOTE.ORG,

Plaintiffs,

v.

MATTHEW DUNLAP, in his official capacity as
the Maine Secretary of State; and AARON FREY,
in his official capacity as the Maine Attorney
General,

Defendants.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Alliance for Retired Americans, Doug Born, Don Berry, and Vote.org (collectively, "Plaintiffs") by and through the undersigned attorneys, file this Complaint for Declaratory and Injunctive Relief against Defendant Matthew Dunlap, in his official capacity as Maine Secretary of State, and Defendant Aaron Frey, in his official capacity as Maine Attorney General (collectively, "Defendants"), and upon information and belief allege as follows:

NATURE OF THE CASE

1. The United States is in the throes of an unprecedented public health crisis, caused by a novel coronavirus that spreads the disease COVID-19. There have been nearly 2.3 million confirmed cases and over 122,000 deaths in the United States from the virus, all in a little under four months. On March 15, 2020, Maine Governor Janet Mills declared a state of emergency due to the serious health and safety risks of the highly contagious virus; the Governor has since extended that state of emergency three times. On March 31, the Governor also issued a "Stay at Home Order," in which she ordered Mainers to stay in their homes, with limited exceptions for

certain essential activities. The Stay at Home Order slowed COVID-19's spread in Maine, but could not stop it. As of the date of this filing, every county in Maine has confirmed cases, with dozens of new cases being reported daily. In extending the state of emergency for the third time on June 10, the Governor was careful to caution that, "this dangerous, highly contagious and untreatable virus is still all around us . . . As Maine continues to reopen and more people begin to interact, we must remain vigilant and follow public health guidelines, such as wearing face coverings, staying six feet apart whenever possible and washing our hands frequently, to protect ourselves and others."

2. While the coronavirus presents a serious threat nationwide, it poses unique dangers in Maine, which has the nation's oldest and most rural population and, even before the present crisis, was suffering from health care shortages and consolidations that left much of the state without accessible care. Concerns about the spread of the virus caused Governor Mills to postpone the state's June primary election until July 14, citing the risk that voters, poll workers, and election officials would be exposed to COVID-19.

3. Since Governor Mills' postponement of the primary, Defendant Maine Secretary of State Matthew Dunlap (the "Secretary") has acknowledged that he does not know if towns will have a sufficient number of polling stations or available staff for those polling locations when the primary is held. Those concerns have proved to be well founded: towns all over Maine are reporting extreme difficulty in recruiting poll workers, and several have already announced that they plan to significantly consolidate polling locations. The Secretary and local elections officials

alike are affirmatively urging voters to vote absentee to help contain the outbreak, citing not only voter safety, but—in the words of the Lewiston City Clerk—“the health of the entire community.”¹

4. While Maine allows any registered voter to cast an absentee ballot without an excuse, the vast majority of Mainers have historically voted in-person at their polling place on Election Day, making this a significant shift away from in-person voting and towards absentee voting for most Mainers. Similarly, because Maine does not currently provide an online voter registration option for domestic voters—something available to voters in the vast majority of other states—Mainers have historically overwhelmingly relied upon in-person methods of voter registration, including at town offices, at the Bureau of Motor Vehicles (“BMV”), and at the polling place on Election Day. But as polling places consolidate or disappear, and town offices restrict access to the public to minimize in-person interactions, it has become increasingly difficult for Mainers who are not already registered or who have moved to register or update their registration. Alarming, recent data indicates that Maine has seen the biggest slowdown in the rate of voter registration since the onset of the pandemic than any other state in the nation.

5. The rapid shift to absentee voting and transition away from in-person voter services in the wake of COVID-19 represents a significant change for Maine, and unless several unnecessary and burdensome absentee ballot and voter registration procedures are enjoined or modified, that shift threatens to disenfranchise countless lawful, eligible Maine voters, for reasons largely beyond voters’ control. Plaintiffs bring this action to protect themselves and Maine’s citizens against this serious and severe threat to their voting rights, and to ensure that all lawful, eligible Maine voters are able to successfully exercise that right in the general election this coming

¹ David Sharp, Maine Encourages Absentee Voting in July Primary Election, WGME.com (May 26, 2020), <https://wgme.com/news/local/maine-encourages-absentee-voting-in-july-primary-election>.

November—which is anticipated to draw historic turnout—without having to make unfathomable choices between doing so and risking their health or that of the community.

6. Specifically at issue are: (1) Maine’s refusal to accept voter registration applications that are completed and transmitted electronically (“Paper and Pen Registration”); (2) Maine’s unnecessary requirement that first-time registrants who register to vote by mail submit a photocopy of an identification document (the “Photocopier Requirement”); (3) Maine’s failure to provide pre-paid postage for voters to mail back their absentee ballots (the “Postage Tax”); (4) Maine’s criminalization of the use of paid organizers to assist voters with returning absentee ballots to elections officials and requirement that multiple individuals witness a ballot should a voter need assistance returning it (the “Absentee Ballot Assistance Restrictions”); (5) Maine’s rejection of all absentee ballots not received by elections officials by 8:00 p.m. on Election Day (the “Election Day Receipt Deadline”); and (6) Maine’s wholesale rejection of absentee ballots for a perceived signature mis-match or other technical defect, particularly when Maine fails to notify voters or give them an opportunity to cure absentee ballots flagged for rejection (the “Rejection Without Notice” and “Signature Matching” Provisions) (collectively, the “Challenged Provisions”).

7. Both individually and in concert, the Challenged Provisions impose undue burdens on the right to vote that cannot be justified by the State’s interest in maintaining them, particularly under the current circumstances. Plaintiffs seek a preliminary and permanent injunction to ensure that the Challenged Provisions do not operate to unconstitutionally abridge or deny the fundamental rights of Plaintiffs, their members or constituents, and countless other Maine voters in the November general election and beyond.

JURISDICTION AND VENUE

8. Plaintiffs bring this action to redress the deprivation, under color of state law, of rights secured by the United States Constitution, the Maine Constitution, and Maine law.

9. This Court has jurisdiction to adjudicate the Plaintiffs' claims that arise under the U.S. Constitution and 42 U.S.C. §§ 1983 and 1988 pursuant to its concurrent jurisdiction with the federal judiciary, see *Thiboutot v. State*, 405 A.2d 230, 235 (Me. 1979), and to adjudicate Plaintiffs' claims that arise under the Maine Constitution and Maine law pursuant to the Maine Uniform Declaratory Judgment Act, M.R.S. tit. 14 § 5951 *et seq.*, and the Maine Administrative Procedure Act, M.R.S. tit. 5 § 8058.

10. This Court has personal jurisdiction over Defendants, who are sued in their official capacities only.

PARTIES

11. Plaintiff Alliance for Retired Americans (the "Alliance") is a nonprofit social welfare organization. The Alliance has over four million members nationwide, comprised of retirees from public and private sector unions, community organizations, and individual activists. The Alliance has state chapters across the United States, including in Maine, and thousands of Mainers are members of the Alliance. The Alliance's mission is to ensure social and economic justice and the full civil rights that retirees have earned after a lifetime of work. To accomplish that mission, the Alliance engages in voter education and outreach, educates its members and legislators on important issues of public policy, and mobilizes its membership to support progressive candidates and policies. The Challenged Provisions frustrate the Alliance's mission because they create obstacles for the Alliance's members who seek to register to vote, cast their votes, and have those votes counted, thus threatening the electoral prospects of Alliance-endorsed

candidates and making it more difficult for the Alliance and its members to make their voices heard. Because of the burdens on registration and absentee voting created by the Challenged Provisions, the Alliance will be required to devote time and resources to educating its members about these requirements and assisting them in complying so that their members are able to register to vote and ensure that their absentee ballots are received by Election Day, accepted, and counted. These efforts will reduce the time and resources the Alliance has to educate its members and legislators on critical public policy issues and pursue its legislative agenda. The time and resources the Alliance diverts to Maine to counteract the Challenged Provisions also takes away from the resources and programming that the Alliance can dedicate to its other numerous state programs. The Alliance, for example, has chapters in almost forty states; any resources spent ensuring that the Alliance's members in Maine can successfully vote necessarily takes away from the legislative programming and get-out-the-vote efforts which are crucially needed in other states.

12. The Alliance also brings this action on behalf of its members in Maine who face burdens on their right to vote as a consequence of the Challenged Provisions. Because nearly all of the Alliance's members are of an age that places them at a heightened risk of complications from coronavirus, they are overwhelmingly likely to vote absentee this year, and thus are disproportionately burdened by the Challenged Provisions. The Alliance's members include, for example, voters who are likely to find it unsafe to venture out to obtain postage to mail their absentee ballot, or to deliver their absentee ballot themselves should they be unable to return it through the mail in sufficient time for it ballot to be counted. Additionally, many of the Alliance's members are likely to be voting absentee for the first time, and thus will be more susceptible to being disenfranchised by the Election Day Receipt Deadline or Rejection Without Notice Provisions. Similarly, because the Alliance's members are at heightened risk from coronavirus,

they are especially unlikely to be able to travel to an in-person town or BMV office or polling place to register to vote, should such polling places or government agency offices be open at all.

13. Plaintiff Doug Born, a lifelong Mainer, is 58 years old and is registered to vote in Cumberland County. Born is a member of the Alliance and currently serves as the Secretary of the Maine Alliance for Retired Americans. Voting is extremely important to Born, who has traditionally voted in-person at his polling place. This year, however, Born has already requested an absentee ballot. Because Born lives with his 98-year old father and has health conditions himself, he does not believe it would be safe for him or his family to vote in-person and is taking precautions to minimize his in-person interactions. Because Maine does not pre-pay for postage for absentee ballots, Born will be required to acquire and pay for postage for his absentee ballot. Born is also worried that his absentee ballot will not be received in time to be counted and that, as a new absentee voter, his absentee ballot will be rejected because of a technical defect or a perceived signature mismatch—particularly because he knows that that his signature has become truncated as he has gotten older.

14. Plaintiff Don Berry is 68 years old and is registered to vote in Oxford County. Berry is a member of the Alliance, currently serves as the President of the Maine Alliance for Retired Americans, and previously served as the President of the Maine AFL-CIO. Voting is extremely important to Berry, who has voted both in-person at his polling place and by absentee ballot when he has been away from home for work or has been volunteering at the polls on Election Day. Because Berry has several health conditions which make him particularly susceptible to COVID-19, including diabetes, a prior double-bypass, and extensive lung damage from years of construction work, Berry is taking measures to avoid in-person interactions that could lead to him contracting COVID-19. For that reason, Berry intends to vote absentee this year. Because Maine

does not pre-pay for postage for absentee ballots, Berry will be required to acquire and pay for postage for his absentee ballot. Berry is also worried that his absentee ballot will not be received in time to be counted or that it will be rejected because of a signature mismatch or other technical defect without an opportunity for him to cure his ballot.

15. Plaintiff Vote.org is a non-profit, non-partisan voting registration and get-out-the-vote (GOTV) technology organization. Vote.org's mission is to use technology to simplify political engagement, increase voter turnout, and strengthen American democracy. Vote.org has registered more than 3.3 million new voters, verified 8.2 million voters' registration status, and has helped over 30 million of its users access registration links and deadlines, polling location details, and other essential voting information for each state, including Maine. Since early 2016, Vote.org has helped over 19,000 Mainers register to vote, verified over 39,000 Mainers' registration status, helped over 9,000 Mainers request absentee ballots, and helped tens of thousands of Mainers access essential voting information. Vote.org also targets low-propensity voters in its GOTV program and peer-to-peer voter registration drives. Since the onslaught of COVID-19, Vote.org has added additional information to its website, offering up to date state-by-state information for voters whose primaries have been postponed, including Maine. The Challenged Provisions frustrate Vote.org's mission because they present Mainers with significant obstacles in registering to vote, casting their votes, and having those votes counted, thus thwarting political engagement. Because of the burdens on registration and absentee voting created by the Challenged Provisions, Vote.org will be required to divert time and resources to educating Maine voters and would-be voters about these requirements and assisting them in complying so that they are able to register to vote and so that their absentee ballots are received by Election Day, accepted, and counted. These efforts will reduce the time and resources Vote.org is able to spend providing

resources and programming to its other numerous state programs. Vote.org, for example, provides voters with resources on how to register to vote, request a ballot, and vote absentee or in person in all fifty states. Vote.org also sends election updates and reminders to voters in all fifty states. Any resources spent ensuring voters in Maine can successfully register to vote and successfully cast their votes necessarily takes away from the programming and get-out-the-vote efforts which are crucially needed in those other states.

16. Defendant Matthew Dunlap is sued in his official capacity as the Secretary of State of Maine. The Secretary is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law. The Secretary is directly responsible for overseeing elections in Maine and has a direct interest in establishing uniform rules that govern the elections process to assure consistency and uniformity of election administration. *See, e.g.*, M.R.S. tit. 21-A §§ 601, 695(5), 760-B(6). Among other duties, the Secretary designs the mail-in voter registration application. *See* M.R.S. tit. 21-A, § 152(1), (5). The Secretary must ensure that election wardens use a “uniform system of counting” ballots. *Id.* at § 695. The Secretary is further empowered to determine what constitutes a “defective” or “void” ballot, to instruct election officials on how to handle those ballots, and to adopt rules for determining voter intent. *Id.* at § 696. The Secretary must also approve training sessions for municipal clerks and ensure that municipal clerks receive regular trainings on how to conduct elections within the state. *See id.* at § 505. Finally, the Secretary has the explicit authority “to facilitate voting by civilian registered voters of [Maine] who live in an area within the United States that is affected by a natural disaster or other occurrence for which the governor . . . has declared a state of emergency covering that area[.]” *Id.* § 663. “These administrative actions may include, but are not limited to, central issuance and receipt of absentee ballots for federal and state

elections using the systems and procedures developed for uniformed service voters and overseas voters.” *Id.*

17. Defendant Aaron Frey is sued in his official capacity as Attorney General for the State of Maine in connection with his enforcement of M.R.S. tit. 21-A, § 791(2)(A) (the Absentee Ballot Assistance Restrictions). The Attorney General is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law. The Attorney General is the chief law officer of the State and directs the State’s litigation. *See Superintendent of Ins. v. Attorney Gen.*, 558 A.2d 1197, 1200 (Me. 1989). The Attorney General is also required to “consult with and advise the district attorneys in matters relating to their duties.” M.R.S. tit. 5, § 199.

STATEMENT OF FACTS AND LAW

A. COVID-19 has upended daily life in Maine.

18. Virtually all aspects of American life today are affected by the unprecedented COVID-19 pandemic. Schools, businesses, and government offices have been closed entirely or subject to severe restrictions; a majority of Americans are sheltering in their homes; more than 40 million have lost their jobs; and over 122,000 people nationwide have lost their lives.

19. Maine has not been spared from the effects of the novel coronavirus. As of the date of this filing, the State has reported nearly 3,000 confirmed or probable cases of COVID-19, including over 100 deaths, and the virus has spread to all sixteen of Maine’s counties.

20. Dr. Nirav Shah, the director of the Maine Center for Disease Control & Prevention (“Maine CDC”), has cautioned that the number of COVID-19 cases reported to date in Maine reflects only a portion of the state’s actual infections, because the numbers do not reflect people who have not been able to be tested due to previously limited testing capacity or people who are asymptomatic but still carry the disease.

21. The number of confirmed cases of COVID-19—a virus that does not respect state boundaries—is even higher in neighboring New Hampshire (5,518) and Massachusetts (107,000).

22. Maine’s residents are, on average, older than the residents of any other state, with nearly 21% of Maine’s population over age 65.

23. As a result, these Mainers are considered a “high-risk” group for “severe illness” according to the federal Centers for Disease Control & Prevention (“CDC”), making them particularly susceptible to suffering the worst effects of COVID-19.

24. Moreover, Maine’s residents have asthma and obesity—both of which are additional risk factors to COVID-19 contraction and illness—at rates well over the national average.

25. Multiple outbreaks have been reported in congregated living facilities that serve older residents, even with precautions in place. As a manager at a center in Cape Elizabeth that is currently suffering from an outbreak observed: “It is staggering how quickly and quietly COVID-19 moves, and its ability to impact people and communities that are taking every possible step to prevent it.”²

26. The surreptitious way in which COVID-19 can spread poses unique dangers to much of Maine’s population, where 60% of the state’s residents live in areas that, even before the coronavirus, had a shortage of doctors. An outbreak in these areas could quickly overwhelm already short-staffed health care facilities.

² Kevin Miller, *State Reports New Outbreak of 57 Cases at Long-Term Care Facility in Cape Elizabeth*, Portland Press Herald (updated May 22, 2020), <https://www.pressherald.com/2020/05/21/maine-cdc-reports-58-new-coronavirus-cases-no-new-deaths/#>.

27. In an effort to slow the spread of the virus, Governor Mills first declared a state of emergency on March 15, before instituting the Stay at Home Order for all Mainers at the end of March.

28. These preventive measures undoubtedly served to slow the virus. But the number of confirmed COVID-19 cases has continued to rise, with outbreaks reported at any place where people have continued to come into contact, including the living facilities discussed above, correctional facilities, group homes, as well as workplaces, such as a factory in Auburn where a cluster of cases emerged, a seafood processing plant in Portland, a chicken processing plant in Portland, and at least 26 cases among contractors working at a construction site in Augusta.

29. Part of the challenge in containing the virus is that it is spread by pre-symptomatic and, in some cases, entirely asymptomatic carriers. Thus, as testimony by a professor of health services research at a hearing convened by Senator Susan Collins emphasized, one of the “key lessons learned” has been that waiting to test residents of congregated living facilities until they are symptomatic does not work to stop transmission, “because by then it’s too late.”³

30. For the same reasons, even as the state moves toward cautious and careful reopening, continued efforts to minimize the spread of the virus or the risk of infection will require Mainers to exercise caution by following social distancing guidelines and avoiding public interactions that increase the risk of transmission.

³ *Id.*

31. Although the Governor eased some of the stay at home restrictions, she has continued to “ask Maine people to stay home whenever possible, not only to protect themselves, but to protect others as well, like our frontline workers.”⁴

32. The Governor has ordered that use of public transportation remains limited to those who must use it for an essential service, and Mainers must limit passengers in their cars to immediate household members.

33. Businesses open to the public must post signs telling customers they must wear a face covering when physical distancing is not possible, and businesses are permitted to deny entry to people not wearing a face mask.

34. The easing of some restrictions, the Governor has explained, is meant to balance the need to protect the health and well-being of Mainers while also supporting the Maine economy, but the pandemic is far from over.

35. Social distancing measures are likely to be required for a significant period of time; indeed, the federal government is preparing for the pandemic to last 18 to 24 months.

36. The Director of the CDC has further warned that the country is likely to encounter a second, even more deadly wave of coronavirus in the fall, right around the time when voters would otherwise head to the polls to vote in the November election.

37. COVID-19 has also had devastating impacts on the income and financial stability of thousands of Mainers, with nearly a quarter of Mainers reportedly out of work in its aftermath.

⁴ Gov. Janet Mills Extends, Eases ‘Stay Safer At Home’ Order as Part of New Executive Order, WMTW.com (updated May 29, 2020), <https://www.wmtw.com/article/gov-janet-mills-extends-eases-stay-safer-at-home-order-as-part-of-new-executive-order/32714594#>.

38. So many people have filed for unemployment in Maine since mid-March that the unemployment benefits system has been overwhelmed, with many waiting indefinitely for their claims to be processed and approved.

39. Job losses have been spread across multiple industries, including but not limited to leisure and hospitality, health care, retail, and manufacturing.

40. At least one study has projected that the economic consequences of the coronavirus could be particularly bad in Maine because so much of its economy relies on industries that require face-to-face contact when compared to the country as a whole.

B. The pandemic is drastically impacting the administration of elections and Mainers' right to vote.

41. Every jurisdiction that has held an election since the pandemic began has had enormous difficulties in safely offering in-person voting.

42. Recognizing that Maine will prove no exception, Governor Mills postponed Maine's primary until July 14, 2020, citing the "risk that voters, poll workers, and election officials will be exposed to COVID-19."⁵

43. Because polling places draw large numbers of individuals into relatively small places and can generate long lines under normal circumstances, in-person voting during the COVID-19 pandemic imposes a heightened risk of transmission absent strict social distancing requirements and other health and safety measures.

⁵ Office of the Governor, Executive Order (Apr. 10, 2020), <https://www.maine.gov/governor/mills/sites/maine.gov/governor.mills/files/inline-files/An%20Order%20Modyifying%20the%20Primary%20Election%20to%20Reduce%20Exposure%20to%20COVID-19.pdf>.

44. This is particularly true in Maine, where Election Day registration procedures necessitate the exchange of paperwork and additional face-to-face interaction between voters and election officials.

45. As one town's deputy warden troublingly discovered, "[y]ou can't logistically keep people six feet apart"—the recommended social distance maintained by the CDC.

46. These same concerns apply with equal force to other in-person registration options at town offices and the BMV, to the extent that such offices are open at all.

47. As the November election nears, it is becoming increasingly apparent that Maine will face significant challenges to in-person voting.

48. Early on in the crisis, the Secretary predicted that towns may have difficulty securing polling locations and staff for those polling locations, and those predictions have borne out in advance of the primary: towns all over Maine are reporting extreme difficulty in recruiting poll workers, and several have already announced that they plan to significantly consolidate polling locations.

49. One Lewiston City Clerk, for example, reported that not a single poll worker has agreed to staff the polls, and that she is considering consolidating seven polling locations to one.

50. In light of these challenges, the Secretary has indicated that Maine considered moving to an all absentee-voting system. The Secretary has not yet taken that step, still hoping that in-person voting locations will be available in upcoming elections.

51. Even if in-person options for registration and voting remain technically available in upcoming elections, the risk of in-person registration and voting will remain too high for a considerable proportion of Mainers, who should not be forced to choose between participating in

our democracy and protecting the health and welfare of themselves, their families, and their communities.

52. The Secretary himself has acknowledged this, recently releasing a video speaking directly to Maine voters, explaining that “[g]iven that the pandemic situation is so fluid and we know that social distancing measures play an important role in mitigating the outbreak, I am recommending that Maine voters use the absentee ballot process.”⁶

53. More than ever, the use of absentee voting and alternatives to in-person voter registration will be essential to ensuring meaningful access to the franchise in Maine.

54. Maine’s current voter registration and absentee ballot procedures, however, are not designed to facilitate an election primarily conducted by mail, and present unnecessary risks of disenfranchisement for thousands of Maine voters.

55. Recognizing that Mainers face significant barriers to registration and absentee voting, civic groups all across Maine have asked the Governor and Secretary Dunlap to take steps to make registration and absentee voting accessible for all Mainers. As of this filing, the Secretary and the Governor have yet to adopt sufficient measures.

56. In addition to the severe pressures imposed by the pandemic on Maine’s elections, 2020 has already proved—and is expected to continue to be—a year of historic voter turnout.

57. In the March 3, 2020 presidential primary, voter turnout exceeded the Secretary’s expectations, with many precincts in Maine’s largest population centers experiencing lines out the door and several even running out of ballots. An elections official in Portland described the turnout as “colossal,” with the biggest surge being among young, new and first-time voters.

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<https://www.maine.gov/sos/cec/elec/upcoming/pdf/Video.ElectionMessage.041420.editjfFINAL.pdf>.

58. Some of the longest lines were reported where Mainers were also attempting to register to vote on Election Day, a popular means of voter registration permitted by Maine law, often referred to as Same Day Registration (“SDR”) or Election Day Registration (“EDR”).

59. Both the unexpectedly large turnout in the presidential primary and the recent experience of elections officials in Wisconsin and other states serve as a warning of what is likely to come for Maine in the general election if unduly burdensome measures restricting absentee voting and voter registration are not modified in advance of November.

60. Wisconsin, like Maine, allows for absentee voting by any registered voter, but a significant number of voters still had little choice but to appear to cast their ballots in person in Wisconsin’s April primary after thousands of voters did not receive absentee ballots they had requested in time to return them to election officials by Election Day.

61. Because the threat posed by the coronavirus severely limited the number of people willing and able to work the polls on Election Day, cities throughout Wisconsin were forced to close and significantly consolidate polling locations.

62. In Milwaukee, a city that ordinarily boasts 180 polling locations, almost 20,000 voters cast their ballots in person at only five polling locations; for those who hadn’t just given up, this resulted in crowds, long lines, and excessive wait times, often without sufficient social distancing.

63. After the Wisconsin primary, one study found a statistically and economically significant association between in-person voting and the spread of COVID-19 two to three weeks after the election.

64. Many of these voters who voted in person in Wisconsin did so because they did not receive absentee ballots in time to return them by Election Day for reasons entirely outside of their control, requiring them to appear in person to vote or forfeit their right entirely.

65. The U.S. Postal Service, which itself is operating with reduced staff due to the coronavirus and is additionally challenged by budget shortfalls, struggled to deliver absentee ballots to voters, and a large portion of absentee ballots were delayed or did not arrive at all. There were similar delays in returning ballots from voters back to elections officials.

66. In total, tens of thousands of absentee ballots in Wisconsin were received by elections officials after Election Day—none of which would have been counted without judicial intervention.

67. The disruptions in the mail delivery of absentee ballots—both to the voters and back to the municipal clerk's offices—were so extensive that Wisconsin's U.S. Senators wrote to the Inspector General for the U.S. Postal Service seeking an investigation into absentee ballots not being delivered in a timely manner.

68. Since Wisconsin's primary, numerous other states, including Ohio, Pennsylvania, Nevada and Georgia have experienced the same postal delays in their primaries that have jeopardized those voters' ability to return their absentee ballots in time for them to be counted.

69. Moreover, because many states have been forced to consolidate polling locations as a result of the pandemic, many voters are encountering hours-long lines to vote at those locations, even with a substantial number of voters turning to vote absentee.

70. Without additional safeguards to ensure citizens are able to effectively register and vote absentee and exercise their constitutional right to vote during the COVID-19 pandemic,

Maine stands poised to encounter obstacles similar to those that disenfranchised thousands of voters in Wisconsin and would have disenfranchised far more without judicial intervention.

C. Maine's mail-in voter registration and absentee voting procedures impose barriers to participation and lack adequate safeguards to protect Mainers' right to vote.

71. The Maine Constitution extends the constitutional right to vote to any qualified elector, ME. CONST. art II, § 1, and Maine permits any voter within the state to vote by absentee ballot, M.R.S. tit. 21-A, § 751.

72. Maine has a long-standing history of exceptional voter turnout, frequently boasting one of the highest rates of voter participation in the country.

73. The lion's share of Maine's voters—around 70%—have typically cast their ballots in person.

74. One reason why so many Maine voters tend to vote in-person is that voting absentee in Maine is needlessly burdensome, and Maine's current absentee voting procedures disenfranchise scores of Mainers each election.

75. Substantial numbers of Mainers have also historically relied upon Maine's proud tradition of in-person registration at the polling place on Election Day, which has served to ensure that registration deadlines and cumbersome mail-in registration procedures do not prevent eligible voters from being able to exercise their right to vote.

76. Thus far in 2020, the devastating effects of COVID-19 and actions taken by states and the federal government in response, including social distancing, staying at home whenever possible, and avoiding large crowds or gatherings, make in-person voter registration drives virtually impossible to hold.

77. As the threat to voter and poll worker safety makes in-person registration and in-person voting riskier and less available, Maine has an obligation to ensure that its citizens can

register and vote without being unduly burdened by the Challenged Provisions both individually and collectively.

Paper and Pen Registration

78. With very limited exceptions, Mainers must register to vote in person, either at the local town office, the BMV, a social service agency that offers voter registration, an in-person voter registration drive, or at the polls on Election Day.

79. The BMV and many other state offices have been closed since the onset of coronavirus, and if they have reopened, are operating on severely reduced schedules with limited staff and hours.

80. Unlike 40 other states, Maine does not offer online or electronic voter registration. Thus, the only way that Mainers can register to vote without having to make contact with other people is by mail.

81. To obtain a paper copy of a mail-in voter registration application without having contact with other people, the voter must have access to a printer capable of printing the application, or must contact their town clerk to ask for an application to be mailed to them.

82. The Secretary has taken the position that once the voter has completed the voter registration application, the application cannot be returned to town clerks' offices electronically, but instead must be hand delivered or mailed.

83. The Secretary has also taken the position that the town clerk must retain a printed version of the voter registration card that contains the voter's "original signature," which means that the application cannot be transmitted electronically.

84. The Secretary of State has taken these positions despite the fact that he has made available on his website two downloadable versions of the voter registration application: a fillable

PDF version and a Microsoft Word version, both of which are capable of being completed and transmitted electronically.

85. As a result, in order for a Mainer to register to vote in a way that is consistent with social distancing guidelines, a registrant must either own or have access to a computer printer in their home, or must engage in a multi-day, multi-step process of requesting a voter registration application from their town clerk to be delivered by mail. Once the voter prints or receives the paper application, they must complete it, sign it, and then obtain an envelope and a stamp to mail it back to their town clerk.

86. Given closures of in-person voter registration locations because of COVID-19, the absence of online or electronic registration, and the burdensome process of requesting and submitting a mail-in voter registration application, it is not surprising that the rate of voter registration in Maine has declined precipitously since the onset of COVID-19.

87. In fact, one analysis indicates that Maine has seen the biggest slowdown in voter registration of any state in the country since the onset of the pandemic.

88. Even though Maine itself has not set up an online or electronic voter registration system, organizations like Vote.org can use technology to enable Mainers to complete a voter registration application on a computer or a smartphone without requiring voters to personally have to print, sign, and mail a paper voter registration application.

89. Vote.org's technology allows voters to type all of the information required for the voter registration application into a digital copy of a voter registration form. The technology enables the voter to take and upload a photograph of their handwritten signature using their smartphone or a camera. Vote.org's technology affixes an image of the voter's handwritten signature to the signature line of the digital voter registration form.

90. Vote.org is capable of transmitting this completed voter registration form bearing the voter's handwritten signature to the appropriate elections office by fax, by email, or by printing and mailing the application. Vote.org also transmits a copy of the application to the registrant via email for the voter's records.

91. The only difference between a voter registration application completed and submitted to an elections office using Vote.org's above-described technology, and a voter registration form submitted under the Secretary's current procedures, is that the voter's handwritten signature is affixed to the application with the ink of a computer printer rather than the ink of a pen.

92. If Vote.org and other organizations were allowed to use such technology to enable voters to register to vote with computers or smartphones, voters could quickly and easily register to vote in a way that is consistent with social distancing guidelines, regardless of their access to a printer and without having to undergo a multi-day, multi-step process to request, complete, and return a mailed registration form.

93. However, the Secretary's position that voter registration forms cannot be transmitted electronically, and the Secretary's position that the voter registration card contain an "original signature[.]" prevents Vote.org and other organizations from deploying such technology to assist voters.

94. As a result of the Secretary's positions, Vote.org has only offered a more limited form of voter registration assistance to voters in Maine. Mainers currently using Vote.org can type required information into a digital copy of a voter registration form, but once completed, the voter still must download a copy of the form, print it, sign it with a pen, affix a stamp, and mail it to their town clerk's office.

95. As a result of the restrictions imposed by the Secretary's positions that prevent Vote.org from using its electronic registration technology, fewer voters are likely to complete the voter registration process on Vote.org at all, and Vote.org must take additional steps to follow up with voters who have completed the application on Vote.org to remind them to print and mail their form.

96. The Secretary's position that voter registration forms cannot be transmitted electronically, and the Secretary's position that the voter registration card contain an "original signature" printed with the ink of a pen is not supported by Maine law.

97. Maine law requires that a mail-in voter registration application contain the "signature of applicant" but does not require that the signature be printed with the ink of a pen. M.R.S. tit. 21-A, § 152(1)(M).

98. Further, Maine law expressly contemplates that the Secretary, by providing access to an electronic voter registration application, will enable registrants to *complete* the voter registration application electronically: "The Secretary of State may design an application that can be completed electronically and that substantially meets the requirements of this section." M.R.S. tit. 21-A, § 152(5).

99. Maine law also contemplates that mail-in voter registration forms may be delivered by mail or by a third person, M.R.S. tit. 21-A, § 121-A, but does not require that third persons deliver voter registration forms in person, as opposed to electronic means.

The Photocopier Requirement

100. Mainers may register to vote by mail or through community registration by completing the Maine Voter Registration Application and returning it to their local election official by the 21st day before an election.

101. The Maine Voter Registration Application states that **“If you are a NEW Maine voter and mail this card,** you must include a photocopy of your Maine driver’s license, Maine State ID, or current utility bill, bank statement or government document that shows your name and address.” (emphases in original).

102. As a result, in order for a first-time Maine voter to comply with the Maine Voter Registration Application’s instructions in a way that is consistent with social distancing guidelines, a registrant must either own or have access to a photocopier or computer printer in their home, or they must travel to a business or other facility where they can utilize a photocopier or printer that is used by other people.

103. Similarly, a community voter registration drive that is registering first time voters must make available a photocopier or printer to each registrant to comply with the Voter Registration Application’s instructions.

104. For community voter registration drives that perform the service of returning voter registration forms to local election officials on registrants’ behalf, both the registrant and the voter registration drive must be willing to accept custody of a voter’s identification document—which may include driver’s licenses, bank account statements, or paycheck stubs.

105. The Photocopier Requirement is completely unnecessary. Like virtually every other state in the country, and as required by the federal Help America Vote Act (“HAVA”), 52 U.S.C. § 21083(A)(1)(a), Maine maintains a computerized statewide voter registration database that stores and manages the official list of registered voters in the state.

106. HAVA further requires that Maine’s voter registration database is capable of sharing information with state motor vehicle and federal social security databases. *See id.* § 21083(a)(1)(A)(iv), (a)(5)(B). This enables the database to verify the identity of a mail-in registrant

simply by matching their name, date of birth, and identification number with the data in the state and federal databases. *See id.* §§ 21083(a)(5)(B), (b)(3)(B).

107. As a result, when a Mainer registers to vote, and provides her Maine driver's license number or the last four digits of her social security number, Maine already has procedures in place to verify her identity without any need to review a photocopy of an identity document.

108. Requiring Mainers to also provide a photocopy of an identity document when registering to vote is redundant and serves no purpose other than to impose burdens on first-time registrants.

109. The Photocopier Requirement is also not mandated by either federal or state law.

110. While HAVA requires that certain registrants who register to vote for the first time in a state must provide proof of identification before they can cast a regular ballot, HAVA's identification requirement does not apply to registrants whose name, birthdate, and identification number have been matched with existing records. *Id.* § 21083(b)(3)(B).

111. As a result, HAVA provides no basis for the Photocopier Requirement, which by its plain terms, applies to all first-time registrants, even if their identity can be verified through Maine's statewide voter registration database.

112. Similarly, the Maine Election Code provides no basis for the Photocopier Requirement.

The Postage Tax

113. Maine does not provide pre-paid postage on its absentee ballots. Thus, Mainers who mail in their absentee ballot must independently secure and append the correct amount of postage to mail their ballot back to elections officials.

114. Maine thus imposes a direct monetary cost on voters whose best—or only—option to safely cast a ballot is to do so by mail.

115. Secretary Dunlap not only directly asked Maine voters to vote absentee, but also suggested they forgo in-person delivery of absentee ballots in favor of returning ballots via the mail to preserve social distancing. *See* Maine Sec’y of State, *Election Video Message* (May 19, 2020).

116. The Postage Tax can range from \$0.55 for one U.S. Postal Service Forever Stamp to more if the ballot is several pages long or if it needs to be sent in an expedited manner—something that many voters may deem necessary to ensure that their ballot is received by the Election Day Receipt Deadline.

117. As rates of unemployment skyrocket due to COVID-19’s devastating impact on the economy, the burden imposed by the Postage Tax will create obstacles to voting for the growing number of Mainers now facing financial concerns over housing, food, and other essentials.

118. In a single six-week span between March and April 2020, over 100,000 Mainers applied for unemployment insurance with the State—more than twice the number who applied at the peak of the 2009 crisis.

119. COVID-19 related unemployment and other collateral consequences of the public health emergency will also increase the percentage of Mainers living in poverty, which already exceeded 10 percent before the pandemic began.

120. For a growing number of voters finding themselves in an increasingly precarious economic situation, the cost of a stamp or a book of stamps will no longer be inconsequential, even if it was before.

121. There are also substantial ancillary burdens that extend beyond the monetary cost of a stamp that are uniquely exacerbated by the COVID-19 pandemic. Every voter who wishes to mail their absentee ballot but lacks adequate postage at home will need to obtain postage. More

likely than not, this will require the voter to break social distancing protocol and engage in in-person interactions that risk spreading or contracting COVID-19.⁷

122. Given that many voters who will request absentee ballots will be doing so precisely because they are immunocompromised, have conditions placing them at high risk for COVID-19, or are generally concerned about their health or the health of their family and friends, they will be far less able to venture out to break social distancing protocol to leave their home and purchase stamps if they do not already have them.

Absentee Ballot Assistance Restrictions

123. Should a voter lack stamps or time (or both) to return their ballot by mail by the Election Day Receipt Deadline, a voter may, in theory, authorize another person to return his or her absentee ballot.

124. In the pandemic, restrictions in Maine law on who may return absentee ballots and the steps that must be followed when a third party returns a ballot in order to have that ballot counted are likely to impose insurmountable hurdles to the right to vote for many Maine voters.

125. First, Maine has unnecessarily restricted the pool of potential help available to absentee voters.

126. It is illegal in Maine to accept compensation to help voters return absentee ballots, *see* M.R.S. tit. 21-A, § 791(2)(A). A violation of this provision is a Class D crime punishable by up to a year of imprisonment and a \$2,000 fine. *See* M.R.S. tit. 21-A, § 791; M.R.S. tit. 17-A §§ 1252, 1301.

⁷ While there are some services that allow voters to print postage online, these services also require a printer, scale, and paid subscription. And while a voter can order stamps online on the USPS website, these stamps take 5-7 days to be delivered under normal circumstances, must be purchased as a sheet instead of individually, and require the voter to pay for shipping and handling in addition to the stamps themselves.

127. This threat of criminal and civil penalties unsurprisingly makes it impossible for organizations to hire professional and trained organizers to help voters in their community to return absentee ballots.

128. This criminal prohibition applies even if a voter asks for help because they have a disability, or are sheltering-in-place at home and are afraid to venture out to return the ballot themselves, or are otherwise concerned that their ballot will not reach the appropriate elections officials in time to be counted.

129. Second, even if a voter is able to find a person who can help return their completed ballot for them, Maine does not permit a person to return a completed absentee ballot for a voter who needs assistance returning it unless that ballot is signed in the presence of a notary, a municipal clerk, or two additional individuals. *See* M.R.S. tit. 21-A, § 754-A(2).

130. Requiring voters who need assistance returning an absentee ballot to locate and coordinate an in-person summit of these witnesses, the voter, and the third person returning the ballot is burdensome in its own right. It is downright dangerous in a pandemic.

131. Together, both of the above provisions substantially and unnecessarily increase the difficulty of returning absentee ballots. These restrictions are already a burden on voters who need assistance casting absentee ballots under normal circumstances. But with the additional stressors placed on individual voters, the postal service, and elections officials as a result of the pandemic, the Absentee Ballot Assistance Restrictions become all the more problematic, prohibiting Plaintiffs and others like them from helping voters cast their ballots as they continue to socially distance.

The Election Day Receipt Deadline

132. Even if a voter successfully navigates the Postage Tax and the Absentee Ballot Assistance Restrictions, for an absentee ballot to be counted, it must be received by 8:00 p.m. on Election Day. *See* M.R.S. tit. 21-A, § 755.

133. This Election Day Receipt Deadline means that, regardless of the date a ballot is postmarked, and regardless of how responsible a voter was in timely mailing their absentee ballot, if it is not received by 8:00 p.m. on Election Day, it will be rejected.

134. In recent past elections, the Election Day Receipt Deadline resulted in the rejection of thousands of Mainers' ballots. For example, in the 2018 general election alone, at least 500 Mainers were disenfranchised because their absentee ballots arrived after 8 p.m. on Election Day, the vast majority of which arrived one to two days after Election Day.

135. Even before the pandemic, Mainers experienced slow mail delivery service, which is not surprising given the geography of the state, where some residents live in island communities and a substantial number in rural areas.

136. In 2015, Senator Susan Collins explained that “[l]ate delivery of mail has been a real difficult problem,” in Maine, and particularly in rural areas of the state.⁸

137. The pandemic will only make delays in mail delivery more severe, imposing substantial burdens on a greater number of voters.

138. As it did in Wisconsin, the increased demand for absentee ballots is likely to place a strain on town clerks' offices, which must process absentee ballot requests and mail those ballots out to voters.

⁸ Edward Murphy, *Maine Postal Workers Set to Protest Cuts That Have Slowed Regular Mail Service*, Portland Press Herald (May 14, 2020), <https://www.pressherald.com/2015/05/14/maine-postal-workers-to-protest-cuts-that-have-slowed-regular-mail-service/#>.

139. Indeed, while Maine initially considered an all mail-ballot election, the Secretary explained that the state “abandoned that idea due to concerns about what would happen if town offices, which are responsible for processing absentee ballots, were shut down.”⁹

140. At the same time that absentee voting is increasing exponentially, the U.S. Postal Service is suffering from severe budgetary shortfalls, staffing shortages, and reduced capacity.

141. Even before the pandemic, the U.S. Postal Service recommended that voters mail their ballots at least a week before the “due date” to election officials.

142. The Secretary recently recommended that Maine voters “allow at least five days for mailing,” recognizing the substantial amount of time that a ballot may take in the mail to reach election officials.¹⁰

143. Depending on where in Maine a voter resides, ensuring receipt of the ballot by Election Day will require sending a ballot substantially before the election—and even then, it still may not arrive on time.

144. Data from prior elections—which were not marred by unanticipated delays and disruptions in mail delivery due to COVID-19—shows that tens of thousands of Mainers’ absentee ballots arrived perilously close to the Election Day Receipt Deadline.

145. For example, in 2018, over 25,000 Mainers’ absentee ballots were received on Election Day itself or the day before.

⁹ Jessica Piper, *Maine Cities and Towns Push Absentee Voting for July Election Reshaped by Virus*, WGME.com (May 17, 2020), <https://wgme.com/news/local/maine-cities-and-towns-push-absentee-voting-for-july-election-reshaped-by-virus>.

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<https://www.maine.gov/sos/cec/elec/upcoming/pdf/Video.ElectionMessage.041420.editjfFINAL.pdf>.

146. Short of paying for private mail carriers or expedited delivery, voters who do not receive their absentee ballot until shortly before Election Day or who are unable to send their ballot well before Election Day are likely to be disenfranchised by the Election Day Receipt Deadline.

147. The risk of not receiving an absentee ballot in time to return it by Election Day has been heightened by the state's recent decision to allow voters to request an absentee ballot up through Election Day.

148. While this sensible change was appropriate and necessary to give voters flexibility in the pandemic, it also makes it more likely that voters will receive absentee ballots without enough time to return it by mail before the Election Day Receipt Deadline.

149. These concerns are not hypothetical; these delays are already happening across the county. In the recent primary election in Wisconsin, a massive increase in requests for absentee ballots, combined with decreases in available elections staff, placed a significant strain on local election officials, several of which were not able to send voters a ballot in time for it to be returned—or even delivered to them—by the Election Day Receipt Deadline normally imposed in that state. *See Democratic Nat'l Comm. v. Bostelmann*, No. 20-cv-249-wmc, 2020 WL 1638374, at *38-39 (W.D. Wis. Apr. 2, 2020).

150. This crisis ultimately necessitated litigation that reached the U.S. Supreme Court and resulted in extension of the state's deadline to receive absentee ballots by six days, so long as the ballots were postmarked by Election Day. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.* 140 S. Ct. 1205, 1208 (2020); *Bostelmann*, 2020 WL 1638374, at *38-39. As a result, as many as 80,000 ballots that would have been rejected were counted because they were postmarked by, but arrived after, Election Day.

151. Since that Wisconsin primary, other states have also struggled to deliver absentee ballots to voters in enough time for them to be returned—or even received by the voter—by Election Day. A few weeks ago, Ohio’s Secretary of State sounded this alarm with increasing urgency, writing to Ohio’s congressional leaders about excessive postal delays in his state which “mean it is very possible that many Ohioans who have requested a ballot may not receive it in time.”¹¹

152. In Pennsylvania, tens of thousands of voters who had applied to vote by mail did not even receive their ballots until the week *after* the primary.

153. Similarly, just two weeks ago, thousands of Georgia voters did not receive their absentee ballots in time to return them by Election Day, leading many Georgia voters to choose between standing in hours-long lines or forgoing voting entirely.

154. In Nevada, voters who did not receive their absentee ballots endured multi-hour lines at reduced numbers of polling locations.

155. Maine is unlikely to be an exception to be this trend. If anything, a state that has previously struggled with mail delivery faces an even greater risk of disenfranchising its voters with an Election Day Receipt Deadline in place.

Rejection Without Notice and Signature Matching

156. For the absentee voters who overcome the Postage Tax, the Absentee Ballot Assistance Restrictions, and the Election Day Receipt Deadline, additional hurdles await: a complete lack of procedures to cure a ballot should that ballot contain a single technical error, as well as arbitrary signature verification procedures for a subset of absentee ballots. Maine’s

¹¹ Letter from Frank LaRose, Ohio Secretary of State, to Ohio Congressional Delegation (Apr. 23, 2020), <https://www.ohiosos.gov/globalassets/media-center/news/2020/2020-04-24.pdf>.

Rejection Without Notice Provisions and Signature Matching process have disenfranchised thousands of Mainers.

157. Mainers may request an absentee ballot from their municipality in five different ways: by mail, in-person, by fax, over the telephone, and online. *See* M.R.S. tit. 21-A, § 753-A.

158. Mainers who request an absentee ballot by mail, in-person, or by fax are required to provide identifying information on their request form, including their name, birth date, and address. These voters are also required to include their signature. *See id.* at § 753-A(3). If a voter requests an absentee ballot online or over the telephone, however, no signature is required. *See id.* at §§ 753-A(4); 753-A(6). For absentee ballot requests made online or over the telephone, a voter's identity is simply confirmed by matching the voter's birth date and address to the voter's record. *See id.*

159. When Maine voters later fill out their absentee ballot, they also fill out an affidavit, which must be signed and dated, and contain the signature of a witness if the voter received assistance in completing the affidavit. *See* M.R.S. tit. 21-A § 755. Upon receiving this ballot and affidavit, local clerks must determine whether the voter's affidavit is properly completed. *Id.* at § 756.

160. A clerk may consider an affidavit to be incomplete if, for example, the affidavit is missing any information, including the signature of the voter or the signature of an aide or witness who assisted the voter in completing their ballot. *Id.*

161. If a voter's affidavit contains a defect, the clerk is *permitted* to issue a new absentee ballot but is not required by Maine law to notify the voter of the defect or allow the voter an opportunity to cure the ballot. *Id.* at § 753-B(4).

162. Upon receipt of *certain* absentee ballots—those requested by a voter by mail, in-person, or by fax—the clerk is also instructed to “compare the signature of the voter on the [absentee ballot request] application . . . with [that voter’s signature] on the corresponding return envelope [and affidavit].” *Id.* at § 756(2). If the signatures appear to have been made by the same person, the clerk sends the ballot on for processing. *Id.* But if those signatures do not appear to match, the clerk must note that discrepancy on the ballot, and that ballot is later rejected if the warden of the voting district agrees that the signatures do not match. *Id.* at § 759(3)(A).

163. Because voters who requested their absentee ballots online or over the telephone were not required to provide a signature with their absentee ballot request form, clerks do not have to match those voters’ signatures on their affidavits to any signature on their request forms. Thus, voters who request their absentee ballots online or by telephone are not subject to disenfranchisement by Signature Matching.

164. For those ballots that are subject to Signature Matching, Maine law prescribes no standards for clerks to consider in determining whether two signatures “match.” Nor does Maine law require election clerks and wardens to undergo any training related to handwriting analysis or signature comparison. Maine’s Signature Matching process thus forces its election officials to make subjective, arbitrary, and standardless determinations as to whether to count a voter’s ballot.

165. Because Maine law does not require election officials to notify voters that their absentee ballots were rejected, voters are not always informed that their votes will not count before they are discarded. Nor does Maine require its election officials to provide voters with the opportunity to contest the status of their ballots or cure their rejected ballots.

166. And while Maine’s rejection of ballots without notice or an opportunity to cure is unconstitutional in its own right, its disenfranchisement of voters for a perceived signature

mismatch is particularly egregious because Maine law contains no standards or criteria to instruct election officials on how to determine if a signature is “genuine.” Election officials are simply instructed to determine whether the signatures “appear to have been made by the same person”—an inherently standardless inquiry. *Id.* at § 756(2).

167. Because Maine’s Signature Matching process relies on determinations made by untrained laypersons, it is highly error-prone. *See, e.g.,* Rory Conn, Gary Fielding, et al., *Signature Authentication by Forensic Document Examiners*, 46 J. OF FORENSIC SCI. 884–88 (2001).

168. Studies conducted by experts in the field of handwriting analysis have repeatedly found that signature verification by laypersons is inherently unreliable and that errors committed by non-experts skew towards the misidentification of authentic signatures as forgeries.

169. Even trained experts in handwriting have difficulty identifying authentic signatures because of the variable nature of signatures.

170. A person’s signature or handwriting can change, and quickly, for a variety of reasons. Factors that can affect a person’s handwriting include physical factors such as age, illness, injury, medicine, eyesight, alcohol, and drugs; mechanical factors such as pen type, ink, surface, position, paper quality; and psychological factors such as distress, anger, fear, depression, happiness, and nervousness.

171. Signature matching laws also are particularly problematic for racial and ethnic minority voters; younger, first-time voters; voters with disabilities; and senior-citizen voters, all of whom are more likely to have variations in their signatures or may require assistance from others to provide a consistent signature.

172. Because of the inherent difficulty in determining whether a signature is genuine, it is inevitable that Maine election officials will—even in good faith—erroneously reject legitimate ballots, resulting in the disenfranchisement of eligible voters.

173. In upcoming elections, Maine’s Signature Matching process is likely to be applied to hundreds of thousands of absentee ballots—substantially more than in the past—subjecting that many more lawful voters to the serious risk that their ballots will be rejected erroneously without notice or an opportunity to cure. Absent judicial intervention, these voters’ ability to cast an effective vote will ultimately depend on whichever arbitrary standard is employed by their local election officials (or which election official is applying it).

174. Maine’s failure to ensure that voters are notified that their absentee ballots will be rejected and give those voters an opportunity to cure their ballots is particularly inexplicable given that Maine requires municipal clerks to notify a voter “immediately” if his or her *application* for an absentee ballot is denied. *See* M.R.S. tit. 21-A § 753-b(7).

175. Maine further requires municipal clerks to determine whether an absentee ballot is eligible for processing and counting as soon as an absentee ballot is received in the clerk’s office. *See id.* at § 756.

176. Thus, even a voter who returns his or her absentee ballot weeks in advance of an election and who would have ample time to fix any alleged deficiencies is not required to be notified of the defect and given the opportunity to cure the ballot.

177. Maine is fully capable of resolving discrepancies and disputes over whether a voter’s ballot should be counted well after Election Day.

178. In fact, Maine does not require the Secretary of State to certify the election results until 20 days after the election, *see id.* at § 722, leaving ample time for election officials to notify

absentee voters of alleged defects in their affidavits or ballots and allow those voters to cure any defects.

179. Other states like Maine which have chosen to use absentee balloting readily provide voters notice and an opportunity to cure their absentee ballot before that ballot is rejected. There is no reason that Maine cannot do the same; indeed, it must, or it will continue to violate the constitutional rights of Maine voters.

CLAIMS FOR RELIEF

COUNT I

First and Fourteenth Amendments

U.S. CONST. Amend. I and XIV, 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202

ME. CONST. art. I, § 6-A; ME. CONST. art II, § 1

Undue Burden on the Right to Vote

(All Challenged Provisions)

180. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

181. Under the *Anderson-Burdick* balancing test, a court considering a challenge to a state election law must carefully balance the character and magnitude of injury to the First and Fourteenth Amendment rights that the plaintiff seeks to vindicate against “‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). This balancing test utilizes a flexible sliding scale, where the rigorousness of scrutiny depends upon the extent to which the challenged law burdens voting rights. *See Werme v. Merrill*, 84 F.3d 479, 483 (1st Cir. 1996).

182. A burden on the right to vote need not be insurmountable before it can be deemed to be a severe burden. *See Perez-Guzman v. Gracia*, 346 F.3d 229, 241 (1st Cir. 2003). Laws or policies imposing severe burdens on the right to vote “must be narrowly drawn to advance a state interest of compelling importance.” *Norman v. Reed*, 502 U.S. 279, 280 (1992); *see also Ayers-Schaffner v. DiStefano*, 37 F.3d 726, 730 (1st Cir. 1994). But even less severe burdens remain subject to balancing: “[h]owever slight” the burden on voting rights may appear, “it must be justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’” *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) (controlling op.) (quoting *Norman*, 502 U.S. at 288–89) (emphasis added).

183. Reduced access to in-person voting and voter registration options, combined with the social distancing guidelines and other precautionary measures that State and federal officials have encouraged Americans to take in order to stem the spread of COVID-19, means that more Mainers than ever before will need to rely on absentee ballots and mail-in voter registration applications to exercise their constitutional right to vote. The Challenged Provisions will operate, both independently and together, to unduly burden this right without sufficient justification to outweigh the imposition of that burden.

184. *First*, the Paper and Pen Registration requirement prevents eligible voters from registering to vote using the mail-in voter registration application unless they have access to a computer printer or undergo a burdensome multi-day, multi-step process of requesting and returning a paper registration form by mail. This requirement will deter countless otherwise eligible Mainers from even attempting to register to vote at all, and will force others to face the burden of unnecessary risk of exposure to COVID-19 to leave their homes to register to vote in-person.

185. Defendants have no legitimate interest in imposing the Paper and Pen Registration requirement. Maine law contemplates that voters can *complete* the mail in voter registration form electronically, and Maine law does not impose a requirement that the voter's handwritten signature be printed in pen ink, or that the mail-in voter registration form can only be returned by mail or in person.

186. *Second*, the Photocopier Requirement prevents eligible voters from registering to vote using the Maine Voter Registration Application, deters voters from even attempting to register to vote at all, and will force some voters to face the burden of unnecessary risk of exposure to COVID-19 to leave their homes to register to vote in-person or obtain a photocopy of their identification document.

187. Defendants have no legitimate interest in imposing the Photocopier Requirement. The mail-in voter registration form already requires voters to provide information that Maine uses to verify voters' identity using official state and federal databases, without any need for a copy of an identity document. Nor does any Maine statute authorize or require the Secretary of State to impose the Photocopier Requirement.

188. *Third*, the Postage Tax will deter voters and render absentee voting inaccessible for some, particularly as the burdens it imposes on voters are substantially exacerbated by the financial fallout of the COVID-19 crisis. Even those Mainers able to afford the cost of postage will face the burden of unnecessary risk of exposure to COVID-19 if required to leave their homes to obtain stamps.

189. Defendants have no legitimate interest in imposing the Postage Tax. Providing postage to allow citizens to complete voting as well as other important government-related functions is a common practice that has been adopted by federal, state, and county governments.

Moreover, in its coronavirus stimulus package, Congress allocated over \$3.5 million for Maine to use for coronavirus-related election expenses, which can be used to cover the cost of prepaying postage, among other expenses. Indeed, Secretary Dunlap has already indicated that he is considering using these funds to prepay postage for absentee ballots.

190. *Fourth*, the Absentee Ballot Assistance Restrictions impose an undue burden on absentee voters' ability to receive assistance in returning their absentee ballot. For those voters whose work schedules, family care responsibilities, lack of transportation, language barriers, disabilities, inability to afford the Postage Tax or obtain postage, or need to remain socially distanced during the COVID-19 pandemic make returning absentee ballots before the Election Day Receipt Deadline difficult or impossible, assistance returning an absentee ballot is crucial.

191. The Absentee Ballot Assistance Restrictions severely restrict the help available to these voters in two distinct ways. First, by prohibiting paid and trained organizers—the very persons best equipped to help voters—from deploying to assist Mainers in returning their absentee ballots, the state has unnecessarily cut off an important avenue of assistance for voters, particularly in an environment where unpaid volunteers are less likely to risk their health to provide such assistance. Second, even if a voter is able to find a person who can help return their completed ballot, Maine does not permit a person to return a completed absentee ballot for a voter who needs assistance returning it unless that ballot is signed, in addition to the voter, in the presence of a notary, a municipal clerk, or two additional individuals. *See* M.R.S. tit. 21-A, § 754-A. Requiring voters who need assistance returning an absentee ballot to locate these individuals and convene an in-person meeting of three or four individuals adds a burdensome (and unnecessary) step to returning absentee ballots. “Even in areas where notaries are plentiful, someone must travel; either the voter must visit the notary’s office or the notary must take to the field.” *Gracia*, 346 F.3d at

239-40 (striking down a law requiring petitions to be signed in the presence of a notary because such a requirement unnecessarily burdensome).

192. This requirement, moreover, is downright dangerous in a pandemic; even if organizations or other voters providing assistance could convince a notary, municipal clerk, or two additional individuals to gather and assist under the circumstances, doing so would contravene orders to remain socially distanced to slow the outbreak of COVID-19. Together, both of these provisions substantially and unnecessarily increase the difficulty of returning absentee ballots. The State has no sufficient justification for imposing such burdensome hurdles on returning absentee ballots.

193. *Fifth*, the Election Day Receipt Deadline poses an undue burden on the right to vote for voters who, despite their best efforts, are not able to return their ballot by the Election Day Receipt Deadline. The Election Day Receipt Deadline has already disenfranchised thousands of voters across Maine in recent elections. Given COVID-19's exacerbating impact on mail service delays and disruptions, the Election Day Receipt Deadline will disenfranchise increasing number of voters who mail their ballots on or before Election Day but whose ballots do not arrive at their local election office by 8 p.m. on Election Day.

194. The State has no sufficient justification for its failure to extend the deadline for the delivery of mail ballots when the state has up to twenty days to finalize its election results. M.R.S. tit. 21-A, § 722.

195. *Sixth*, Maine's policy of Rejection Without Notice, which disenfranchises voters who make a single technical error on their absentee ballot without notifying the voter or giving them an opportunity to cure that ballot, also imposes an undue burden on the right to vote. This policy has previously disenfranchised thousands of voters in recent elections throughout Maine.

Moreover, the number of Mainers disenfranchised by a complete lack of procedures to cure a ballot is likely to dramatically increase in upcoming elections as many Mainers begin to vote absentee for the first time, and thus are more prone to make clerical or administrative mistakes with their ballot.

196. Maine has no sufficient interest in failing to notify voters and giving voters an opportunity to cure their absentee ballot given that Maine currently affords such procedures to in-person voters and has ample time to help voters resolve any discrepancies before the state's certification of ballots is due.

197. *Seventh*, Maine's Signature Matching process imposes a severe burden—in this case, complete disenfranchisement—on the right to vote of otherwise eligible voters whose ballots are discarded because of an alleged signature mismatch, a determination reached without sufficient standards or criteria to instruct election officials on how to determine if a signature is “genuine.”

198. Rejecting these voters' ballots based solely on an alleged signature mismatch on their ballot envelopes without giving those voters an opportunity to prove or verify their identity does not serve any legitimate, let alone compelling, state interest, as demonstrated by the fact that thousands of absentee ballots are not even subject to signature matching.

199. In fact, Maine's Signature Matching process is much more likely to disenfranchise an eligible Maine voter than it is to “catch” fraudulent voters. As the U.S. Commission on Civil Rights recently found, “voter fraud is essentially nonexistent” in Maine. *See* U.S. COMMISSION ON CIVIL RIGHTS, *Report of the Maine Advisory Committee to the U.S. Commission on Civil Rights* at 1 (April 2018). In the past thirty years, Maine has prosecuted only one case of voter fraud. *See id.* Maine also has other safeguards in place to prevent voter fraud. It is already a crime in Maine, for example, to forge the name of another on an absentee ballot, the return envelope, or the application

for an absentee ballot. *See* M.R.S. tit. 21-A, § 791. And when Maine voters fill out the required affidavit alongside their absentee ballot, they swear under penalty of perjury that the information contained in their affidavit, including their name and signature, is true and correct.

200. Each of the challenged restrictions provides an independently unconstitutional burden on the fundamental rights of Mainers to participate in our democracy. But taken together, these restrictions impose significant barriers that will deter or disenfranchise countless Maine voters, particularly during the COVID-19 pandemic, and severely burden Plaintiffs’ and other Mainers’ constitutional right to participate safely in the electoral process.

COUNT II

Due Process

U.S. CONST. Amend. XIV, 42 U.S.C. § 1983

ME. CONST. art. I, § 6-A

Denial of Procedural Due Process

(Rejection Without Notice, Signature Matching)

201. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

202. The Due Process Clauses of the state and federal constitutions prohibit the state from depriving any “person of ...liberty...without due process of law.” U.S. CONST. amend. XIV, § 1; ME. CONST. art. I, § 6-A. *See also MSAD 6 Bd. of Directors v. Town of Frye Island*, No. CUM-19-194, 2020 WL 1862206, at *7 (Me. Apr. 14, 2020) (“The rights guaranteed by article I, section 6-A of the Maine Constitution are coextensive with those guaranteed by the Fourteenth Amendment of the United States Constitution.”). This due process principle protects the fundamental right to vote. *See Doe v. Rowe*, 156 F. Supp. 2d 35, 48 (D. Me. 2001) (“[T]he denial of the right to vote is a denial of a fundamental liberty.”). This interest extends to voting absentee, which Maine has statutorily conferred upon its citizens. *See, e.g., Saucedo v. Gardner*, 335 F.

Supp. 3d 202, 217 (D.N.H. 2018) (“Having induced voters to vote by absentee ballot, the State must provide adequate process to ensure that voters’ ballots are fairly considered and, if eligible, counted.”).

203. To determine whether Maine has provided constitutionally adequate process, this Court must weigh “(1) Plaintiffs’ interest in participating in the democratic process through voting; (2) the risk of erroneous deprivation of the right to vote under the procedures used by the State; and (3) the State’s interest, including any extra administrative or financial burden on the State from requiring additional procedures.” *Doe*, 156 F. Supp. 2d at 48 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)); *Seider v. Bd. of Examiners of Psychologists*, 754 A.2d 986, 991 (Me. 2000) (also citing *Mathews*, 424 at 335 (1976)).

204. Here, procedural due process requires that voters be afforded notice and an opportunity to cure alleged technical deficiencies, such as a lack of signature on a return envelope or an incomplete witness or aide certificate, before a voter’s ballot is permanently rejected. Due process also requires, at a minimum, that voters are notified of alleged signature mismatches or other technical defaults with their absentee ballot and are given an opportunity to verify their identity or signature before their ballot is permanently rejected.

205. As numerous other courts have found, a state’s failure to ensure that a voter’s absentee ballot is not erroneously rejected before notifying that voter and providing a meaningful opportunity to be heard—both for alleged signature defects and other technical defects—violates a voter’s procedural due process rights. *See, e.g., Saucedo*, 335 F. Supp. 3d at 222 (holding New Hampshire’s signature matching requirement, which did not provide an opportunity to cure, violated voters’ due process rights); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1338-40 (N.D. Ga. 2018) (holding Georgia’s practice of rejecting absentee ballot applications and ballots due to an

alleged signature mismatch or other technical error without pre-rejection notice, a reasonable opportunity to cure the deficiency, or an opportunity to appeal the rejection violated voters' procedural due process rights); *Zessar v. Helander*, No. 1:05-cv-1917, 2006 WL 642646, at *6-10 (N.D. Ill. 2006), *vacated as moot sub. nom. Zessar v. Keith*, 536 F.3d 788 (7th Cir. 2008) (holding Illinois' practice of rejecting absentee ballots without first notifying the voter of that rejection and allowing an opportunity to contest that rejection violated voters' procedural due process rights); *Raetzel v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1357-58 (D. Ariz. 1990) (holding Arizona's practice of failing to provide notice or a hearing to voters whose absentee ballots were disqualified violated voters' procedural due process rights).

206. In Maine, there is a high risk that an absentee voter's ballot will be rejected for failure to include technical information that is not related to their eligibility to vote, as demonstrated by the substantial number of Mainers whose absentee ballots are rejected each election. Moreover, the risk of an erroneous rejection for an alleged signature mismatch is inherently high given the difficulty in accurately determining whether a voter's signature is genuine. That risk is further compounded by Maine's wholesale lack of standards in evaluating signatures and failure to require that election officials be trained in handwriting or signature comparison.

207. Providing adequate safeguards to prevent the arbitrary and erroneous deprivation of the right to vote would impose no more than a minimal administrative burden on the State, if any. Because voting is a fundamental right, the risk that even one person will be disenfranchised—for failure to include technical information or because a voter's signature is wrongly determined not to be genuine, for example—is too significant for Maine to justify depriving absentee voters

of both pre-rejection notice and a meaningful opportunity to cure or prove the validity of their ballot.

COUNT III

Equal Protection
U.S. CONST. Amend. XIV, 42 U.S.C. § 1983
ME. CONST. art. I, § 6-A
Disparate Treatment of Voters
(Signature Matching)

208. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

209. The Equal Protection Clause of the Fourteenth Amendment guarantees qualified voters a substantive right to participate equally with other qualified voters in the electoral process and requires “that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Maine’s Constitution guarantees the same rights. *See MSAD 6 Bd. of Directors*, 2020 WL 1862206, at *7.

210. Maine’s Signature Matching process plainly violates the Equal Protection Clause by requiring similarly-situated absentee voters to fulfill different verification requirements in order for their ballots to be properly counted. While Maine voters who request an absentee ballot online or over the telephone successfully verify their identity by providing their birth date and address, Maine voters who request an absentee ballot by mail, in-person, or by fax cannot successfully verify their identity—*despite also providing their birth date and address*—without also providing a signature that can later be successfully “matched” to that voter.

211. Maine’s Signature Matching process is thus arbitrary and results in different requirements for similarly-situated voters in violation of the Equal Protection Clause.

COUNT IV

Freedom of Speech and Association
U.S. CONST. Amends. I, XIV, 42 U.S.C. § 1983
ME. CONST. art. I, § 4
Infringement on Speech and Association
(Paper and Pen Registration)

212. Plaintiffs incorporate by reference and reallege all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

213. The First Amendment protects against the passage and enforcement of laws “prohibiting the free exercise [of] or abridg[ment] of freedom of speech.” U.S. CONST. amend. I. Likewise, Maine’s Constitution guarantees to “[e]very citizen” the right of free speech and forbids undue government interference with that right. ME. CONST. art. I, § 4. Those protections are at least as the free-speech protections of the federal Constitution. *See City of Bangor v. Diva’s, Inc.*, 830 A.2d 898, 902 (Me. 2003) (“With respect to the protection of freedom of speech, the ‘Maine Constitution is no less restrictive than the Federal Constitution.’” (quoting *State v. Janischak*, 579 A.2d 736, 740 (Me. 1990))).

214. The Supreme Court has applied “exacting scrutiny” to review laws governing election-related speech. *See McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 345 (1995); *see also League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 722 (M.D. Tenn. 2019) (“[L]aws that govern the political process surrounding elections—and, in particular, election-related speech and association—go beyond merely the intersection between voting rights and election administration, veering instead into the area where ‘the First Amendment has its fullest and most urgent application.’”) (quoting *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989)). Restrictions on such speech are unconstitutional when they “significantly inhibit” election-related speech and are “not warranted by the state interests . . . alleged to justify [the]

restrictions.” *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 192 (1999). *See also Cent. Maine Power Co. v. Pub. Utils. Comm’n*, 734 A.2d 1120, 1126 (Me. 1999), *overruled on other grounds by Conservation Law Found. v. Pub. Utilities Comm’n*, 192 A.3d 596 (Me. 2018) (applying the doctrine of “core [political] speech” under the Maine Constitution).

215. Vote.org’s voter registration efforts are “the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Meyer v. Grant*, 486 U.S. 414, 421–22 (1988); *see also League of Women Voters*, 400 F. Supp. 3d at 720 (“Encouraging others to register to vote is pure speech, and, because that speech is political in nature, it is a core First Amendment activity.”) (quotation marks and alterations omitted).

216. Paper and Pen Registration severely inhibits Vote.org’s speech in several ways. First, by prohibiting Vote.org from collecting and transmitting voters’ completed voter registration applications to elections offices, the Paper and Pen Registration requirement significantly inhibits their speech by “limit[ing] the number of voices who will convey [Plaintiffs’] message,” and “the size of the audience they can reach.” *Meyer*, 486 U.S. at 422–23.

217. Furthermore, under the United States Constitution, First Amendment rights “include the right to band together for the advancement of political beliefs.” *Hadnott v. Amos*, 394 U.S. 358, 364 (1969). The conversations and interactions between Vote.org and Maine voters surrounding the submission of their voter registration applications are forms of protected political speech and association. *See Williams v. Rhodes*, 393 U.S. 23, 30 (1968) (describing the “overlapping” rights “of individuals to associate for the advancement of political beliefs” and “of qualified voters . . . to cast their votes effectively”); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 700 (N.D. Ohio 2006) (explaining “participation in voter registration implicates a number of both expressive and associational rights which . . . belong to—and may be invoked by—not just

the voters seeking to register, but by third parties who encourage participation in the political process through increasing voter registration rolls”). Thus, by limiting Vote.org’s ability to assist voters in registering to vote, Maine’s Paper and Pen Registration process burdens the speech and associational rights of Vote.org, its staff, and Maine voters who seek their assistance.

218. These burdens are severe, and the Paper and Pen Registration is not narrowly tailored to advance a compelling state interest. “In considering whether a [] requirement is narrowly drawn to advance the state’s interest in preventing fraud, the mechanisms that the state already has in place serve as benchmarks.” *Gracia*, 346 F.3d at 245. Here, Maine law already contemplates that voters can complete the mail in voter registration form electronically, and Maine law does not impose a requirement that the voter’s handwritten signature be printed in pen ink, or that the mail in voter registration form only be transmitted by mail or in person. The restrictions thus represent an overbroad restriction on political speech and political organizing that infringes the constitutional rights of Plaintiffs and other Mainers under the First Amendment.

COUNT V

U.S. CONST. Amend. XIV and XXIV, 42 U.S.C. § 1983 Violation on Prohibition on Poll Taxes and Other Taxes (Postage Tax)

219. Plaintiffs incorporate by reference and reallege all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

220. The Twenty-Fourth Amendment to the United States Constitution provides that: “The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.” U.S. CONST. amend XXIV, § 1.

221. The Equal Protection Clause of the Fourteenth Amendment provides: “No state shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend XIV, § 1

222. Both amendments prohibit the government from imposing a poll tax or other tax on the access to the franchise. *See Harman v. Forssenius*, 380 U.S. 528 (1965); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966).

223. During the COVID-19 public health crisis, the only safe way for many Maine voters to vote will be by mail. But Maine requires individuals who cast such ballots to pay for the postage to return their ballot. Requiring voters to spend money to submit a mail ballot imposes an unconstitutional tax on voting in violation of the Twenty-Fourth and Fourteenth Amendments. Indeed, Maine voters—and particularly voters who are low-income, disabled, or homebound due to COVID-19—are being forced to pay “a price for the privilege of exercising the franchise.” *Harman*, 380 U.S. at 539.

224. Based on the foregoing, the Secretary has burdened and deprived and will continue to burden and deprive Plaintiffs and their members and constituents of their right to vote in federal elections, secured to them by the Twenty-Fourth and Fourteenth Amendments to the United States Constitution and protected by 42 U.S.C. § 1983.

COUNT VI

Declaratory Judgment

M.R.S. tit. 14 § 5951 *et seq*; M.R.S. tit. 5 § 8058

(Paper and Pen Registration; Photocopier Requirement)

225. Plaintiffs incorporate by reference and reallege all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

226. Maine law requires that a mail-in voter registration application contain the “signature of applicant” but does not require that the signature be printed with the ink of a pen. M.R.S. tit. 21-A, § 152(1)(M). To the contrary, Maine law expressly contemplates that applicants should be able to *complete* the voter registration application electronically: “The Secretary of State may design an application that can be completed electronically and that substantially meets the requirements of this section.” M.R.S. tit. 21-A, § 152(5).

227. The Secretary’s position that mail-in voter registration applications contain a signature printed with the ink of a pen, which prevents Vote.org and other organizations from submitting voter registration applications containing handwritten signatures printed with the ink of a computer printer, is contrary to Maine law.

228. Maine law provides that mail-in voter registration forms can be delivered by mail or by a 3rd person, M.R.S. tit. 21-A, § 121-A, but does not require that 3rd persons may only deliver mail-in voter registration applications in person.

229. The Secretary’s position that mail-in voter registration applications cannot be transmitted electronically, which prevents Vote.org and other organizations from submitting voter registration applications by fax or email, is contrary to Maine law.

230. The mail-in voter registration application, promulgated by the Secretary, states that **“If you are a NEW Maine voter and mail this card,** you must include a photocopy of your Maine

driver's license, Maine State ID, or current utility bill, bank statement or government document that shows your name and address.”¹²

231. No provision of Maine law requires new Maine voters to include a photocopy of an identification document with their mail-in voter registration application or authorizes the Secretary to impose such a requirement. *See, e.g.*, M.R.S. tit. 21-A, § 152.

232. The instruction on the mail-in voter registration application requiring new Maine voters to include a photocopy of an identification document with their mail-in voter registration application, is contrary to Maine law.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- A. Declaring that the Paper and Pen Registration requirement is an unconstitutional burden on the right to vote under the First and Fourteenth Amendments and Article I Section 6-A and Article II Section 1 of the Maine Constitution, a violation of the right to free speech and association under the First Amendment and Article I Section 4 of the Maine Constitution, and contrary to Maine law;
- B. Declaring that the Photocopier Requirement on Maine's mail-in voter registration application is an unconstitutional burden on the right to vote under the First and Fourteenth Amendments and Article I Section 6-A and Article II Section 1 of the Maine Constitution, and contrary to Maine law;
- C. Declaring that the Postage Tax is an unconstitutional burden on the right to vote under the First and Fourteenth Amendments and Article I Section 6-A and Article

¹² Maine Voter Registration Application, Maine.gov, <https://www.maine.gov/sos/cec/elec/upcoming/pdf/voterregcard20.pdf> (last visited June 22, 2020).

II Section 1 of the Maine Constitution, and an unconstitutional poll tax under the Twenty Fourth and Fourteenth Amendments;

D. Declaring that the Absentee Ballot Assistance Restrictions, M.R.S. tit. 21-A, §§ 791(2)(A), § 754-A(2), are an unconstitutional burden on the right to vote under the First and Fourteenth Amendments and Article I Section 6-A and Article II Section 1 of the Maine Constitution;

E. Declaring that the Election Day Receipt Deadline for absentee voters, M.R.S. tit. 21-A, § 755, is an unconstitutional burden on the right to vote under the First and Fourteenth Amendments and Article I Section 6-A and Article II Section 1 of the Maine Constitution;

F. Declaring that Rejection without Notice, M.R.S. tit. 21-A, §§ 753-B(4), 756, is an unconstitutional burden on the right to vote under the First and Fourteenth Amendments and Article I Section 6-A and Article II Section 1 of the Maine Constitution and violates the Due Process Clause of the Fourteenth Amendment and Article I Section 6-A of the Maine Constitution;

G. Declaring that Maine's Signature Matching procedures, M.R.S. tit. 21-A, §§ 756(2), 759(3)(A), are an unconstitutional burden on the right to vote under the First and Fourteenth Amendments and Article I Section 6-A and Article II Section 1 of the Maine Constitution, violates the Due Process Clause of the Fourteenth Amendment and Article I Section 6-A of the Maine Constitution, and subject voters to arbitrary treatment in violation of the Equal Protection Clause of the Fourteenth Amendment and Article I Section 6-A of the Maine Constitution;

- H. Enjoining Defendants and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them from rejecting a registrant's mail-in voter registration application solely because the registrant's signature is not printed in pen ink or because the application was delivered by facsimile, email, or other electronic transmission mechanism;
- I. Enjoining Defendants and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them from rejecting a first-time registrant's mail-in voter registration application solely because the registrant failed to provide a photocopy of their identification;
- J. Enjoining Defendants and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them from requiring that voters provide postage on their absentee ballot return envelopes and further require that Maine provide prepaid postage on all absentee ballot return envelopes;
- K. Enjoining Defendants, and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from enforcing the Absentee Ballot Assistance Restrictions, M.R.S. tit. 21-A, §§ 791(2)(A), § 754-A(2);
- L. Enjoining Defendants, and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from rejecting ballots that are postmarked on or before Election Day and arrive at the election office within a minimum of ten days after Election Day; ballots that do

not have a postmark or other marking from the USPS but arrive within such timeframe shall be presumed to have been mailed by Election Day;

- M. Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from rejecting absentee ballots of otherwise eligible Maine voters without giving the voter notice and an opportunity to cure their ballot or verify their identity;
- N. Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from rejecting absentee ballots of otherwise eligible Maine voters for a perceived signature mismatch;
- O. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws; and
- P. Granting such other and further relief as the Court deems just and proper.

Dated this 24th day of June, 2020.

Respectfully submitted,



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STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DKT. NO. CV 20-95

ALLIANCE FOR RETIRED AMERICANS;
DOUG BORN; DON BERRY; and VOTE.ORG,

Plaintiffs,

v.

MATTHEW DUNLAP, in his official capacity as
the Maine Secretary of State; and AARON FREY,
in his official capacity as the Maine Attorney
General,

Defendants.

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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I. INTRODUCTION

The United States faces an unprecedented public health crisis. While the coronavirus poses a threat nationwide, it poses a particular danger in Maine, the state with the nation's oldest population and worst COVID-19 racial disparity. While Maine has had relative success to date in avoiding widespread outbreaks, this has also resulted in relatively low levels of immunity to COVID-19, which could leave Mainers particularly vulnerable to a second surge this fall.

The pandemic has affected all aspects of life, and the democratic process is no exception. In normal elections, Mainers overwhelmingly register to vote and cast their ballots in-person. But these are not normal times. The July 14 primary election—postponed from June for COVID-19-related concerns—saw an unprecedented surge in absentee voting. This trend is only expected to accelerate in the upcoming November election, as public health officials urge Mainers to continue practicing social distancing and to stay home whenever possible.

Despite the best efforts of local elections officials, Maine's in-person election system was not designed for a pandemic. Even under ordinary circumstances, the provisions of Maine election law challenged in this suit burden voters. But in a pandemic—when registering to vote remotely and absentee voting are the “fail safe” for accessing the franchise—these provisions are even more unjustifiable. If left in place, they threaten to burden and disenfranchise thousands of Mainers. Accordingly, Plaintiffs request that the Court preliminarily enjoin each of the challenged provisions to protect the voting rights of all Mainers in the upcoming November election.

II. BACKGROUND

A. The COVID-19 pandemic has caused an ongoing public health crisis in Maine, upending Maine's elections.

On March 15, 2020, the Governor declared a state of emergency due to the serious health and safety risks of COVID-19, and she has since extended that state of emergency four times. *See* Ex. 4. The Governor postponed the June primary, citing the risk that “voters, poll workers, and elections officials would be exposed to COVID-19.” Ex. 5. Today, every county has reported confirmed cases, with dozens of new cases reported daily. *See* Ex. 2 ¶¶ 8-9. As of June, Maine had

the nation's worst COVID-19 racial disparity, with Black residents accounting for less than 2 percent of the population but a remarkable 23 percent of the state's COVID-19 cases. *Id.* ¶ 14.

Plaintiffs' expert, Dr. Peter Millard, a Belfast infectious disease epidemiologist, echoes the conclusions of the Director of the Centers for Disease Control and Prevention ("CDC") and other experts, in cautioning that the pandemic is far from over. *See id.* ¶¶ 21-23; Ex. 6 (CDC Director explaining "fall and the winter of 2020 and 2021 are going to be probably one of the most difficult times that we've experienced in American public health"). Maine is at particular risk: it has one of the nation's oldest populations, above average levels of chronic disease, and relatively low levels of immunity to COVID-19—precisely because, at least to date, it has managed to avoid the kinds of surges experienced in other states. *See Ex. 2* ¶¶ 29-30. Mitigation measures and social distancing will continue to be necessary throughout the fall, as public gatherings requiring interaction with others (such as at polling places or government offices) pose severe health risks. *See id.* ¶¶ 27-34.

Shifting away from forms of democratic participation that involve face-to-face interaction will represent a significant change for Maine. This is because Maine's system is largely set up to require in-person interactions to exercise the franchise. Historically, Mainers participated in elections via in-person interactions more than voters in almost every other state: over 90% of recent voter registrations have been completed in-person (at the polling place, in clerks' offices, at the BMV), while less than 10% have been completed by mail—the only method of voter registration that is not conducted in person. *See Ex. 1* ¶¶ 87, 95. The same is true of voting: until this year, no more than 10% of Mainers in any general election returned their ballots by mail. *See id.* ¶ 65-66.

The virus changed everything. Prior to the July primary, Secretary of State Matthew Dunlap (the "Secretary") urged voters to vote by mail to help contain the outbreak. *See Ex. 7*. Mainers responded with a *four thousand* percent increase in absentee ballot requests for the July 2020 primary compared to the June 2016 primary. *See Ex. 1* ¶ 51.¹ The Secretary estimated that almost 80% of voters in the July primary voted absentee. *See Maine Public Radio, Matthew*

¹ This projected increase is a conservative estimate. As Dr. Herron explains in his report, Maine has not finished reporting its absentee ballot figures for the July 2020 primary. *See Ex. 1* at ¶ 68.

Dunlap: Maine Secretary of State Discusses Voting, Census, CMP, Motor Vehicles, and More (July 27, 2020) at 1:33 (hereinafter “Dunlap Interview”).² Preliminary results show that nearly a third of ballots cast in the July primary were by mail—more than triple the usual rate. *See* Ex. 1 ¶ 65. The Secretary anticipates more of the same. *See* Dunlap Interview at 4:25-4:56 (Secretary affirming that “absentee balloting is going to be a critical factor in the November election” and anticipating “having as many as 600,000 absentee ballots for the November election”).

Mainers’ voter registration practices are also under strain. Most forms of voter registration in Maine require voters to engage in person-to-person contact, often in an enclosed space with many other people present. The pandemic makes these options too risky for many voters and their families. *See, e.g.*, Ex. 2 ¶¶ 27-34; Ex. 8 ¶ 5 (voter minimizing in person interactions for health); Ex. 9 ¶¶ 6-7 (same). The pandemic has also reduced access to in-person methods of registration: organizations that used to conduct voter registration drives suspended their activities several months ago and are struggling to recruit volunteers to re-start those drives. *See* Ex. 12 ¶¶ 8-10. Many town offices remain closed or are operating with significantly reduced hours and reduced staff. *See* Ex. 9 ¶ 8; Exs. 31, 32. And towns are reducing the number of polling places that offer same-day registration in response to the pandemic. *Compare* Ex. 14 with Ex. 15 (significant reductions in polling places in Auburn, Augusta, and Lewiston). In Wisconsin, a state like Maine that has relied heavily upon same day registration, the use of same day registration declined dramatically between its 2016 and 2020 primaries. *See* Ex. 1 ¶ 119. In Wisconsin, however, online voter registration—which requires no in-person interaction—filled the gap. *See id.* ¶¶ 123-124 (86% of Wisconsin registrations occurred online in the month before the April 2020 primary).

B. The Secretary’s policies make it needlessly difficult to register to vote remotely.

As the pandemic makes in-person registration inaccessible for many Mainers, two policies implemented by the Secretary make remote voter registration unduly burdensome.

² An audio recording of this interview is available at: <https://www.mainepublic.org/post/matthew-dunlap-maine-secretary-state-discusses-voting-census-cmp-motor-vehicles-and-more>.

1. The Pen-and-Paper Registration Requirement

To register to vote remotely, the Secretary requires voters to complete a mail voter registration form and return a paper copy of the form signed in pen ink to the voter's local election official. *See* Ex. 16. As a direct result, a Mainer seeking to register remotely must have access to a computer printer, or must engage in a multi-day, multi-step process of requesting the delivery of a voter registration application from their town clerk. Once the voter prints or receives the paper application, they must complete it, sign it, and then obtain an envelope and a stamp to mail it back. These additional steps make it less likely that Mainers will register to vote. *See* Ex. 11 ¶¶ 9-10. The overwhelming majority of states have created online voter registration systems to eliminate these obstacles to registering. *See* Ex. 1 ¶ 83. Maine has not followed suit. But civic organizations like Plaintiff Vote.org are ready to fill the gap. Vote.org's technology would allow Mainers to complete a voter registration application on a computer or a smartphone and sign the application with a picture of their handwritten signature—all without requiring them to print, sign, or mail a paper voter registration application. *See* Ex. 11 ¶¶ 11-16. Vote.org's system does not require local elections officials to use any new technology; officials would receive a signed voter registration application to be processed like any other application. *See id.* ¶¶ 14-15. The only difference is that the voter's handwritten signature would be affixed to the application with the ink of a computer printer rather than the ink of a pen. *See id.* But the Secretary's requirement of paper applications signed in pen ink stands in the way. A one-step, paperless form of remote registration would significantly increase access to voter registration at a time when other registration options have become unsafe or unavailable at all. Ex. 12 ¶ 11; Ex. 13 ¶ 12.

2. The Photocopier Requirement

The Secretary's mail voter registration form requires first-time Maine registrants to include a photocopy of an identification document with their application. *See* Ex. 17. The Secretary's requirement means any first-time voter who lacks access to a photocopier at home must travel to another location—such as a business or library—to find one, making it less likely that they will register or that community organizations will be able to assist them in registering to vote. Ex. 1 ¶

82; Ex. 12 ¶ 7; Ex. 13 ¶¶ 8-10 (organization has ceased voter registration drives in part because of the Photocopier Requirement). The Secretary's requirement is completely unnecessary and has no basis in federal or state law. *See infra* at 12-13. Maine is fully capable of verifying voter registration applications without photocopies of identity documents, as virtually every other state manages to do. Moreover, the Secretary does not even impose this requirement consistently: the Secretary's instructions for the National Mail-In Voter Registration Form—an alternative form that Mainers can use to register—do not include this onerous requirement. *See* Ex. 18.

C. Maine's voting regime erects several burdens to successfully voting absentee.

Maine permits any voter to vote absentee, M.R.S. tit. 21-A, § 751, and like the rest of the country, has seen a dramatic increase in absentee voting since the pandemic began. *See* Ex. 1 at ¶¶ 49-50, 65. But, at a time when absentee voting is crucial to securing access to the franchise, four aspects of Maine's election laws will burden the right to vote of thousands of lawful voters.

1. The Election Day Receipt Deadline

Maine law imposes the harsh penalty of disenfranchisement on voters whose ballots are delivered to local elections officials by mail after 8:00 p.m. on Election Day, regardless of when the voter mailed their ballot. *See* M.R.S. tit. 21-A § 755. The Election Day Receipt Deadline (the "Deadline") has resulted in the rejection of over a thousand mail ballots in recent elections alone, even though only a small percentage of Mainers returned their ballot by mail in those elections. *See* Ex. 1 ¶¶ 65, 201. In the 2018 general election, more than 86% of these rejected ballots arrived only one or two days after the Deadline, *id.* ¶ 203. Further, in these elections—which were not marred by unanticipated delays and disruptions in mail delivery due to COVID-19—tens of thousands more ballots arrived in the mail either on Election Day itself or the day before, putting those ballots at grave risk of rejection. *See id.* ¶ 208.

This year's anticipated surge of absentee ballots will put an unprecedented strain on the entire system, from local election offices to the USPS, which is suffering from severe budgetary shortfalls, staffing shortages, and reduced capacity—concerns the Secretary has acknowledged are real. *See* Dunlap Interview at 5:01 (Secretary remarking that processing absentee ballot

applications is “quite a strain for town officials”); *id.* at 25:45 (Secretary explaining, “[T]he postal service is suffering from this strain . . . they don’t have enough staff . . . they don’t have enough facilities and, you know, they’re coping as best they can”). These delays are already happening across the country. In California’s recent primary election, over 70,000 ballots were rejected for arriving after the state’s receipt deadline—even though California accepted ballots up to *three days after* Election Day. *See* Ex. 19. In Wisconsin’s primary, a massive increase in requests for absentee ballots placed a significant strain on elections officials, who were unable to send ballots to thousands of voters who timely requested them in time for those ballots to be returned by Election Day. But for a decision of the Supreme Court in litigation brought in anticipation of this very problem, which allowed absentee ballots to count so long as they were postmarked by Election Day, over 79,000 voters would have been disenfranchised. *See Democratic Nat’l Comm. v. Bostelmann*, No. 20-cv-249-wmc, 2020 WL 1638374, at *38-39 (W.D. Wis. Apr. 2, 2020); *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1208 (2020); Ex. 20.

The Deadline particularly burdens voters who—whether because of a surge in COVID-19 cases or other reasons—cannot vote in person. USPS has warned that, in Maine, which permits voters to request absentee ballots within five days of an election, ballots are at “high risk of not being delivered to voters before an election.” Ex. 21.³ Indeed, even in Maine’s relatively low turnout July primary, there were reports of voters who had not received their absentee ballots by Election Day. *See* Ex. 23. In fact, because USPS advises elections officials and voters to assume one-week delivery both to deliver ballots and for voters to return them, *see* Ex. 24, no Mainer who requests a mail ballot *less than two weeks* before Election Day will be able to come close to complying with USPS mailing guidance. The Deadline thus puts local elections officials and voters seeking to return their ballots by mail in an impossible situation. Voters who are unable to send their ballot well before Election Day, or who wait to cast their ballot so that they may consider

³ In the July primary, Governor Mills permitted voters to request an absentee ballot up through Election Day. *See* Ex. 22. While this sensible change was necessary to give voters flexibility in the pandemic, the Deadline means those voters have no opportunity to return those ballots via mail. It is not yet clear if Maine will extend the absentee ballot request deadline for the November election.

late-breaking information in the campaign cycle, are likely to be disenfranchised. Adding to the confusion, different elections officials have offered different guidance on mailing timelines, and in just the past month, the Secretary has increased his own mailing recommendation from “at least five days” before Election Day to now seven to ten days before Election Day.⁴ *Compare* Dunlap Interview at 26:30 *with* Ex. 7. Mainers voting by mail for the first time—of which there are likely to be many in November—are significantly more likely to have their ballots rejected because they arrive after the Deadline. *See* Ex. 1 ¶¶ 214-223. Should the Deadline remain in place, even conservative estimates indicate that it will disenfranchise thousands in November. *See id.* ¶ 233.⁵

2. The Absentee Ballot Assistance Restrictions

Even before the pandemic, a significant number of Mainers did not mail their absentee ballots, but instead delivered them in person or relied on another person to do so. *See* Ex. 1 at ¶ 71 (in 2016 general election, 45,181 voters personally delivered their ballots, 25,660 relied on an immediate family member, and 381 relied on a third person); Ex. 12 ¶¶ 13-14 (organization delivered ballots for the ill and elderly before COVID-19). The ability to rely on others to return ballots is particularly vital given the disenfranchising effects of the Deadline during the pandemic. In addition, data shows that absentee ballots delivered in person are less likely to be rejected for technical errors, such as missing signatures. *See* Ex. 1 at ¶¶ 175, 178. But for the same reason that they are avoiding in-person voting, voters and their immediate family members are likely to be less willing or able to deliver ballots in person this year. *See, e.g.,* Ex. 8 ¶ 5.

Organizers and volunteers with civic groups and political organizations are critical to filling this gap. But Maine law unjustifiably bars many of them from doing so. First, Maine has unnecessarily restricted the pool of potential help available to absentee voters by criminalizing the use of paid and trained absentee ballot collectors, *see* M.R.S. tit. 21-A, § 791(2)(A), making it

⁴ Some towns in Maine continue to recommend only two to five days for mailing each way, *see* Ex. 25, despite USPS guidance to allow at least a week each way, *see* Ex. 24.

⁵ Dr. Herron’s projections conservatively rely upon rates of late ballots from prior elections; the rate is likely to be much greater this year given postal delays and a dramatic increase in first-time mail voters. *See* Ex. 1 ¶¶ 50-52, 222, 241.

impossible for community organizations to hire staff who can assist voters in returning their ballots. *See* Ex. 13 ¶ 14. Separately, even if a voter finds a volunteer to return their absentee ballot, Maine does not permit that volunteer to do so unless the ballot is signed in the presence of a notary, a municipal clerk, or two additional individuals. *See* M.R.S. tit. 21-A, § 754-A(2). Requiring voters who need assistance returning a ballot to coordinate an in-person meeting of witnesses, the voter, and the volunteer returning the ballot makes this type of third-party assistance unnecessarily burdensome, as demonstrated by the small fraction of voters whose ballots were returned by a third party in recent elections—and it is unnecessarily risky under the current circumstances. *See* Ex. 1 at ¶ 71; Ex. 12 ¶ 14; Ex. 2 ¶¶ 31-34. Yet, now, more than ever, voters need this type of assistance to ensure that their ballot is timely delivered and counted.

3. The Rejection Without Notice and Signature Matching Provisions

For the absentee voters who overcome the barriers discussed above, additional hurdles await: Maine lacks any procedures to cure a ballot flagged for rejection for technical errors, and also imposes arbitrary signature verification procedures for a subset of absentee ballots. Remarkably, despite the historically low number of Maine voters who have cast their ballots absentee, these procedures have still operated to disenfranchise thousands in recent elections. *See* Ex. 1 ¶¶ 165, 175. With the substantial increase in absentee voting, they now threaten many more with disenfranchisement in November.

As the Secretary himself admits, and the data confirms, voters who do not have much experience voting absentee are the most likely to neglect to sign their ballot. *See* Ex. 1 ¶ 222 (inexperienced absentee voters 40% more likely to be disenfranchised by a missing signature); Dunlap Interview at 17:29 (explaining that missing signatures “happen periodically,” “especially for people who don’t [] vote by absentee very often”). Because the November election is likely to see a significant increase in first-time or occasional absentee voters, the rates of errors and rejected ballots are likely to increase substantially. *See, e.g.,* Ex. 33 ¶ 3;⁶ Ex. 1 at ¶ 233 (conservatively

⁶ Ex. 33 is the declaration of Lee Giles, a 77-year-old Maine voter. Ms. Giles is homebound due to COVID-

estimating that thousands of Mainers likely to be disenfranchised for missing signatures in November).

In addition, some—but not all—absentee voters are at risk of disenfranchisement because an elections official believes their signature on their ballot does not match their signature on file with the elections office. When elections officials receive *certain* types absentee ballots—those requested by a voter by mail, in-person, or by fax—they are to “compare the signature of the voter on the [absentee ballot request] application . . . with [that voter’s signature] on the corresponding return envelope [and affidavit].” See M.R.S. tit. 21-A § 756(2) (the “Signature Matching” requirement).⁷ If the clerk determines the signatures do not appear to be made by the same person, and the election warden finds the same, the ballot is rejected. See *id.* § 759. For those ballots subject to Signature Matching, Maine law fails to provide sufficient standards for clerks to judge whether two signatures were made by the same person. See Ex. 3 ¶ 3. Unlike professional forensic document examiners, who undergo months of training for signature examination, election clerks are not required to have any training at all. See *id.* ¶ 30.

Determining whether a signature is genuine is a difficult task even for trained professionals. See *id.* An individual’s signature may vary for a host of reasons, “including age, health, native language, and writing conditions.” *Id.* ¶ 5. As Plaintiffs’ expert Dr. Linton Mohammed explains, even trained forensic document examiners would be likely to make erroneous signature comparison determinations under Maine’s signature matching procedure, which involve only two signature samples (one on the absentee ballot application, and one on the ballot return envelope). See *id.* ¶¶ 29-33. Studies have shown that non-experts have a significantly higher error rate than experts in determining whether signatures are genuine—and are much more likely to incorrectly conclude that a genuine signature is fraudulent than to accurately catch fraudulent signatures. See

19 and lacks internet access. For that reason, Ms. Giles was not able to safely access a notary; she has thus signed a declaration under penalty of perjury.

⁷ Absentee ballots requested online or by phone are not subject to this procedure. See M.R.S. tit. 21-A §§ 753-A(4); 753-A(6); 756(2).

id. ¶¶ 34, 46-49. This practice, moreover, particularly burdens voters whose signatures are more likely to feature variations, such as the elderly, disabled individuals, and young voters. *See id.* ¶ 6.

Because of the inherent difficulty in determining whether a signature is genuine, it is inevitable that Maine elections officials will—in good faith—erroneously reject legitimate ballots, resulting in disenfranchisement of eligible voters. *See id.* ¶ 3. In the upcoming November election, Maine’s signature matching process is likely to be applied to record-breaking numbers of absentee ballots, subjecting many more lawful voters to the serious risk that their ballots will be rejected erroneously and without notice or an opportunity to cure. *See Ex. 1 at* ¶ 21, 53.

Making matters worse, Maine law does not require officials to notify voters that their ballot is missing a signature or that elections officials believe their signature does not match, nor does it require that voters be given an opportunity to “cure” their ballot. *See id.* ¶ 21 (“Rejection Without Notice”). Thus, voters who vote absentee and those who are subject to Signature Matching—and in particular voters who have not previously voted absentee, the elderly, disabled individuals, and very young voters—are at serious risk of having their right to vote denied (in many cases entirely as a result of errors made by untrained and inexperienced elections officials), and they may never be notified at all, much less have an opportunity to correct the mistake before it is too late.

4. The Postage Tax

Finally, Maine does not provide pre-paid postage for absentee ballots. *See id.* at ¶ 128. As such, it imposes a direct monetary cost on voters whose best—or only—option to safely exercise their right to vote is to do so by mail. *See Ex. 7* (Secretary requesting voters mail ballots in pandemic). In the 2017 Postal Omnibus Survey, approximately a quarter of respondents considered the then \$0.49 Forever Stamp to be “expensive.” *See Ex. 26*. For a growing number of voters in an increasingly precarious economic situation, the cost of a stamp or a book of stamps may no longer be inconsequential, even if it was before. *See, e.g., Ex. 13* ¶ 15.

Moreover, not all voters have stamps on hand, and the pandemic has exacerbated the ancillary burdens of obtaining postage. Unless a voter can navigate USPS.com to order stamps online, pay shipping costs, and wait 5-7 days for delivery, *see Ex. 1 at* ¶ 138; *Ex. 27*, obtaining

postage requires a voter to go in person to a post office or another business that sells stamps. *See* Ex. 1 ¶ 143. For voters who are elderly, disabled, live far from a post office, or have limited access to transportation, this imposes significant transaction costs on casting a mail ballot. *See id.* ¶¶ 44-45. As multiple studies have shown, these costs deter voting. *See id.* ¶¶ 35, 131-132; *see also* Ex. 33 ¶¶ 2, 6 (77-year-old Maine voter who intends to vote absentee and anticipates difficulty acquiring postage). Such in-person interactions also risk exposure to COVID-19—precisely the reason that affected voters are seeking to vote absentee in the first place. *See* Ex. 2 at ¶ 27.

III. ARGUMENT

Plaintiffs are entitled to preliminary injunctive relief because: (1) they will suffer irreparable harm if the injunction is not granted; (2) their injury outweighs any harm which granting the injunctive relief would inflict upon the defendant; (3) they are likely to succeed on the merits; and (4) the public interest will not be adversely affected by granting the injunction. *See Dep't of Envtl. Prot. v. Emerson*, 563 A.2d 762, 768 (Me. 1989).

A. Plaintiffs are likely to succeed on the merits.

1. The challenged provisions unduly burden the right to vote.

The challenged provisions impose unjustifiable barriers to registering to vote and casting an absentee ballot, particularly during the pandemic. Plaintiffs' undue burden claims are properly analyzed under the *Anderson-Burdick* balancing test.⁸ This test requires courts to “weigh ‘the character and magnitude of the asserted injury to the rights . . . that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’” considering “‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983)). This balancing test utilizes a sliding scale, where the rigor of scrutiny depends upon the extent to which the challenged law burdens voting rights. *See Werme*

⁸ Maine has not developed its own test for evaluating an undue burden on the right to vote, despite recognizing the right to vote as fundamental. *See Melanson v. Sec'y of State*, 861 A.2d 641, 645 (Me. 2004). Plaintiffs thus rely on federal standards.

v. Merrill, 84 F.3d 479, 483 (1st Cir. 1996). A burden on the right to vote need not be insurmountable before it can be deemed severe. *See Perez-Guzman v. Gracia*, 346 F.3d 229, 241 (1st Cir. 2003). Laws imposing severe burdens on the right to vote “must be narrowly drawn to advance a state interest of compelling importance.” *Norman v. Reed*, 502 U.S. 279, 280 (1992). But even less severe burdens remain subject to balancing: “[h]owever slight” the burden on voting rights may appear, “it must be justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’” *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) (controlling op.) (quoting *Norman*, 502 U.S. at 288-89). No such interests exist here.

First, the Secretary’s Pen and Paper Registration requirement prevents organizations like Vote.org from helping Mainers register to vote using a computer or smartphone, at a time when the pandemic severely limits in-person registration options voters normally rely upon. *See supra* at 4. The Secretary has no legitimate interest in imposing the Paper and Pen Registration requirement. The Secretary’s requirement is not set out in statute or rule. Indeed, Maine law contemplates that voters can complete the mail-in registration form electronically, M.R.S. tit. 21-A, § 152(5); it does not require that the voter’s handwritten signature be in pen ink, or that the registration form can only be returned by mail or in person. M.R.S. tit. 21-A, § 152(1). To the extent the Secretary asserts a need for a handwritten signature on the form (as opposed to a typewritten electronic signature), Vote.org’s technology provides just that: an image of the voter’s handwritten signature affixed to the voter registration form. *See supra* at 4.

Second, the Secretary’s Photocopier Requirement forces new voters who do not have photocopiers at home to undertake a burdensome additional step to travel to another location to make a copy of an identification document. *See supra* at 4-5. Again, the requirement is not authorized by a statute or rule. Moreover, it is completely unnecessary. Like virtually every other state, and as required by the Help America Vote Act (“HAVA”), 52 U.S.C. § 21083(A)(1)(a), Maine maintains a computerized statewide voter registration database which is capable of sharing information with state motor vehicle and federal social security databases, allowing Maine to verify the identity of a mail-in registrant by matching their name, date of birth, and identification

number in those databases. *See id.* § 21083(a)(1)(A)(iv), (a)(5)(B), (b)(3)(B). As a result, when a Mainer registers to vote, and provides her Maine driver's license number or the last four digits of her social security number, as required, Maine already has procedures in place to verify her identity without any need to review a photocopy of an identity document. Requiring voters to also provide a photocopy of an identity document when registering to vote serves no purpose other than to impose burdens on first-time registrants.⁹

Third, the Deadline poses an undue burden on the right to vote for voters whose ballots are not received by elections officials by the Deadline—even if the delay was entirely outside of the voter's control. *See supra* at 5-7. As more voters turn to absentee voting and mail delays only grow, courts are recognizing that Election Day receipt deadlines must be enjoined, and states are being ordered to accept—and count—ballots mailed by Election Day to prevent widespread disenfranchisement. *See Republican Nat'l Comm.*, 140 S. Ct. at 1208; Ex. 20 (showing Supreme Court's imposition of a postmark deadline resulted in over 79,000 voters' ballots being counted that would have been discarded under an Election Day Receipt Deadline); Ex. 30, *Driscoll et al. v. Stapleton*, No. DV 20-408 (Mont. Dist. Ct. May 22, 2020) *stayed pending appeal* No. DA 20-0295 (preliminarily enjoining Montana's receipt deadline and recognizing that such a deadline is likely to disenfranchise thousands of voters); *LaRose v. Simon*, No. 62-CV-20-3149 at *25 (Minn. Dist. Ct. Aug. 3, 2020) (entering consent decree extending Minnesota's receipt deadline). Here, too, Maine has no sufficient justification for its failure to extend its Deadline when the state has twenty days to finalize its election results. *See* M.R.S. tit. 21-A, § 722.

Fourth, the Absentee Ballot Assistance Restrictions impose an undue burden on voters' ability to ensure safe and timely delivery of their absentee ballot. *See supra* at 7-8. For those voters

⁹ The Photocopier Requirement is also not mandated by federal law. While HAVA requires that certain registrants who register to vote for the first time in a state must provide proof of identification before they can cast a regular ballot, HAVA's identification requirement *does not apply* to registrants whose name, birthdate, and identification number have been matched with existing records. 52 U.S.C. § 21083(b)(3)(B). The Photocopier Requirement, by contrast, applies to *all* first-time registrants, even if their identity can be verified through Maine's statewide voter registration database. Nor does HAVA require that identification be provided at the time of *registration*; rather, a voter must do so prior to *voting*.

whose work schedules, family care responsibilities, lack of transportation, language barriers, disabilities, inability to obtain postage, or need to remain socially distanced during the pandemic make personally returning their ballots before the Deadline difficult or impossible, this type of assistance is crucial. *See* Ex. 12 ¶ 13. By prohibiting paid and trained organizers from providing this service—and in the process, providing an additional check to ensure that the voter has signed their ballot envelope—the state has unnecessarily cut off an important avenue of assistance for voters. *See supra* at 7-8. Separately, requiring voters who need assistance to recruit multiple individuals to witness the ballot adds a burdensome, unnecessary, and now dangerous step to returning absentee ballots. *See Gracia*, 346 F.3d at 239-40 (holding law requiring petitions to be signed in the presence of a notary to be unnecessarily burdensome). The State has no sufficient justification for imposing such burdensome hurdles on returning ballots. Maine already criminalizes, for example, failing to properly return another’s absentee ballot or forging another’s name on an absentee ballot, *see* M.R.S. tit. 21-A, § 791, capturing any potential for fraud in the ballot assistance process.

Fifth, Maine’s policy of Rejection Without Notice, which disenfranchises voters who make a single technical error on their absentee ballot without notice to the voter or an opportunity to cure the issue, also imposes an undue burden on the right to vote. *See supra* at 8-10. The number of Mainers disenfranchised by this policy is likely to increase in November as many vote absentee for the first time. *See id.* at 8-9. Maine has no sufficient interest in failing to notify voters and giving them an opportunity to cure these issues before rejection of the ballot; to the contrary, the State has ample time to help voters resolve any discrepancies before its certification of ballots is due. *See* M.R.S. tit. 21-A, § 722.

Sixth, the Signature Matching process imposes a severe burden—in this case, complete disenfranchisement—on voters whose ballots are discarded because of an alleged signature mismatch, a determination that elections officials must make despite a wholesale lack of statewide standards as to how to determine if a signature is “genuine.” *See supra* at 9-10. Rejecting these ballots without giving voters an opportunity to verify their identity does not serve any legitimate

state interest, as demonstrated by the fact that thousands of absentee ballots (those requested online or by phone) are not even subject to Signature Matching in Maine at all. *See id.* at 9. Moreover, the Signature Matching process is much more likely to disenfranchise an eligible Maine voter than it is to reveal fraudulent voters. *See id.* at 10. As the U.S. Commission on Civil Rights recently found, “voter fraud is essentially nonexistent” in Maine. Ex. 28. It is also already a crime in Maine to forge the name of another on an absentee ballot, the return envelope, or the application for an absentee ballot. *See* M.R.S. tit. 21-A, § 791. And when voters fill out the required affidavit alongside their absentee ballot, they swear under penalty of perjury that the information contained in their affidavit, including their name and signature, is true and correct.

And finally, the Postage Tax will deter voters and render absentee voting inaccessible for some, particularly as the burdens it imposes on voters are substantially exacerbated by the financial fallout of the COVID-19 crisis. *See supra* at 10-11. Even those able to afford the cost of postage will face the burden of unnecessary risk of exposure to COVID-19 if required to leave their homes to obtain stamps. *See id.* at 11. Defendants have no legitimate interest in imposing the Postage Tax. Notably, Maine has received over \$3 million from Congress for coronavirus-related election expenses, which can be used to cover the cost of prepaying postage. *See* Ex. 29.

The challenged provisions do not operate in a vacuum; instead, they build upon each other, cumulatively burdening Maine voters. For example, voters unable to obtain postage are more likely to need assistance in returning their ballots, and without such assistance are at risk that their ballot may not arrive on time.

2. Rejection Without Notice and Signature Matching violate the Due Process Clauses of the Maine and U.S. Constitutions.

Rejecting absentee ballots without notice and subjecting them to arbitrary and standardless Signature Matching procedures also deprives Maine voters, including Plaintiffs, of their liberty interests in voting with adequate procedural safeguards. The Due Process rights protected by the U.S. and Maine Constitutions are coextensive, *see MSAD 6 Bd. of Directors v. Town of Frye Island*, 2020 ME 45, ¶ 36, and protect the right to vote, *see Doe v. Rowe*, 156 F. Supp. 2d 35, 48

(D. Me. 2011) (“[T]he denial of the right to vote is a denial of a fundamental liberty.”). This liberty interest extends to voting absentee. *See, e.g., Saucedo v. Gardner*, 335 F. Supp. 3d 202, 217 (D.N.H. 2018) (“Having induced voters to vote by absentee ballot, the State must provide adequate process to ensure that voters’ ballots are fairly considered and, if eligible, counted.”).

To determine whether Maine has provided constitutionally adequate process, the Court must weigh “(1) Plaintiffs’ interest in participating in the democratic process through voting; (2) the risk of erroneous deprivation of the right to vote under the procedures used by the State; and (3) the State’s interest, including any extra administrative or financial burden on the State from requiring additional procedures.” *Doe*, 156 F. Supp. 2d at 48 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). As numerous other courts have found, a state’s failure to ensure that a voter’s absentee ballot is not erroneously rejected without notifying that voter and providing a meaningful opportunity to cure the ballot or contest its validity—both for alleged signature defects and other technical defects—violates a voter’s procedural due process rights. *See, e.g., Saucedo*, 335 F. Supp. 3d at 222 (holding New Hampshire’s signature matching requirement, which did not provide an opportunity to cure, violated voters’ due process rights); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1338-40 (N.D. Ga. 2018) (absence of pre-rejection notice, a reasonable opportunity to cure the deficiency, or an opportunity to appeal rejection violated procedural due process rights); *Zessar v. Helander*, No. 1:05-cv-1917, 2006 WL 642646, (N.D. Ill. 2006), *vacated as moot sub. nom. Zessar v. Keith*, 536 F.3d 788 (7th Cir. 2008) (similar); *Raetzel v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1357-58 (D. Ariz. 1990) (similar). In Maine, the risk of an erroneous rejection for an alleged signature mismatch, in particular, is inherently high given the difficulty in accurately determining whether a signature is genuine, a problem compounded by Maine’s wholesale lack of standards in evaluating signatures. *See supra* at 9-10. Providing adequate safeguards to prevent the arbitrary and erroneous deprivation of the right to vote would impose no more than a minimal administrative burden on the State.

3. Signature Matching violates Equal Protection.

The Equal Protection Clause guarantees qualified voters a substantive right to participate equally with other qualified voters in the electoral process and requires “that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Maine’s Constitution guarantees the same rights. *See* ME. CONST. art. I § 6-A; *MSAD*, 2020 ME 45, ¶ 36. The Signature Matching process violates both Constitutions by requiring similarly-situated voters to fulfill different verification requirements. While Maine voters who request an absentee ballot online or over the telephone successfully verify their identity by providing their birth date and address, voters who request an absentee ballot by mail, in person, or by fax cannot successfully verify their identity—despite also providing their birth date and address—without also providing a signature that can later be successfully “matched” to that voter. *See supra* at 9. Additionally, the Signature Matching process disproportionately burdens elderly voters, voters with disabilities, and young voters, whose signatures often vary. *See id.* at 10. And because of the lack of consistent standards for implementing signature matching, there is no guarantee that towns across Maine implement signature matching consistently or uniformly. But equal protection requires “specific rules designed to ensure uniform treatment” in order to prevent “arbitrary and disparate treatment to voters.” *Bush v. Gore*, 531 U.S. 98, 106-07 (2000).

4. Maine’s Voter Registration Restrictions Violate Plaintiffs’ First Amendment Rights

The First Amendment protects against laws “prohibiting the free exercise [of] or abridg[ment] of freedom of speech.” U.S. CONST. amend. I. Likewise, Maine’s Constitution guarantees to “[e]very citizen” the right of free speech and forbids undue government interference with that right. ME. CONST. art. I, § 4. Those protections are at least as extensive as the free-speech protections of the federal Constitution. *See City of Bangor v. Diva’s, Inc.*, 830 A.2d 898, 902 (Me. 2003). Restrictions on election-related speech are unconstitutional when they “significantly inhibit” election-related speech and are “not warranted by the state interests . . . alleged to justify [the] restrictions.” *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 192 (1999).

Plaintiff Vote.org's voter registration efforts are "the type of interactive communication concerning political change that is appropriately described as 'core political speech.'" *Meyer v. Grant*, 486 U.S. 414, 421–22 (1988); *see also League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 720 (M.D. Tenn. 2019) ("Encouraging others to register to vote is pure speech, and, because that speech is political in nature, it is a core First Amendment activity.") (quotation marks and alterations omitted). By prohibiting Vote.org from transmitting voters' completed registration applications to elections offices, simply because those applications lack a pen ink signature, the Paper and Pen Registration requirement significantly inhibits Vote.org's speech by "limit[ing] the number of voices who will convey [Plaintiffs'] message," and "the size of the audience they can reach." *Meyer*, 486 U.S. at 422–23. Furthermore, First Amendment rights "include the right to band together for the advancement of political beliefs." *Hadnott v. Amos*, 394 U.S. 358, 364 (1969). The conversations and interactions between Vote.org and Maine voters surrounding the submission of their voter registration applications are forms of protected political speech and association. *See Williams v. Rhodes*, 393 U.S. 23, 30 (1968); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 700 (N.D. Ohio 2006) (explaining "participation in voter registration implicates a number of both expressive and associational rights which . . . belong to—and may be invoked by—not just the voters seeking to register, but by third parties who encourage participation in the political process through increasing voter registration rolls"). Thus, by limiting Vote.org's ability to assist voters in registering to vote, the Paper and Pen Registration burdens the speech and associational rights of Vote.org, its staff, and Maine voters who seek their assistance.

These burdens are severe, and the Paper and Pen Registration Requirement is not narrowly tailored to advance a compelling state interest. "In considering whether a [] requirement is narrowly drawn to advance the state's interest in preventing fraud, the mechanisms that the state already has in place serve as benchmarks." *Gracia*, 346 F.3d at 245. Here, Maine law already contemplates that voters can complete the mail-in voter registration form electronically, and does not require that the voter's handwritten signature be submitted in pen ink, or that the mail-in voter registration form only be transmitted by mail or in person. *See supra* at 12. The restrictions thus

represent an overbroad restriction on political speech and political organizing that infringes the First Amendment rights of Plaintiffs and other Mainers.

5. The Postage Tax violates the Twenty Fourth and Fourteenth Amendments.

The Twenty-Fourth Amendment provides that the right to vote “shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax,” U.S. Const. amend. XXIV, § 1; *see also Harman v. Forssenius*, 380 U.S. 528 (1965); *Jones v. DeSantis*, 410 F. Supp. 3d 1284, 1305 (N.D. Fla. 2019), *aff’d sub nom. Jones v. Governor of Fla.*, 950 F.3d 795 (11th Cir. 2020). The Fourteenth Amendment similarly prohibits the imposition of fees on the franchise. *See Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966).

The Supreme Court has made clear that “voting cannot hinge on ability to pay . . . for it is a ‘fundamental political right . . . preservative of all rights.’” *M.L.B. v. S.L.J.*, 519 U.S. 102, 124 n. 14 (1996) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). This is true regardless of whether a voter is able to pay. *See Harper*, 383 U.S. at 668 (finding imposition of fee unconstitutional “whether the citizen, otherwise qualified to vote, has \$1.50 in his pocket or nothing at all”). Maine does what *Harper* prohibits: it conditions casting a mail ballot on paying a fee. In the pandemic, paying that fee is a prerequisite for voting for thousands of voters, forcing them to pay “a price for the privilege of exercising the franchise.” *Harman*, 380 U.S. at 539.

B. Plaintiffs will suffer irreparable harm if the injunction is not granted.

First, if not enjoined, the challenged provisions will severely burden (and in many cases disenfranchise) Plaintiffs and countless other Maine voters. When “constitutional rights are threatened or impaired, irreparable injury is presumed.” *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976). Once the election comes and goes, “there can be no do-over and no redress.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). *Second*, the registration restrictions inhibit Plaintiff Vote.org from effectively registering Maine voters, which courts routinely recognize as irreparable harm. *See League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) (holding plaintiffs’ lost opportunity to register voters was irreparable harm); *Project Vote*,

Inc. v. Kemp, 208 F. Supp. 3d 1320, 1350 (N.D. Ga. 2016). *Third*, if the challenged provisions are in effect, the organizational Plaintiffs must divert resources from other organizational activities to assist Mainers in overcoming these burdens. *See* Ex. 11 ¶¶ 23-28; Ex. 10 ¶ 13-15. This, too, constitutes irreparable harm. *See, e.g., Ga. Coal. For People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1268 (N.D. Ga. 2018) (finding irreparable harm where “[p]laintiffs’ organizational missions . . . will continue to be frustrated and organization resources will be diverted to [address the challenged law]” and “[s]uch mobilization opportunities cannot be remedied once lost”).

C. Plaintiffs’ injuries outweigh any harm to Defendants if a preliminary injunction is granted, and an injunction is in the public’s interest.

The irreparable harm that Plaintiffs and their members will suffer if an injunction does not issue outweighs any harm to Defendants in abiding by the basic protections afforded by the right to vote. Maine does not have an interest in continuing to enforce unconstitutional restrictions on the franchise. *See, e.g., Legend Night Club v. Miller*, 637 F.3d 291, 302-03 (4th Cir. 2011); *see also KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). If anything, the State is *harmed* by their continued enforcement, which compromises its ultimate function: “to establish justice, . . . promote [Mainers’] common welfare, and secure to [Mainers] the blessings of liberty.” ME. CONST. preamble. And any administrative inconvenience in implementing revised election procedures pales in comparison to the ongoing burdens the current system imposes on Plaintiffs and their members. *See Peirce v. City of Bangor*, 74 A. 1039, 1042 (Me. 1909); *Taylor v. Louisiana.*, 419 U.S. 522, 535 (1975) (holding “administrative convenience” cannot justify practices that impinge upon fundamental rights). The public interest also weighs heavily in Plaintiffs’ favor. An injunction preventing the enforcement of an unconstitutional law serves the public interest. *See Planned Parenthood League of Massachusetts v. Bellotti*, 641 F.2d 1006, 1023 (1st Cir. 1981); *see also Husted*, 697 F.3d at 437 (“the public interest . . . favors permitting as many qualified voters to vote as possible”).

IV. CONCLUSION

Plaintiffs respectfully request that this Court grant the motion for preliminary injunction.

Dated this 7th day of August 2020.

Respectfully submitted,

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STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT

CIVIL ACTION
DKT NO. CV-20-95

ALLIANCE FOR RETIRED AMERICANS;
DOUG BORN; DON BERRY; and VOTE.ORG,

Plaintiffs,

v.

MATTHEW DUNLAP, in his official capacity as
the Maine Secretary of State; and AARON FREY,
in his official capacity as the Maine Attorney
General,

Defendants.

**AFFIDAVIT OF RONALD
STROMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
INJUNCTIVE RELIEF**

I, Ronald Stroman, submit this affidavit in support of Plaintiffs' Motion for Preliminary Injunction.

1. I am a resident of Washington, D.C., and I am submitting this affidavit in response to the portion of the Defendant-Intervenors' Opposition to Plaintiffs' Motion for Preliminary Injunction that addresses Plaintiffs' claim relating to Maine's law that requires all ballots to arrive at election offices by 8:00 p.m. on Election Day. Defendant-Intervenors assert that this Election Day Receipt Deadline for absentee ballots "does not burden voting rights" (Opposition at 8), and they attempt to cast doubt on whether the surge in absentee voting expected in the November General Election will strain the infrastructure that is used to facilitate absentee voting (*Id.*). As I describe below, there are very real strains on the United States Postal Service ("USPS") resulting from large increases in absentee voting, effects from the COVID-19 pandemic, and implementation challenges regarding recent changes in the USPS's operations. The challenges the USPS is facing this election season create a significant risk that the absentee

ballots of many Maine voters will not be delivered to election offices by Election Day, particularly when Maine voters are able to request absentee ballots until up to five days before Election Day. The Election Day Receipt Deadline therefore does burden voting rights.

2. I served for nine years as the Deputy Postmaster General of the USPS, the second highest-ranking official in USPS, from 2011 until June 1, 2020. A copy of my curriculum vitae is attached (Exhibit 1). The USPS has more than 600,000 employees and approximately \$70 billion in annual operating revenue. Some of my responsibilities and priorities as Deputy Postmaster General related to voting by mail and included: (1) improving the quality of the information that USPS provided to state and local election officials on absentee voting by mail; (2) improving the communications between the USPS, election officials, and the election mail community; (3) improving the internal training for USPS employees on election mail; and (4) developing a system for the rapid resolution of election mail issues. I worked closely with state and local election officials across the country for approximately five years to implement these improvements in the voting by mail system.

3. With the COVID-19 pandemic and the resulting dramatic shift to voting by mail across most of the country, election officials in most states, including in Maine, are facing unprecedented challenges in conducting this year's elections. Voting by mail has increased significantly in the elections that Maine and other states have conducted so far in 2020, and it is highly probable that this shift toward voters casting ballots by mail will be even more pronounced in the November 3rd General Election, including in Maine. This surge in voting by mail imposes unprecedented strains on state election systems, most of which are not designed for the expected volume of mail ballots, and on the USPS, which has never before been required to

provide mail service to support elections in which large numbers of voters -- the majority of voters in some states -- will vote by mail.

4. As Deputy Postmaster General, my work in coordinating with the election mail community included coordinating with the National Association of State Election Directors ("NASED") and the National Association of Election Officials, also known as The Election Center, to develop best practices for administering vote by mail in federal, state, and local elections. NASED and the Election Center's members are election officials from across the country, many of whom have worked in election administration at the state and local levels for decades. In the process of working with these officials, I became very familiar with state laws governing voting by mail.

5. In addition to having expertise in issues involving mail and the USPS, I am a lawyer, having been admitted to the Bar of Pennsylvania in 1978. My training and experience as a lawyer, including working as Assistant Counsel on the Judiciary Committee of the U.S. House of Representatives, has provided me with unique insights into the relationship between states' voting laws involving voting by mail and the operations and service standards of the USPS.

6. My work on voting by mail as the Deputy Postmaster General has also provided me with a detailed understanding of the resources and procedures that election officials and the USPS must have to support voting by mail. Specifically, election officials and the USPS must devote the resources and establish the procedures necessary to ensure that: (1) voters receive absentee ballots in a timely manner; (2) voters are able to return their absentee ballots in time for them to be counted; (3) ballots are not lost in the mail; and (4) ballots are properly verified by election officials and included in final vote tabulations.

7. In my role as Deputy Postmaster General, I became familiar with the significant problems the USPS experienced in connection with several elections held during the COVID-19 pandemic. Some of those problems are described in a report of July 7, 2020 issued by the USPS' Office of the Inspector General ("OIG") in connection with Wisconsin's Spring Election (attached as Exhibit 2), held on April 7, 2020. The audit reflected in the OIG Report was conducted between April and July, encompassing a period during which I was still Deputy Postmaster General. It focuses not just on the Wisconsin election, but also on national issues involving the incompatibility of many state election deadlines concerning: (1) when ballots must be received to be counted, and (2) the time it takes for the USPS to deliver ballots to voters and then to deliver voters' completed ballots back to election offices. I was aware of the issues that were being addressed in the audit while I was still with the USPS, including the incompatibility of state election deadlines and USPS delivery time, and I have reviewed the final OIG report and am familiar with its findings.

8. The myriad problems described in the OIG Report reflect long-standing vote-by-mail problems and the extraordinary strains that the surge in voting by mail have placed on election officials and the USPS. As described in the report, Maine is one of multiple states that has voting deadlines that are incompatible with USPS delivery times and that create a very high risk of disenfranchising large number of voters. This risk has never been greater than it is today, because of the large volume of voting by mail that will occur in the November election, which is being driven by the COVID-19 pandemic and the health risks that voting in person poses for many people.

9. My understanding is that Maine had unprecedented levels of absentee voting in its July Primary Election this year and is expecting unprecedented levels of absentee voting again in

the November General Election. Maine had a 4,000% increase in absentee ballot requests for the July 2020 primary compared to the June 2016 primary, and almost 80% of voters in the July primary voted absentee. Approximately 35% of ballots cast in the July primary were by mail, which is more than a 10-fold increase in voting by mail compared to the past four election cycles. And, Maine's Secretary of State is expecting that as many as 600,000 absentee ballots will be cast in the November General Election, which would be a significant increase over the percentage of absentee ballots Mainers cast in the 2016 presidential election.

10. One of the specific problems with Maine's electoral scheme is that voters can request an absentee ballot up until five days before an election. As I explain below, even under the best of circumstances, it will take more than a week, on average, for an absentee ballot to be mailed by an election official, delivered to the voter by the USPS, completed by the voter, and delivered by the USPS from the voter back to an election office. This means that Maine voters who request absentee ballots within 7-10 days of Election Day, which they are permitted to do under Maine law, are at very high risk of not having their ballots returned in time to be counted under Maine's law that requires all ballots to arrive at election offices by 8:00 p.m. on Election Day.

11. The USPS recently notified Maine's Secretary of State of this problem for the November Election, explaining that Maine's election laws are incompatible with the USPS's mail delivery service standards. In a letter of July 29, 2020 (attached as Exhibit 3), the General Counsel and Executive Vice President of the USPS, Thomas Marshall, warned that "certain [Maine] state law requirements and deadlines appear to be incompatible with the Postal Service's delivery standards and the recommended timeframe noted above." The USPS General Counsel goes on to state, "to the extent that mail is used to transmit ballots to and from voters, there is a

significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.”

12. The USPS General Counsel’s letter to the Maine Secretary of State continues by describing the Maine laws that create this serious problem: “Specifically, it appears that a completed ballot must be received by Election Day to be counted. If that understanding is correct, we accordingly recommend, as noted above, that voters who choose to mail their ballots do so no later than Tuesday, October 27. However, it further appears that state law generally permits voters to request a ballot as late as the 3rd business day before the election. If a voter submits a request at or near that deadline, and the ballot is transmitted to the voter by mail, there is a significant risk that the voter will not have sufficient time to complete and mail the completed ballot back to election officials in time for it to arrive by the state’s return deadline. This risk is exacerbated by the fact that the law does not seem to impose a time period by which elections officials must transmit a ballot to the voter in response to a request.”

13. I fully agree with the USPS General Counsel’s conclusions relating to the incompatibility of Maine’s voting laws and USPS delivery standards, and I believe it is highly likely that in the November General Election, the absentee ballots of thousands of Maine voters will arrive at election offices after Election Day and will not be counted unless the Election Day Receipt Deadline is extended. Several factors lead me to this conclusion, each of which I describe in the following paragraphs.

14. First, based on my experience as Deputy Postmaster General, I am familiar with the time it takes for USPS to process and deliver absentee ballots to voters, and from voters back

to county election boards. The USPS has an Election Mail target of 96% on-time delivery. While this is a high target for some types of mail, even if this target is achieved, four percent of mailed ballots—which could represent thousands of ballots in the November election—will be at high risk of untimely delivery. And, the reality is that the USPS is not achieving this target. In an audit report issued on August 31, 2020, the USPS's Office of the Inspector General reported that from April through June of this year, on-time delivery of election and political mail across the country fell to 94.5%, which is a decrease of 1.7% compared to the same period in 2018. If that level of service continues into October and November, which seems likely given the USPS's cutbacks in service and operations, at least 5.5% of mailed ballots will be at high risk of untimely delivery.

15. Second, the USPS has service standards for the two types of mail used for election-related materials—First Class Mail and Marketing Mail. The service standard for First Class Mail is two to five days, while the service standard for Marketing Mail is three to ten days. It is nearly impossible for a Maine voter who lawfully requests an absentee ballot within one week of the November election to receive the ballot in the mail, complete it, and have that ballot delivered by a mail carrier to a county election board by Election Day.

16. A few examples demonstrate this difficulty. Let's consider a very optimistic scenario of a voter submitting an email request for an absentee ballot on Tuesday, October 27, 2020, which is one week before Election Day. If an election official responds promptly and mails the ballot within one day (even though Maine law does not impose any deadline for election officials to respond), the ballot could be accepted by the USPS as early as Wednesday, October 28. Let's assume the county election board is using First Class Mail, and the ballot is delivered to the voter's residence on Friday, October 30. The voter promptly reviews the candidates and

any ballot initiatives, fills out the ballot, and mails it Saturday afternoon, after the Saturday USPS critical entry time. The mail carrier won't pick up that ballot until Monday, November 2. Even if the voter takes the ballot to a Post Office and has it postmarked on Saturday, the ballot would not be processed until Monday. With the USPS service standard of two to five days, the earliest that ballot would be delivered is Wednesday, November 4, the day after Election Day. This scenario assumes everything goes perfectly, and a voter is within two days reach of USPS.

17. Now, let's say it takes five days to get a ballot to a voter, a day for the voter to fill out a ballot, and five days for that completed ballot to be delivered back to a county election board, all within the USPS service standards. Under this scenario, we have added on six more days. This does not even consider other possible delays. It is why the USPS is recommending, as set forth in the USPS General Counsel's letter, that Maine voters request absentee ballots at least 15 days before Election Day -- instead of the five days allowed by Maine law -- and mail their completed ballots back at least a week in advance of Election Day (which is two days before the deadline for voters to request an absentee ballot).

18. In the scenarios described above, through no fault of her own, a voter who requested a ballot within the time period permitted by Maine law and who relied on the mail to receive and return her ballot would, under Maine's Election Day Receipt Deadline, have her absentee ballot discarded and not counted.

19. Third, the high probability of broad disenfranchisement resulting from the State's Election Day Receipt Deadline is increased by the significant challenges the USPS is facing. For example, in various cities during the COVID-19 pandemic, the USPS has had significant challenges with employee availability. As employees tested positive for COVID-19, in some

locations, large numbers of employees were out on leave. In a lawsuit that Maine filed against the USPS on August 21, 2020 (attached as Exhibit 4), along with five other states and the District of Columbia, this worker shortage is highlighted, with the complaint stating that 10% of the nation's 630,000 postal workers had contracted COVID-19 as of August. Ex. 4 ¶ 4. This shortage has led to a slowing of mail delivery because with limited staffing, the Postal Service began prioritizing the delivery of packages to ensure the timely delivery of life-saving pharmaceuticals and personal protective equipment. With health-care experts predicting a possible second wave of COVID-19 in the fall, along with the seasonal flu, employee availability is likely to continue being a significant issue.

20. The USPS also has experienced a dramatic decline in mail volume over the last decade. In addition, since the middle of March of this year, the Postal Service has seen about a 25% decline in mail volume over the same period as last year, a steeper decline than in recent years. In responding to this decline, the USPS has chosen to cut costs by significantly limiting employee overtime, which was used to address gaps in employee availability, and requiring all trucks to leave plants on time, regardless of whether all mail is loaded onto the trucks. This new policy is already delaying mail delivery and will very likely delay the delivery of absentee and completed ballots. It should be noted that in a message to employees, Postmaster General Louis DeJoy acknowledged that his transformative initiative of operational and organizational changes had unintended consequences that impacted overall service levels.

21. Maine has shown deep concern about the effects of these changes in USPS operations on the delivery of mail in the November General Election in the lawsuit it has filed against the USPS. Maine's complaint asserts, based on media reports, that the USPS operational changes have "led to significant delays in mail delivery across the nation." Ex. 4 ¶ 181. The

lawsuit explains that the operational changes and resulting delays in mail service threaten to interfere with the ability of Maine and the other jurisdictions to effectively administer the November General Election, particularly because of the exponential increases in voting by mail that are expected. *Id.* ¶¶ 79-85. The complaint asserts that “the combination of too few workers, elimination of late and extra trips, rigid adherence to start and end times, and increased package volume is causing undelivered mail and packages to pile up.” *Id.* ¶ 184. The complaint reports that customers in southern Maine recently experienced delays with at least 65,000 pieces of mail. *Id.* ¶ 188.

22. Maine itself also recognizes what I describe above -- the incompatibility of its election laws with the USPS’s mail delivery times and the significant risk of voters being disenfranchised. After citing Maine’s Election Day Receipt Deadline (Ex. 4 ¶ 78) and similar laws in other states, the complaint against the USPS goes on to state that “the service delays caused by the Postal Service’s implementation of sweeping new policies in the midst of the pandemic may disenfranchise voters because their ballots will not be sent or received in time and may deter people from voting because they do not trust that their ballot will be delivered.” *Id.* ¶ 206.

23. All the factors I describe above, including Maine’s acknowledgement of these factors, give me great concern that large numbers of Maine voters who vote by mail in the November election will be disenfranchised by the State’s Election Day Receipt Deadline. There is a relatively straightforward fix for this problem: extending the date for the receipt of ballots by at least a week after Election Day and requiring election officials to accept all ballots postmarked on or before Election Day.

FURTHER AFFIANT SAYETH NOT.

EXECUTED on 09/15/2020

Ronald Stroman

Ronald Stroman

Subscribed and sworn to before me on this 15 day of September, 2020.

Mickel David Leal-Wise

Electronic Notary Public

Notary Public 20-9959-01



My commission expires on 05/31/2024

Notarized online using audio-video communication



RECEIVED

JUL 31 2020

Office of the
Secretary of State

July 29, 2020

Honorable Matt Dunlap
Maine Secretary of State
148 State House Station
Augusta, ME 04333-0148

Dear Secretary Dunlap:

Re: Deadlines for Mailing Ballots

With the 2020 General Election rapidly approaching, this letter follows up on my letter dated May 29, 2020, which I sent to election officials throughout the country. That letter highlighted some key aspects of the Postal Service's delivery processes. The purpose of this letter is to focus specifically on the deadlines for requesting and casting ballots by mail. In particular, we wanted to note that, under our reading of Maine's election laws, certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service's delivery standards. This mismatch creates a risk that ballots requested near the deadline under state law will not be returned by mail in time to be counted under your laws as we understand them.

As I stated in my May 29 letter, the two main classes of mail that are used for ballots are First-Class Mail and USPS Marketing Mail, the latter of which includes the Nonprofit postage rate. Voters must use First-Class Mail (or an expedited level of service) to mail their ballots and ballot requests, while state or local election officials may generally use either First-Class Mail or Marketing Mail to mail blank ballots to voters. While the specific transit times for either class of mail cannot be guaranteed, and depend on factors such as a given mailpiece's place of origin and destination, most domestic First-Class Mail is delivered 2-5 days after it is received by the Postal Service, and most domestic Marketing Mail is delivered 3-10 days after it is received.

To account for these delivery standards and to allow for contingencies (e.g., weather issues or unforeseen events), the Postal Service strongly recommends adhering to the following timeframe when using the mail to transmit ballots to domestic voters:

- **Ballot requests:** Where voters will both receive and send a ballot by mail, voters should submit their ballot request early enough so that it is received by their election officials at least 15 days before Election Day at a minimum, and preferably long before that time.
- **Mailing blank ballots to voters:** In responding to a ballot request, election officials should consider that the ballot needs to be in the hands of the voter so that he or she has adequate time to complete it and put it back in the mail stream so that it can be processed and delivered by the applicable deadline. Accordingly, the Postal Service recommends that election officials use First-Class Mail to transmit blank ballots and allow 1 week for delivery to voters. Using Marketing Mail will result in slower delivery times and will increase the risk that voters will not receive their ballots in time to return them by mail.

- **Mailing completed ballots to election officials:** To allow enough time for ballots to be returned to election officials, domestic voters should generally mail their completed ballots at least one week before the state's due date. So, if state law requires ballots to be returned by Election Day, voters should mail their ballots no later than Tuesday, October 27.

Under our reading of your state's election laws, as in effect on July 27, 2020, certain state-law requirements and deadlines appear to be incompatible with the Postal Service's delivery standards and the recommended timeframe noted above. As a result, to the extent that the mail is used to transmit ballots to and from voters, there is a significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules and returned promptly, and yet not be returned in time to be counted.

Specifically, it appears that a completed ballot must be received by Election Day to be counted. If that understanding is correct, we accordingly recommend, as noted above, that voters who choose to mail their ballots do so no later than Tuesday, October 27. However, it further appears that state law generally permits voters to request a ballot as late as the 3rd business day before the election. If a voter submits such a request at or near that deadline, and if the requested ballot is transmitted to the voter by mail, there is a significant risk that the ballot will not reach the voter before Election Day, and accordingly that the voter will not be able to use the ballot to cast his or her vote. Even if a voter receives a ballot before Election Day, there is a significant risk that the voter will not have sufficient time to complete and mail the completed ballot back to election officials in time for it to arrive by the state's return deadline. That risk is exacerbated by the fact that the law does not appear to impose a time period by which election officials must transmit a ballot to the voter in response to a request.

To be clear, the Postal Service is not purporting to definitively interpret the requirements of your state's election laws, and also is not recommending that such laws be changed to accommodate the Postal Service's delivery standards. By the same token, however, the Postal Service cannot adjust its delivery standards to accommodate the requirements of state election law. For this reason, the Postal Service asks that election officials keep the Postal Service's delivery standards and recommendations in mind when making decisions as to the appropriate means used to send a piece of Election Mail to voters, and when informing voters how to successfully participate in an election where they choose to use the mail. It is particularly important that voters be made aware of the transit times for mail (including mail-in ballots) so that they can make informed decisions about whether and when to (1) request a mail-in ballot, and (2) mail a completed ballot back to election officials.

We remain committed to sustaining the mail as a secure, efficient, and effective means to allow citizens to participate in the electoral process when election officials determine to utilize the mail as a part of their election system. Ensuring that you have an understanding of our operational capabilities and recommended timelines, and can educate voters accordingly, is important to achieving a successful election season. Please reach out to your assigned election mail coordinator to discuss the logistics of your mailings and the services that are available as well as any questions you may have. A list of election mail coordinators may be found on our website at: <https://about.usps.com/election-mail/politicaelection-mail-coordinators.pdf>.

We hope the information contained in this letter is helpful, and please let me know if you have any questions or concerns.

Sincerely,



Thomas J. Marshall

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-20-95

ALLIANCE FOR RETIRED
AMERICANS; DOUG BORN; DON
BERRY; and VOTE.ORG,

Plaintiffs,

v.

MATTHEW DUNLAP, in his official
Capacity as the Maine Secretary of State;
and AARON FREY, in his official capacity
as the Maine Attorney General,

Defendants.

AFFIDAVIT OF JULIE L. FLYNN
DEPUTY SECRETARY OF STATE

I, Julie L. Flynn, being duly sworn, hereby depose and state as follows based on my personal knowledge:

1. I am the Deputy Secretary of State for the State of Maine, in charge of the Bureau of Corporations, Elections and Commissions, and have held this appointed position since February of 1999. I served as Director of the same Bureau, including the Elections Division, from March 1995 until I was appointed Deputy. The Elections Division is comprised of eight staff members, including a Director and Assistant Director of Elections, all of whom who work closely with me.

2. I am submitting this affidavit in response to the Plaintiffs' motion for a preliminary injunction in this matter. I have personal knowledge of the matters set forth in this affidavit.

3. The Secretary of State's Office, through the Elections Division, oversees all statewide elections and administers the Maine election laws set forth in Title 21-A of the Maine

Revised Statutes. Our responsibilities include designing, preparing and distributing to municipalities all the ballots – including sample ballots and absentee ballots – absentee ballot envelopes, instruction posters for voters, and instructions for municipal officials related to conducting the primary, general, and referendum elections, as well as issuing and processing all absentee ballots from military voters and overseas civilians. Our office provides training to municipal election officials on all aspects of election administration, including but not limited to voter registration and absentee voting. We communicate regularly with those officials to provide information and guidance regarding upcoming elections and procedures related to administering federal and state elections. Our office does not have any responsibility for oversight of local elections, however – even those that are conducted in conjunction with the statewide general election.

Efforts to make in-person voting safe and accessible during the COVID-19 pandemic:

4. Our office has taken a number of steps to protect voters' ability to vote safely in-person at the polls, if they wish, during this pandemic. We have used federal funds provided to Maine under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. 116-136, 134 Stat. 281 (2020), to purchase and distribute personal protective equipment for all local election officials, as well as supplies of hand sanitizer, alcohol spray for cleaning and single-use pens for all polling places. We did this for the primary election on July 14, 2020, and we are replenishing those supplies now to distribute for November. In addition, we provided plexiglass shields for each municipality to use for each location where voters come in to close contact with election officials; such as at each voter registration table and at each place where voters check in at the incoming voter list and where the voter receives the ballot(s).

5. Before the primary election held on July 14, 2020, we collaborated with the Maine Center for Disease Control (CDC) to develop guidelines for local officials to follow in setting up and managing their polling places, including limiting the number of voters in the polling place at any one time, and spacing out the voting booths and associated lines to ensure that voters remain at least six feet apart at all times. Attached as Exhibit 1 is a true copy of the guidelines issued for July, which we intend to redistribute for the November election. The set-up at each polling place includes a table, staffed by the local registrar, for voters to register to vote – or to update their registration – before voting on election day. The registrars sit behind plexiglass shields to protect both staff and voters, and all workers are required to wear masks or a face shield.

6. A total of 316,210 voters participated in the election on July 14, 2020, and 182,439 of them (approximately 58%) voted absentee. *See* chart attached as Exhibit 2. To the best of my knowledge, there were no reported incidents of any voters or election staff becoming infected with COVID-19 as the result of people going to the polls to vote in person, and/or to register to vote at the polls on election day.

7. While plaintiffs have expressed concern in this case that municipalities may consolidate polling places, potentially reducing accessibility for some voters, there are only twelve (12) municipalities in Maine with more than one polling place: Auburn, Augusta, Cranberry Isles, Ellsworth, Gorham, Harpswell, Lewiston, Portland, Saco, Sanford, and South Portland. Of these twelve communities, only three have consolidated their voting places for this election or are proposing to consolidate: Auburn has consolidated five locations to three; Harpswell consolidated from three locations to one; and Augusta is considering a proposal to consolidate four locations into one. No other changes have been proposed.

8. The Governor issued Executive Order 8 FY 20/21 on August 26, 2020, clarifying that no more than 50 people may be present inside a single polling place for the upcoming November 2020 election, or a lesser number as needed to meet the six-foot physical distancing requirement between persons. EO 8 FY20/21 (attached as Ex. 3). The Executive Order requires that voter lines outside each polling place be marked with signage and ground lines designed to enforce a six-foot separation between voters, and it permits election clerks to be recruited from outside the county if needed. The Executive Order also extends voters' ability to vote absentee in the presence of the clerk, for any reason or no reason at all, until 5:00 pm on Friday, October 29, 2020.

Voter Registration:

9. A high percentage of Maine's voting age population is already registered to vote. As of November 2018, there were 1,054,952 active registered voters in Maine,¹ which represents 96% of the voting age population of 1,095,370, as estimated by the U.S. Census Bureau in July 2019.² As of the date of the primary election in July 2020, the number of active registered voters had increased to 1,063,383 – 97% of the voting age population.

10. During the period from January 1, 2020, up to the date of the presidential primary on March 3, 2020, a total of 32,980 Maine residents registered to vote or updated their registrations, as compared to only 2,422 during the same period in 2018. *See* Exhibit 4. An additional 14,454 voters registered or updated their registrations between March 4 and July 13, 2020, and another 3,552 did so in person at the polls during the primary election for other state,

¹ See data posted on Secretary of State's web page at: <https://www.maine.gov/sos/cec/elec/data/data-pdf/r-e-active1118.pdf>

² See U.S. Census projections posted in the Federal Register at: <https://www.federalregister.gov/documents/2020/02/14/2020-03000/estimates-of-the-voting-age-population-for-2019>

federal and county offices on July 14, 2020. Therefore, as of mid-July of this year, Maine election officials had processed nearly 25,000 new registrations and a little more than 26,000 address changes or updated registrations – *two and a half times* as many as during the same time period in the 2018 election cycle two years ago when approximately 9,600 new registrations and 9,200 updated registrations were processed. *Id.*

11. There is no indication from this data that Maine is registering fewer voters this year than in past election cycles, or that its voter registration system is “under strain,” as plaintiffs contend. *See* Plaintiffs PI Motion at 3.

12. In Executive Order 8 FY20/21, the Governor extended the time period for mail in registrations (and registrations delivered by 3rd parties) by one week, until the 15th day before the November 2020 general election.

13. The term “signature” as used in Maine’s election laws means an original, inked signature, unless otherwise expressly provided. This has been the understanding of the Elections Division for the over 25 years I have worked here, as well as before that when I performed election-related work for the city of Portland.

14. A paper voter registration card is provided to voters to use to register in Maine for the first time, as well as to update their registration for any reason – e.g., to reflect a change of address within or outside the municipality or a name change, or to enroll, change enrollment, or withdraw enrollment in a party. *See* attached Exhibit 5.

15. The inked signature of a voter on that card is an important record for the municipal registrar to keep on file because it serves as a reference against which future signatures of the same voter are compared. Without original signatures on file, local registrars would be unable to verify, when checking candidate nominating petitions or initiative or

referendum petitions, for example, that the signature on the petition is that of the voter and not a duplicate or forgery.

16. Our office is not aware of any application that could be filled out electronically and that would serve as an adequate substitute for the paper record with an inked signature. Accordingly, the Secretary has not designed one.

17. While plaintiffs have suggested that voters should be able to scan their inked signature on the voter registration card and send it in as a pdf to the town office, rather than have to put it in the mail, this assumes that the town office has a dedicated and secure email address set up for this purpose, and to the best of my knowledge most (perhaps all) municipalities in Maine do not. Even if the law were changed to allow scanned voter cards to be submitted for voter registration purposes, without a secure and reliable way to confirm receipt of the scanned copy, voters could believe they had updated their registration when in fact the registrar never received the email or acted on it. This is not a secure or reliable system for the voters and would hinder rather than help more people to become registered to vote.

18. Voter registration cards contain sensitive personal information, such as the voter's date of birth, and either a driver's license number or the last four digits of a social security number as well as their physical address. We would not recommend sending such information via general email due to the risks of identity theft.

19. Maine does have a secure online system for requesting absentee ballots electronically—the Absentee Ballot Request service (called ABR)—which was developed and is operated by InforME, under contract with our office. When the voter finishes entering the request in ABR, the system provides an on-screen acknowledgement and sends the voter an additional acknowledgement by email. The application is saved in the ABR database as a

pending application. The town receives an email notification of pending requests that it must process. When the town processes the request, they must designate it as accepted or rejected, whereupon the voter receives an email message of the disposition of the request. The site has an administrative service that our staff can access to monitor the towns' processing of the applications and to search and resolve issues.

20. It took four to five months of development followed by rigorous testing to ensure that the ABR system would operate reliably. I would expect a similar effort to be required if we were to try to develop an appropriately secure and reliable online voter registration system.

21. The federal law (the Help America Vote Act, or HAVA) requires first-time voters who register to vote by mail to include a copy of certain documents with their application, which is why we added that instruction to the Maine Voter Registration Application in January of 2004. HAVA also requires that all new voters (regardless of how the application was submitted) provide an applicable ID number (either a Maine driver license/state identification number or the last four digits of the voter's social security number) on the application. If this number is matched to the voter, then this serves as proof of identity (and may provide proof of residency if the number is a driver license or state ID) even without copies of the documents.

22. If the voter fails to provide adequate proof with their mail-in registration, however, the registration is not rejected. Instead, the voter's record is flagged and the voter must present that proof when they show up to vote. If the voter is unable to provide the proof when they first vote, then they will be able to vote a challenged ballot and will be asked to provide documentation of identity and/or residency after the election.

23. A voter who submits a written request for an absentee ballot before registering to vote is presumed qualified, and the registrar must send them an absentee ballot as well as a registration application. *See* 21-A M.R.S. § 122(5).

Absentee voting:

24. Maine permits so-called “no excuse” absentee voting, with a variety of different authorized methods for the voter to choose from to request and return an absentee ballot.

25. In Maine, voters may obtain an absentee ballot for any reason up until 5:00 p.m. on the Thursday before Election Day. Under the Governor’s Executive Order, a voter may also vote in person in the presence of the clerk for no reason up until 5:00 p.m. on the Friday before Election Day. E.O. 8 FY20/21, § I(F)(3). To obtain an absentee ballot any closer to Election Day, the voter must state one of four possible reasons, set forth in 21-A M.R.S. § 751.

26. Voters may request an absentee ballot by any one of several methods, including by phone, by written request submitted through the mail or by delivery to the town office, or by email using the Absentee Ballot Request (ABR) service. *See* Exhibits 6A (screen shot of electronic request form) & 6B (printable pdf form that voter can mail, fax or deliver to town office). In response to a request made by telephone or through the ABR service, the ballot will be mailed to the voter. An immediate family member may also obtain a ballot for the voter, and the definition of immediate family member is quite broad. *See* 21-A M.R.S. § 1(20).

27. When a local official receives a request by phone from the voter, the official must verify the voter’s identity directly over the telephone, by asking the voter to give their name, date of birth and residence address – all information that a voter would otherwise fill out if submitting a written request. When the request is made through ABR they must check a certification that they are the voter and submitting their own application. If the application information does not

match to a registered voter in the municipality, then the application is rejected and the voter must first complete a voter registration card with a signature before a new absentee ballot application is submitted.

28. Voters may choose between three methods of returning their absentee ballot: voters may mail their completed ballot to the municipal office for the municipality where they are registered to vote; carry their completed ballot to that same municipal office, or have a family member or authorized third person do so; or complete their ballot prior to Election Day in the presence of the clerk in their municipality. In many municipalities, deliveries may be made to a secure drop box outside the municipal building, while in others the drop box is inside the building. Either way, delivery does not require interaction with another human being.

29. The statutory requirements for absentee voting are designed to ensure that the voter votes independently and without interference or influence from others. Thus, if someone other than the voter or an immediate family member is going to obtain a ballot for the voter, or return it for the voter, that "3rd person" has to be designated by the voter. *See* 21-A M.R.S. § 754-A(2). This is an important safeguard for the integrity of the voting process. If the voter needs assistance, there are additional witnessing requirements to assure that the ballot is cast according to the voter's own choices. *See* 21-A M.R.S. § 754-A(3).

30. All absentee voting requests are logged into the Central Voter Registration (CVR) system both for purposes of tracking where the request is in the process and to provide important safeguards against dual voting. Just before Election Day, the clerk will print out the incoming voter list from CVR, which flags all voters who have submitted an absentee ballot that has been accepted with an "AV" designation by the voter's name to ensure that they do not also vote in person at the polls. If an absentee ballot is received and accepted after the incoming voter list has been printed for the election, the clerk must ensure that the list is marked with an AV before processing the ballot,

after verifying that the voter has not voted in person at the polls. If the voter does appear in person at the polls, and the list does not have the AV annotation, the voter will be able to vote and the absentee ballot (if it later appears) will be rejected and coded on the absentee ballot report as “VIP” for “voted in person.” *See Exhibit 2, line 27.*

31. Election officials are instructed that when they receive absentee ballots from voters, they should check to see if there is a voter signature on the envelope, and whether it appears to match the voter’s signature on the written request form if there is one, or on the voter card on file with the registrar if the request was made by phone such that there is no written request. Based on this review, the clerk either writes “OK” on the envelope or notes the discrepancy. This step alone does not determine whether the ballot is counted.

32. Although Maine’s election statutes do not spell out a procedure for notifying voters when there are defects on their absentee ballot envelopes that may cause their ballots to be rejected, the law does allow for absentee ballots to be challenged, pursuant to 21-A M.R.S. § 673(1)(A)(6) & (7), rather than rejected. In addition, our office has always encouraged local election officials to reach out to voters whenever time permits to notify them and to mail out a replacement (or duplicate) ballot so that the voter can cure the defect.

33. Given the expected increase in absentee voting due to the COVID-19 pandemic this year, our office provided additional written guidance to local election officials for the July primary stressing the importance of notifying absentee voters of any defects found on the envelopes that would require the ballot to be rejected or challenged if not corrected. We are in the process of updating and expanding these instructions to provide more detail and to be more comprehensive. The updated version will instruct local election officials to:

a. Make a good faith effort to notify the voter by phone or email (using information provided by the voter on the request form or otherwise available in the municipal office) within

24 hours when a defect is noted on the absentee envelope that would cause the ballot to be rejected or challenged, such as a missing voter signature, a signature that does not appear to match the voter's signature on the request form or voter card on file, or an incomplete or improperly completed aide or witness certificate;

b. Verify that the voter filled out the envelope, cast the ballot, and placed the ballot in the envelope (or had their designated assistant place it in the envelope);

c. Offer the voter an opportunity to cure the defect by voting another absentee ballot to be mailed to the voter, or by coming in to the town office to add a missing signature or vote another ballot;

d. Inform the voter that if they prefer not to take the steps necessary to cure the defect, then the ballot will be challenged by the clerk, pursuant to 21-A M.R.S. § 673(1)(A)(6) or (7); and

e. If the voter is not reachable, reject the ballot and send the voter a new ballot.

34. The instructions will clarify that any missing or mismatched voter signature defect on a ballot that could not be cured would result in a challenged ballot. Lack of compliance with the witnessing requirements would have to be cured or be rejected.

35. Ballots that are challenged pursuant to 21-A M.R.S. § 673 are still counted, and the challenges are resolved in the event that there are enough challenged ballots to make a difference to the outcome of a close race in the event of a recount.

36. Our office also redesigned the absentee voter request forms this year – both the online ABR form and the printed form – to include spaces for the voter to provide a telephone number and an email address that the local officials can use to contact them if there is a defect on their absentee ballot envelope.

37. Absentee ballot data from the July 14, 2020 primary election shows that a total of 911 absentee ballots were rejected because the envelopes were not signed by the voter; 9 were rejected due to the voter signature on the envelope not matching what was on the absentee ballot request form; and 102 were rejected due to defects in the witness or aide certificate. *See* Ex. 2. This means a total of 1,022 ballots were rejected on these grounds, which is 0.3% of the total ballots cast in that election, and 0.5% of the total number of absentee ballots cast. *Id.* Data from the 2016 and 2018 general elections shows that approximately 0.5% of the total number of absentee ballots were rejected for these reasons. Because a much higher proportion of voters voted in person in those two elections, the absentee ballots rejected for these reasons represented only 0.16 or 0.17% of the total ballots cast.

38. The improved instructions that we are issuing to local election officials for the upcoming general election should further reduce the number of rejected ballots.

39. There is another new tool that will be available to assist absentee voters in the upcoming general election. Our office is working to activate an on-line website service that will allow voters to track their absentee ballot to see if the ballot has been received and accepted. This service exists currently for overseas and military voters and we are expanding it to include all civilian voters. We anticipate that this service will be activated by October 2, 2020.

Postage:

40. Voters in Maine who choose to vote absentee and choose to return their ballots by mail have always had to place postage on the envelope. The pre-printed absentee ballot envelopes that we send to the municipalities to distribute to voters with absentee ballots have a box in the upper right corner marked "First Class Postage." *See* Exhibit 7.

41. The cost for a voter to send back their absentee ballot for the state, federal and county election by First Class mail, will be \$.55.

42. The amount of postage required for voters to return their absentee ballots varies according to how many local ballots there may be for any municipality that is holding local elections in conjunction with the statewide general election. The Secretary has no way to know which municipalities are holding local elections, or how many ballots may be involved (e.g., a candidate ballot for a town council or school board, and/or a referendum ballot). We have advised the cities and towns that they need to communicate clearly to their voters what amount of postage will be required to send both the state ballot and any local ballots back to the municipal office by election day.

43. Because our office provides the absentee envelopes but the ballots are returned to the municipal offices, not our office, it is not possible to for the State to purchase a pre-paid mail permit from the U.S. Postal Service. That approach is only workable if the permit holder is both sending and receiving the pre-printed envelopes. Accordingly, the only way to pay for and provide postage for voters would be for local officials to affix stamps to the envelopes when they mail out the ballots. If those voters decide not to return the ballot, or to have it delivered by hand instead of by mail, that would be a wasted public expense. For the July 14, 2020 primary election, over 200,000 absentee ballots were issued to voters, of which 21,066, or about 10% were not returned. *See Ex. 2, line 37.*

44. Approximately 35% of the total ballots cast (111,139) in the July 14, 2020 primary election were returned by mail. This is a substantial increase over the last two general elections, where the percentage was less than 10%. *See Exs. 2 & 8.* Applying that same percentage to the expected turn-out in a presidential election year of 770,000 would mean over

270,000 absentee ballots being sent by U.S. Postal Service mail. At \$.55 per voter for the state ballot alone, this would cost \$148,500.

45. Pursuant to the unfunded mandate provisions of the Maine Constitution, article IX, § 21, and 30-A M.R.S. § 5685, the State cannot require municipalities to incur the cost of postage for voters to return their absentee ballots by mail. And although our office could apply some of our federal CARES Act money toward this purpose, expenditure of those funds requires a 20% match, and we have no funds appropriated to cover that match.

46. Moreover, given recent publicity about delays in U.S. Postal Service deliveries, we anticipate that more voters will rely on hand delivering ballots to their town office or to a secure drop box rather than by mail. Since most voters live within a few miles of their town office, and many more town offices are offering the drop box option, this should be a viable alternative for many voters.

Election Day deadline for receipt of absentee ballots:

47. It is notable that even with the significant increase in absentee voting for the July 14, 2020 primary, only 271 ballots returned by mail arrived after the Election Day deadline. *See* Ex. 2. This represents 0.24% of all the ballots returned by mail.

48. There are a number of reasons why allowing ballots to be received after 8:00 p.m. on Election Day would harm the state's interests in administering a fair and orderly election.

49. First, absentee ballots must be processed – i.e., the envelopes reviewed, then opened, and the ballots cast – by at least two election clerks and with prior public notice to assure the integrity of the process. This would be difficult for 500 local jurisdictions to staff and organize over the courses of several days following Election Day. Also, in many communities,

only one or two ballots might be received after Election Day, which would make it extremely difficult to maintain voter privacy.

50. Maine law requires municipal clerks to submit their official returns of votes cast to the Secretary of State by 5 p.m. on the second business day after the election, so that other statutory procedures such as ranked-choice vote counting, recounts and completion of the tabulation for submission to the Governor can be completed. Municipal officials could not comply with this if the Election Day deadline were extended.

51. The Maine Constitution, art. IV, pt. 3, § 1, requires all members of the House and Senate elected at the general election in November to be sworn in and to convene as the 130th Maine Legislature on December 2, 2020.

52. Ranked-choice vote counting for the federal races that may be determined by the RCV method is a process that typically takes at least a week after election day because all the ballots from towns that hand-count ballots and all the memory sticks from towns that use optical scanners to count ballots must be collected and physically transported to a central location before that count can be conducted. *See* 21-A M.R.S. § 723-A and 29-250 Code Me. Reg. 535. Moreover, we cannot determine whether a RCV count is necessary until we know whether a candidate has obtained more than 50% of the first choice votes tallied at the municipal level. Thus, continuing to count ballots after Election Day would delay even the start of that collection and delivery process.

53. In addition, we typically receive requests for recounts, pursuant to 21-A M.R.S. § 737-A in at least half a dozen legislative or county races each election cycle, and each recount takes between a half to a full day to conduct. If a recount is requested for a Congressional or U.S. Senate race, that can take several days to several weeks.

54. If we are unable to start the RCV or recount process because we are still waiting for ballots to come in the mail, that could jeopardize our ability to provide the Governor with official results so that she may "issue a summons" at least seven days before December 2, 2020, to the elected legislators to "attend that day and take their seats" in the Legislature as required by Me. Const. art. IV, pt. 2, § 5 and art. IV, pt. 3, § 4.

Dated: September 1, 2020

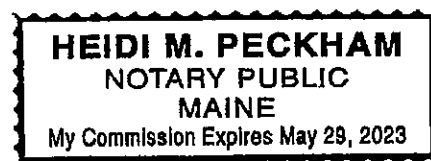

JULIE L. FLYNN

STATE OF MAINE
KENNEBEC, ss.

September 1, 2020

Personally appeared before me the above-named Julie L. Flynn, and made oath that the foregoing statements made by her are true and correct to the best of her personal knowledge.


NOTARY PUBLIC



	A	B	C	D	E	F	G	H	I
1	November 8, 2016 and November 6, 2018 General Elections - Analysis of Civilian Ballots Cast and Rejected Absentee Ballots								
2									
3	How Ballots Were Cast	Number of Ballots Cast 2018	Percentage of Total Ballots Cast 2018	Number of Ballots Cast 2016	Percentage of Total Ballots Cast 2016				
4	Total Ballots Cast at the Polls	459,964	0.71	516,091	0.67				
5	Total Absentee Ballots Cast (Returned and Accepted)	183,678	0.29	251,752	0.33				
6	Total Ballots Cast	643,642		767,843					
7									
8	Total Absentee Ballots Rejected	9,926		8,322					
9									
10	Summary of How Accepted Absentee Ballots Were Returned								
11	Returned by Mail	51,593	0.08	71,204	0.09				
12	Delivered by Voter, Immediate Family or Third Person	66,833	0.10	70,902	0.09				
13	Voted in Person at the Clerk's Office	65,248	0.10	109,646	0.14				
14	Method not Recorded	4		0					
15									
16	Ballots Returned by Voter - Rejection Reason	Number of Ballots Rejected that were Returned by All Methods 2018	Percentage	Subset of Ballots Rejected that were Returned by Mail 2018	Percentage	Number of Ballots Rejected that were Returned by All Methods 2016	Percentage	Subset of Ballots Rejected that were Returned by Mail 2016	Percentage
17									
18	(ANC) Aide Certificate Not Properly Completed	32		14		65		36	
19	(DBR) Duplicate Ballot Received	78		44		114		63	
20	(ENS) Envelope Not Signed by Voter	858		700		1,025		844	
21	(NEN) Not Enrolled When Necessary	1		0		3		3	
22	(NVR) Not a Registered Voter	19		17		53		44	
23	(OTH) Other	506		53		868		106	
24	(RAD) Received After Deadline Date	475		468		139		137	

	A	B	C	D	E	F	G	H	I
25	(SBV) Spoiled by Voter	350		11		346		12	
26	(SNM) Signature on Application and Envelope Don't Match	16		6		27		11	
27	(VIP) Voted in Person	93		13		115		9	
28	(WNC) Witness Certificate Not Properly Completed	126		79		167		88	
29	Subtotal of Ballots Returned by Voter and Rejected	2,554		1,405		2,922		1,353	
30									
31	Ballots Not Returned by Voter - Rejection Reasons								
32									
33	(BND) Ballot Not Received by Deadline (includes all ballots issued to voters that were never returned)	7,217		0		5,177		0	
34	(BRU) Ballot Returned as Undeliverable (i.e., ballots mailed to voters but returned as undeliverable)	155		153		223		223	
35	Subtotal of Ballots NOT Returned by Voter*	7,372		153		5,400		223	
36									
37	Total of All Absentee Ballots Rejected or Not Returned	9,926		1,558		8,322		1,576	
38									
39									
40	*These are listed in absentee ballot reports as "rejected" even though they were never returned.								
41									

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-20-95

ALLIANCE FOR RETIRED
AMERICANS; DOUG BORN; DON
BERRY; and VOTE.ORG,

Plaintiffs,

v.

MATTHEW DUNLAP, in his official
Capacity as the Maine Secretary of State;
and AARON FREY, in his official capacity
as the Maine Attorney General,

Defendants.

SUPPLEMENTAL AFFIDAVIT
OF JULIE L. FLYNN
DEPUTY SECRETARY OF STATE

I, Julie L. Flynn, being duly sworn, hereby depose and state as follows based on my personal knowledge:

1. I am the Deputy Secretary of State for the State of Maine, in charge of the Bureau of Corporations, Elections and Commissions, and have held this appointed position since February of 1999.

2. I am submitting this affidavit in response to the Plaintiffs' motion for a preliminary injunction in this matter, and to supplement my first affidavit, dated September 1, 2020, with more up to date information. I have personal knowledge of the matters set forth in this affidavit and would testify to the same.

3. As noted in paragraph 5 of my first affidavit, our office collaborated with the Maine Center for Disease Control (CDC) to develop guidelines for local officials to follow in setting up and managing their polling places for the July 14, 2020 primary election. We reviewed these guidelines again with the CDC after the July primary to see if any modifications

were necessary. With a few minor edits regarding face coverings in paragraph 3, we are now re-issuing them for the November 2020 election. Defendants' Exhibit 3 is a true and accurate copy of this updated guidance that we will be distributing to all local election officials in a mailing scheduled to go out next week.

4. In paragraph 7 of my first affidavit, I noted that the City of Augusta was considering consolidating their four voting locations into one for the November election. The City Council subsequently rejected that proposal. Accordingly, voters in Augusta will be distributed across the city in four separate polling locations.

5. With assistance from my staff, I prepared Defendants' Exhibit 9 from voter registration data maintained in the Central Voter Registration ("CVR") system. Our office also generated the data that is shown on page 47 of the "Rebuttal Report of Michael C. Herron" labeled as Plaintiffs' Exhibit 34.

6. Prior to the July 2020 primary, our office developed additional instructions to local election officials regarding notifying voters of defects on absentee ballot envelopes that could cause those ballots to be rejected, as discussed in paragraph 33 of my first affidavit and as shown in Plaintiffs' Exhibit 38. Since then, we have revised and updated those instructions to provide greater clarity. Defendants' Exhibit 17 is a true and accurate copy of our new instructions that will be mailed out to the municipalities next week.

7. Our office has also embarked on an initiative, supported by the Governor and the Division of Procurement within the Department of Administrative and Financial Services, to acquire secure drop boxes for all municipalities in the state that wish to use them and do not have them already. Voters will be able to deposit their absentee ballots in these boxes outside the city or town office where they live and thereby avoid having to interact with anyone in that office.

This provides an alternative to mailing in the ballot via the U.S. Postal Service. A survey that we conducted over the past week shows that a number of municipalities have already obtained secure drop boxes, and more towns have reported to us since the survey that they have ordered or obtained secure drop boxes. With state assistance, using our CARES Act funding, we will be working to provide secure drop boxes to any municipalities that request them for this election.

8. Our office is in the process of updating our web page with information on absentee voting, which currently includes the texts shown in Defendants' Exhibit 13. The updated site will include a link to the on-line tracking tool referenced in paragraph 39 of my first affidavit, which will enable voters to look up on line to see whether their absentee ballot request has been received; whether the ballot has been issued by the municipality; and, once the voter has returned the ballot, whether the ballot has been received and accepted or rejected by the municipality. This service will be turned on by the time absentee ballots are provided to voters on October 2, 2020.

Dated: September 18, 2020

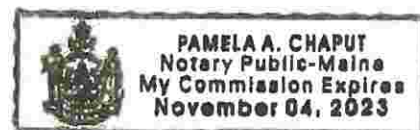

JULIE L. FLYNN

STATE OF MAINE
KENNEBEC, ss.

September 18 2020

Personally appeared before me the above-named Julie L. Flynn, and made oath that the foregoing statements made by her are true and correct to the best of her personal knowledge.


NOTARY PUBLIC



	A		B	C	D	E
1	July 14, 2020 Primary Election - Analysis of Civilian Ballots Cast and Rejected Absentee Ballots					
2						
3	How Ballots Were Cast		Number of Ballots Cast	Percentage of Total Ballots		
4	Total Ballots Cast at the Polls		133,771	0.42		
5	Total Absentee Ballots Cast (Returned and Accepted)		182,439	0.58		
6	Total Ballots Cast		316,210			
7						
8	Total Absentee Ballots Rejected		2,198			
9						
10	Summary of How Accepted Absentee Ballots Were Returned					
11	Returned by Mail		111,139	0.35		
12	Delivered by Voter, Immediate Family or Third Person		59,731	0.19		
13	Voted in Person at the Clerk's Office		11,562	0.04		
14	Method not Recorded		7	0		
15						
16	Ballots Returned by Voter - Rejection Reason		Number of Ballots Rejected that were Returned by All Methods	Percentage	Subset of Ballots Rejected that were Returned by Mail	Percentage
17						
18	(ANC) Aide Certificate Not Properly Completed		36		25	
19	(DBR) Duplicate Ballot Received		87		39	
20	(ENS) Envelope Not Signed by Voter		911		768	
21	(NEN) Not Enrolled When Necessary		5		1	
22	(NVR) Not a Registered Voter		12		10	
23	(OTH) Other		543		88	
24	(RAD) Received After Deadline Date		279		271	
25	(SBV) Spoiled by Voter		139		23	
26	(SNM) Signature on Application and Envelope Don't Match		9		7	
27	(VIP) Voted in Person		111		4	
28	(WNC) Witness Certificate Not Properly Completed		66		52	

	A	B	C	D	E
29	Subtotal of Ballots Returned by Voter and Rejected	2,198		1,288	
30					
31	Ballots Not Returned by Voter - Rejection Reasons				
32					
33	(BND) Ballot Not Received by Deadline (includes all ballots issued to voters that were never returned)	18,692		7 *	
34	(BRU) Ballot Returned as Undeliverable (i.e., ballots mailed to voters but returned as undeliverable)	176		173	
35	Subtotal of Ballots NOT Returned by Voter**	18,868		173	
36					
37	Total of All Absentee Ballots Rejected or Not Returned	21,066		1,461	
38					
39					
40	* Note: This number is in error - these ballots were not returned, so they could not have been returned by mail				
41	** These are listed in absentee ballot reports as "rejected" even though they were never returned.				

Instructions to Municipal Election Officials
Providing an Opportunity to Cure Defects on Absentee Ballot Envelopes before Rejection
issued by Secretary of State's Office for the November 3, 2020 General Election
(September 18, 2020)

During the clerk's examination of returned absentee envelopes pursuant to Title 21-A, section 756, subsection 2, the clerk must make notes of any of the following issues:

- the signature on the return envelope and the signature on the absentee ballot application do not appear to have been written by the same person and are not due to the voter having obtained assistance under sections 753-A, subsection 5, or section 754-A, subsection 3, or both; or
- the return envelope is missing a signature; or
- the affidavit on the return envelope is not properly completed (the name or signature of an aide or witness is missing, for example).

If any of the foregoing issues are present, **the clerk must make a good faith effort to notify the voter as quickly as possible (within one business day at a minimum) that the ballot may be rejected or challenged unless the defect is cured. If the ballot is received on election day or less than 24 hours before election day, the clerk should make a good faith effort to notify the voter as quickly as possible.**

If the clerk sees a defect, the clerk must notify the voter of the defect either by:

- email, using the email address provided on the application; or
- telephone, using the phone number provided on the application.

The following procedure must be followed for each of the defects described below:

1) Mismatched voter signature: If the voter signature on the envelope does not appear to have been written by the same person as the voter whose signature appears on the absentee ballot application, then the clerk must:

- notify the voter of the defect by email asking the voter to call the clerk, or call the voter;
- on the phone, ask the voter to identify themselves by name, date of birth and voting residence address as you would do in handling a voter's telephone request for an absentee ballot;
- verify that the voter requested a ballot, cast the ballot, and placed the ballot in the envelope (or had their designated assistant do so, if they were assisted); and
- verify that the voter signed the envelope.
- If the voter verifies that they signed it, the clerk should accept the ballot (without a challenge) and write a note on the envelope: "voter confirmed that they personally signed the envelope."

- If the clerk is unable to reach the voter before 8:00 p.m. on election day, the clerk should accept the ballot but challenge it in accordance with Title 21-A section 673, subsection 1.

2) Missing voter signature: If the defect is a missing voter signature, then the clerk must:

- notify the voter of the defect by phone or email and inform the voter of the following options:
 - a) The voter may come to the town office to sign the envelope, after verifying their identity to the clerk; the clerk must then accept the ballot; or
 - b) The voter may request a duplicate ballot; or
 - c) If the voter does not wish to do (a) or (b), but the voter identifies themselves by name, date of birth and voting residence address over the telephone with the clerk, and acknowledges to the clerk that the voter requested a ballot, cast the ballot and placed the ballot in the envelope (or had their designated assistant do so, if they were assisted), then the clerk should accept the ballot but challenge it in accordance with Title 21-A section 673, subsection 1.
 - d) If the voter does not respond to the phone call or email or does not cure the defect by 8:00 p.m. on election day, then the ballot must be rejected in accordance with Title 21-A, section 759, subsection 3.

3) Aide or witness certificate not completed or completed incorrectly: If the aide or witness certificate is unsigned, or was not completed or was completed incorrectly for a ballot that has been assisted or handled by a person other than an immediate family member, then the clerk must:

- notify the voter of the defect by phone or email and inform the voter of the following options:
 - a) The voter may ask the witness or aide to come to the town office to sign and properly complete the affidavit, and if the aide or witness does so, the clerk must accept the ballot; or
 - b) The voter may request a duplicate ballot; or
 - c) If the voter does not wish to do (a) or (b), but identifies themselves by name, date of birth, and voting residence address over the telephone with the clerk, describes how they received the ballot, who assisted them if they received assistance, and who delivered and returned the ballot if it was a person other than an immediate family member, then the clerk should accept the ballot but challenge it in accordance with Title 21-A, section 673, subsection 1.
 - d) If the voter does not respond to the phone call or email or does not cure the defect by 8:00 p.m. on election day, then the ballot must be rejected in accordance with Title 21-A, section 759, subsection 3.

In response to any of the above circumstances, if the clerk issues a duplicate ballot to the voter, the clerk must enclose a note stating the reason for sending them the ballot and remind the voter what they need to do to comply (e.g., sign the envelope). The clerk must also write “second ballot issued” on the return envelope.

- The clerk must provide the duplicate ballot in the manner requested by the voter, which may include issuance to the voter in-person at the municipal office, by postal mail to the address requested on the original application, or delivery by an immediate family member or 3rd person as designated on the original application or authorized in writing by the voter.
- If the clerk is unable to reach the voter by telephone or email to determine the voter's preferred method of receiving a duplicate ballot, then the clerk must send a duplicate ballot by postal mail to the voter's address or to the address listed on the original absentee ballot request, if different.

The duplicate (cured) ballot must be received in the clerk's office by 8 p.m. on election day in order to be counted. If a duplicate ballot has been issued to a voter, only one returned ballot from that voter may be accepted and counted.