

To: Bryce Cundick, Chair, Maine Library Commission

Date: April 17, 2026

Re: Commission Request to Defer Participation

Summary

We regret that the Commission has declined, at this stage, to discuss the substance of the [Alternative Proposal \(Working Draft\)](#).

With all due respect, we disagree with the premise that the [Maine Administrative Procedure Act](#) (MAPA) requires deferral of questions or ideas during the pre-notice phase of rule development. We also disagree with the directive that we (and presumably, other stakeholders) are not to be heard until some later [official period \(June 25, 2026\)](#).

While the Commission may choose to seek to silence early discussion from outside its ranks, this choice is a discretionary decision rather than a statutory mandate. We hope it does not so choose. Far from compromising the rulemaking process, we believe that engaging earlier rather than later with the broader library community can enrich and strengthen the result. To these ends, we respectfully ask the Commission to:

[Amend its Communications Plan](#) and provide its rulemaking fact sheet—or a working link to it—that reflects the information required by [5 M.R.S.A. § 8057-A\(1\)](#), including its principal reasons; concise description; fiscal impact estimate; analysis; and summary of relevant information considered.

Consider a consensus-based rule development process as envisioned by [5 M.R.S.A. § 8051-B](#). Failing that, we urge adoption, at this preparatory stage, of a more open, proactive, and inclusive stance toward ideas and policy and regulatory alternatives.

We base our requests and overall response on our analysis of MAPA's evident purpose to encourage and ensure public participation and agency transparency. (We include citations and links to applicable law and Commission materials.)

We look forward to a renewed opportunity to support this work collaboratively.

Considering the [Alternative Proposal \(Working Draft\)](#)
in the MAPA Legal Context

We appreciate your continued engagement and your thoughtful communications.

Thank you for [your email dated April 13](#) reaching out to us and acknowledging receipt of [our email and attachments dated April 1](#). We particularly appreciate this given the many obligations we know you are managing in your own libraries.

We also appreciate [your earlier email](#) to the MELIBS-L listserv where you noted that public perspectives can be shared through the [Contact the Maine Library Commission](#) website and explained that “Comments will be shared with Commission members monthly. While the Commission does not respond individually through this form, it provides another way to communicate perspectives. Please note that comments submitted at this time are not automatically included in the rulemaking. During the formal rulemaking process, a separate system will be used to collect and respond to public comments on the draft rule.” The [Maine Library Commission contact link](#) you shared further provides: “Public input is an important part of the Commission’s work. Use the form below to submit questions, share comments, or provide feedback related to library services and programs in Maine.”

Your emphasis on the Commission's adherence to applicable state law is well-taken and is a commitment we share.

As your MAPA [recitation states](#): “This process requires that the rulemaking entity (here, the Maine Library Commission) develops and officially promulgates a proposed rule.” We could not agree with you more about the importance of the Commission’s commitment to follow the MAPA. So too, we recognize that rules adopted by the Commission must be consistent with the language and intent expressed by the Legislature in authorizing [locally-created and managed municipal libraries](#) and in creating the Commission, the State Library, the Regional Library System, and the Library Advisory Council to work with such libraries. [For statutory references on these points, please see [Who Defines Public Library in Maine? \(Working Draft\)](#), as previously made available to the Commission and others and on file with the authors.]

The MAPA encourages public participation.

On this point, our understanding of the law differs from the Commission’s. We ground our view directly in MAPA’s text and in related administrative law. (The full MAPA text can be found [here](#), together with a general process summary, [here](#).)

We understand—and fully share—the Commission’s stated interest in a *robust*, *equitable*, and *transparent* process, a process with *integrity*. But those descriptors are not statutory requirements, and they do not support the conclusion that early public input is improper.

We are unaware of any provision of the MAPA that establishes a basis for the concern that submitting ideas or alternatives earlier rather than later in the deliberative process would stifle or otherwise compromise administrative decision-making. While the mixed use of the terms *formal* and *official* in this context may unintentionally suggest that it is improper for public appointees/employees to respond to questions or discuss rule proposals prior to their being noticed by the Secretary of State, this is not the case under applicable MAPA sections.

Simply put, as we read it, the MAPA is not written to preclude or chill public comment, but rather to amplify public participation. Its purpose is to enhance agency accountability and prevent agency abuse of discretion so as to “appropriately limit the authority of the agency and avoid arbitrary standards.” [Wood v. Dep’t of Inland Fisheries & Wildlife, 2023 ME 61, 302 A.3d 18, 29 (2023)].

More specifically, the MAPA does not set out to limit public involvement until the point the rule is ready for public notice and comment/hearing. Indeed, several provisions of Maine’s overall statutory schema for public participation, including the MAPA, suggest the opposite of such a constraining view [1 M.R.S.A. §§ 400–403-B]. The MAPA provisions on point include those for liaisons, consensus-based rule development, citizen petitions, goal recitation and explanation, and legislative notification and petition. [5 M.R.S.A. §§ 8051-A, 8051-B, 8053-A, 8055, 8057-A]. At a minimum, the Legislature intended for the public to have access to detailed information about rules as they were being prepared, including the agency’s reasons for the rule, its analysis, and its estimate of fiscal impact. [5 M.R.S.A. § 8057-A(1)].

Still, in some instances, communications with decision-makers that occur outside the administrative record are limited—so-called *ex parte* communications. Here, federal and state law differ. The federal Administrative Procedure Act (APA) differentiates between rulemaking and adjudication and also distinguishes between formal (on-the-record) proceedings and informal (notice-and-comment) proceedings. Under the APA, *ex parte* communications are limited in adjudication and in formal rulemaking. In contrast, MAPA restrictions on *ex parte* communications apply only to adjudicatory proceedings—which this is not. And even then, those restrictions apply only after such proceedings have commenced—which this has not. [5 M.R.S.A. §§ 8002(1), (9)(A), (9)(B)(3); 8052(1), 8052(9); 9055; cf. 5 U.S.C. §§ 551–554]. These distinctions support the conclusion that the MAPA does not prohibit substantive communications or the submission of alternative proposals during the pre-notice phase of rulemaking.

The nature, timing, and distribution of the Alternative Proposal (Working Draft) were consistent with the MAPA, and they were deliberate.

In both substance and approach, the Alternative Proposal (Working Draft) was intended to be exactly as it was labeled—an idea: a conceptual draft offered to encourage broader, more inclusive discussion. In fact, we benefited from hearing the discussion at the April MLC Special Discussion Zoom meeting; and we can see several areas—for example, with respect to professional development—where our proposed draft could be improved.

Substantively speaking, we sought a cooperative, supportive approach—not a divisive or exclusionary one.

The Alternative Proposal (Working Draft) was developed in direct response to the Commission’s ongoing effort to define *public library*. These appear to have evolved through *numerous iterations* and culminated in its unanimous *January vote* directing staff to draft a rule proposal “for identifying the number of library regions, the public libraries in each region, and proposing criteria for libraries to receive services under the current MRLS agreement.”

Although these *iterations varied in form and source*—some *presented at Commission meetings* or presentations, some on the *web*, some in *agreements*, some relying on *required standards*, others promoting *aspirational benchmarks*—it appeared (and continues to appear) to an outside reader that they would produce the same result: to divide Maine’s libraries into two classes and distinguish those deemed to meet articulated criteria from those that do not. Some versions reinforced this distinction by rebranding long-recognized public libraries as *designated limited-service libraries* or *community reading rooms* and then *conditioning or withdrawing significant infrastructural support* from those *no longer recognized as public libraries*.

The alternative we suggested eschewed this attempt to redefine and limit what the Legislature has defined as a *public library*. It rejected an *excluding, stick-oriented* framework. Instead, it put forth an approach grounded in the Legislature’s longstanding recognition that public libraries in *Maine are locally created and locally maintained*. This more constructive perspective reflects both statutory intent and historical and geographical reality: Maine’s libraries differ widely in structure, capacity, and *community role*. The Alternative Proposal (Working Draft) reflected a view that effective public policy would respect these differences rather than impose uniformity regardless of community tradition or need.

Procedurally speaking, the timing was intended to be helpful—not preemptive.

Concern with what appeared to be a divisive and punitive direction prompted the submission of a written alternative. Ideally, we would have offered the alternative even sooner had our own working capacity been stronger.

Be that as it may, our materials, as and when submitted, were intended to inform and broaden the Commission’s deliberations *before* a proposed rule was finalized and noticed by the Secretary of State and before preliminary assumptions became entrenched. More specifically, we sought to contribute constructively by offering a comprehensive approach, one that did not then appear to be under serious consideration and one that would not place unwanted demands on staff. Similarly, we offered the draft in format and timeframe we did—and not as a petition under the MAPA—in the hope that it would be cooperatively considered.

Procedurally speaking, the material was widely shared—not selectively circulated.

Procedurally speaking, the method of email distribution was intended to promote openness and broaden perspective. At no point did we seek to share the document

privately with Commissioners or otherwise seek special access, preferential treatment, or exemption from any other eventual public process. Instead, distribution was deliberately structured to include entities with statutory or de facto interests in the Commission's decisions. Because Commission proposals would have restricted or removed E-rate or other internet support (described by the Commission as valued at \$6,100), leaders of entities with responsibilities for broadband access were specifically copied: the Maine Public Utilities Commission [35-A M.R.S.A. §§ 7101, 7104-B], the Maine Connectivity Authority [35-A M.R.S.A. §§ 9401–9405], Networkmaine, and Maine Infonet. Because the Maine Library Advisory Council is statutorily created specifically to make recommendations to the Commission for “programs and services that help to make libraries accessible for all,” its members were also copied. [27 M.R.S.A. § 114-A(2)]. The materials were also shared with other Mainers who had independently expressed interest in this work to us. Had the Commission acknowledged receipt or allowed the public to post information in the Zoom chat for the special April meeting, the alternative concepts would have been made even more public—an outcome we would welcome.

In conclusion, we ask the Commission to review its rulemaking process and reassess whether it can be made more welcoming and open.

The Alternative Proposal was explicitly and truthfully labeled as a *Working Draft*. Rather than seeking “precedence,” the accompanying email welcomed further discussion. The timing was intended to offer an additional viewpoint in a cooperative spirit before ideas became entrenched. We are not sure how we could have been more open or “transparent.” There was, and is, no intention to “disrupt the integrity of the process.”

Rather than reject early involvement by the many beyond its membership who care about these issues, we urge the Commission to welcome and benefit from it. Mainers are creative—and frugal—and it seems a shame to delay drawing on their education and lived experience for the work ahead.