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. Alarmingly, 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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6 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 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.

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[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.

[10] 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 heighted 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 disfranchises 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/Bellemont 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. Janisczak*, 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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