

**STATE OF MAINE  
122nd LEGISLATURE  
SECOND REGULAR SESSION**

**Final Report  
of the  
STUDY COMMISSION TO STUDY  
ALTERNATIVE VOTING PROCEDURES,  
THE CITIZEN INITIATIVE PROCESS AND  
MINOR PARTY BALLOT ACCESS**

**January 2006**

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## EXECUTIVE SUMMARY

The Commission to Study Alternative Voting Procedures, the Citizen Initiative Process and Minor Party Ballot Access (“Commission”) was created by Resolve 2005, chapter 127. During the First Session of the 122<sup>nd</sup> Legislature, the Joint Standing Committee on Legal and Veterans’ Affairs considered several bills regarding voting procedure, the citizen initiative process and minor party ballot access. In order to study the proposals made by these bills in more depth, the Committee incorporated them into study bill (LD 1608), that was created as Resolve 2005, chapter 127.

### Enabling Legislation

Chapter 127 created a commission of 11 members. Six were legislative members from the 122<sup>nd</sup> Legislature, 3 from the Senate appointed by the Senate President and 3 from the House of Representatives appointed by the Speaker. Appointments of legislative members were required to be representative of the two major political parties and preference was given to members of the Joint Standing Committee on Legal and Veterans’ Affairs. The Resolve also identified the following 5 members: the Secretary of State or a designee; a representative of the Maine Municipal Association appointed by the President of the Senate; a representative of the Town and City Clerks Association appointed by the Speaker of the House; an official of the Maine Democratic Party appointed by the chair of the party; and a member of the Maine Republican Party appointed by the chair of the party.

The Resolve authorized 3 meetings that were held on October 3, 14<sup>th</sup> and 28<sup>th</sup> in 2005. The Commission was charged with examining proposals introduced in the First Regular Session of the 122<sup>nd</sup> Legislature to improve ballot access and address issues regarding elections and the citizen initiative process. Some of these proposals included:

- the institution of alternative voting methods such as instant run-off (IRV), fusion voting and voting by mail;
- facilitating the formation of minor political parties; and
- informing the public about the fiscal implications of proposed citizen initiated legislation.

The Commission used these topics as a starting point and examined in depth those issues that incurred the greatest amount of interest and ideas for changes in policy.

After receiving presentations and information from staff and interested parties and after careful consideration of several proposals put forward by Commission members, the Commission makes the following recommendations:

- **The Commission supports a pilot program to consider implementing early voting.** Recognizing the surge in popularity of voting by absentee ballot at the municipal clerk’s office, the Commission decided that a program for early voting was worthy of a trial run. The Commission believes that making voting convenient and expedient is a worthy goal and could potentially increase voter participation. Early

voting would differ from the current absentee voting process in that the ballot would be actually cast at the time the voter filled out the ballot at the clerk's office. Commission members did express concern about the security of cast ballots until election day and the facilitation of poll watchers, but believe a trial of such a program would provide insight on possible ways to address those issues. Thus, 10 of 11 members of the Commission supports the design of an early voting pilot that will be presented to the Legal and Veterans' Affairs committee by February 15<sup>th</sup>, 2007 for potential implementation at the November 2008 election pursuant to current law, Resolve 2005, chapter 70.

- **A formal policy regarding withdrawal of signatures from citizen initiative petitions should be considered.** In light of the increasing sophistication of political campaigns and the popularity of the citizen initiative process, the Commission determined that it would be prudent to develop a policy regarding the withdrawal of signatures from citizen initiative petitions. Thus, the Commission unanimously directs the Secretary of State to analyze the issue of the withdrawal of signatures from initiative petitions and present a policy proposal to the Legal and Veterans' Affairs committee by March 15<sup>th</sup> of 2006.
- **The public should have greater access to information regarding the financing of citizen initiative campaigns.** As with campaigns for statewide office, the Commission has determined that the public should be able to easily access information regarding the financing of initiative campaigns. Information about the initiative itself is maintained by the Office of the Secretary of State while campaign finance information is filed with the Commission on Governmental Ethics and Election Practices. The Commission agrees that access to both types of information should be readily available to the public. Specifically, the public should have access to information about who is circulating an initiative petition, political action committees and their leadership receiving and spending money to support or defeat a citizen initiative, and reports submitted regarding the financing of such efforts. A majority of the Commission, 8 of 11 members, supports requiring these two agencies to provide links on their respective websites directing the public to information on an initiative as maintained by the other agency. These members also recommend that the Secretary of State examine the feasibility of and legal issues surrounding requesting that petition applicants indicate affiliations with political action committees upon applying to circulate a citizen initiated petition.
- **The Commission on Governmental Ethics and Election Practices should report to the Joint Standing Committee on Legal and Veterans' Affairs regarding issues considered by the commission regarding campaign finance reports for citizen initiative campaigns and public access to that information.** To resolve issues raised about campaign finance reports for citizen initiative campaigns and public access to information about citizen initiative campaigns, 9 of 11 Commission members recommend that The Commission on Governmental Ethics and Election Practices examine the following issues and report back the Legal and Veterans' Affairs Committee by March 15<sup>th</sup> 2006:

- The feasibility of the proposals that entities required to file reports with the Commission on Governmental Ethics and Election Practices specify the citizen initiative campaigns or ballot measure campaigns they are receiving or spending money to support or oppose. Thus, if a PAC is spending on more than one initiative or ballot question the contribution or expenditure level will be able to be determined;
  - The feasibility of the proposals that petitions for citizen initiatives, voter information pamphlets and posters about a ballot measure and publications by PACs in support of or in opposition to a citizen initiative or ballot measure campaign be required to include a link to the website where the public can view the PACs reports filed with the Commission on Governmental Ethics and Election Practices;
  - The feasibility of the proposal to lower the expenditure amount that defines a group as a PAC and triggers reporting requirements to an amount closer to those that trigger reporting by candidates and the impact this may have on the practice of bundling. The proposal suggests reducing the \$1500 spending threshold that defines a group making expenditures for an election, petition campaign or ballot measure as a PAC and triggers the requirement finance reports be filed with the Commission on Governmental Ethics and Election Practices to \$500; and
  - The feasibility of the proposal to require campaign finance reports filed by PACs that have raised or spent in excess of \$40,000 be submitted more frequently immediately prior to an election in order to inform the public about high-level spending on ballot measure campaigns in a more timely manner.
- **Voter information regarding citizen initiatives to be on the ballot should be more informative, accessible, and easy to read.** A majority of the Commission favored mailing voter information packets directly to the homes of voters informing them about measures to be on the ballot, but the high cost and less-than-favorable funding ideas makes such a recommendation impractical at this time. However, the Commission believes that improvements can be made with regard to the information that is currently disseminated by the Office of the Secretary of State. The Commission determined that technology can be better utilized in providing voters with information efficiently and inexpensively but the state must be cognizant of the digital divide that exists here. Thus, the commission unanimously recommends that the Secretary of State examine voter awareness in other states that mail voter information packets directly to voters and explore ways to make the voter information that is currently distributed in Maine more accessible, readable and informative within existing budgetary resources.
  - **The issue of qualification of political parties should be considered further by the Legislature.** The Commission was unable to consider the issue of party qualification and minor party ballot access to the extent that is necessary to make any substantive recommendation on this issue. The Commission believes this is an important policy issue that should be afforded thorough discussion by the Legislature. The Commission unanimously recommends that LD 329 An Act Concerning Recognition

of Qualified Political Parties which was carried over on the Appropriations Table by Senate Paper 640, should be referred back to the Joint Standing Committee on Legal and Veterans' Affairs.

- **Legislation should be enacted to require that campaign finance reports by PACs organizing citizen initiative campaigns specify expenditures made as payment to petition circulators. This legislation should also clarify that contributions received and expenditures made by a PAC during the signature gathering phase of a citizen initiative campaign must be reported when current statutory thresholds are met.** The Commission unanimously supported clarifying the law so that there is no ambiguity that if a group spends \$1500 (current trigger to report with the Commission on Governmental Ethics and Election Practices as a PAC) to support or discourage the gathering of signatures for a citizen initiative it meets the definition of a PAC and is required to submit reports. The Commission unanimously agreed that payment made by PACs to people for circulating initiative petitions should be itemized on required campaign finance reports. Those Commission members agreed that this information should be available to the public and is consistent with reporting requirements of campaigns for state office.
- **In order to better facilitate the constitutionally provided right to the initiation of law by citizen petition, the Legislature should consider an amendment to the Constitution of the State of Maine that would ensure municipal officials are afforded adequate time to verify petition signatures before they are due to the Secretary of State.** The Commission determined that for various reasons, petitions for citizen initiatives are often turned into a municipal clerk's office for signature verification too close to when they need to be submitted to the Secretary of State for certification. As a result, municipal officials find it difficult to meet their obligation to verify signatures. The commission looked at various statutory proposals to address the issue but found that they may conflict with the Constitution of the State of Maine. Thus, the Commission determined that if the Legislature deemed the issue important enough to amend the Constitution it should have that option. The Commission stated that this recommendation in no way intended to infringe upon the rights of petitioners but is intended to create a time period where municipal officials could appropriately meet its Constitutional obligation to verify signatures. The Commission's recommendation would state that signatures are due to municipal officials 10 days before required to be at the Secretary of State's office. Signatures not submitted to municipal officials by this date would be invalid. This recommendation is to be put forward as a separate bill was supported unanimously by the commission.

## **I. INTRODUCTION**

The Commission to Study Alternative Voting Procedures, the Citizen Initiative Process and Minor Party Ballot Access (“Commission”) was created by Resolve 2005, chapter 127. During the First Session of the 122<sup>nd</sup> Legislature, the Joint Standing Committee on Legal and Veterans’ Affairs considered several bills regarding voting procedure, the citizen initiative process and minor party ballot access. In order to study the proposals made by these bills in more depth, the Committee incorporated them into study bill (LD 1608), that was enacted as Resolve 2005, chapter 127. A copy of Resolves 2005, chapter 127 may be found in Appendix A.

### **Enabling Legislation**

Chapter 127 created a commission of 11 members. Six were legislative members from the 122<sup>nd</sup> Legislature, 3 from the Senate appointed by the Senate President and 3 from the House of Representatives appointed by the Speaker. Appointments of legislative members were required to be representative of the two major political parties and preference was given to members of the Joint Standing Committee on Legal and Veterans’ Affairs. The Resolve also identified the following 5 members: the Secretary of State or a designee; a representative of the Maine Municipal Association appointed by the President of the Senate; a representative of the Town and City Clerks Association appointed by the Speaker of the House; an official of the Maine Democratic Party appointed by the chair of the party; and a member of the Maine Republican Party appointed by the chair of the party.

The Resolve authorized 3 meetings and charged the Commission with examining proposals introduced in the First Regular Session of the 122<sup>nd</sup> Legislature to improve ballot access and address issues regarding elections and the citizen initiative process. Some of these proposals included:

- the institution of alternative voting methods such as instant run-off (IRV), fusion voting and voting by mail;
- facilitating the formation of minor political parties; and
- informing the public about the fiscal implications of proposed citizen initiated legislation.

The Commission used these topics as a starting point and examined in depth those issues that incurred the greatest amount of interest and ideas for changes in policy.

### **Commission Meetings**

The Commission held meetings on October 3, 14<sup>th</sup> and 28<sup>th</sup> in 2005. During the first meeting, Commission members discussed several aspects of the citizen initiative process. Commission members received a brief overview of the citizen initiative process and a review of recently considered or enacted bills presented to the 122<sup>nd</sup> Legislature that dealt with the citizen initiative process. Members were also presented with a statement from the city clerk in Portland regarding the issue of municipal level signature verification for citizen initiated petitions. Her comments introduced an issue that committee felt was important and incorporated it into its

work. Additionally, members were briefed on what information other states require be provided to voters about initiated bills to be on the ballot.

At the Commission's second meeting, discussion included alternative voting methods, party qualification and minor party access to the ballot. Representatives of the Maine Citizen Leadership Fund made presentations to the Commission on the Instant Run-off Voting (IRV) method of conducting elections and fusion voting or cross endorsement. The Commission then reviewed recently considered bills regarding party qualification changes.

During the third and final meetings Commission members reviewed information from prior meetings and considered proposals for recommendations to be included in this report. To view copies of the agendas for the Commission's October 3<sup>rd</sup> and October 14<sup>th</sup> meetings, see Appendix C.

## **II. BACKGROUND AND FINDINGS**

### **The Citizen Initiative Process**

Pursuant to Resolve 2005, chapter 127, the Commission examined issues regarding the citizen initiative process. Primarily, the following topics were considered:

- Availability of information for voters about proposed initiatives;
- Enhanced reporting of contributions and expenditures relative to citizen initiative campaigns;
- The burden of verifying signatures on initiative petitions at the municipal level; and
- Proposed citizen initiatives that require general fund expenditures to be implemented.

Voter Information: During the first session of the 122<sup>nd</sup> Legislature, the Legal and Veterans' Affairs Committee considered several bills regarding the citizen initiative process. LD 870 An Act to Increase Access to Information Regarding Referendum Questions which was enacted as Public Law 2005, chapter 316 served as a starting point for discussion with regard to the information provided to voters regarding proposed citizen initiatives. Chapter 316 requires a fiscal note showing the impact on the general fund of an initiative that will appear on a ballot. The law requires that this fiscal note be included as part of the intent and content statement published by the Secretary of State in all of the statewide newspapers prior to the election. This law also allows statements for and against the ballot measure to be included in the intent and content statement for a fee of \$500. However, statements in support or opposition to the ballot measure submitted in accordance with this provision are not required to be published in the newspaper but are required to be included in the Citizen's Guide printed by the Secretary of State and posted on its website. Rules are being developed by the Secretary of State to administer this portion of the law. For a copy of Public Law 2005, chapter 316 see Appendix E.

Another bill considered by the Legal and Veterans' Affairs Committee during the First Session of the 122<sup>nd</sup> Legislature was LD 929 An Act to Create Freedom of Citizen Information Regarding Ballot Questions which was enacted as Public Law 2005 chapter 356. Chapter 356



makes changes to the petition that is circulated in order to get an initiative on the ballot with regard to providing additional information to those who may sign the petition. Chapter 356 requires a statement to be printed at the top of the petition informing the signer that they must be afforded the opportunity to read the summary and the cost of placing a citizen initiated law on the ballot. Below that statement, a summary of the proposed law is required. Under this law, a petition circulator is required to offer potential signers the opportunity to read the summary before they sign. For a copy of Public Law 2005, chapter 356 see Appendix E. For a general overview of the citizen initiative process see Appendix D.

At their first meeting, the Commission reviewed examples of voter information booklets and legal notices that are published in daily newspapers throughout the state prior to an election when a citizen initiative is on the ballot. The Secretary of State provides both of these publications. Some members were critical of what they deemed the obscurity of the legal notice and the lack of information on ballot measures provided directly to voters.

The Commission discussed several potential changes to the laws governing voter information, including placing the summary and fiscal note for a citizen initiative directly on the ballot, mailing information packets to voter households and the overall design of legal notices and the information packets available to voters. To facilitate the discussion, members were provided information showing examples of how other states provide information to voters about initiatives and referenda. This information listed the states that have the initiative process and that provide voter information pamphlets voluntarily or pursuant to law. Fourteen of these states with a citizen initiative require voter information pamphlets and all initiative states provide some sort of voter information. For a table of initiative states and the types of voter information provided by those states see Appendix D.

Pursuant to 1 MRSA § 353, the Secretary of State currently publishes a legal notice intended to inform the public about upcoming referenda on the ballot in each of the daily newspapers between 7 and 10 days prior to a statewide referendum election. This legal notice contains a neutral summary of the proposed measure to be on the ballot. The summary, prepared by the Office of the Attorney General and referred to as the intent and content statement, is also displayed at each polling place on election day in a poster-style format. It is also included in the voter guide that is published by the Secretary of State. Copies of the voter guide are distributed to municipalities and it is available on the Secretary of State's web page.

Members conceded that there is considerable debate about whether or not voters are truly informed about initiatives before they cast their votes. All agreed that increasing the amount of information to the voter will enhance voters' understanding of a particular ballot measure. However, common ground among Commission members was not as easy to find regarding how that information should be provided and how active a role voters should take to educate themselves about questions on the ballot. The Commission looked at other states that provide information packets to voters. While there was no dispute that mailing information packets to voters directly would provide some benefit, some argued the costs would outweigh that benefit. Predictably, the Commission recognized that the expense of delivering voter information packets directly to voter households would be the biggest hurdle to overcome if the state were to move in that direction.

A report published by the National Conference of State Legislators in July 2002, *Initiative and Referendum in the 21<sup>st</sup> Century – The Final Report and Recommendations of the I&R Task Force*, shows the costs some states incur for the distribution of voter pamphlets. The costs tend to vary from year to year depending on the number of initiatives that have made it to the ballot and the number of pages it takes to provide the summaries. The cost also varies from state to state based on what content is required to be included in the pamphlet. The following are examples from the report:

- Oregon mails a voter information packet to every residential household. In 2000, Oregon spent \$1.9 million on printing and \$870,000 on postage to mail 1.6 million pamphlets;
- Arizona mails voter information pamphlets to every registered voter household and county offices. In 2000, Arizona spent \$443,000 on printing and \$190,000 to mail 1.1 million pamphlets (1.3 million were printed); and
- Colorado mails a voter information pamphlet to every registered voter household and county offices. In 2000, Colorado spent \$283,000 on printing and \$192,000 on postage to mail 1.6 million pamphlets.

To view a copy of the NCSL report on the web use the following link:  
<http://www.ncsl.org/programs/legman/irtaskfc/irtaskforce.htm>

In light of the costs of mailing voter information pamphlets, Commission members brainstormed for ideas about how to cover the costs. The Commission considered charging a fee to proponents of an initiative who raised over a certain dollar amount to support an initiative campaign. However, this suggestion raised issues with regard to infringing on a person's constitutionally protected right to free speech as well as simply having a chilling effect on participation in the initiative process. In the end, this idea did not generate significant support from members of the Commission. Several members of the Commission suggested discontinuing the legal notice, considering it rather obscure and not very helpful, and using that savings to defray the cost incurred in creating a more readable and accessible publication. The Commission agreed to consider this idea further and requested a report from the Secretary of State examining options for a more accessible and readable publication.

Reporting Financing of Citizen Initiative Campaigns: The Commission determined that voter information about the financing of an initiative effort, the financing of opposing an initiative effort and the reporting of such financing is insufficient. It was clear to the Commission that once a proposed initiative is certified to become a ballot question, the campaigns for and against that measure are subject to the laws that require campaign finance reports. Not as clear to the Commission was whether or not campaign finance reports are required during the signature gathering phase of the process. At their first meeting, Commission members received remarks from Jonathan Wayne, the executive director of the Commission on Governmental Ethics and Election Practices. The Commission asked Mr. Wayne to comment on whether advocates of ballot questions must file campaign finance reports of contributions and expenditures for the gathering of petition signatures. He cited current law, 21-A MRSA, §1053, stating that when an organization meets the definition of a political action committee (PAC) by

receiving or spending more than \$1,500 in a calendar year to initiate, support, defeat or influence in any way a ballot measure, it must register as a PAC and file campaign finance reports. Mr. Wayne stated it is his opinion that “initiate” should be understood to include signature gathering but noted that the Commission on Governmental Ethics and Election Practices has not previously been presented an instance where it was necessary to provide guidance on the issue.

Mr. Wayne also pointed out a provision in current law, 21-A MRSA §1058, that states that any organization opposing a ballot question shall begin filing campaign finance reports within 10 days of the Secretary of State drafting the referendum question and prior to the distribution of petitions for voter signatures . Commission members questioned how this provision would be enforced unless a PAC was already registered in anticipation of a potential citizen initiative. They also found it in conflict with current law governing PACs. In addition, legal questions were raised regarding placing a stricter reporting requirement on an entity simply because of the type of speech they were expressing, meaning speech in opposition to a measure. Thus, the Commission determined that this provision should be clarified to be consistent with the law governing campaign finance reports by PACs. Furthermore, the Commission supported the idea that PAC campaign reports should be further itemized and be required to show signature gatherers as employees and report payments to those employers. A copy of Mr. Wayne’s testimony may be found in Appendix F.

Determining that information about campaigns for citizen initiatives should be accessible to the general public, the Commission agreed that the Secretary of State and the Commission on Governmental Ethics and Election Practices coordinate efforts in order to make information more readily available to the public about who is coordinating or supporting initiative campaigns.

Signature Verification at Municipal Level: At the beginning of the Commission’s first meeting, members received comments from the Town and City Clerk’s Association regarding municipal clerks’ responsibility to verify the signatures gathered in their municipality for citizen initiative petitions. The Commission was informed that there is usually very little time for them to fulfill their obligation to verify signatures considering the short time between when the petitions are submitted to them and when they are due at the Secretary of State’s office. The Constitution of Maine, Article IV, Part Third, Section 18, states that petitions must be submitted to local officials by 5:00pm on the 10<sup>th</sup> day before they are due to the Secretary of State (excluding weekends and holidays) in order that those signatures may be verified as those of registered voters of the municipality. The Commission was informed that it is often the case that petitions are turned in later than that, thus shortening an already brief time period to complete verification. In combination with the other duties of the municipal clerk, meeting this obligation is often difficult. Different reasons are presumed to be the cause of late filing, including the political strategy of holding the number of signatures gathered close to the vest until the last possible minute or simply because it requires that much time to gather enough signatures to be successful. Regardless of the reason, members of the Commission recognized the burden on municipal officials as well as their strong commitment to meet their obligation.

Ideas considered by the Commission to address the limited timeframe to verify signatures proved complex. Statutory changes were limited because the signature verification process is

required by Maine's Constitution. The Commission studied a number of statutory alternatives before considering a Resolution to amend Maine's Constitution. The Commission determined that a statutory change to nullify signatures if they were not turned in by a certain date infringed on the constitutional right for a citizen to initiate a petition. Maine's Constitution prescribes what is required for a citizen initiated petition to be placed on the ballot. Imposing a deadline statutorily would likely conflict with those constitutional requirements. The Commission was unable to identify any statutory changes that would be effective and be likely to withstand constitutional scrutiny.

Finding no workable statutory change to address the issue, the Commission inquired into whether or not the soon-to-be operational Central Voter Registration (CVR) database would ease the burden on municipal officials. The Commission determined that the CVR would help on certain occasions by eliminating the need to retrieve a voter registration card from a card file, since the information would be available electronically. However, this is only a small percentage of what is required of clerks when verifying petition signatures. Members discussed whether or not the CVR should allow for the centralization of signature verification and certification within the Secretary of State. While the Commission favored this idea, concern was raised about the constitutionality of such a system given the state Constitution specifically states that municipal officials be involved in the process.

In the end, the Commission determined that if there was enough support for a change, a Resolution to amend the Constitution should be considered and be subject to public input.

During the Commission's discussion of the verification of signatures, a tangential issue arose. That issue pertained to whether or not there is a policy regarding the withdrawal of a petition signature by a person who had changed his or her mind. Although there is no formal policy, a representative from the office of the Secretary of State indicated that the withdrawal of signatures has been permitted on occasion. Recognizing that political campaigning is becoming increasingly sophisticated, some Commission members were concerned that organized efforts to encourage people to withdraw their names from petitions may become a new strategy for defeating measures. Thus, the Commission advised the Secretary of State that they should be considering potential policies to address this issue.

Citizen Initiatives Requiring General Fund Expenditures: During the First Session of the 122<sup>nd</sup> Legislature, the Legal and Veterans' Affairs Committee considered LD 939 a Resolution, Proposing an Amendment to the Constitution of Maine to Preserve the Integrity of the Citizen Initiated Petition Process. This Resolution proposed to amend the state Constitution to require that citizen initiatives requiring state expenditures include either a new revenue source to fund the expenditure or identification of reductions in existing state programs sufficient to offset the new expenditure. Although Commission members recognized the financial burden put on the Legislature when an initiative is passed that requires non-surplus general fund expenditures, they were somewhat hesitant to place such a requirement on the initiative process. One suggestion the Commission discussed proposed requesting that funding be specified in an initiative and if not provided, that fact would be published in voter information pamphlets and on the ballot information poster displayed at the voting place. One member was concerned that this could be seen as a form of intimidation by the Legislature in an effort to quell initiative efforts. Other

members supported the idea that specifying the funding be optional. Ultimately, this proposal did not illicit much support from the Commission and no alternatives were offered in its place.

## **Alternative Voting Methods**

During its second meeting, the Commission considered alternative methods of voting including, instant run-off, fusion or cross endorsement, voting by mail and early voting. The Commission received presentations on instant run-off voting and fusion voting from supporters of bills considered during the First Session of the 122<sup>nd</sup> Legislature proposing a change to one of those systems. Of the alternative methods discussed, the Commission focused on early voting and fusion voting.

Early Voting: The Commission determined that with the increased accessibility of absentee ballots in the state, many voters are taking advantage of casting ballots absentee. It was demonstrated that people vote absentee for a variety of reasons, including but not limited to, difficulty getting to the voting place, wishing to avoid lines at the polls, or just simple convenience. Municipal clerks stated that they have seen a surge in voters opting to vote in person by requesting, filling out and submitting absentee ballots at the clerk's office during a single visit. Statements to the Commission from municipal clerks indicated that they believed that ballots turned in by someone who voted in person at the clerk's office should be actually cast right then as opposed to the current procedure that requires an application to be completed, special storage of the ballot in a specific envelope until election day, maintenance of list of those voting absentee and separate processing when they are counted. A bill considered and passed by the Legal and Veterans' Affairs Committee, LD 1173 Resolve, Directing the Secretary of State to Design a Pilot Program for Early Voting was enacted as Resolve 2005, chapter 70. This Resolve requires the Secretary of State to design a process for early voting to be conducted by at least one municipality for the November 2008 election. The plan must be presented in advance to the Legal and Veterans' Affairs Committee by February 15<sup>th</sup> 2007. The Commission expressed its support of Resolve 2005, chapter 70. For a copy of Resolve 2005, chapter 70, see Appendix G.

Fusion Voting: Fusion voting is a voting system that utilizes cross-endorsement, which is the practice of multiple parties or political designations nominating the same candidate. As proposed during the First Session of the 122<sup>nd</sup> Legislature by LD 1033 An Act to Implement Fusion Voting in Maine, fusion voting would forego the current process of requiring enrollment in a political party in order to be a candidate for that party's nomination. The proposal would list a candidate's name on the ballot next to each political party that nominated that person as their candidate.

In a presentation to the Commission, supporters of fusion voting stated that it results in elections that better reflect what the voters want. Fusion advocates have noted, with regard to races with more than two candidates, that Maine's current process does not elect the candidate that receives a majority of the votes but rather a plurality. Supporters argued that the result is often a candidate placed in office that the majority does not support because majority's votes were split among two other candidates. They believe that fusion allows a party to establish its own platform and spread its message while at the same time nominating candidates that are competitive in political races.

Commission members considered a modified version of fusion voting that would allow only minor parties to cross endorse a major party candidate. This proposal would have required creating a definition of major and minor parties. However, most on the Commission opposed the proposal arguing that our current system is working well and such a change would prove confusing to voters. Additionally, some members of the commission, citing the increasing sophistication of political campaigns, stated that this could be used as a political strategy for fronting insincere candidates with the hope of influencing the platform of other candidates.

Instant Run-off Voting: The Commission examined instant run-off voting (IRV), a voting method that determines winners in an election by simulating the ballot counts that would occur if all voters participated in a series of run-off elections. This method allows a voter to rank candidates according to that voter's preferences. Each voter would have only one vote for each office. The candidate with the fewest number of votes would be eliminated after each round of counting. During the First Session of the 122<sup>nd</sup> Legislature, LD 265 An Act to Establish Instant Run-off Voting proposed this voting method for elections for President, Vice President, United States Senator, United States Representative to Congress, Governor, State Senator, and State Representative. The bill was not supported by the Legal and Veterans' Affairs committee.

Supporters of IRV argue that this alternative method would eliminate the spoiler effect in races with more than two candidates. Furthermore, supporters asserted that this method could lead to more positive campaigning since a candidate would not want to alienate the voters who may rank that candidate as their second choice by campaigning too negatively against their potential first choice candidate. Similar to arguments for fusion voting, IRV advocates stated that this method of determining the winner of elections would better reflect the true intent of the majority of voters.

The Commission raised concerns about how IRV would apply to federal candidates on the state ballot and whether or not it would raise equal protection issues as provided by the United States Constitution. Furthermore, the Secretary of State noted that the state Constitution provides that the Governor and state legislators be elected by a plurality, therefore enactment of IRV would necessitate an amendment to the state Constitution. Other issues raised in opposition to IRV were fiscal implications of implementation, voter confusion and vote counting errors for those towns without optical scan machines who count ballots by hand. Though some on the Commission were open to considering IRV as a proposal, many legal and logistical issues were raised that the Commission deemed were too numerous and complex to address in the brief time the Commission had to complete its work.

## Party Qualification – Minor Party Ballot Access

Pursuant to Public Law 2005, chapter 127 the Commission looked at ways to facilitate the formation of minor political parties. Current law, 21-A MRSA §§ 301-303, provides that a potential party qualifies to participate in a primary if it was listed on the ballot in either of the two preceding general elections and if:

- The party held a municipal caucus in at least one municipality in each county during the election year in which the designation was listed on the ballot;
- Held a state convention during the election year in which the designation was listed on the ballot; and
- Its candidate for Governor or for President polled at least 5% of the total vote cast in the State for Governor or President in either of the 2 preceding general elections.

A party can also qualify by submitting a petition with 5% of the total vote cast for governor at the last preceding gubernatorial election.

The Commission had little discussion about proposed changes to the law governing the qualification of a party to participate in a primary. However, upon review of LD 329 An Act Concerning Recognition of Qualified Political Parties which was passed by the Legal and Veterans' Affairs Committee during the First Session of the 122<sup>nd</sup> Legislature and then carried over to the Second Regular Session after being placed on the Appropriations Table, some Commission members wanted to use this bill as a vehicle to address issues with regard to party qualification. LD 329 as amended proposed to provide an alternative means to achieve qualification as a political party. Under this bill, the party could qualify if its candidate received at least 5% of the total gubernatorial vote in either of the past two elections, as is provided in current law OR if the party has maintained enrollment of at least 1% of registered voters using the Secretary of State's tabulation from either of the two preceding elections. Commission members determined that re-referring this bill back to the Legal and Veterans' Affairs Committee for further discussion and public input would be an effective way to address any issues surrounding party qualification that the Commission did not have time to consider during the course of its three meetings.

### III. RECOMMENDATIONS

After consideration of the information presented and discussion of proposals made during the course of their work, the Commission makes the following recommendations:

- **The Commission supports a pilot program to consider implementing early voting.** Recognizing the surge in popularity of voting by absentee ballot at the municipal clerk's office, the Commission decided that a program for early voting was worthy of a trial run. The Commission believes that making voting convenient and expedient is a worthy goal and could potentially increase voter participation. Early



voting would differ from the current absentee voting process in that the ballot would be actually cast at the time the voter filled out the ballot at the clerk's office. Commission members did express concern about the security of cast ballots until election day and the facilitation of poll watchers, but believe a trial of such a program would provide insight on possible ways to address those issues. Thus, 10 of 11 members of the Commission supports the design of an early voting pilot that will be presented to the Legal and Veterans' Affairs committee by February 15<sup>th</sup>, 2007 for potential implementation at the November 2008 election pursuant to current law, Resolve 2005, chapter 70.

- **A formal policy regarding withdrawal of signatures from citizen initiative petitions should be considered.** In light of the increasing sophistication of political campaigns and the popularity of the citizen initiative process, the Commission determined that it would be prudent to develop a policy regarding the withdrawal of signatures from citizen initiative petitions. Thus, the Commission unanimously directs the Secretary of State to analyze the issue of the withdrawal of signatures from initiative petitions and present a policy proposal to the Legal and Veterans' Affairs committee by March 15<sup>th</sup> of 2006.
- **The public should have greater access to information regarding the financing of citizen initiative campaigns.** As with campaigns for statewide office, the Commission has determined that the public should be able to easily access information regarding the financing of initiative campaigns. Information about the initiative itself is maintained by the Office of the Secretary of State while campaign finance information is filed with the Commission on Governmental Ethics and Election Practices. The Commission agrees that access to both types of information should be readily available to the public. Specifically, the public should have access to information about who is circulating an initiative petition, political action committees and their leadership receiving and spending money to support or defeat a citizen initiative, and reports submitted regarding the financing of such efforts. A majority of the Commission, 8 of 11 members, supports requiring these two agencies to provide links on their respective websites directing the public to information on an initiative as maintained by the other agency. These members also recommend that the Secretary of State examine the feasibility of and legal issues surrounding requesting that petition applicants indicate affiliations with political action committees upon applying to circulate a citizen initiated petition.
- **The Commission on Governmental Ethics and Election Practices should report to the Joint Standing Committee on Legal and Veterans' Affairs regarding issues considered by the commission regarding campaign finance reports for citizen initiative campaigns and public access to that information.** To resolve issues raised about campaign finance reports for citizen initiative campaigns and public access to information about citizen initiative campaigns, 9 of 11 Commission members recommend that The Commission on Governmental Ethics and Election Practices examine the following issues and report back the Legal and Veterans' Affairs Committee by March 15<sup>th</sup> 2006:

- The feasibility of the proposals that entities required to file reports with the Commission on Governmental Ethics and Election Practices specify the citizen initiative campaigns or ballot measure campaigns they are receiving or spending money to support or oppose. Thus, if a PAC is spending on more than one initiative or ballot question the contribution or expenditure level will be able to be determined;
  - The feasibility of the proposals that petitions for citizen initiatives, voter information pamphlets and posters about a ballot measure and publications by PACs in support of or in opposition to a citizen initiative or ballot measure campaign be required to include a link to the website where the public can view the PACs reports filed with the Commission on Governmental Ethics and Election Practices;
  - The feasibility of the proposal to lower the expenditure amount that defines a group as a PAC and triggers reporting requirements to an amount closer to those that trigger reporting by candidates and the impact this may have on the practice of bundling. The proposal suggests reducing the \$1500 spending threshold that defines a group making expenditures for an election, petition campaign or ballot measure as a PAC and triggers the requirement finance reports be filed with the Commission on Governmental Ethics and Election Practices to \$500; and
  - The feasibility of the proposal to require campaign finance reports filed by PACs that have raised or spent in excess of \$40,000 be submitted more frequently immediately prior to an election in order to inform the public about high-level spending on ballot measure campaigns in a more timely manner.
- **Voter information regarding citizen initiatives to be on the ballot should be more informative, accessible, and easy to read.** A majority of the Commission favored mailing voter information packets directly to the homes of voters informing them about measures to be on the ballot, but the high cost and less-than-favorable funding ideas makes such a recommendation impractical at this time. However, the Commission believes that improvements can be made with regard to the information that is currently disseminated by the Office of the Secretary of State. The Commission determined that technology can be better utilized in providing voters with information efficiently and inexpensively but the state must be cognizant of the digital divide that exists here. Thus, the commission unanimously recommends that the Secretary of State examine voter awareness in other states that mail voter information packets directly to voters and explore ways to make the voter information that is currently distributed in Maine more accessible, readable and informative within existing budgetary resources.
  - **The issue of qualification of political parties should be considered further by the Legislature.** The Commission was unable to consider the issue of party qualification and minor party ballot access to the extent that is necessary to make any substantive recommendation on this issue. The Commission believes this is an important policy issue that should be afforded thorough discussion by the Legislature. The Commission unanimously recommends that LD 329 An Act Concerning Recognition

of Qualified Political Parties which was carried over on the Appropriations Table by Senate Paper 640, should be referred back to the Joint Standing Committee on Legal and Veterans' Affairs.

- **Legislation should be enacted to require that campaign finance reports by PACs organizing citizen initiative campaigns specify expenditures made as payment to petition circulators. This legislation should also clarify that contributions received and expenditures made by a PAC during the signature gathering phase of a citizen initiative campaign must be reported when current statutory thresholds are met.** The Commission unanimously supported clarifying the law so that there is no ambiguity that if a group spends \$1500 (current trigger to report with the Commission on Governmental Ethics and Election Practices as a PAC) to support or discourage the gathering of signatures for a citizen initiative it meets the definition of a PAC and is required to submit reports. The Commission unanimously agreed that payment made by PACs to people for circulating initiative petitions should be itemized on required campaign finance reports. Those Commission members agreed that this information should be available to the public and is consistent with reporting requirements of campaigns for state office.
- **In order to better facilitate the constitutionally provided right to the initiation of law by citizen petition, the Legislature should consider an amendment to the Constitution of the State of Maine that would ensure municipal officials are afforded adequate time to verify petition signatures before they are due to the Secretary of State.** The Commission determined that for various reasons, petitions for citizen initiatives are often turned into a municipal clerk's office for signature verification too close to when they need to be submitted to the Secretary of State for certification. As a result, municipal officials find it difficult to meet their obligation to verify signatures. The commission looked at various statutory proposals to address the issue but found that they may conflict with the Constitution of the State of Maine. Thus, the Commission determined that if the Legislature deemed the issue important enough to amend the Constitution it should have that option. The Commission stated that this recommendation in no way intended to infringe upon the rights of petitioners but is intended to create a time period where municipal officials could appropriately meet its Constitutional obligation to verify signatures. The Commission's recommendation would state that signatures are due to municipal officials 10 days before required to be at the Secretary of State's office. Signatures not submitted to municipal officials by this date would be invalid. This recommendation is to be put forward as a separate bill was supported unanimously by the commission.

**APPENDIX A**

**Authorizing legislation: Resolve 2005, chapter 127**

**APPENDIX B**

**Membership list, Study Commission to Study Alternative Voting Procedures, the Citizen Initiative Process and Minor Party Ballot Access**

## **APPENDIX C**

### **Agendas**

**APPENDIX D**

**Citizen Initiative and People's Veto**

**APPENDIX E**

**Public Law 2005, chapter 316 and Public Law 2005, chapter 356**



**APPENDIX F**

**Testimony of Jonathan Wayne, Executive Director  
Commission on Governmental Ethics and Elections Practices**

**APPENDIX G**

**Resolve 2005, chapter 70**