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MAINE POLITICS IN 2022:

A FEELING OF DEJA VU

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There is an old joke that “Mainers want progress without change”. It is a state where tradition and history are important, and being the trendiest state in the nation isn’t. Along these lines, Maine politics is yet again giving one a sense of deja vu, particularly where elections are concerned. The two most watched election races in Maine this fall are a great example: they featured the current governor running against her two-term predecessor, and a rematch of the 2018 election in one of the most competitive congressional districts in the nation, Maine’s 2d Congressional District.

Janet Mills and the return of Paul LePage in a fight for the Blaine House

The headliner race for the state as a whole was the race for Governor, in which incumbent Democrat Janet Mills faced her longtime political foe, Republican Paul LePage. LePage was elected to two consecutive terms as governor in 2010 and again in 2014. Maine’s term limits law bars governors from seeking a third consecutive term. But unlike Presidential elections, there is no lifetime limit on terms, and LePage was expected by most observers to seek a return to the Blaine House. LePage and Mills have strong personalities and very different views on issues, and have had extensive conflict dating back to the 2010s when LePage was Governor and Mills was Attorney General (e.g. Thistle 2017).

Neither LePage nor Mills faced a primary in their party—an echo of 2014, the last time there was an incumbent running, and neither major party had a primary for governor. In 2018, when there was an open seat, both parties had crowded primaries, with 4 Republicans and 7 Democrats in the race. Mills was the more likely of the two to face a primary, as some in her

party saw her as too conservative on certain issues, such as criminal justice. Environmental activist John Glowa began a primary campaign against Mills (DiMinno 2022), but failed to get enough signatures to qualify for the ballot.

Many recent Maine gubernatorial elections featured winners with pluralities but not majorities. Both of LePage's wins, in 2010 and 2014, are examples. This is largely explained by the fact that every Maine gubernatorial election since 1994 has featured either a major independent candidate or a major third party candidate. The last four races had seen a major centrist independent: Barbara Merrill in 2006, Eliot Cutler in 2010 and 2014, and Independent State Treasurer Terry Hayes in 2018. Cutler's 2010 campaign was particularly consequential, as he finished in second place, losing by only two percentage points to Paul LePage. Green Independent Party candidate Pat LaMarche also got over 9% of the vote in 2006, which helps explain how Democrat John Baldacci won with only 38% of the vote.

2022, however, was the first gubernatorial election in Maine in many years without a major independent or third party candidate. The only one running was little-known independent Sam Hunkler, a physician critical of the two party system who pledged to limit himself to spending \$5000 on his campaign. Hunkler did get a chance to become better known, participating in a debate with both Mills and LePage, as well as one with just LePage (Billings 2022; Krosnowski 2022; Calder 2022).

It should be noted that while LePage's 2010 victory with 39% of the vote was a key spur to Maine's enactment of ranked choice voting, RCV did not play a role in the general election for governor. The state has honored an advisory ruling by the Maine Supreme Judicial Court that general elections for governor and state legislature must be decided by plurality elections, based on the Maine Constitution.

One policy stance Governor Mills took that she is highlighting in her re-election advertising was her decision to send millions of dollars in inflation relief checks to Maine taxpayers as a way of sharing the state’s budget surplus. This idea had been broadly popular with Republican legislative leaders, but LePage was critical of it, calling the checks “funny money” and his political adviser Brent Littlefield dismissing it as a “campaign gimmick”. Instead, LePage argued that Maine would benefit more from permanent cuts in the state’s income tax (Piper 2022).

Janet Mills held a statistically significant lead in nearly all polls leading up to the election, and they proved to be accurate: Mills not only won by double digits with just over 55% of the vote, but voters also returned Democratic majorities in both houses of the Legislature (Billings 2022). Mills’ 51% of the vote in 2018 and 55% in 2022 are the only times where a candidate for Maine governor won a majority of the vote since Independent Angus King was re-elected with over 58% of the vote in 1998 (*Portland Press Herald* 2022). The race also proved to be the most expensive race for Governor in Maine history, with over \$28 million spent (Associated Press, 2022).

Jared Golden-Bruce Poliquin rematch in the Second Congressional District

In 2020, Maine witnessed an even more costly race—in fact, the most expensive election in its history: the race for the United States Senate between incumbent Republican Susan Collins, Democrat Sara Gideon, and independents Lisa Savage and Max Linn (Hall 2020). As measured by total campaign dollars spent per voter, it was the second most expensive Senate race in the nation, costing over \$185 million, a whopping \$175 spent per voter (Miller 2020, Wade 2020).

Maine is not scheduled to have another U. S. Senate race until 2024, and 1st District Democrat Chellie Pingree was expected to hold her seat yet again (as she did by a large margin),

so the main focus of Congressional election watchers on Maine in 2022 was, once again, Maine's Second District. And the major candidates should be familiar: Democrat Jared Golden defeated incumbent Republican Bruce Poliquin and independent Tiffany Bond in 2018. This is one of the most competitive seats in the nation, particularly as Maine's two congressional districts become more and more divergent with one another. In 2020, Donald Trump carried the Second District—as he did in 2016—and ran a full thirty points better in the Second than in the First (Melcher and Fried 2022). Yet Golden won re-election, and outperformed President Biden's vote by a larger percentage than any other Democratic House member, in what Politico called the “Democrats' Trumpiest district” (Ferris 2021).

The 2018 race showed how ranked choice voting can affect outcomes. Neither Poliquin nor Golden had a majority in that race among voters' first choice; however, Poliquin had slightly more first choice votes. But when the second and third choices of two independent candidates were factored in through the process, Golden eked out a narrow victory. Poliquin and many Republicans condemned ranked choice voting and the outcome, but it will still be in place for the 2022 race.¹ The district has very similar borders to what it had before 2022, with the only shifts coming, again, in Kennebec County. The most significant of these shifts was to add Augusta, the state capital, to the Second District. This is an unfamiliar position for the capital city, which had not been in the Second District since 1960, the last time Maine had three House seats. Most observers think the changes make the new Second slightly more Democratic than before (for example, Strauss 2021).

Golden has often voted against Democratic Party leadership on key issues, including voting against Nancy Pelosi as Speaker of the House; the only Democrat in the House to vote

¹Poliquin went so far as to testify before the Massachusetts Legislature urging them not to enact RCV, where he called it “a scam” and the “biggest voter rip-off in Maine history.” (Maine Examiner,

against President Biden’s Build Back Better Plan; taking a more conservative stance on firearms issues than most Democrats; opposing President Biden’s coronavirus relief bill; and vocally criticizing President Biden’s student loan forgiveness program, calling it “out of touch” (Strauss 2021; Bourgault 2022). He has run an ad showing him cracking into a lobster, while his voiceover says how he voted to “crack Biden’s aggressive spending agenda” (Jared Golden for Congress 2022). Bruce Poliquin and other Republicans have countered that he has been too supportive of Biden’s policies (which they say are responsible for high inflation) and that Golden is inconsistent.

Once again, the race was competitive, and ultimately was settled by ranked choice voting, as none of the candidates had 50% in the initial round. Unlike 2018, however, there was relatively little drama waiting for the results, for three reasons. First, Golden had a substantial lead going into the second round of balloting, in which the second choices of those who voted for third place candidate Tiffany Bond were added to the tally of the leading candidates. Secondly, since there were only three candidates instead of the four in 2018, the count was completed much more quickly. Finally, both the results in 2018 and polling in 2022 suggested that Bond voters would break heavily for Golden in their second place votes (Shepherd 2022). Even before the ranked choice votes were applied, Golden declared victory after the first round of votes came in (Singer 2022). In the final tally, Jared Golden got 53% of the second round votes, and won his third term in Congress (Collins 2022).

United States Supreme Court rules on Maine education case

Over the past few decades, U. S. Supreme Court cases primarily about Maine have been relatively rare. Some of the few recent cases that have been the subject of U.S. Supreme Court decisions are an 11th Amendment case, *Alden v. Maine* (1999), and *Voisine v. United States*, a

case about the constitutionality of the Lautenberg Amendment, which put limits on firearms possession by those convicted of misdemeanor domestic violence (Hornrig 2001; Maneen 2020; Chinnock 2022). But in a term of many landmark cases, a case from Maine was among the most important: *Carson v. Makin*. This case came on the heels of the U.S. Supreme Court ruling in *Montana Department of Revenue v. Espinoza*. That ruling found that Montana violated the U. S. Constitution's First Amendment by excluding sectarian private schools from a state tax credit given to parents sending their children to nonsectarian private schools (Dunn 2021; Russo and Thro 2020-2021).

As a relatively rural state, Maine has a number of small towns, plantations and unorganized territory that are not part of a high school district. The State of Maine has a program that allows parents to send their high school students to select public high schools in their area, and the state compensates the school district for the cost. Some parents in these areas wanted to send their children to sectarian schools, and felt that their First Amendment rights had been infringed upon. But in multiple cases, including *Bagley v. Raymond School Department* (1999) and *Anderson v. Town of Durham* (2006), the Maine Supreme Judicial Court upheld the constitutionality of the exclusion of sectarian schools from the program, and the US Supreme Court did not hear appeals of either (Hudak 2006).

So, a court case on this matter was an echo of the past—but the outcome was very different. Three parents who lived in an area not directly served by a high school who wanted to send their children to conservative Christian schools sued the state on First Amendment grounds, hoping the Montana precedent showed a shift on the Court. Their hopes were met when the Supreme Court ruled 6-3 in their favor (Hutchinson 2022; Kim 2022; Weinberger 2022). The ruling only directly affects Maine, New Hampshire and Vermont, and even in Maine, its

application may be very limited because some schools that could be beneficiaries of the ruling do not meet the state's nondiscrimination requirements, particularly concerning LGBT employees and students (Hutchinson 2022). So far, only one school—Cheverus High School in Portland, a Catholic school—has applied, and the state accepted their application (Olsen 2022). Nonetheless, Maine played a large role in continuing a Supreme Court trend toward a more expansive use of the First Amendment's Free Exercise Clause.

The NECEC Project comeback?

Finally, even initiatives people thought were over and done with can come back from the past in Maine! A good example is the New England Clean Energy Connect (NECEC) proposal, which would build power lines through Maine to connect Quebec hydropower with Massachusetts. The proposal remains a key part of Massachusetts state government goals to increase the role played there by renewable energy (Iaconangelo 2021; Gundlach 2022). Many probably thought that the citizen initiative to block the project that passed overwhelmingly in 2021 (Bryce 2021) spelled the end of this proposal. But Central Maine Power and Hydro Quebec saw an opportunity to resurrect the project by suing in court, arguing that the initiative should not block the project, because they had “vested rights” created by government approvals and extensive spending on the project before the vote had occurred. The Maine Supreme Judicial Court helped to keep the project alive by remanding the issue to the Maine Business Court to decide if the initiative result was allowed to stand (Miller 2022). Tux Turkel (2021) of the *Portland Press Herald* called the fight over the NECEC “one of the most divisive and expensive environmental battles in Maine history”, and it still is not over. Maine politics continues to show the wisdom of the observation of American writer William Faulkner in his novel *Requiem for a Nun*, “The past is never dead. It's not even past.” (Magee 2008).

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