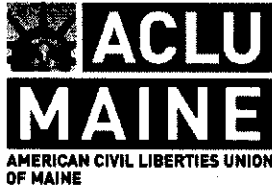


Dēmos



October 17, 2011

Charles E. Summers, Jr.
Secretary of State
148 State House Station
Augusta, ME 04330
Fax: (207) 287-8598
sent via facsimile and U.S. Mail

Dear Secretary Summers:

The undersigned voting rights organizations are writing to express our deep concern about your recent actions targeting legally registered student voters in Maine for investigatory action and sending them threatening correspondence likely to deter them from exercising their voting rights. Such actions provide strong evidence that you are violating federal statutory protections against intimidation and coercion of individuals in the exercise of their right to vote, as well as constitutional protections of the right to vote.

As reported in a news article published on September 21, 2011 by the *Bangor Daily News*, "Secretary of State Finds No Student Voter Fraud but Still Pledges to Improve System," and other news accounts, you launched an investigation into the voter registration of 206 University of Maine students based on no evidence other than the unsubstantiated and baseless accusation of a partisan individual. Indeed, in your own September 21, 2011 press release (attached), you note, "Initially, the Chairman of the Republican Party, Charles Webster presented me with a list of 206 students, all of who have out-of-state addresses on file with the University of Maine system – some of which he believed voted twice in the same election and committed 'voter fraud.'" If the information and quotations attributed to you and your representatives are correct, you launched this investigation without any evidence or credible allegation that any individual voted illegally.

Your investigation instead appears to have been based merely on the unsubstantiated concerns expressed by a source whose motives should have been, at very least, suspect based on his prominent partisan position. Exacerbating the situation is that, even after your own investigation failed to produce evidence of illegal voting or registration by any of these students, you sent a letter dated September 20, 2011 to 191 of them warning them that they may be violating Maine election and motor vehicle laws. You did not enclose instructions or forms for

registering vehicles and obtaining drivers' licenses, but you did enclose a "Voter Request to Cancel Registration," which is a form apparently crafted for this particular group of students.

We believe that your actions violate the federally protected rights of these students under the Voting Rights Act of 1965 and other federal laws, as well as the United States Constitution and governing Supreme Court precedent in *Symm v. United States*, 439 U.S. 1105 (1979).

Initially, we would draw your attention to Section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b), which provides:

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 3(a), 6, 8, 9, 10, or 12(e).

Given that you decided to launch an investigation aimed specifically at students who had changed their residency to the state of Maine and registered to vote as permitted by both Maine law and federal precedent, and after determining that no laws had been broken, you issued a letter to those legally registered students suggesting that they might be prosecuted for motor vehicle violations, it is difficult to view such an investigation as anything other than unlawful intimidation under Section 11(b) of the Voting Rights Act.

As you know, the above-referenced *Symm* case specifically affirmed the finding that students could not be treated differently than other residents for voting purposes. There is no justification for treating persons who registered and voted in a legally sanctioned manner as potential lawbreakers, without some independent evidence that a particular individual registered or voted illegally. The rationale set forth in your September 21, 2011 press release that Mr. Webster, an individual claiming no first-hand knowledge of any illegal activity, "believed" that these students voted twice in the same election should have triggered an investigation by your office into the source of Mr. Webster's "beliefs" before it spawned a targeted investigation of baseless claims.

What is more disconcerting, and even less defensible, are the subsequent actions you took, and are currently taking, against these students. As your September 21, 2011 statement notes, your investigation, found no violation of Maine law by any of the 206 students on the list provided to you. No student was found to have registered or voted illegally in the state of Maine and none "voted twice in the same election" or "committed 'voter fraud'" as Mr. Webster had alleged. Despite this, your office decided to single out these individuals and threaten them with repercussions under your motor vehicle laws and encouraged them to cancel their voter registration to cure such violation.

We have obtained a copy, via the internet, of the letter that was ostensibly sent from your office, and signed by you, to these students. The same is attached hereto. It is troubling for a number of reasons.

First, while your letter notes that you were asked to investigate certain students with out-of-state home addresses, and that said investigation is “now closed,” you never confirm to the recipients that your investigation revealed no wrong-doing by them. In fact, documents provided in response to an FOAA request suggest that you ignored a comment from the Attorney General’s office noting that it “seems odd not to tell the student that we found no evidence that they violated the election laws.” On the contrary, a plain reading of the letter implies that the investigation may have revealed certain improprieties with regard to voter registration by the recipient. That, of course, is entirely untrue.

Second, you go on to imply that all new residents of Maine have an affirmative duty to obtain a driver’s license. Of course, this is simply incorrect, given that non-drivers, as many university students are, have no such duty. Even setting this aside, rather than providing potential Motor Vehicle violators with a license application to cure this alleged defect, you suggest they cancel their voting registration and enclose the requisite form. You state, “If you are currently using an out-of-state driver’s license or motor vehicle registration, I ask that you take appropriate action to comply with our motor vehicle laws within the next 30 days (i.e., by October 20, 2011). If, instead, you are no longer claiming to be a Maine resident, I ask that you complete the enclosed form to cancel your voter registration in Maine so that our central voter registration system can be updated.” By enclosing a form to cancel the voter’s registration you strongly suggest that this is the option the recipient should follow to prevent further scrutiny and harassment by Maine’s Secretary of State.

In any event, this is a false choice. Your own investigation found no illegal registration by any of these students. Threatening prosecution, even indirectly, under the motor vehicle laws based on their status as registered voters is precisely the type of intimidation and harassment of persons exercising their lawful right to register and vote in a federal election covered by Section 11(b) of the Voting Rights Act. Voters in Maine – and in particular 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. Indeed, under a predecessor statute to Section 11(b), 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. *U.S. 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 you appear to have targeted these individuals only because they registered to vote, and that you specifically limited your investigation to these newly registered students, your investigation was clearly directly based on these voters’ exercise of their right to vote.¹

¹ 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.

Moreover, even if it was not your intent to 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 Section 11(b). 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 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 Section 11(b). *Id.* Because your investigation and subsequent correspondence are reasonably likely to intimidate persons in the exercise of their voting rights, they constitute a likely violation of Section 11(b).

In addition to constituting a likely violation of Section 11(b) of the Voting Rights Act, your 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"), 42 U.S.C. § 1973gg-10, 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.

For all these reasons, we urge you to immediately: 1) issue a public statement clarifying and specifically stating that none of the students listed in Mr. Webster's letter were found to violate any election law; 2) write directly to the recipients of your September 20, 2011 correspondence retracting your previous correspondence and noting that they have specifically been exonerated of any wrong-doing with respect to voting and are under no obligation to rescind their registration as Maine voters; and 3) cease and desist from further targeted efforts to harass, intimidate or coerce these or other legally registered Maine voters.

Because of our concern about the potential violations of law mentioned in this letter, we are providing a copy of this letter to the Voting Section and the Criminal Section of the Civil

Rights Division of the U.S. Department of Justice, and the Maine Attorney General, and are requesting that the U.S. Department of Justice commence an investigation of these potential civil and criminal violations.

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Letter sent from Secretary of State Charles Summers to about 200 Maine university students

By Source: Sun Journal, Lewiston

Posted Oct. 04, 2011, at 8:05 a.m.

Last modified Oct. 04, 2011, at 8:21 a.m.

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On July 25, 2011, I was presented with a list of 206 University of Maine students with out-of-state home addresses and asked to investigate allegations of election law violations.

I am writing to inform you that this investigation is now closed and to convey some important information pertaining to your voter registration and residency status, based on the results of the investigation.

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State to students: Register your car in Maine or don't vote here

Our research shows you have registered to vote as a resident of Maine. Maine's election law (Title 21A of the Maine Revised Statutes, section 111, subsection 1) defines "residence of a person" as "that place where the person has established a fixed and principal home to which the person, whenever temporarily absent, intends to return."

As Secretary of State, I also oversee the Bureau of Motor Vehicles and am responsible for enforcing the laws of Maine's Motor Vehicle Statute -- Title 29A. As you may or may not be aware, Maine law requires residents of Maine, who are licensed to operate a motor vehicle, to obtain a Maine driver's license within 30 days of becoming a resident. (Title 29A of the Maine Revised Statutes, section 225, subsection 1A). If you are the owner of a vehicle, you are also required to register that vehicle in Maine within 30 days of becoming a resident. (Title 29A, section 351, subsection 1A).

If you are currently using an out-of-state driver's license or motor vehicle registration, I ask that you take appropriate action to comply with our motor vehicle laws within the next 30 days (i.e., by October 20, 2011). If, instead, you are no longer claiming to be a Maine resident, I ask that you complete the enclosed form to cancel your voter registration in Maine so that our central voter registration system can be updated.

If you have any questions or concerns about this matter, please do not hesitate to contact the Division of Elections at (207) 624-7650 or the Bureau of Motor Vehicles at (207) 624-9000.

Source: sunjournal.com

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STATE OF MAINE

OFFICE
OF THE
SECRETARY OF STATE

CHARLES E. SUMMERS, JR.
SECRETARY OF STATE

Secretary of State Charlie Summers' Remarks

September 21, 2011

Good afternoon and thank you all for coming.

At my last press conference held on July 28th, I promised to provide you with the findings from the investigation into potential voter fraud as soon as possible. Based on information uncovered during the course of this investigation, I am here today to report my findings.

There are approximately 972,000 voters listed in Maine's Central Voter Registration System. During the course of this investigation, I looked at less than 1% and found the following:

- Of all cases of potential voter fraud - including the 2010 investigation that resulted in 2 prosecutions - 84% were due to clerical error - 79% of these errors occurred on election day;
- Our investigative efforts were seriously hampered by the Maine law which requires municipalities to only keep their voter history records for 2 years - while seeking information that would have been imperative to this investigation - only Portland still had voter history prior to 2007
- Based on the information provided to me by a Bureau of Motor Vehicles employee that non-citizens may have registered to vote - 6 non-citizens were confirmed to be on Maine's voter lists - 1 non-citizen was proven to have cast a vote in Portland in 2002 - all of these non-citizens have either been deported or left the United States prior to this investigation;
- 77 students were found to be simultaneously registered in Maine as well as another state;
- 5 students have voted in both states in the same year - but not in the same election;

Initially, the chairman of Maine's Republican Party, Charles Webster presented me with a list of 206 students, all who have out-of-state addresses on file with the University of Maine system - some of which he believed voted twice in the same election and committed "voter fraud". Based on the information provided on this list I found that 2 of the names were found to be duplicates and therefore, removed from the original list. An additional 77 names that Chairman Webster identified as only being registered in Maine were also removed from the list.

This left 127 names to be fully investigated.

- Based on the limited information that Chairman Webster has access to, he believed some of these students voted twice in the same election – or committed voter fraud. Upon further research by my office, our information indicated that 5 students voted in both Maine and another state in the same year. However, they did not vote in both places for the same election.
- 44 of the remaining students were found to be registered in Maine but not their home state;
- 77 students were found to be actively registered to vote in both Maine and their home state. Being dually registered is a violation of law if the voter intentionally fails to disclose their previous address. It is impossible to determine if any of these students “intentionally” failed to disclose this information. I can say, however, that 11 of these 77 students left their previous registration address blank – and by law – these cards should have been rejected by the registrar as incomplete.

Finally, there was 1 remaining case that we were unable to fully research since the student’s home state did not respond to repeated inquiries by my office.

As Secretary of State I also oversee the Bureau of Motor Vehicles and am therefore responsible for the administration and enforcement of Maine’s motor vehicle laws – Title 29-A of the Maine Revised Statutes. Once someone registers to vote, they have made a declarative statement that Maine is their residence. Motor vehicle law requires those residents, who are licensed to operate a motor vehicle, to obtain a Maine driver’s license within 30 days of becoming a resident. Additionally, if a resident owns a vehicle, they are required to register that vehicle in Maine and pay excise tax to the town in which they reside. Title 29-A, Section 351, Subsection 1-A states, “an owner of a vehicle who becomes a resident of this state shall register that vehicle in this state within 30 days of establishing residency.”

191 of the 204 students who claim Maine as their residence have yet to obtain a Maine driver’s license - even though it has been far more than 30 days since they registered to vote. I have notified each of the students in this category of their responsibility, as residents, to adhere to these laws and asked them to take all appropriate actions to comply with Maine statute.

Also, I previously informed you that I had received information from a Bureau of Motor Vehicle employee who was concerned that non-citizens may have registered to vote.

This second investigation that I outlined on July 28th, was based on this employee’s experiences of accepting voter registration cards from customers she believed to be non-citizens. As the chief elections official it is my duty to investigate these claims.

Based on the information brought forth by this employee, I consulted with the Attorney General and began researching any validity to these claims. Members of my staff and I met with agents from the Department of Homeland Security, Immigration and Customs Enforcement - otherwise known as ICE - to ask for their assistance in confirming citizenship of any potential non-citizens who may appear on Maine’s voter lists. Because this is a violation of Maine election law, ICE agents were able to assist and we agreed to share any information uncovered during this process.

To begin this process, my office looked at the history of identity requirements as they relate to obtaining a Maine driver's license or ID. Beginning in 1997, anyone who wished to obtain a Maine credential was required to provide a social security number to the Bureau of Motor Vehicles. When someone was not eligible to obtain a social security number, they were asked to provide documentation from the Social Security Administration stating that fact. When this documentation was presented in lieu of a number, BMV employees entered a social security number of all 9's in the required field and issued a driver's license or ID card as it relates to this investigation. The names and dates of birth of the individuals who were issued credentials using a social security number of all 9s was cross-referenced with Maine's Central Voter Registration System. Twenty-six exact matches were found. Upon initial review of citizenship status, 4 of those individuals were referred to ICE for follow-up. Subsequently, all 4 were people were confirmed to be non-citizens.

Two of the 4 registered voters submitted their applications through the Bureau of Motor Vehicles. One was a resident of Portland and one was a resident of South Portland. Both individuals checked that they were not citizens of the United States on their voter registration cards. Both of these registrations should have been rejected by the registrar based on their ineligibility to participate in Maine's elections.

The third non-citizen registered to vote and was subsequently cancelled on the same day. The history and motivation of this person attempting to register to vote is not clear. The town clerk could not remember the circumstances surrounding the registration and the card was no longer on file. ICE investigative records show he was a suspect involved in the transportation of illegal aliens to Maine to obtain drivers licenses. His current location is unknown.

As to the 4th non-citizen who appears in Maine's Central Voter Registration System - there is no clear record as to how his name was added to CVR. There is a scanned copy of a BMV change of address card, but no voter registration card has been located. It cannot be determined if his voter registration card was lost or if the change of address card was mistakenly used by the registrar to create a voter ID in the Central Voter Registration System.

Next, my office looked at previous investigations conducted by the Secretary of State's Office of Investigations that involved driver license or ID theft, fraud, or misuse. These names and dates of birth were also cross-referenced with CVR. Five names were sent to ICE for citizenship confirmation.

One was found to be a US citizen; 3 were unable to be fully determined one way or the other; and 1 was found to be a non-citizen.

The Portland City Registrar was able to confirm that this citizen of El Salvador registered and voted on Election Day 2002. According to ICE records, this non-citizen was reportedly "removed/deported/excluded" from this country in 2006.

Then, based on an Associated Press article dated July 14, 2011, a 6th non-citizen was located in CVR and that name was sent to ICE for follow-up. It was confirmed that he had been a legal permanent resident in this country - a citizen of Peru - who departed the United States in 2007.

They have no record of his subsequent return. The clerk from the town in which he previously resided confirmed he registered to vote in 2002 but had no record of him voting.

In all, a sampling of 428 names - of the roughly 972, 000 registered voters in CVR - were processed through this administrative investigation conducted by my office - that equals a sampling of approximately 4/100 of a percent. And, based on that sampling, just over 1% of those registered voters were confirmed to be non-citizens. One of the 6 identified was confirmed to have not only registered, but also voted here in Maine.

Also during the course of this investigation we felt it necessary to refer a name to the Attorney General for further investigation and possible prosecution.

This research led me to seek a better understanding of where the weaknesses in our system are. In a report submitted to the Legislature in March of this year summarizing the 2010 investigation of suspected voter fraud, it explained that prior to the implementation of Central Voter Registration, there was no systematic way to look for instances of any of the three types of voter fraud. Dual voting was investigated when and if any allegations were made by either elections officials or members of the community.

Since the implementation of CVR, we now have a computer database in which to locate possible dual voting. We rely on the accuracy of the information in CVR to accomplish this. The Voter Fraud Report for 2010 explains that one person from each municipality has been trained and given access to CVR in order to conduct their voter registration duties. Until after the 2008 general election, municipalities did not consistently enter their voter participation history - or the records of residents who voted in an election - into CVR. This lack of information makes it impossible to fully investigate previous voter fraud claims. We've heard a lot of numbers from this report and the claim that it shows there have been only 2 cases of voter fraud in Maine's history. What this report actually states is that there were 240 groupings of potential dual voting that affected approximately 500 voters. Of the 240 instances, 236 or 98% were determined to be human error - most notably errors where the wrong voter was checked off on the incoming voter list on Election Day. Two cases were prosecuted and convicted of dual voting, one case is still pending. And - one instance of dual voting was not pursued for prosecution because the person who cast 2 separate ballots did not have the culpable state of mind.

Further examination of the history of Maine's voting procedures provided me with some eye-opening information. Between the years of 1995 and 2010, 3 substantial federal election laws and 1 state law were implemented.

First, the National Voter Registration Act, which among other things, required the development of a program of systematic voter list maintenance.

Second was the Help America Vote Act which added a number of new, intense, voter system requirements in order to meet federal standards, including the creation of the Central Voter Registration System.

Third, the Military and Overseas Voter Empowerment Act which requires each state to have at least 1 method of electronic communication used to provide absentee ballot applications, voter registration applications, and blank ballots - if requested - to uniformed and overseas voters.

In addition to these federal mandates, the State of Maine passed the "any reason or no reason" absentee voting law which became effective prior to the November 2000 election. The number of absentee ballots processed - on average - was 11% of the total ballots cast in 2000. This change in law increased that average to 32% of all voters casting absentee ballots in 2008.

Each one of these mandates were passed with the singular purpose of increasing every American's access to the polls - no matter where they are in the world on Election Day. All of these changes have had a positive affect on civic participation. These changes have also had a significant affect on the duties of election officials up to and including Election Day. For example, my department has only 8 staff members who run all state and federal elections in Maine. The number of employees has not increased over time in correlation to the additional mandates. Their increased workload has - in turn - been passed on to and felt by each and every municipal clerk. We have asked more and more of our dedicated clerks and election officials without providing them with the time and tools necessary to ensure the integrity of the system and the accuracy of their work.

During the course of this investigation, numerous people have approached me with concerns surrounding Maine elections. For example, the chairman of the Maine Republican Party asserted that 19 voters claiming their residence as the Holiday Inn Express in South Portland voted in 2004. These individuals, it was reported, were from the British Cayman Islands. Whether or not a violation of Maine's residency law has occurred, has not yet been pursued.

It was also brought to my attention that lawyers present at the polling places on Election Day have badgered clerks into accepting voter registration cards they are unsure of and intimidating them to the point they simply process the registration as is - without first calling the state's election office for guidance.

All of the findings from this small sampling have clearly shown that the integrity of our current system is vulnerable and has confirmed my belief that our dedicated municipal election officials need some breathing room to ensure the accuracy of their work and protect the integrity and security of our election's system.

Finally, Maine's election system is long overdue for a comprehensive examination of our methodologies and ways in which we conduct our elections. Therefore in the weeks and months ahead I will continue to examine these processes and procedures in an effort to craft legislation that I can then submit to the 2nd session of the 125th legislature.

I want to thank you all for coming, and I would be more than happy to answer any of your questions.

Investigation Results:

- Researched less than 1% of Maine's registered voters

Facts:

- Hundreds of clerical errors
 - 84% of those cases investigated revealed clerical error
 - 79% of those errors were made on election day
- 6 non-U.S. citizens on Maine's voter lists
 - 1 non-U.S. citizen proven to have voted
- 77 students on more than 1 state's voting list;
5 voting in both locations in the same year although not in the same election

Key Findings:

- There has never been a comprehensive, quality-control audit of Maine's election's system – we are running Maine elections in 2011 based on an 1820 model
- Voter activity is impossible to verify due to the current Maine Law that clerks only maintain voter history records for 2 years
- Serious weaknesses are leaving our current election's system fragile and vulnerable