

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. Cum-26-288

JANE GILBERT, MARK SAYRE, and KAITLIN WEBBER,
Petitioners-Appellees

v.

SHENNA BELLOWS,
in her official capacity as Maine Secretary of State,
Respondent-Appellee,

PROTECT GIRLS' SPORTS IN MAINE,
a registered Ballot Question Committee,
Intervenor-Appellant.

**On Appeal from Cumberland County Superior Court
Docket No. AP-2026-10**

BRIEF OF INTERVENOR - APPELLANT

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TABLE OF CONTENTS

I.	STATEMENT OF FACTS	1
II.	STATEMENT OF ISSUES	2
III.	ARGUMENT	5
	A. CONSTITUTIONAL BACKGROUND TO LEGAL ARGUMENT.....	5
	1. THE MAINE CONSTITUTION IS THE SOURCE OF STATE GOVERNMENTAL POWER AND THE DEPARTMENTS OF GOVERNMENT MAY NOT EXERCISE POWERS NOT ASSIGNED TO THEM	6
	2. THE CONSTITUTION AUTHORIZES AND LIMITS THE LEGISLATIVE POWER, INCLUDING THE LEGISLATURE’S DELEGATION OF POWER.	8
	3. SOURCE AND CHARACTER OF LAWMAKING BY INITIATIVE AND REFERENDUM	9
	a. Purpose and Character of Initiative Amendments	9
	b. By the Initiative Amendments, the People Reclaimed their Sovereign Lawmaking Power	13
	c. The Initiative Amendments are Self-Executing; the Legislature may only Enact Implementing Statutes	14
	d. Role of Electors under Initiative Amendments.....	17
	B. THE ELECTORS’ RIGHTS TO INITIATE AND PROMOTE INITIATIVES AND REFERENDA, INCLUDING SIGNING PETITIONS, ARE REINFORCED AND SEPARATELY PROTECTED BY THE RIGHT TO PETITION THE GOVERNMENT	18
	C. THE CONSENT ORDER AND JUDGMENT OF THE U.S. DISTRICT COURT IN <i>WE THE PEOPLE V. BELLOWS</i> DID NOT AND COULD NOT HAVE EMPOWERED THE SECRETARY TO IMPOSE MANDATORY CONDITIONS ON OUT-OF-STATE CIRCULATORS.....	21

1. IN RULING ON THE CONSTITUTIONALITY OF MAINE’S EXCLUSIONARY RESIDENCY AND VOTER REGISTRATION REQUIREMENTS, THE DISTRICT COURT APPLIED STANDARD FIRST AMENDMENT ANALYSIS.....	22
2. THE CONSENT ORDER DOES NOT “NARROW” OR OTHERWISE AMEND THE MAINE CONSTITUTION	29
3. THE SECRETARY’S ASSERTIONS THAT “THE FRAMERS” ADOPTED THE EXCLUSIONARY RESIDENCY AND VOTER REGISTRATION REQUIREMENTS TO COMBAT FRAUD IS NOT SUPPORTED IN THE RECORD OR IN CASE LAW	32
4. THE SECRETARY’S DETERMINATION THAT SHE CANNOT SUBPOENA OUT-OF-STATE CIRCULATORS SEVERELY UNDERCUTS HER ENFORCEMENT RATIONALE AND CONFLICTS WITH HER REPRESENTATIONS TO THE DISTRICT COURT AND THE FIRST CIRCUIT COURT OF APPEALS.....	34
5. THE INVALIDATION OF THE RESIDENCY AND VOTER REGISTRATION REQUIREMENTS DEPRIVED THE SECRETARY OF THE POWER TO TREAT OUT-OF-STATE CIRCULATORS DIFFERENT FROM IN-STATE CIRCULATOR.....	36
6. FEDERAL COURTS DO NOT CONSTRUE STATE CONSTITUTIONS AND LAWS.....	38
a. The Invalidation of the Electors’ Signatures on the Out-of-State Circulators’ Petitions Violates their Right to Petition the Government and their Rights under the Initiative Amendments ...	38
b. Circulator Cairo Complied with the Consent Order	40
c. The Secretary erred in Invalidating Circulator Cairo’s Petitions.....	40
d. The Secretary Erred in Invalidating Circulator Cairo’s Petitions because, in doing so, the Secretary Violated the Signatory Electors’ Right to Petition the Government.....	42

7. THE INITIATIVE AMENDMENT’S RESIDENCY AND REGISTRATION REQUIREMENTS VIOLATE THE FIRST AMENDMENT’S GUARANTEE OF FREEDOM OF SPEECH	43
8. THE STATUTORY BAN ON NOTARIES CIRCULATING PETITIONS AND LATER WITNESSING THE SIGNATURES OF OTHER CIRCULATORS VIOLATES THE FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH, FREEDOM OF ASSEMBLY, THE RIGHT TO PETITION THE GOVERNMENT AND RIGHTS OF ASSOCIATION INHERENT THEREIN.....	44
a. Notary Statutes Constitute Unconstitutional Viewpoint Discrimination.....	47
9. THE SECRETARY ERRED IN INVALIDATING ELECTOR SIGNATURES ON THE GROUNDS THAT THE ELECTORS ENTERED DITTO MARKS FOR THE DATE RATHER THAN WRITE IN THE DATE	48
D. THE COMMITTEE ADOPTS THE ARGUMENTS THAT THE SECRETARY PRESENTS IN RESPONSE TO PETITIONERS’ CROSS- APPEAL	51

TABLE OF AUTHORITIES

Cases

<i>Allen v. Quinn</i> 459 A.2d 1098 (ME. 1983).....	9, 11, 12, 15, 41
<i>Avangrid Networks, Inc. v. Sec’y of State</i> 2020 ME 109, ¶ 30, 237 A.3d 882.....	8, 9
<i>Ayotte v. Planned Parenthood of Northern New England</i> 543 U.S. 320 (2006)	29
<i>Borough of Duryea, Pa. v. Guarnieri</i> 564 U.S. 379, 395-398 (2011)	20
<i>Buckley v. American Constitutional Law Foundation, Inc.</i> 525 U.S. 182, 186 (1999)	10, 33, 45, 46
<i>Burr v. Dep’t of Corr.</i> 2020 ME 130 ¶ 20; 240 A.3d 371	7
<i>Cape Elizabeth School Bd. v. Cape Elizabeth Teachers Ass’n</i> 459 A.2d 166, 172, n. 12	6
<i>Chadha v. Immigration and Naturalization Service</i> 462 U.S. 919, 948-959 (1983).....	8
<i>Chandler v. City of Arvada</i> 292 F.3d 1236, 1243-44 (10th Cir. 2002).....	25
<i>De Jong v. Oregon</i> 299 U.S. 353, 364 (1937)	47
<i>Dupuis v. Roman Cath. Bishop of Portland</i> 2025 ME 6, ¶ 22, 331 A.3d 294.....	7, 9, 18
<i>Farris ex rel. Dorsky v. Goss</i> 143 Me. 227, 231, 60 A.2d 908 (1948)	12, 14, 16

<i>First National Bank of Boston v. Bellotti</i> 435 U.S. 765, 790 (1978)	33
<i>Grayned v. City of Rockford</i> 408 U.S. 104 , 109, n. 4 (1972)	40
<i>Hart v. Secretary of State</i> 1998 ME 189, ¶ 13, 715 A.2d 165.....	4, 43, 44
<i>Hobbs v. Getchell</i> 8 Me. 187 (1832)	17
<i>John Doe No. 1 v. Reed</i> 561 U.S. 186, 221 (2010)	18,
<i>Jones v. Secretary of State</i> 2020 ME 113, ¶ 34, 239 A.3d 982	3, 4, 43, 44
<i>Kasper v. Bd. of Education of the City of Chicago</i> 814 F.2d 232, 338 (7th Cir. 1987)	26
<i>Krislov v. Rednour</i> 226 F.3d 851, 860 (7th Cir. 2000)	25
<i>League of Women Voters v. Secretary of State</i> 683 A.2d 769, 771 (Me. 1996)	12, 41
<i>Lewis v. Webb</i> 3 Me. 326, 329 (1825)	8
<i>Libertarian Party of Virginia v. Judd</i> 718 F.3d 308, 317 (4th Cir. 2013)	25
<i>Maine Taxpayers Action Network v Sec’y of State</i> 2002 ME 64, ¶ 23, 795 A.2d 79	18, 45
<i>McCutcheon v. Fed. Election Comm'n</i> 572 U.S. 185, 203 (2014)	45, 46

<i>McGee v. Secretary of State</i> 2006 ME 50 ¶ 21, 896 A.2d 933	<i>passim</i>
<i>Meyer v. Grant</i> 486 U.S. 414, 421-22, 425 (1988)	23, 33, 42, 45, 46
<i>Moulton v. Scully</i> 111 Me. 428, 89 A. 944, 953 (1914).....	14
<i>Nader v. Blackwell</i> 545 F.3d 459, 478 (6th Cir. 2008)	25
<i>Nader v. Brewer</i> 531 F.3d 1028, 1036 (9th Cir. 2008)	25
<i>Opinion of the Justices</i> 132 Me. 512, 174 A. 853, 855 (1933)	16
<i>Opinion of the Justices</i> 275 A.2d 800, 803 (Me. 1971).....	12, 14, 16, 50
<i>Opinion of the Justices</i> 437 A.2d 597, 606 (Me. 1981).....	8
<i>Opinion of Justices</i> 2023 ME 34, ¶ 16, 295 A.3d 1212.....	16
<i>Opinion of the Justices</i> 2026 ME 32, ¶ 17, 354 A.3d 1014.....	10
<i>Payne v. Secretary of State</i> 2020 ME 110, ¶ 18, 237 A.3d 870.....	10
<i>Pedreira v. Sunrise Children’s Services, Inc.</i> 826 F. Appx. 480, 487 (6th Cir. 2020)	37
<i>Pike Industries v. City of Westbrook</i> 2012 ME 78, ¶ 37, 45 A.3d 707.....	37

<i>Pollack v. Fournier</i> 2020 ME 93, ¶15, 237 A.3d 149.....	20
<i>Pool v. City of Houston</i> 978 F.3d 397, 309 (5th Cir. 2020)	29
<i>R.A.V. v. City of St. Paul, Minn.</i> 505 U.S. 377, 391 (1992)	47
<i>Rosenberger v. Rector & Visitors of Univ. of Virginia</i> 515 U.S. 819, 828 (1995)	47
<i>Smith v. Speers</i> 253 A.2d 701, 704 (Me. 1969).....	9
<i>State v. Boyajian</i> 344 A.2d 410, 412 (Me. 1975).....	9
<i>Tenants Harbor General Store v. Dep’t of Environmental Protection</i> 2011 ME 6, ¶¶ 14-17	37
<i>Thomas v. Collins</i> 332 U.S. 516 (1945).....	19, 47
<i>Turner Broadcasting System, Inc. v. F.C.C.</i> 512 U.S. 622, 664 (1994)	33
<i>United States v. Cruickshank</i> 92 U.S. (2 Otto) 542, 552 (1875).....	19, 20
<i>We the People PAC v. Bellows</i> 519 F. Supp. 3d 13 (D. Me. 2021).....	26, 30, 34, 35, 43
<i>We the People v. Bellows</i> 40 F. 4th 1 (1st Cir. 2022)	3, 21, 35, 44
<i>We the People v. Dunlap</i> Civil No. 1:20-cv-00489-JAW	3, 21

Wilmoth v. Sec’y of New Jersey
731 F. App;x 97, 103 (3d Cir. 2018)25

Yes On Term Limits, Inc. v. Savage
550 F. 3d 1023, 1027 (10th Cir. 2008)18, 25, 35, 36

Other Authorities

U.S. Const., 1st Am.....*passim*

Me. Const., art. I, § 26, 7, 8, 13

Me. Const. art. I, § 419

Me. Const. art. I, § 1519

Me. Const., art. II, §§ 2-3.....17

Me. Const., art. III, § 2.....7, 8

Me. Const., art. IV, pt. 3, § 18

Me. Const., art. IV, pt. 3, §§ 17-222

Me. Const., art. IV, pt. 3, § 18.....2

Me. Const, art. IV, pt. 3, § 20.....16, 17

Me. Const., art. IV, pt. 3, § 22.....*passim*

Me. Const. art. X, § 4.....13, 31

4 M.R.S. § 1904(5)44, 47

5 M.R.S. § 506034

21-A M.R.S. § 354(4)48

21-A M.R.S. §§ 901-907.....16

21-A M.R.S. § 902	48
21-A M.R.S. § 903-A.....	27, 40
21-A M.R.S. § 903-E	4, 44, 47
21-A M.R.S. § 905.....	1
21-A M.R.S. § 1052(4-B)	17
Rule 80(C), M. R. Civ. P.	1
Steven Diner, <i>A Very Different Age</i> 209 (1998).....	11
Alexander Hamilton, <i>Publius</i> . The Federalist 78, in <u>The Debate on the Constitution</u> 467, 470 (Bernard Bailyn ed., 1993)	7
Richard Hofstadter, <i>The Age of Reform: From Bryan to F.D.R.</i> 257 (1955)	11
James Madison, <i>Memorial and Remonstrance Against Religious Assessments</i> , in <u>Madison Writings</u> 29, 30 (Jack N. Rakove. ed., 1999)	7
Marshall Tinkle, <i>The Maine State Constitution</i> 70-72 (2d. ed. 2013).....	7, 13, 19
Gordon Wood, <i>Creation of the American Republic</i> 340-41 (ed. 1998)	6
American Heritage Dictionary (ed. 1976)	49

I. STATEMENT OF FACTS

Protect Girls Sports in Maine Ballot Question Committee (“the Committee”) was formed to promote a citizen initiative, “An Act to Designate School Sports Participation and Facilities by Sex” (“the Ballot Initiative”). On February 2, 2026, the Committee filed petitions supporting the placement of the Ballot Initiative on the ballot for the general election on November 3, 2026. On March 17, the Secretary issued her Determination that the Ballot Initiative had qualified for placement on the November 3 ballot.

As authorized by the Maine Constitution, art. IV, pt. 3, § 22, and pursuant to 21-A M.R.S. § 905 and Rule 80(C), M.R. Civ. P., Petitioners, Jane Gilbert, Mark Sayre, and Kaitlin Webber (“the Petitioners”), challenged the Secretary’s Determination in Superior Court. The Committee joined as an intervenor. Following briefing by the parties, the Superior Court issued an initial decision ruling on some challenges and remanding to the Secretary for an evidentiary hearing on other issues. The Secretary by her designee, Presiding Officer Katherine McBrien, held a hearing on May 12-13 at which witnesses offered testimony for and against Petitioners’ fact-based challenges.

Upon the close of evidence, the Petitioners and the Committee submitted briefs to the Presiding Officer, following which, the Presiding Officer issued a Recommended Decision. While rejecting some of Petitioners’ challenges, the

Recommended Decision invalidated enough additional elector signatures to recommend that the Secretary disqualify the Ballot Initiative from the November 2026 ballot.

The Petitioners and the Committee filed objections to the Recommended Decision. On May 26, the Secretary issued her Final Decision in which she accepted the Presiding Officer's proposed findings of fact and conclusions of law *in toto* and disqualified the Ballot Initiative from the November 2026 general election ballot.

With the Secretary's Final Decision, the Superior Court reassumed jurisdiction over this matter. On June 11, following the submission of briefs by all parties, the Court upheld the Final Decision, confirming the Secretary's exclusion of the Ballot Initiative from the November ballot. That same day, the Committee filed its Notice of Appeal. The Petitioners have since cross-appealed. On June 12, this Court issued a Procedural Order setting the Schedule for briefs and oral argument.

II. STATEMENT OF ISSUES

In 1909, dissatisfied with their elected representatives, the people of Maine amended the Maine Constitution to reinvest themselves with powers to initiate and to veto legislation. Me. Const., art. IV, pt. 3, §§ 17-22 (“the “Initiative Amendments”). The Ballot Initiative is the exercise by Maine voters of their sovereign lawmaking authority pursuant to art. IV, pt. 3, § 18.

The Secretary's invalidation of thousands Maine electors' signatures and her ultimate disqualification of the Ballot Initiative from the November 2026 ballot raises constitutional questions of the first order of magnitude. The Secretary's actions are wholly inconsistent Initiative Amendments' intent and purpose and unlawfully frustrate the electors' rights and powers of direct democracy.

First, the Secretary has invalidated petitions circulated by certain out-of-state circulators containing 1,520 otherwise valid elector signatures based on "submission to jurisdiction" requirements found nowhere in Maine law. The Secretary's exclusion of these petitions was essential to her decision disqualifying the Ballot Initiative from the November 2026 ballot. Yet, as authority for this extreme measure, the Secretary relies on a Consent Order issued by the U.S. District Court in *We the People v. Dunlap*, Civil No. 1:20-cv-000489-JAW ("Consent Order"). But, the Consent Order cannot invest the Secretary with powers that the Maine Constitution has not granted to her. Therefore, the Secretary's invalidation of these out-of-state circulators' petitions is *ultra vires*.

Second, the U.S. District Court's decision in *We the People v. Bellows*, 519 F. Supp. 3d 19 (D. Me. 2021); *aff'd*, 40 F. 4th 1 (1st Cir. 2022) finding that Maine Constitution and statutory bans on petition circulators who are not Maine residents and registered voters likely violate the First Amendment to the U.S. Constitution is materially at odds with this Court's decisions in *Jones v. Sec'y of State*, 2020 ME

113, 238 A.3d 928 and *Hart v. Sec’y of State*, 1998 ME 189 715 A.2d 165 (upholding against First Amendment challenges Maine’s requirements that petition circulators be registered Maine voters and Maine residents). The Committee respectfully asks this Court to resolve this divergence by reconsidering *Jones* and *Hart* and ruling that Maine’s voter registration and residence requirements violate the First Amendment.

Third, 21-A M.R.S. § 903-E, on which the Secretary relied to disqualify of petitions witnessed by notaries public on the grounds that those notaries had earlier circulated petitions, violates notaries’ rights to petition the government and to freedom of speech, assembly and rights of association inherent therein as protected by the First Amendment of the U.S. Constitution and art. I, §§ 4 and 15 of the Maine Constitution. The impediments it imposes violate the Initiative Amendments in that they are not sufficient to justify the disqualification of otherwise valid elector signatures.

Fourth, the Secretary erred in her invalidation of elector signatures on the sole ground that those electors who indicated the date by “ditto” marks rather writing the date out. Although this appellate issue involves a comparatively small number of signatures, the invalidation of **any** elector’s signature is a grave step and should be thoroughly justified. The Secretary’s reasoning in invalidating these “ditto” illustrates her fundamental misunderstanding of her constitutional role which

requires her to facilitate, not handicap, the voters' exercise of their sovereign lawmaking powers. See, *McGee v. Sec'y of State*, 2006 ME 50, ¶ 25, 896 A.2d 933. It also illustrates the consequences of the Secretary's consistent failure, throughout this entire petition review process, to even acknowledge, much less apply, these and other Constitutionally mandated principles that **must** govern her administration of **all** petition challenges.

Finally, a common thread binds all these appellate issues. **Not one** of the 1,783 of invalidated elector signatures is invalid in its own right.¹ Moreover, **all** these disqualified signatures were affixed by voters who, in so doing, asked for nothing more than, as provided by art. IV, pt. 3, § 18, that they and their fellow Mainers should have the opportunity to publicly debate the Ballot Initiative's merits and, on November 3, 2026, cast their votes for or against it.

III. ARGUMENT

A. CONSTITUTIONAL BACKGROUND TO LEGAL ARGUMENT

In this appeal, the Secretary's errors encompass her arrogation of power to invalidate petitions to her failure to even acknowledge, much less apply, the constitutional standards that govern her administration of the Initiative

¹ Although the Secretary disqualified the "ditto" signatories because of their use of "ditto" in place of the handwritten date, no one contends that the signatories were not Maine electors fully qualified to sign the petitions. Nor did anyone, including the Secretary, claim that they actually confused as to the pertinent date.

Amendments, culminating in her reflexive and unauthorized “remedy” of choice—the disqualification of valid elector signatures—and disqualification of the Ballot Initiative altogether. Given the fundamental character of the Secretary’s errors, the following review of the basic structure of the Maine Constitution, including powers granted, powers withheld, and the origins and purposes of the Initiative Amendments is warranted.

1. THE MAINE CONSTITUTION IS THE SOURCE OF STATE GOVERNMENTAL POWER AND THE DEPARTMENTS OF GOVERNMENT MAY NOT EXERCISE POWERS NOT ASSIGNED TO THEM.

The Maine Constitution states that “[a]ll power is inherent in the people; all free governments are founded on their authority and instituted for their benefit; they have, therefore, an unalienable and inalienable right to institute government, and to alter, reform, or totally change the same, when their safety and happiness require it.” Me. Const. art. I, § 2. This Court has recognized art. I, § 2 “as the textual basis for the delegation doctrine.” *Cape Elizabeth School Bd. v. Cape Elizabeth Teachers Ass’n*, 459 A.2d 166, 172, n. 12.

It expressly states the essential principle—unstated in the U.S. Constitution and vibrantly manifested in the constitutional ratification conventions²— that **the people** are the ultimate source of sovereignty and, through the constitutions they

² Gordon Wood, *Creation of the American Republic* 340-41 (ed. 1998).

approved; **they** choose what powers the federal and state governments may exercise and what powers they may not; and, **they** choose what powers each department of federal and state governments may exercise and what powers they may not. *See* James Madison, *Memorial and Remonstrance Against Religious Assessments*, in Madison Writings 29, 30 (Jack N. Rakove. ed., 1999) (The legislature’s “jurisdiction is both derivative and limited.”); Alexander Hamilton, *Publius*. The Federalist 78, in The Debate on the Constitution 467, 470 (Bernard Bailyn ed., 1993) (“No legislative act . . . contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.”).

In many ways, art. III, § 2, which expressly directs that none of the branches of government shall exercise powers that the Maine Constitution assigns to a different branch, complements and reinforces art. I, § 2. As this Court has explained, “[b]ecause the separation of powers is made express in [the Maine] Constitution. the doctrine is ‘much more rigorous’ that that presented in the Constitution of the United States.” *Dupuis v. Roman Cath. Bishop of Portland*, 2025 ME 6, ¶ 22, 331 A.3d 294, quoting in part, *Burr v. Dep’t of Corr.*, 2020 ME 130 ¶ 20; 240 A.3d 371; *see also* Tinkle *The Maine State Constitution* 70-72 (2d. ed. 2013).

Compliance with the separation of powers is paramount. That is because, as this Court has explained: “[T]he more [the] independence of each department, within its constitutional limits, can be preserved, the nearer the system will approach the perfection of civil government and the security of civil liberty.” *Lewis v. Webb*, 3 Me. 326, 329 (1825); *see also Chadha v. Immigration and Naturalization Service*, 462 U.S. 919, 948-59 (1983) (discussing importance of enforcing separation of powers). The same purposes apply equally to the imperative that state officials only exercise powers that the Maine Constitution grants to them and reject invitations to exercise powers inconsistent with or in violation of the Constitution.

Taken together, art. I, § 2 and art. III, § 2, stand for these principles: first, that no department of Maine government and no state official may exercise powers that the people have not granted to that department or that official; second, that each department may only exercise those powers assigned to it.

2. THE CONSTITUTION AUTHORIZES AND LIMITS THE LEGISLATIVE POWER, INCLUDING THE LEGISLATURE’S DELEGATION OF POWER.

As this Court has explained: “The Legislature’s powers, though broad, are subject to the three-fold limitations that its enactments be ‘reasonable,’ be ‘for the benefit of the people,’ and not be repugnant to any other provision of the Maine or United States Constitution.” *Opinion of the Justices*, 437 A.2d 597, 606 (Me. 1981); *see also* Me. Const. art. IV, pt. 3, § 1; *Avangrid Networks, Inc. v. Sec’y of State*, 2020

ME 109, ¶ 30, 237 A.3d 882 (listing nine factors to determine whether a proposed act is “legislative”); *see also Dupuis*, 2025 ME 6, ¶ 22 (“Our constitutional text provides that Legislature’s role is to make ‘laws and regulations.’”).

In keeping with these principles, although the Legislature may delegate powers to executive agencies, such delegations must include sufficiently detailed standards to guide that agency in its administration of such delegated powers. *State v. Boyajian*, 344 A.2d 410, 412 (Me. 1975); *Smith v. Speers*, 253 A.2d 701, 704 (Me. 1969).

3. SOURCE AND CHARACTER OF LAWMAKING BY INITIATIVE AND REFERENDUM.

Effective in 1909, Maine voters amended the Maine Constitution to allow for the enactment of laws and their repeal by direct action. Me. Const. art. IV, pt. 3, §§ 17-22 (“Initiative Amendments”). Before the adoption of the Initiative Amendments, the Maine Constitution vested the authority to make and repeal laws exclusively in the Legislature. *See* Me. Const. art. IV, pt. 3, § 1.

a. Purpose and Character of Initiative Amendments.

In general, when provisions of the Maine Constitution are construed, this Court has required that they be given “liberal interpretation to carry out their broad purpose because they are expected to last over time and are cumbersome to amend.” *Allen v. Quinn*, 459 A.2d 1098, 1102 (Me. 1983). This interpretive rule is supplemented by the further requirement that “[a]ny analysis of the initiative

provisions in the Constitution must take account of their significance and purpose.”
McGee, 2006 ME 50, ¶ 24, 896 A.2d 933.

Moreover, “[i]n construing the plain language of the Constitution as it pertains to elections, ‘we interpret the Constitution’s words in light of what meaning they would convey to an intelligent, careful voter.’” *Opinion of the Justices*, 2026 ME 32, ¶ 17, 354 A.3d 1014, quoting, *Payne v. Secretary of State*, 2020 ME 110, ¶ 18, 237 A.3d 870. “If the Constitutional text does not provide a definitive answer, ‘we may also examine, to the extent relevant, ‘the general purpose of the provision at issue, its historical context, any related statutes, and the common law, together with sociological and economic considerations and relevant precedent from other jurisdictions.’” *Opinion of Justices, Id.*

Maine voters’ adoption of these amendments was part of a national trend seeking governmental reform through enhanced popular democracy. “Ballot initiatives . . . were a central part of the Progressive movement’s agenda for reform at the turn of the 20th century, and were a means of limiting the control of wealthy special interests and restoring electoral power to the voters.” *Buckley v. American Constitutional Law Found.*, 525 U.S. 182, 226-27 (1999) (Rehnquist, C.J., dissenting).

Central to the movement for direct democracy, of which the initiative and referendum power are prominent manifestations, was distrust of those elected to

legislatures and the legislatures, themselves. *See* Steven Diner, *A Very Different Age* 209 (1998) (“Progressive reforms also captured many state governments in the early twentieth century. Concerned about corruption and the power of the trusts over elected officials, reformers called for primary elections, laws prohibiting corrupt practices, campaign expenditure limits, strengthened voter registration systems to minimize voter fraud, the short ballot, initiative and referendum in which voters could bypass the legislature to enact or repeal laws, and recall procedures whereby citizens could require an elected official to face the voters prior to normally scheduled election.”).³

“The broad purpose of the direct initiative is the **encouragement** of participatory democracy.” *Allen*, 459 A.2d at 1102 (emphasis supplied). Therefore, in applying these amendments, the “primary consideration” is to “liberally” construe them in order to “facilitate [rather than handicap] the people’s exercise of their sovereign power.” *League of Women Voters v. Sec’y of State*, 683 A.2d 769, 771 (Me.

³ “What the majority of Progressives hoped to do in the political field was to restore popular government as they imagined it to have existed in an earlier and purer age. This could be done, it was widely believed, only by revivifying the morale of the citizen, and using his newly aroused zeal to push through a series of changes in the mechanics of political life—direct primaries, popular election of Senators, initiative, referendum, recall, the short ballot, commission government, and the like. Such measures, it was expected would deprive machine government of the advantages it had in checkmating popular control and make government accessible to the superior disinterestedness and honesty of the average citizen.” Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.* 257 (1955).

1996); *see also McGee*, 2006 ME 50, ¶ 25, 896 A.2d 933 (quoting *Allen*, 459 A.2d at 1102-03).

This Court has recognized the importance of understanding the Initiative Amendments' origins and purposes, noting that: "The broad purpose of the direct initiative is the **encouragement** of participatory democracy. By section 18 'the people, as sovereign, have retaken unto themselves legislative power,' and that constitutional provision must be liberally construed to facilitate, rather than to handicap, the people's exercise of their sovereign power to legislate." *McGee*, 2006 ME 50, ¶ 50, quoting, *Allen*, 459 A.2d at 1102–03 (1983) (emphasis supplied).

Consequently, this Court has admonished that, "[t]he significance of this change must not be overlooked, particularly by this court whose duty it is to so construe legislative action that the power of the people to enact their laws shall be given the scope which their action in adopting this amendment intended them to have." *Farris ex rel. Dorsky v. Goss*, 143 Me. 227, 231, 60 A.2d 908, 910-11 (1948); *see also Opinion of the Justices*, 275 A.2d 800, 803 (Me. 1971) ("Our primary consideration, therefore, must be that by the initiative amendment the people, as sovereign, have retaken unto themselves legislative power and that particular undertaking by them shall be construed to effectuate that purpose.")

Thus, when placed in their historical context and tied to their self-executing dynamism,⁴ it becomes evident the standards for construing the Initiative Amendments are not mere rules of construction—they are constitutionally-based **directives** to all state officials, including the Secretary of State and the Courts, which **must** guide challenges to the voters exercise of their sovereign lawmaking powers.

b. By the Initiative Amendments, the People Reclaimed their Sovereign Lawmaking Power.

As noted above, art. I, § 2 clearly provides that in ratifying the Maine Constitution, the people expressly reserved the right to “alter, reform, or totally change” it. Me. Const. art. I, § 2; *see also* discussion above.⁵ The Initiative Amendments constitute a clear example of the people’s exercise of that reserved power.

This Court explained the nature and character of the powers that the Initiative Amendments placed in the voters: “By the amendment the people reserved to themselves power to propose laws and to enact or reject the same at the polls independent of the legislature, and also reserved power at their own option to

⁴ “Until the Legislature shall enact further laws not inconsistent with the Constitution for applying the people’s veto and direct initiative, the election officers and other officials shall be governed by the provisions of this Constitution and of the general law, supplemented by such reasonable action as may be necessary to render the preceding sections self executing.” Me. Const. art. IV, pt. 3, § 22.

⁵ From its inception, the Maine Constitution always included amending procedures which were included as an element of the Articles of Separation from Massachusetts. Me. Const. art. X, § 4; *see also* Tinkle, *The Maine State Constitution* 179-181 (2d ed. 2013).

approve or reject at the polls any act, bill, resolve or resolution passed by joint action of both branches of the legislature.” *Farris*, 143 Me. at 230-31, 60 A.2d at 910. “In short, the sovereign, which is the people has taken back, subject to the terms and limitations of the [Initiative Amendments], a power which the people vested in the legislature when Maine became a state.” *Id.* 143 Me. at 231, 60 A.2d at 910.

Shortly after their adoption, this Court confirmed that these amendments had invested Maine voters—that is, Maine electors—collectively with the lawmaking power. *Moulton v. Scully*, 111 Me. 428, 89 A. 944, 953 (1914); *see also Opinion of the Justices*, 275 A.2d 800, 803 (“by the initiative amendment the people, as sovereign, have retaken unto themselves legislative power”).

c. The Initiative Amendments are Self-Executing; the Legislature may only Enact Implementing Statutes.

Consistent with the voters’ distrust of their elected representatives in the Legislature, the Initiative Amendments were drafted in such detail that they could be implemented without any legislation; that is, both in their detail and by their express command, they were and remain “self-executing.” Me. Const. art. IV, pt. 3, § 22. And, although the Legislature was empowered to “establish procedures for the determination of the validity of written petitions.” such laws could not be “inconsistent with the Constitution.” *Id.*

This Court has recognized the Initiative Amendments’ “self-executing” effect. Thus, as this Court has also recognized, the electors “laid out in unusual detail the

procedure by which they will legislate by direct vote.” *Allen*, 459 A.2d at 1103. Indeed, as the *Allen* Court noted, so detailed are the Initiative Amendments that, even without § 22’s express directive, “section 18 is detailed enough to be self-executing.” *Id.*; see also Me. Const. art. IV, pt. 3, §§ 18, 22.

This Court has explained the effect of the Initiative Amendments, as follows:

The direct initiative right was added to the Constitution by an amendment effective 1909. Prior to the enactment of the initiative amendment, the ability to enact legislation rested solely with the Legislature. The amendment placed in the hands of the people a powerful tool for shaping and creating legislation. This fundamental change in the form of government reserved directly to the people a power that had previously been held solely by the people’s elected representatives.

McGee, 2006 ME 50, ¶ 24 (internal citations omitted). Taken together, these provisions manifested the people’s unmistakable will that, having reclaimed this sovereign power, the Legislature must not frustrate the people’s exercise of it.

For these reasons, this Court has cautioned that a court should be “chary” of reading other limitations into these amendments. *Allen*, 459 A.2d at 1103 (rejecting deadline outside of Section 18). *Allen* cautioned further that a “court should infer additional procedural requirements only if they are **clearly necessary** to achieve consistency with other constitutional provisions or to accomplish the general purpose of the direct initiative.” *Id.* (emphasis supplied),

In other words, as this Court also explained, “[t]he right of the people . . . to enact legislation and approve or disapprove legislation enacted by the legislature is

an absolute one and cannot be abridged directly or indirectly by **any** action of the legislature.” *Farris*, 143 Me. at 231 (emphasis supplied); *accord McGee*, 2006 ME 50, ¶ 21; *see also Opinion of the Justices*, 132 Me. 512, 174 A. 853, 855 (1933) (“The right of the voters to pass upon the act is absolute. It **cannot** be abridged by further action of the Legislature.” (emphasis supplied)). Put another way, “[n]either by action nor by inaction can the legislature interfere with submission of measures as provided by the constitution.” *Opinion of the Justices*, 275 A.2d at 803, citing, *Farris*, 143 Me. at 231 (emphasis supplied).

This is not to say that the Initiative Amendments excluded the Legislature altogether. They gave the Legislature a role, but that role was limited: The Legislature was authorized to enact “further laws for **applying** the people’s veto and direct initiative.” Me. Const. art. IV, pt. 3, § 20 (emphasis supplied). Thus, the Legislature was authorized to “enact laws not inconsistent with the Constitution to establish **procedures** for determination of the validity of written petitions.” Me. Const. art. IV, pt. 3, § 22 (emphasis supplied). Noting this, the Justices have observed that, “[b]ecause the Maine Constitution itself authorizes the Legislature to enact laws to implement the direct initiative process described in the Constitution [citations omitted], the laws adopted by the Legislature, *see* 21-A M.R.S. §§ 901-907, are helpful in understanding the constitutional process.” *Opinion of Justices*, 2023 ME 34, ¶ 16, 295 A.3d 1212. But that is because, “the statutes which effectuate

and do not conflict with [the Initiative Amendments], are important to our constitutional interpretation.” *Id.*

In sum, in discharging their respective roles pursuant to the Initiative Amendments, the Legislature, the Executive, and the Judiciary may facilitate but they may not hinder the electors’ sovereign rights to initiate and repeal laws. By whatever justification, they may not change the substance of these rights or, materially impede or frustrate their exercise. These principles apply equally the voters’ exercise of these rights throughout the initiation and approval of initiatives and referenda.⁶

d. Role of Electors under Initiative Amendments.

The Initiative Amendments provide that Maine voters—electors—may initiate initiatives and referenda; they may sign petitions, they may circulate petitions, and, when an election is held, they may vote on the proposed legislation. Me. Const. art. IV, pt. 3, ¶§§ 17-22.⁷ The electors rights and duties under the Initiative Amendments build on those set forth in art. II, which recognize their essential is transient role as constitutional officers invested with discrete protections in discharging their electoral duties. *Id.* art. II, §§ 2-3.⁸

⁶ See 21-A M.R.S. § 1052(4-B) defining “initiation” of ballot measures as “includ[ing] the collection of signatures on petitions and related activities to qualify a state or local initiative or referendum for the ballot”).

⁷ See Me. Const. art. IV, pt. 3, § 20 (defining “elector” as one qualified to vote for governor).

⁸ I art. II, §§ 2-3; see also *Hobbs v. Getchell*, 8 Me. 187 (1832) (discussing immunity from arrest going to and from the polls).

Thus, when an elector initiates, circulates, or signs an initiative petition, they are acting in a legislative capacity. *See, John Doe No. 1 v. Reed*, 561 U.S. 186, 221 (2010), (Scalia, J., concurring) (when a voter signs a petition, “he is acting as a legislator”). And, as this Court has recognized, when the petition on which an elector’s name appears has been invalidated, all the electors on that petition have been “disenfranchise[d].” *Maine Taxpayers Action Network v. Sec’y of State*, 2002 ME 64, ¶, 23, 795 A.2d 75 (Dana, J., concurring); *see also Yes On Term Limits, Inc. v. Savage*, 550 F.3d 1023, 1027 (10th Cir. 2008) (“unenforceable” circulator consent agreement could “disenfranchise” voters).

B. THE ELECTORS’ RIGHTS TO INITIATE AND PROMOTE INITIATIVES AND REFERENDA, INCLUDING SIGNING PETITIONS, ARE REINFORCED AND SEPARATELY PROTECTED BY THE RIGHT TO PETITION THE GOVERNMENT.

Although the Initiative Amendments are distinctive, they do not exist in a constitutional vacuum. They implicate and are reinforced by the commensurate and reinforcing right to petition the government and to exercise freedoms of assembly and speech.⁹ *See Dupuis*, 2025 ME 6, ¶ 19, (“we examine our Constitution wholistically.”).

⁹ *See* Me. Const., art. I, §§ 15, 4; *see also* U.S. Const., 1st Am. (freedom of speech, assembly, right to petition).

The Maine Constitution has always provided that the people have the right to petition the government:

“The people have a right at all times in an orderly and peaceable manner to assemble to consult upon the common good, to give instructions to their representatives, and to request, of either department of the government by petitioner remonstrance, redress of their wrongs and grievances.”

Me. Const. art. I, § 15.¹⁰

Though distinct in their own rights, the rights to assemble and to petition the government are interrelated with the Maine Constitution’s guarantees of free speech and freedom of the press. Me. Const. art. I, §§ 4, 15. The Supreme Court has long recognized that the right to petition the government as set forth in the First Amendment is an essential and distinctive right:

“The right of the people to peaceably assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or duties of the national government is an attribute of national Citizenship, and, as such, under the protection of and guaranteed by the United States. The very idea of a government, republican in form, implies a right on

¹⁰ Learned authority suggests that this Court has concluded that the right to petition the government has been “subsumed under freedom of speech.” Tinkle, *The Maine State Constitution*, at 56. Although the right to petition the government and freedom of speech are subject to similar analyses, the Committee does not read this Court’s decision as divesting the right to petition of its role in protecting distinctive rights. To the contrary, the Committee contends that the Initiative Amendments, although independent and “self-executing” in their own right, constitute a direct application of the principles protected by right to petition as set forth in art. I, § 15. That right, in turn, serves as an aid to and reinforces the people’s exercise of their sovereign lawmaking power from the initiation of a petition drive to its culmination at the ballot box. The people’s rights of direct democracy and the right to petition are, of course, enhanced and further protected by the “cognate” right of freedom of speech in art. I, § 4. *Cf. Thomas v. Collins*, 332 U.S. 516 (1945).

the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for redress of grievances.”

United States v. Cruickshank, 92 U.S. (2 Otto) 542, 552 (1875).

At its core, the Petition Clause has always protected the people’s right to seek redress of grievances, including changes in policy, from the executive and lawmaking governmental bodies. *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 395-398 (2011) (recounting history of Petition Clause); *see also, id.* at 403 (Scalia, J, concurring and dissenting), (“There is abundant historical evidence that ‘Petitions’ were directed to the executive and legislative branches of government...”). As the *Duryea* Court explained, “[t]he right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives.” *Id.* at 388; *accord, Pollack v. Fournier*, 2020 ME 93, ¶15, 237 A.3d 149. Thus, with the adoption of the Initiative Amendments, Maine voters regained the power to petition themselves to enact or repeal laws and, thereby, the entirety of these legislative processes became subject to the Petition Clauses of the Maine and U.S. Constitutions.

The foregoing discussion, therefore, establishes two points: first, as limited and confined by the Initiative Amendments, statutes may not, of their own force, impose substantive limitations on the electors’ rights to engage in direct democracy under the Initiative Amendments. Nor, without compelling justification, can they materially impair the electors’ rights under the Petition Clauses of the Maine and

U.S. Constitutions. In other words, the electors’ rights to petition the government and engage in political speech—and the correlative rights of petition circulators—must be considered along with those of their rights to initiate, advance, and vote for or against proposed initiatives and referenda.

C. THE CONSENT ORDER AND JUDGMENT OF THE U.S. DISTRICT COURT IN *WE THE PEOPLE V. BELLOWS* DID NOT AND COULD NOT HAVE EMPOWERED THE SECRETARY TO IMPOSE MANDATORY CONDITIONS ON OUT-OF-STATE CIRCULATORS.

In 2020, We the People PAC and other plaintiffs filed suit in U.S. District Court seeking a declaratory judgment that Maine’s constitutional and statutory prohibitions barring out-of-state circulators from circulating initiative and referenda petitions violated the First Amendment to the U.S. Constitutions and requesting injunctive relief barring the Secretary from enforcing them. *We the People PAC v. Bellows*, 519 F.Supp.3d 13, 15-16 (D. Me. 2021). After finding that the plaintiffs had shown a likelihood of success on their constitutional claims and had met the other standards, the District Court issued injunctive relief. *Id.* at 53, *aff’d* 40 F. 4th 1, 27 (1st Cir. 2022). On remand, the Secretary and the plaintiffs drafted a Consent Order and Judgment which the District Court approved. *We the People v. Dunlap* Civil No. 1:20-cv-00489-JAW (“Consent Order”).

The Secretary relies heavily on the Consent Order to invalidate the petitions of four out-of-state circulators, Ummsalaamah Hakeem, Kewechi Chukwuma,

Albert Jordan, and Cairo (her mononym). App. 0333-0337; App. 0537-0540. But Consent Order could not and did not give the Secretary powers the Maine Constitution denies to her; it did not and could not give her the authority to circumvent the Maine Constitution’s amending clause by only “partially” enforcing the Constitution’s blanket ban on out-of-state circulators; and, it did not and could not empower her to engage in the wholesale invalidation of petitions and the consequent disenfranchisement of 1,520 Maine electors.

1. IN RULING ON THE CONSTITUTIONALITY OF MAINE’S EXCLUSIONARY RESIDENCY AND VOTER REGISTRATION REQUIREMENTS, THE DISTRICT COURT APPLIED STANDARD FIRST AMENDMENT ANALYSIS.

The *We the People* plaintiffs included the We the People PAC, the Liberty Initiative Fund, and an individual out-of-state circulator. *We the People*, 519 F.Supp.3d at 16. The Plaintiffs claimed, as to each of them, Maine’s blanket constitutional and statutory bans on out-of-state circulators violated their First Amendment’s free speech protections and sought preliminary injunctive relief. *Id.* at 15-16. Following discovery, plaintiffs moved for summary judgment. *Id.* at 33, In ruling on the parties’ arguments, the District Court noted that it had the benefit of a “substantial factual record.” *Id.* at 50.

District Court Applied Strict Scrutiny: Applying the four-factor preliminary injunction tests, the District Court considered plaintiffs’ challenges to Maine’s exclusionary residency and voter registration prohibitions, treating each

separately. In defense of these conditions, the Secretary explained the particular state interests supporting each. *Id.* at 34-38. After reviewing the parties' arguments and supporting evidence, the District Court concluded that, as to the residency exclusion, the plaintiffs had "show[n] that their inability to use out-of-state petition circulators is a severe burden on the exercise of their First Amendment rights." *Id.* at 46; *see also Id.* at 42. The District Court reached the same conclusion with respect to the exclusionary constitutional and statutory voter registration requirement. *Id.* at 51.

To begin with, the District Court concluded that petition circulation in support of an initiative or referendum constituted "core political speech" where First Amendment protection was "at its zenith." *Id.* at 38, citing, *Meyer v. Grant*, 486 U.S. 414, 421-22, 425 (1988). Having identified the First Amendment right at stake, the District Court explained, its conclusion that the residence and voter registration requirements "severely burdened" plaintiffs' First Amendment freedom of speech rights, triggered the application of well-established standards of review. As the District Court explained, "[r]egulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest." *Id.* at 39, citing *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997).

Although it should go without saying, still it must be said, the "narrow tailoring" to which the District Court referred is **not** done by the court. It is done by the lawmaking authority. The question a court must answer is whether, given the

severity the law in question imposes on First Amendment rights, has that law been sufficiently tailored to serve its objectives to survive strict scrutiny. *See Id.* at 51 (finding “the Defendants have **not shown** the voter registration requirement **is** narrowly tailored to a compelling state interest.” (emphases, underscore supplied)).

In another context, the Supreme Court has explained why courts do not choose among less restrictive means: “If there are alternative ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid objective. Policy decisions are for state legislatures[.]” *Bibb v. Navajo Freight Lines*, 359 U.S. 520, 524 (1958) (commenting on less restrictive means under dormant Commerce Clause review).

This does not mean that the District Court did not consider whether the Secretary might serve the state interests she asserted were served by the residency and voter registration exclusions might be achieved through less burdensome means, that is the very analysis that strict scrutiny requires. *We the People*, 519 F. Supp. 3d at 38-41. The several comparable circuit court decisions deciding blanket residency and voter requirements cited in the District Court decision all applied the same strict scrutiny analysis, including the assessment of whether the government’s objectives might be served by less burdensome means. *Id.* at 40-41, 46-50. However, none of those courts then “tailored” the law to fit the alternatives they had identified; neither,

of course, did any hold that, if any such alternatives were enacted into law, they would automatically pass First Amendment muster.¹¹

Although this discussion may seem prosaic, as will be seen, the claims that the Secretary and the Petitioners make for the Consent Order render it essential context.

The District Court’s Initial Injunction. When the District Court concluded that the *We the People* plaintiffs had shown a likelihood of success on their First Amendment challenges to Maine’s residency and voter registration exclusions, it entered an order for injunctive relief. *Id.* at 53. In doing so, it was not writing on a blank slate. In their initial motion for injunctive relief, the plaintiffs had described in detail the relief they were seeking. *We the People v. Dunlap*, 1:20-cv-00489-JAW, Doc. 3, pp. 1-2. Although in their proposed injunction, plaintiffs asked the District Court to enjoin the Secretary from enforcing the residency and voter registration requirements against out-of-state circulators, they also proposed that the injunction would only benefit those out-of-state circulators “who first submit to the jurisdiction of the State of Maine for any investigation and/or prosecution of alleged violations of Maine’s election code with respect to Referendum and/or People’s Veto petitions

¹¹ *We the People*, 519 F.Supp.3d at 40-41, reviewing *Wilmoth v. Sec’y of New Jersey*, 731 F. Appx 97, 103 (3d Cir. 2018), *Libertarian Party of Virginia v. Judd*, 718 F.3d 308, 317 (4th Cir. 2013), *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023, 1028 (10th Cir. 2008), *Nader v. Blackwell*, 545 F.3d 459, 478 (6th Cir. 2008), *Nader v. Brewer*, 531 F.3d 1028, 1036 (9th Cir. 2008), *Krislov v. Rednour*, 226 F.3d 851, 860 (7th Cir. 2000); see also *Chandler v. City of Arvada*, 292 F.3d 1236, 1243-44 (10th Cir. 2002).

filed with Defendants.” *Id.* ¶ 2. Aside from opposing one another on the merits of plaintiffs’ First Amendment challenge, nothing in the decision indicates any adversity over the proposed injunction’s limitation to out-of-state circulators agreeing to submit to the State’s jurisdiction. *We the People*, 519 F. Supp. 3d 13, *passim*. The District Court endorsed it without change. *Id.* at 53.

District Court’s Consent Order: After remand by the First Circuit, the agreed to resolve the plaintiffs’ claims without further litigation. To that end, the parties drafted a consent agreement which the District Court approved.¹²

The Consent Order provides that the District Court would enter judgment for the plaintiffs on Count I-IV of their complaint. Consent Order, ¶ 1, Exhibit B to App. 0085. Paragraph 3 of the Consent Order is readily recognizable as an exercise of traditional injunctive relief. With the parties having agreed that the voting registration requirement violates the First Amendment, Paragraph 3 simply bars the Secretary from enforcing this requirement. *Id.*, ¶ 3. With respect to the residency requirement, Paragraph 2 starts out the same way as Paragraph 3, but then incorporates purportedly qualifying conditions for out-of-state circulators similar to,

¹² With the First Circuit’s affirmance of the District Court’s ruling on the residency and voter registration requirements, there appears to have been no adversity in the drafting and approval of the Consent Order. *Cf. Kasper v. Bd. of Education of the City of Chicago*, 814 F.2d 232, 338 (7th Cir. 1987).

but not the same as, those in the original preliminary injunction. *Id.* ¶ 2(a)-(c); *cf. We the People*, 519 F.Supp.3d at 53.

Although as is discussed further below, the purportedly provisional conditions in subparagraph 2(a)-(c) are far removed from traditional injunction remedies, they are equally striking in that they appear to set conditions for out-of-state circulators to exercise the First Amendment rights under a wholly exclusive prerequisite that, with the Secretary's agreement, the District Court has adjudicated as unconstitutional in its entirety. Further removed still, is the Secretary's draconian application of those parts of the Consent Order—particularly, subparagraph 2(a).

Thus, subparagraph 2 provides that to qualify for exemption from the Secretary's enforcement of Maine's unconstitutional residency requirement, out-of-state circulators were required to consent to the State's jurisdiction, maintain current contact information with the Secretary, and respond to the Secretary's requests for information. In particular, the Consent Order requires circulators to consent as follows:

“(a) agree to submit to the personal jurisdiction of Maine for purposes of any investigation or prosecution of any alleged violation of Maine law with respect to initiative or people's veto petition.¹³

¹³ Subparagraph 2(b) requires out-of-state circulators to maintain current contact information with the Secretary of State. It is comparable to 21-A M.R.S. § 903-A(4)(1). With the District's invalidation of the residency and voter registration requirements, Section 903-A(4) in its entirety became applicable to out-of-state circulators. Thus, subparagraph 2(b) is largely redundant to Section 903-A(4)(1) and, in any event, is not at issue in this appeal. Subparagraph 2(c) requires

Id. at ¶ 2

Because there is no record that any party opposed these terms, their provenance is not clear.

A comparison of the initial preliminary injunction with the Consent Order reveals some significant and entirely unexplained differences. First, whereas the initial injunction limited its application to out-of-state circulators “who **first** submit to the jurisdiction of the State of Maine”, the Consent Order contains no such timing restriction. Second, subparagraphs 2(b) and 2(c) are tied to the “duration of any petition drive” which subparagraph 2(b) explains “includes the collection of signatures and review of those signatures by the Secretary of State’s office.” *Id.* at ¶ 2(b).¹⁴

Aside from the particular aspects of subparagraphs 2(a)-(c), which are discussed further below, the Consent Order does not explain why, with the Secretary’s consent, it has purported to impose conditions on out-of-state circulators

the out-of-state circulator to be responsive to the Secretary. Subparagraph 2(c) is also not at issue in this appeal.

¹⁴ The phrase “for the duration of any petition drive” as set forth and, at least partially, explained, in subparagraph 2(b) is not derived from the Initiative Amendments or Title 21-A. Its meaning is not clear and the Secretary has made no attempt to clarify it. Whatever it may mean, it does not appear in subparagraph 2(a) giving rise to the inference that compliance with subparagraph 2(a) is not tied to the petition drive. This interpretation would be consistent with the omission of the word “first” as a possibly rigid timing requirement.

as to Maine’s wholly exclusionary residence requirement which the District Court, with the consent of the parties, has adjudicated as unconstitutional in its entirety.

2. THE CONSENT ORDER DOES NOT “NARROW” OR OTHERWISE AMEND THE MAINE CONSTITUTION

Before turning to the terms of Secretary’s interpretation and application of the Consent Order, it must be understood that, with the Secretary’s consent, the District Court adjudicated the exclusionary residency and voter registration unconstitutional in their entirety as violative of the First Amendment. Consent Order, ¶ 1. At that point, these provisions became invalid and could not be enforced. *cf. Ayotte v. Northern New England Planned Parenthood*, 546 U.S. 320, 329-32 (2006).¹⁵

Although not fully acknowledged by the Secretary, this legal fact forms the essential backdrop to all her arguments that, notwithstanding the invalidation of these conditions, she nonetheless retains the power to enforce them not against out-of-state circulators, themselves, but against the electors on the petitions they have circulated.

While vigorously advocating for the powers purportedly flowing to the Secretary from the Consent Order, the Recommended Decision had considerable difficulty explaining its legal effect. First, the Recommended Decision asserted that “[t]he United States District Court **authorized** Maine” to require out-of-state

¹⁵ See *Pool v. City of Houston*, 978 F.3d 397, 309 (5th Cir. 2020) (“Courts hold laws unenforceable; they do not erase them.”).

circulators to consent to Maine’s jurisdiction to escape the Secretary’s enforcement of Maine’s unconstitutional residency requirement. App. 0334. At another point, the Recommended Decision asserts that the Consent Order “does not contradict the Maine Constitution’s prohibition on out-of-state circulators. Rather, it narrows the scope of that prohibition[.]” App. 0337. At yet another point, the Recommended Decision asserted that “the Consent Order merely narrows the scope of the Constitution’s [Maine residency] prohibition.” App. 0337.

In her brief to the Superior Court, the Secretary asserted that, in including the jurisdiction conditions in the Consent Order, was based on the District Court “recognition that requiring circulators to consent to a state’s jurisdiction is (unlike a blanket ban on out-of-state circulators) a requirement narrowly tailored to furthering ‘the State’s strong interest in protecting its elections.’” Secretary’s Post-Remand Br. App. 0538--0539, citing, *We the People*, 519 F. Supp. 3d at 46. But that is not what the District Court did or could have done. Its “narrowly tailoring” observations did not hold that any of the less restrictive options would, **if enacted**, pass First Amendment muster. They only noted that they were less restrictive than the total ban.

As the Supreme Court in *Bibb* made clear, in finding state laws overly burdensome of federally protected rights, federal courts do not, themselves, approve less burdensome means. That is decision is left to the legislatures or, in this instance,

to the people of Maine who have the right to remove or attempt to condition the residency and voter registration exclusions by amending the constitution. *Bibb*, 359 U.S. at 524.¹⁶

Since the District Court’s invalidation of the residency and voter registration exclusions, nothing has changed. The exclusions remain invalid in their entirety. That means it is up to the people of Maine to determine whether and to what extent they should be changed. Upon proposal by the Legislature, only the people of Maine can amend the Constitution. art. X, § 4. The Secretary complains that Maine voters “overwhelmingly” rejected a constitutional amendment to remove the residency and voter registration requirements. Sec’y Post-Remand Br. at App. 0538. But that is their right.¹⁷

Moreover, should at some point Maine voters approve constitutional amendments eliminating the residency and voter registration requirement, it would be entirely within their power to provide the Secretary with **no** particularized

¹⁶ The conditional character of a court’s review of less burdensome options under First Amendment strict scrutiny shows that claims by the Secretary and the Petitioners that the conditions incorporated into the Consent Order have been **adjudicated** to be consistent with First Amendment standards are completely wrong. The only way these notional approaches could be adjudicated consistent with the First Amendment would be if they had been enacted into law and subject to a constitutional challenge. None of the “narrow tailoring” options in the circuit court decisions reviewed by the District Court had been enacted into law and withstood a First Amendment challenge. See, n. 11, *supra*.

¹⁷ The Secretary asserts that Maine voters’ rejection of these amendments “confirm[s] the voters widespread concern that out-of-state circulators created risks to the integrity of the direct initiative process.” Sec’y Post-Remand Br. at 15. But the Secretary cited to no record support for this assertion.

authority to regulate out-of-state circulators, simply leaving them subject to the same requirements that already apply to all Maine circulators. That, too, would be **their** choice.

3. THE SECRETARY’S ASSERTIONS THAT “THE FRAMERS” ADOPTED THE EXCLUSIONARY RESIDENCY AND VOTER REGISTRATION REQUIREMENTS TO COMBAT FRAUD IS NOT SUPPORTED IN THE RECORD OR IN CASE LAW.

Throughout her Post-Remand Brief, the Secretary asserts that the “Framers” adopted the exclusionary residency and voter registration requirements to preserve the integrity of the initiative and referendum processes. *See e.g.*, Sec’y Post-Remand Br. at 15. However, when in the *We the People* litigation, the Secretary was given ample opportunity to prove this point, the results did not impress the District Court. Indeed, the only justification that was “clear” to the District Court was “that one of the purposes of the residency requirement and the 2015 [statutory] amendment is to keep out-of-state interest groups out of Maine’s political process.” *We the People*, 519 F. Supp. 3d at 47.¹⁸

In addition, as the Supreme Court observed, “we are not prepared to assume that a professional circulator—whose qualifications for similar future assignments may well depend on a reputation for competence and integrity—is any more likely to accept false signatures than a volunteer who is motivated by an interest in having

¹⁸ Needless to say, this sentiment, by itself, could explain the voters “overwhelming” rejection of the residency and voter registrations requirements of which the Secretary complains.

the proposition placed on the ballot.” *Meyer v. Grant*, 486 U.S. 426; accord *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 203-04 (1999).

Moreover, *Meyer* suggested that Colorado’s laws prohibiting forgery and the making of false statement might well be sufficient by themselves to manage risks of circulator misconduct, including, in that case, paid circulator misconduct. *Meyer*, 486 U.S. at 427. Maine, of course, has comparable laws. See 21-A M.R.S. § 904.

The Supreme Court has also repeatedly observed that, where ballot measures are concerned, the risk of *quid pro quo* corruption “not present.” *Buckley*, 525 U.S. at 648, citing, *Meyer*, 486 U.S. at 4427-28; *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978).¹⁹

On this point, it bears emphasis that, when burdening First Amendment rights, whether to remedy past harms or prevent anticipated harms, the Secretary “must do more than simply posit the existence of the disease sought to be cured” *Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622, 664 (1994). The same standard

¹⁹ To buttress her unsupported contention that out-of-state circulators are prone to corruption, the Secretary points to an instance in which all the signatures on one out-of-state circulators were found to have been “forged.” Secretary’s Post-Remand Br. at 15. That is not correct. The Secretary determined that the signatures on the circulator’s petitions did not match those on the voter registration cards. No one has determined why they did not match. It bears emphasis that the circulator in question responded on extremely short notice to the Secretary’s letter asking her to appear at the May 12 hearing. She had to wait most of the day to testify and, when she did, she patiently answered all questions under oath. [R 033402-R 033420]. Something appears to have gone wrong with the signatures this circulator gathered, but what exactly happened and why must await a more complete investigation. If that were to happen, the Secretary should recuse herself because, in her zest to defend her decision, she has clearly prejudged the facts concerning this particular incident.

should apply where, as here, the Secretary relies on unsupported claims as to the “Framers’ intent” to disqualify more than 1,500 otherwise valid elector signatures and frustrate the placement of this Ballot Initiative on the November 2026 ballot.

In sum, the conditions in subparagraph 2(a) of the Consent Order have not been enacted into law. Because it has not been enacted into law, no one, including the four out-of-state circulators and the electors who signed their petitions, have been able to challenge its No court has adjudicated its constitutionality. And, no court has adjudicated whether these conditions are consonant with the First Amendment.

4. THE SECRETARY’S DETERMINATION THAT SHE CANNOT SUBPOENA OUT-OF-STATE CIRCULATORS SEVERELY UNDERCUTS HER ENFORCEMENT RATIONALE AND CONFLICTS WITH HER REPRESENTATIONS TO THE DISTRICT COURT AND THE FIRST CIRCUIT COURT OF APPEALS.

Shortly before the May 12 hearing, the Petitioners asked the Secretary to issue subpoenas to three out-of-state circulators, all of whom had checked the submission-to-jurisdiction box. The Secretary responded by advising that, upon consultation with the Deputy Attorney General, she had concluded that 5 M.R.S. § 5060 prevented her from issuing subpoenas. App. 0302. All she could do was issue letters requesting that the circulators appear at the hearing. The letters that she issued to three out-of-state circulators confirmed her position. Notwithstanding the Secretary’s toothless request, all the out-of-state circulators appeared. *See We the People*, 519 F. Supp. 3d at 47 (“out-of-state circulators...have an incentive to

maintain their professional reputations and get paid for their signatures.”) The Secretary’s belated admission that she cannot subpoena even those out-of-state circulators who have consented to the State’s jurisdiction seriously undermines her contention that the consent-to-jurisdiction requirement is essential to maintaining the integrity of the initiative and referendum processes.

Beyond that, the Secretary’s belated concession conflicts with the representations she made to the District Court and the First Circuit that the State could exercise compulsory process over consenting circulators. *See Id.* at 47 (“Defendants have failed to show how a requirement that petition circulators enter into a binding agreement to submit to Maine’s jurisdiction and comply with **subpoenas** would be inadequate.”(emphasis supplied)); see also, 40 F. 4th at 20 (For that reason, defendants contend, even though Maine **could subpoena** out-of-state circulators that option ‘is hardly a realistic one for the Secretary to exercise during the thirty day petition review period.’ (emphasis supplied)).

This is no minor distinction. One who defies a valid subpoena may be held in contempt. That is a far different consequence than recourse to the Secretary’s remedy of choice, petition invalidation. At least one federal court has questioned whether it could approve an agreement that involve “the proposed penalty of striking petition signatures [which] would disenfranchise Oklahoma voters.” *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023, 1027 (10th Cir. 2008).

It appears that, whatever their validity as applied to the Secretary, the District Court approved them on the understanding that any penalties would be borne by the non-compliant circulator. Nothing suggests that the District Court understood that the Secretary would invoke the District Court's Consent Order to invalidate otherwise valid voter signatures and to bar an initiative from the ballot.²⁰

5. THE INVALIDATION OF THE RESIDENCY AND VOTER REGISTRATION REQUIREMENTS DEPRIVED THE SECRETARY OF THE POWER TO TREAT OUT-OF-STATE CIRCULATORS DIFFERENT FROM IN-STATE CIRCULATORS

Pursuant to art. V, pt. 2, the Secretary of State is a constitutional officer. However, with respect to initiatives and referenda, **all** the Secretary's powers are derived from the Initiative Amendments and nowhere else. What powers the Secretary exercises by statute are dependent on the Initiative Amendments' authority and may not be inconsistent with them.

According to the Consent Order to which the Secretary agreed, the Maine Constitution's residency and voter registration exclusions have been adjudged unconstitutional and unenforceable. Consent Order, ¶ 1. Nonetheless, as the

²⁰ It is not clear whether the Secretary has advised the District Court of her conclusion that, notwithstanding the circulators' consent to jurisdiction, she cannot subpoena them and that she has determined that, for noncompliant circulators, her sole remedy is petition invalidation up to and including disqualification of an otherwise valid initiative from the ballot. If not, it would seem that the Secretary should do so to allow the District Court to consider whether it intended that the Consent Order would be used to disenfranchise voters and disqualify a ballot measure from the general election ballot. See, *Yes On Terms Limits, Inc.*, 550 F.3d at 1027.

Secretary also acknowledges, these exclusions remain intact in the Maine Constitution.

Consent Order prevents the Secretary from barring out-of-state circulators from circulating petitions in Maine. But, because the Maine Constitution wholly bans out-of-state circulators from Maine, the Secretary cannot set conditions that allow some out-of-state circulators to circulate petitions while barring others.

In other words, the Maine Constitution's blanket exclusions deny her the authority to selectively enforce these exclusions; especially subject to conditions Maine voters have not approved. Neither may the Secretary devise standards circumventing these exclusions based on policy determinations which the Secretary deems important but which have not been even been presented to much less approved by any lawmaking body. Where the Secretary lacks such authority, her insistence on the need for the circumventing standards cannot validate them.

The Law Court has held that a governmental entity may not enter into a consent agreement that purports to invest that entity with powers it does not possess. *Pike Industries v. City of Westbrook*, 2012 ME 78, ¶ 37, 45 A.3d 707; *see also Tenants Harbor General Store v. Dep't of Environmental Protection*, 2011 ME 6, ¶¶ 14-17.²¹

²¹ Federal standards for consent agreements are comparable. See, *Pedreira v. Sunrise Children's Services, Inc.*, 826 F. Appx. 480, 487 (6th Cir. 2020). ("Courts must be especially cautious when state officials seek to achieve by consent decree what they cannot achieve by their own authority.")

The provisions in the Consent Order on which the Secretary relies to exclude the petitions circulated by Hakeem, Chukwuma, Albert, and Cairo are not derived from the Maine Constitution. Therefore, the Secretary lacks the power to enforce them. And, the Secretary cannot circumvent this rule by seeking to invest herself with powers under the purported authority of a Consent Order—whether issued by a federal court or a state court.

Therefore, the provisions of the Consent Order on which the Secretary has relied to invalidate the out-of-state circulators petitions are, themselves, invalid **as to the Secretary** and she may not apply them to invalidate any of the petitions circulated by Hakeem, Chukwuma, Albert and Cairo.

6. FEDERAL COURTS DO NOT CONSTRUE STATE CONSTITUTIONS AND LAWS

Although the Secretary contends that the Consent Order is really applying (selectively) the Maine Constitution, federal courts do not construe state constitutions. *Minnesota v. National Tea Company*, 309 U.S. 551, 557 (1940) (“It is fundamental that state courts be left free by us in interpreting their state constitutions.”). To do otherwise would undermine basic concepts of federalism. *e.g.*, *Younger v. Harris*, 401 U.S. 37, 44-45 (1971) (discussing “Our Federalism”).

The Secretary implies that, in effect, construed the Maine Constitution by divining the purpose behind the residency and registration exclusions and tailoring the injunction to allow the Secretary to enforce them for valid purposes but not for

invalid purposes. Nothing in the District Court's decision supports this decision. To the contrary, the District Court clearly applied First Amendment standards to the exclusionary residency and voter registration requirements.

a. The Invalidation of the Electors' Signatures on the Out-of-State Circulators' Petitions Violates their Right to Petition the Government and their Rights under the Initiative Amendments.

None of the signatures on the petitions circulated by the four out-of-state circulators has been challenged as invalid. In signing those petitions, each elector was exercising his or her right to petition the government under both the Maine and U.S. Constitutions. They were also exercising their rights to freedom of speech, freedom of assembly, and rights of association inherent therein and in the right to petition the government, all as protected by the Maine and U.S. Constitutions.

Under the Initiative Amendments, the Secretary is bound to administer her review of petitions and the laws applicable to them so as to facilitate rather than handicap the electors' exercise of those rights. *McGee*, 2006 ME 50, ¶ 25. In invalidating all the signatures on the petitions circulated by the four out-of-state circulators, the Secretary violated her obligations as articulated by the *McGee* Court. For this reason, her decision as to the petitions circulated by all four out-of-state circulators was invalid and the Committee respectfully asks that it be overturned.

b. Circulator Cairo Complied with the Consent Order.

Assuming, solely for the sake of argument, that Subparagraphs 2(a) of the Consent Order is valid, Cairo satisfied its conditions. First, Subparagraph 2(a) contains no timing requirement. Second, it is not include the “duration of the petition drive” limitation (whatever that may actually mean). This must be considered deliberate omissions. Their absence suggests that, where submission to jurisdiction was concerned, timing was not critical.

In addition, the clear absence of any timing standard from the Consent Order raises significant notice issues under the Due Process Clause. *See Grayned v. City of Rockford*, 408 U.S. 104 , 109, n.4 (1972) (collecting cases). The Consent Order did not put circulators on notice that, if they did not check the box by some unstated, unannounced deadline, their petitions could be invalidated.

Recognizing that the Consent Order lacks any timing requirement, the Secretary invokes the general circulator requirements at 21-A M.R.S. § 903-A(4).²² But, Section 903-A(4) was clearly enacted to apply to Maine circulators. It can only be applied to out-of-state circulators in the same way it is applied to Maine

²² In light of the Secretary’s inability to rule out a circulator’s completion of jurisdiction box after beginning to circulate petitions but before the completion of the review process, her endorsement of the argument that timing is governed by Section 903-A(4) of Title 21—A is telling. That is because the Secretary effectively lifted it from the Petitioners’ posts-hearing brief. It is nothing short of remarkable that the Petitioners could provide the Secretary with the justification for invalidating all of Circulator Cairo’s petitions under the Consent Order when the Secretary, herself, though an author of that Consent Order could not summon that justification from her own knowledge of the Consent Order. On this point, it should be noted that, while adopting the Petitioners’ Section 903-A(4) argument, the Secretary did not accept the Petitioners’ reliance on the word “first” in the preliminary injunction.

circulators. It cannot be a source of special qualifying conditions for out-of-state circulators because the Maine Constitution still bars all such circulators.

The Maine Constitution cannot be the source for specialized enabling conditions for out-of-state circulators.

c. The Secretary erred in Invalidating Circulator Cairo's Petitions.

The Law Court has repeatedly emphasized that “the broad purpose of the direct initiative is the encouragement of participatory democracy.” *Allen v. Quinn*, 459 A.2d 1098, 1102 (Me. 1983). Therefore, Initiative Amendments should be construed to “facilitate rather than handicap the people’s exercise of their sovereign power.” *League of Women Voters v. Secretary of State*, 683 A.2d 769, 771 (Me. 1996).

Before invalidating Cairo’s petitions and, thereby, disqualifying the Ballot Initiative from the November 2026 ballot, the Secretary was required to demonstrably apply the constitutional imperative to “facilitate rather than handicap” the Ballot Initiative. The Secretary’s failure to do so, violated her administration of the Ballot Initiative and, on this ground alone, warrants the reversal of the Secretary’s decision.

d. The Secretary Erred in Invalidating Circulator Cairo's Petitions because, in doing so, the Secretary Violated the Signatory Electors' Right to Petition the Government.

As has been noted above, none of Circulator Cairo's petitions have been challenged. Each voter who signed one of her petitions was not only acting in his or her capacity as a constitutional officer, they were also exercising their right to petition the government as protected by both the First Amendment to the U.S. Constitution and Article I, Section 15 of the Maine Constitution. *See Meyer v. Grant*, 486 U.S. 414, 421-22 (1988) (one who signs an initiative petition either supports it or believes it warrants consideration by the voters at large).

Invalidating their signatures and, thereby, their otherwise valid effort to petition the government constitutes a severe—even extreme—burden on that right. It also places a severe burden on their corollary rights to freedom of speech, freedom of assembly and associated rights of expression and association, as protected by the First Amendment to the U.S. Constitution and Article I, Sections 4 and 15 of the Maine Constitution.

The Secretary's decision to invalidate their signatures altogether may only be justified by a compelling state interest. Even if accepted *arguendo*, the justification that the Secretary's decision on that point does not meet that demanding standard. Therefore, for these reasons and those set forth above, the Secretary's exclusion of the petitions of those out-of-state circulators who did not check the jurisdiction box,

including Circulator Cairo, who did check the box in time for the Secretary's review of this matter, should be reversed and those petitions with their elector signatures should be reinstated.

7. THE INITIATIVE AMENDMENT'S RESIDENCY AND REGISTRATION REQUIREMENTS VIOLATE THE FIRST AMENDMENT'S GUARANTEE OF FREEDOM OF SPEECH.

The District Court's decision, affirmed by the First Circuit, that the plaintiffs in *We the People* had demonstrated a likelihood of success in their contention that the Initiative Amendments' residence and voter registration requirements (and the complementary statutory requirements) violated the freedom of speech clause of the First Amendment was in tension with the Law Court's decisions in *Hart* and *Jones* holding that the residency and voter registration requirements did not conflict with the First Amendment.

As the District Court noted, in contrast to *Hart* and *Jones*, the parties had provided the court with "a substantial factual record." *We the People PAC v. Bellows*, 519 F. Supp. 3d 13, 50 (D. Me. 2021). Based on that record, the District Court concluded that the residency requirement imposed a severe burden on the plaintiffs' first amendment rights. *Id.* at 42.

Therefore, as to their challenges to both the residency and the voter registration requirements, the District Court found that the plaintiffs had demonstrated a likelihood of success. *Id.* at 48, 51. The First Circuit upheld the

District Court's findings on both points. *We the People v. Bellows*, 40 F. 4th 1, 19, 24-25 (1st Cir. 2022).

In light of the decisions of the District Court and the First Circuit, the Committee respectfully suggests that this Court reconsider and overrule its rulings in *Hart and Jones*.

8. THE STATUTORY BAN ON NOTARIES CIRCULATING PETITIONS AND LATER WITNESSING THE SIGNATURES OF OTHER CIRCULATORS VIOLATES THE FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH, FREEDOM OF ASSEMBLY, THE RIGHT TO PETITION THE GOVERNMENT AND RIGHTS OF ASSOCIATION INHERENT THEREIN.

Notaries Public are barred from providing “other services” to an initiative or referendum and later acting as a notary to witness the signatures of other circulators. 21-A M.R.S. § 903-E, 4 M.R.S. § 1904(5). Relying on these statutes, the Secretary invalidated all petitions witnessed by notaries, Robert DeClercq and Patrick Harrington, on the grounds that, before witnessing the signatures of other circulators of petitions for the Ballot Initiative, they had, themselves, circulated petitions for the Ballot Initiative.

In invalidating the petitions witnessed by notaries DeClercq and Harrington, the Secretary also invalidated and effectively disenfranchised all the electors who signed the petitions they witnessed as notaries. The Secretary's invalidation of these petitions thereby frustrated and nullified the electors' self-evident expression that the

voters of Maine should have the opportunity to vote on the merits of the Ballot Initiative at the November 2026 general election.

The United States Supreme Court and the Law Court have both held that petition circulation is “core political speech.” See *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 186 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414, 422 (1988)); *Me. Taxpayers Action Network*, 2002 ME at ¶ 8. In this context, First Amendment protection is “at its zenith.” *Id.* Although states may protect the integrity of the ballot initiative process, they must also “guard against undue hindrances to political conversations and the exchange of ideas.” *Id.* at 192. Where a “law would burden an absolute right, such as the right to initiative ... strict scrutiny requires that the State’s action be narrowly tailored to serve a compelling state interest.” *Birks*, 2016 WL 1715405 at *6 (citing and quoting *Rideout*, 2000 ME 198, ¶ 19).

The new notary provisions are not narrowly tailored to the State’s interest in the integrity of the ballot initiative process and impermissibly violate notaries’ “right to participate in the public debate through political expression and political association.” *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 203 (2014).

Notaries are licensed professionals regulated by the Secretary, who are entrusted with a critical public function, and who have their own reputations to protect. In an analogous context, the Supreme Court held that it was “not prepared to assume that a professional circulator—whose qualifications for similar future

assignments may well depend on a reputation for competence and integrity—is any more likely to accept false signatures than a volunteer who is motivated entirely by an interest in having the proposition placed on the ballot.” *Buckley*, 525 U.S. at 204 (quoting *Meyer*, 486 U.S. at 426). The same is true for notaries, who are interested in upholding their reputations for competence and integrity, and in avoiding potential discipline by the Secretary.

Notaries who initiate or promote a petition are thus no more likely than other notaries to accept false signatures or to otherwise undermine the integrity of the process. The Legislature and the Secretary can monitor potential conflicts of interest without chilling notaries’ speech. In the analogous campaign finance context, the Supreme Court has held that “[a]ny regulation must instead target what [it has] called “quid pro quo” corruption or its appearance.” *McCutcheon*, 572 U.S. at 192. In *McCutcheon*, the Court held that aggregate limits on the amount of money a person can spend on an election were unconstitutional and impermissibly chilled speech, *id.* at 194, noting the availability of less restrictive options, such as “[d]isclosure requirements,” which “burden speech, but—unlike the aggregate limits—[] do not impose a ceiling on speech.” *Id.* at 223. So too here. Maine has notarial and circulator disclosure requirements that enable it to investigate notarial issues, without removing a privilege of a notary’s profession (the ability to administer oaths to petition gatherers) for exercising core political speech.

a. Notary Statutes Constitute Unconstitutional Viewpoint Discrimination.

As written, the new notary statutes also constitute impermissible viewpoint discrimination. The statutes allow a notary to speak out publicly *against* an initiative while still lawfully notarizing petitions. Restricting notaries' speech in this way is impermissible because, "[i]n the realm of private speech or expression, government regulation may not favor one speaker over another." *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995). If the notary provisions were truly meant to ensure that political viewpoints do not undermine faith in notarial services, then the statute must be viewpoint neutral. *See e.g., R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 391 (1992).

For these foregoing reasons, the Committee contends that the Section 903-E's ban on notaries circulating petitions and later notarizing the petitions circulated by others violates the Maine Constitution and both the Free Speech, Freedom of Assembly, and Right to Petition provisions of First Amendment to the United States Constitution²³ as well as Article I, Sections 4 and 15 of the Maine Constitution.

For the foregoing reasons, the Committee respectfully asks this Court to hold that the prohibitions on notaries circulating petitions as set forth in 21-A M.R.S. § 903-E, 4 M.R.S. § 1904(5) violate the First Amendment and, thereby, invalid and

²³ The Supreme Court has recognized these First Amendment rights as "cognate" to one another. *Thomas v. Collins*, 323 U.S. 516, 530 (1945), citing, *De Jong v. Oregon*, 299 U.S. 353, 364 (1937)

unenforceable. The Committee further prays that this Court restore the petitions witnessed by notaries DeClercq and Harrington, including the signatures of the electors who, in their exercise of their rights under the Initiative Amendments, signed the petitions so that their fellow electors could consider and vote on the Ballot Initiative on the merits in the November 2026 general election.

9. THE SECRETARY ERRED IN INVALIDATING ELECTOR SIGNATURES ON THE GROUNDS THAT THE ELECTORS ENTERED DITTO MARKS FOR THE DATE RATHER THAN WRITE IN THE DATE.

The Secretary accepted the Recommended Decision’s recommendation to invalidate otherwise valid elector signatures on the grounds that the elector-signatories indicated the date by using “ditto” marks rather than writing the date out. In explaining her decision to disenfranchise these electors, the Secretary adopted the Recommended Decision’s acknowledgment that invalidating the “ditto date” signatures, while accepting and validating other discrepancies, resulted in “some tension” in the reasoning applied. Rec. Dec. at 39.

But, the Secretary justified her invalidation of these electors’ exercise of their initiative rights, including the right to petition the government and freedom of expression on the grounds that, by cobbling together statutory authorities—21-A M.R.S. § 354(4) and 21-A M.R.S. § 902—seemed to “cabin the Secretary’s discretion to apply her usual contextual approach to determining the signature date.” *Id.* at 39-40. Proclaiming herself hemmed in, the Secretary then justified this hyper-

technical result as “a reasonable way to prompt each petition signer to independently determine the date and not simply add a column of ditto marks that may or may not have been made on the same day.” *Id.* But the Secretary fails to acknowledge that the Legislature’s authority to enact statutes for implementing the Initiative Amendments comes from those amendments alone. The Legislature must consciously and deliberately enact such laws. The Secretary is not allowed to borrow invalidating authority from statutes enacted pursuant to art. IV, pt. 3, § 1.

Although the Secretary’s “ditto” ruling does not invalidate many signatures, it is emblematic of a general failure in the Secretary’s approach to all the contested issues. By importing a “reasonableness” standard, the Secretary has determinedly erased the constitutional standards that the Initiative Amendments require her to apply in instances such as this.

But the Secretary does not contend that she could not discern the voters’ intent as to the date. Nor could she. The use of ditto marks is common. Indeed, it has been defined as meaning: “1. The aforesaid; the above; same as before. Used to avoid repetition and indicated by a part of small marks (“”) placed under the word that would otherwise be repeated.” *American Heritage Dictionary* (ed. 1976).

Lost from the Secretary’s analysis is any recognition that, as has been noted repeatedly above, the Initiative Amendments occupy a special place in the Constitution. Having arisen out of a fundamental distrust of the elected legislature

and a countervailing confidence in the voters at large, the Initiative Amendments were “self-executing” and were designed to be untrammelled by post-adoption impediments the Legislature might devise. The origins and purposes of the Initiative Amendments prompted the Law Court’s longstanding admonition that courts should construe these amendments and any implementing (not substantive) legislation to “facilitate” not to “handicap” the electors exercise of their hard-won popular lawmaking power. *See McGee*, 2006 ME 50, ¶ 24.

Also missing is the Secretary’s acknowledgment that, “[n]either by action or inaction can the legislature interfere with the submission of [initiative] measures as provided by the constitution.” *Opinion of the Justices*, 275 A.2d at 803. Nor does the Secretary admit that the people’s sovereign right in the initiative process is “absolute” and “cannot be abridged directly or indirectly by any action of the Legislature.” *McGee*, 20003 ME 50. ¶ 21. These are not mere rules of construction. They are **constitutional directives** to the state officials responsible for administering the Initiative Amendments TP encourage direct democracy. *Id.* ¶ 25.

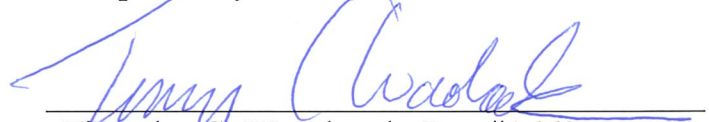
This Court should apply the constitutional directives that the Law Court has admonished must govern the exercise of the voters’ rights under the Initiative Amendments and insist that the Secretary only apply to initiatives statutes enacted pursuant to art. IV, pt. 3, § 22.

D. THE COMMITTEE ADOPTS THE ARGUMENTS THAT THE SECRETARY PRESENTS IN RESPONSE TO PETITIONERS' CROSS-APPEAL.

Petitioners have cross-appealed challenging the Secretary's ruling on many of their challenges. The Committee is familiar with the Petitioners and the Secretary's responses to them. Therefore, the Committee adopts the arguments it anticipates the Secretary will make in addressing the Petitioners' cross-appeal.

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Respectfully submitted,



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