

**CITY OF PORTLAND  
M E M O R A N D U M**

**TO:** Charter Commission

**FROM:** Gary C. Wood, Corporation Counsel

**DATE:** March 2, 2010

**RE: Legality of Voting By Legal Immigrants in Municipal Elections**

The Charter Commission is divided over the issue of whether it should put to the voters of the City a charter change that would authorize voting in municipal elections by legal immigrants who reside in the City.

I have been asked to do a risk assessment on whether I think that issue would survive a legal challenge if it were put to the voters and the voters approved it.

In part this question has been put to me because in stating to the Committee both in writing and verbally that I would endorse the legality of that proposal for the purpose of submitting it to the voters, I used the term "coin toss" in describing its legality.

I used the phrase "coin toss" not to suggest that in my opinion the chances are 50/50 that it would survive a legal challenge. I used the phrase as a way of saying that the result is uncertain in my mind as to how a court would come out. My own personal risk assessment is that the chances are 60/40 against that right surviving a legal challenge. In other words, I think the stronger legal arguments favor a court decision that would declare the right illegal in light of existing state law.

That being said, however, as I have also stated, until this issue is actually briefed and decided by a Maine court there is absolutely no way to be certain about the legal outcome.

GCW:tlb