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November 7, 2016

**VIA REGULAR AND ELECTRONIC MAIL**

Chris Herren  
Chief, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
Room 7254 - NWB  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Re: Voter Threats and Intimidation in Maine

Dear Mr. Herren:

We write to express our serious concern about recent activity by the Governor of Maine, Paul R. LePage, targeted at Maine students who have voted or who intend to vote in the 2016 general election. We believe that this activity, and the accompanying threats (if carried out), violate the Voting Rights Act, and we ask the Department of Justice to investigate and monitor this situation and to oppose any attempt to interfere with Maine voters' fundamental right to vote.

Factual Background

On November 7, 2016—the day before the 2016 general election—Governor LePage issued a statement urging college students who vote to establish Maine residency.<sup>1</sup> The statement accuses students of committing voter fraud by voting in both Maine and other states, though it includes no evidence to support that accusation. And, the letter sets out a number of requirements for residents who own or operate motor vehicles. None of these requirements have anything to do with voting, and this explanation is targeted only at students. Finally, the statement threatens students who vote with investigation and prosecution related to motor-vehicle operation and ownership: “After the election, we will do everything we can that is allowed under state and federal law to verify college students who voted here are following Maine law, which is clearly displayed on the Secretary of State’s website.”

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<sup>1</sup> This makes no sense. Under Maine law, all voters must establish Maine residency, by forming the intent to be a resident, before registering and voting.

No other group is threatened with investigation or prosecution—only “college students who voted here.” A copy of Governor LePage’s statement is attached to this complaint.

### Threatening and Intimidating Student Voters

We believe that the only reasonable interpretation of Governor LePage’s statement is threatening and intimidating students to prevent them from voting in the 2016 general election. The message sent by Governor LePage’s statement is that students are at risk if they vote, and that the Governor is going to use his official authority to investigate and prosecute students who vote. Governor LePage’s statement also sends the message that students can avoid unwanted attention or investigation from the governor by simply not voting. The message was sent on the day before election day, and not in late August when students traditionally arrive on Maine campuses. Finally, the Governor’s statement sends the message that only student voters need to fear investigation and prosecution for voting. Other voters, whatever their level of car registration law compliance, are not being threatened or intimidated for exercising their fundamental right to vote.

Federal law prohibits any person, whether acting under color of law (as Governor LePage is) or not, from engaging in conduct that is intended to, or has the effect of, intimidating voters. The Voting Rights Act of 1965, 52 U.S.C. §10307,<sup>2</sup> states:

#### (b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 10302(a), 10305, 10306, or 10308(e) of this title or section 1973d or 1973g of Title 42.

Intentional voter intimidation is similarly outlawed under the National Voter Registration Act of 1993.

The Governor’s concern that students in Maine are illegally voting in Maine and in other states is completely unsubstantiated. There is no evidence to support the accusation that students are any less law-abiding than other Maine residents. As you are aware, the United States Supreme Court has specifically affirmed that students cannot be treated differently than any other residents for voting purposes. *See Symm v. United States*, 439 U.S. 1105 (1979). There is no justification for

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<sup>2</sup> formerly codified at 42 U.S.C. §1973i



treating persons who registered and voted in a legally sanctioned manner as potential lawbreakers without some independent evidence that a particular individual registered and voted illegally.

Threatening prosecution, even indirectly, under Maine motor vehicle laws based on status as a registered voter is precisely the type of intimidation and harassment of persons exercising their lawful right to register and vote in federal election covered by the Voting Rights Act. As a result of Governor LePage's actions, voters in Maine—particularly students—will now be fearful that exercising the right to vote will expose them to law enforcement investigation, and this will surely chill their future willingness to participate in elections. Under a predecessor statute to the Voting Rights Act, the U.S. Court of Appeals for the Fifth Circuit held that local officials in Alabama had engaged in unlawful intimidation under the 1957 Civil Rights Act when they followed persons on their way home from a voter registration meeting and arrested them for actual traffic violations. *United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967). The pretext of carrying out an investigation of possible traffic violations did not immunize from scrutiny the conduct of local officials that tended to intimidate persons exercising their voting rights.

Given the fact that Governor LePage has targeted individuals only because they registered to vote, that he specifically limited his attention to newly-registered students, and that his statement was sent out the day before the 2016 general election, this action was clearly directly based on these voters' exercise of their right to vote.<sup>3</sup>

And, even if it was not Governor LePage's intent to threaten and intimidate persons exercising their right to vote, the legislative history of Section 11(b) makes clear that a lack of intent is not a defense in a lawsuit alleging a violation of this section of the Voting Rights Act. While the 1957 Civil Rights Act made it unlawful for any person "to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose," 42 U.S.C. § 1971(b), the reference to purpose was eliminated when the anti-intimidation provision was added to the Voting Rights Act of 1965 in Section 11(b). However, the House Report accompanying the Voting Rights Act of 1965 states, "Unlike 42 U.S. C. 1971(b) (which

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<sup>3</sup> The *McLeod* decision is quite instructive here. The court there noted, "It is common knowledge that the police often overlook violations of relatively trivial traffic laws. Rarely if ever do police mount massive law enforcement drives to eradicate the sinful practice of driving with burned out license-plate lights. When they do so on the evening of a voter registration meeting and, fortuitously of course, catch twenty-nine Negroes on their way home from that meeting and no one else, the inference of justifiable enforcement ... loses much of its force." A similar argument can quite easily be made in this case.

requires proof of a 'purpose' to interfere with the right to vote) no subjective purpose or intent need be shown." H. Rep. No. 439, 89th Congress, 1st Sess. 30 (1965).

Moreover, "the prohibited acts of intimidation need not be racially motivated" to be actionable under this provision of the Voting Rights Act. Because Governor LePage's actions are reasonably likely to intimidate persons in the exercise of their voting rights, they constitute a likely violation of the Voting Rights Act.

In addition to constituting a likely violation of the Voting Rights Act, Governor LePage's unwarranted investigation of lawful voting activities and threat to pursue legally registered voters under other state laws potentially violates the criminal prohibitions of Section 12 of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20511,<sup>4</sup> which provides for criminal penalties against:

A person, including an election official, who in any election for Federal office –

(1) knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for –

(A) registering to vote, or voting, or attempting to register or vote;

(B) urging or aiding any person to register to vote, to vote, or to attempt to register or vote[.]

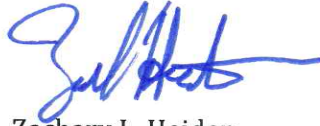
Finally, we would also note that 18 U.S.C. §§ 241 and 242 provide criminal sanctions against persons who intimidate persons in the exercise of their constitutional right to vote or deprive persons of such rights. Moreover, we believe that an investigation of persons based on nothing more than their exercise of their right to register and vote also violates their constitutional rights under the First and Fourteenth Amendments to the U.S. Constitution.

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<sup>4</sup> Formerly 42 U.S.C. § 1973gg-10.

For the above reasons, we ask that the Department of Justice commence an investigation of these potential civil and criminal violations, and act to stop any conduct aimed at harassing or intimidating Maine voters.

Very truly yours,



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Enclosure

cc:

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# Governor Issues Statement Urging College Students Who Vote to Establish Maine Residency

*November 7, 2016*

For Immediate Release: Monday, November 07, 2016

Contact: Adrienne Bennett, Press Secretary, 207-287-2531

AUGUSTA – Governor Paul R. LePage today issued a statement urging college students to establish residency in Maine if they choose to vote in state.

“Democrats for decades have encouraged college students from out of state to vote in Maine, even though there is no way to determine whether these college students also voted in their home states,” Governor LePage said. “Casting ballots in two different states is voter fraud, which is why Maine law requires anyone voting here to establish residency here. We welcome college students establishing residency in our great state, as long as they follow all laws that regulate voting, motor vehicles and taxes. We cannot tolerate voter fraud in our state.”

## **The law on the Secretary of State’s website is clear:**

### **Eligibility to Register and Vote in Maine**

- To be eligible to register to vote in Maine, you must have established and maintain a voting residence in the municipality (i.e. city, town, plantation or unorganized township) where you seek to register.

### **Consequences of Declaring Your Voting Residence (by Registering to Vote) in Maine**

- You should be aware that if you register to vote in Maine, you will be deemed to have declared residency in Maine, which may have consequences for compliance with other Maine laws, including the motor vehicle laws and tax laws.
- If you drive a car in Maine, you are required to obtain a Maine driver’s license within thirty days of establishing residency here. Driving without a Maine license more than ninety days after you have established residency in the state is a crime under Maine law.
- If you are a resident of Maine and own a vehicle here, state law also requires you to register that vehicle in Maine within thirty days of establishing residency. By declaring Maine as your voting residence, you may be treated as a resident of Maine for income tax purposes and be subject to Maine income tax.
- . . . as a student, you must meet the same residency requirements as all other potential voters.

See the complete requirements of the law on the Secretary of State’s website: <http://www.maine.gov/sos/cec/elec/voter-info/resident.html>

“After the election, we will do everything we can that is allowed under state and federal law to verify college students who voted here are following Maine law, which is clearly displayed on the Secretary of State’s website,” said Governor LePage.

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