STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

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LAW COURT DOCKET NO. Cum-26-288

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JANE GILBERT, et al.
Petitioners–Cross-Appellants

v.

SECRETARY OF STATE
Respondent–Appellee

and

PROTECT GIRLS' SPORTS
IN MAINE
Intervenor-Respondent–Appellant

On Appeal from the Superior Court
Cumberland County

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# BRIEF OF THE SECRETARY OF STATE

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AARON M. FREY
Attorney General

Of counsel:
Thomas A. Knowlton
Deputy Attorney General

Jonathan R. Bolton, #4597
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
6 State House Station
Augusta, Maine 04333-006
(207) 626-8800
jonathan.bolton@maine.gov

## Table of Contents

## Table of Authorities

### Cases

**Statutes**

**Other Authorities**



**Constitutional Provisions**

## Introduction

Both the defender of and challengers to the direct initiative "An Act to Designate School Sports Participation and Facilities by Sex" (the "Initiative") appeal the decision of the Superior Court (*Cashman, J.*) affirming in full the Secretary of State's ("Secretary's") determination after remand that the petition supporting the Initiative contained 67,150 valid signatures—532 short of the constitutional threshold to place a direct initiative on the ballot.

The defender of the Initiative, the ballot question committee Protect Girls' Sports in Maine (the "Committee"), raises three challenges, but only one implicates enough signatures to place the Initiative over the constitutional threshold. In that challenge, covering 1,520 signatures, the Committee argues that the Secretary erred by invalidating signatures collected by four out-of-state circulators who did not agree to submit to Maine's jurisdiction, as the Secretary may require under a permanent injunction issued by a federal court otherwise barring Maine from enforcing the Maine Constitution's ban on out-of-state circulators. Because the federal injunction does nothing more than allow enforcement of an existing constitutional provision in narrowed circumstances, the Secretary's compliance with its terms is not "ultra vires." Moreover, the Committee's argument that the Secretary was required to accept one circulator's belated consent after all relevant deadlines had passed and the Secretary had completed her review of the petition is counter to Maine law and would substantially undermine the efficacy of the consent requirement.

The Committee's two remaining challenges, involving the constitutionality of a notary public conflict-of-interest statute and the Secretary's application of a statutory ban on certain uses of ditto marks, involve only 224 and 39 signatures respectively, too few to matter if the Committee's main challenge fails and likely moot if the Committee's main challenge succeeds. Should the Court consider them, they fail for the reasons set forth below and by the Superior Court.

Meanwhile, the challengers to the Initiative, Jane Gilbert and two other Maine voters ("Gilbert"), raise a laundry list of challenges in their cross-appeal, which collectively seek to invalidate more than half of the remaining signatures collected for the Initiative. To the extent the Court addresses any of these challenges, they also uniformly fail for the reasons set forth below and by the Superior Court.

The Court should affirm the Secretary's decision in full.

## Statement of the Case

*Secretary of State review of direct initiative petitions*

The direct initiative process set forth in the Maine Constitution allows Maine voters to seek enactment of legislation by referendum vote. To invoke this process, the petitioners must file a petition with the Secretary containing at least 67,682 valid signatures of registered Maine voters. Me. Const. art. IV, pt. 3, § 18(2); Appendix ("A") at 0652. To appear on the ballot in a given year, an initiative must be filed with the Secretary by a deadline tied to the convening of the Legislature. Me. Const. art. IV, pt. 3, § 18(1). In 2026, the deadline was February 2nd. *Id.*; A0653.

The Maine Constitution prescribes safeguards to protect the integrity of the initiative process. It requires the circulators of the petition to take an oath (the "circulator's oath") on each petition form[1] verifying the authenticity of the signatures and that they "were made in the presence of the circulator and that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be." Me. Const. art. IV, pt. 3, § 20. The oath must be administered by a "person authorized by law to administer oaths." *Id.* To ensure that circulators can be readily contacted and investigated, the Maine Constitution further specifies that circulators must be Maine residents and registered voters. *Id.* However, under a permanent injunction issued by the United States District Court for the District of Maine in *We the People PAC v. Bellows*, Docket No. 1:20-cv-00489-JAW (D. Me. Feb. 9, 2023) (attached as Exhibit A), the Secretary is permanently enjoined from enforcing this requirement, except where the out-of-state circulator fails to agree to certain terms, including consent to Maine's jurisdiction for purposes of investigation and prosecution. Ex. A at 1–2.

The petition form must also contain a certificate from an authorized municipal official confirming that the names of petition signers from that municipality "appear on the voting list of the city, town or plantation of the official as qualified to vote for

[1] The "petition form" describes the document, reproduced at A0653–56, that contains blanks for 65 voters to sign the petition. The "petition" refers collectively to all of the completed petition forms.

Governor." Me. Const. art. IV, pt. 3, § 20. The petition forms must be submitted to municipal officials for this certification by certain deadlines. *Id.*

In addition to these constitutional requirements, the Maine Legislature has imposed certain statutory requirements on the initiative process, pursuant to its delegated authority to "enact further laws not inconsistent with the Constitution for applying the . . . direct initiative" and to "establish procedures for determination of the validity of written petitions." Me. Const. art. IV, pt. 3, § 22. These requirements are set forth in Chapter 11 of Title 21-A. As relevant here, they include requirements that (a) petition signers comply with the law specifying how nonparty candidate nomination petitions should be signed, 21-A M.R.S.A. § 902; (b) "petition organizations"—business entities paid to circulate petitions—register with the Secretary "in addition to meeting any other requirement to transact business in this State," *id.* § 903-C; (c) notarial officers refrain from administering the circulator's oath if they have provided "any other services, regardless of compensation," to the direct initiative campaign, *id.* § 903-E; *accord* 4 M.R.S.A. § 1904(5); and (d) each circulator file a "circulator affidavit" at the time the petition is filed attesting to certain matters, including their residency, *id.* § 903(4). Using her authority to "establish the form and content of all forms . . . required by or necessary to the efficient operation" of the election laws, 21-A M.R.S.A. § 21, the Secretary has incorporated into the circulator affidavit the agreement to consent to Maine's jurisdiction authorized by the federal court in *We the People*. *See* Exhibit A at 1–2 (consent order); A0665 (affidavit).

The Legislature has entrusted the Secretary with reviewing the petitions for compliance with these requirements. Under 21-A M.R.S.A. § 905, the Secretary must "review all petitions" and "determine the validity of the petition and issue a written decision stating the reasons for the decision." 21-A M.R.S.A. § 905(1).

The Secretary has developed internal guidance governing staff review of initiative petitions. A0690–94. This guidance covers many topics including, as relevant here, reviewing signatures for invalid dates. Under this guidance, staff are instructed to take a functional approach to assessing signature dates, in which a signature with a missing date should be validated where it can be determined from context (i.e., signatures with valid dates above and below the undated signature) that the signature was made within the circulation period. A0692.

As permitted by 21-A M.R.S.A. § 903-A(3), the Secretary provides instructions to petition organizers and circulators. A0657–0664. Relevant here, these instructions alert circulators that they must consent to Maine's jurisdiction on their circulator affidavits. A0662. The instructions also explain that "a person who serves as a paid or volunteer circulator of petitions for an initiative may not also administer the oath to other circulators of the petition." A0659. And the instructions explain that a voter's failure to include address information on the petition form "will not automatically invalidate the signature but *may* invalidate it if the registrar cannot determine who the voter is based on the signature alone." A0658.

*The Initiative*

The Initiative was circulated to Maine voters between November 3, 2025, and January 23, 2026. A0692. On February 2, 2026, the deadline for placing the Initiative on the 2026 ballot, the petitioners filed with the Secretary 8,067 petition forms containing 79,692 signatures as well as 322 circulator affidavits. A0651; Agency Record ("R") 032605–032926. Four of these circulator affidavits were executed by out-of-state circulators who did not check the box consenting to the terms applicable to out-of-state circulators, including consent to Maine's jurisdiction. A0695–0698. The submitted petition also contained petition forms in which the circulator's oath was administered by someone who had previously circulated petitions for the Initiative. R 034073; *see* A0410–11.

On March 17, 2026, the Secretary issued a decision finding that the petition had 71,033 valid signatures and therefore exceeded the threshold of 67,682 signatures needed to validate the petition. A0651–52. The Secretary's review of the petition resulted in the invalidation of 8,659 signatures submitted by the initiators for various reasons. *Id.* However, given the short amount of time to review a vast number of signatures, *see* 21-A M.R.S.A. § 905(1), the review failed to identify certain issues with the petition, including the two issues noted above. *See* A0113–22.

*Gilbert's Challenge*

On March 27, 2026, Gilbert filed a petition for review in the Superior Court, Cumberland County, alleging that the Secretary should have invalidated many

additional signatures. A0010–47. The Committee was granted intervenor status. A0006. In Gilbert's merits brief, she asserted 21 separate challenges to the Secretary's decision, including a challenge ("Challenge 1") not raised in her petition for review alleging that over 50,000 signatures were invalid due to the alleged failure of petition organizations to comply with the registration requirements in 21-A M.R.S.A. § 903-C. A0048–84.

In her response, the Secretary opposed 10 challenges in their entirety, opposed 5 challenges in part, and conceded 4 challenges. A0085–0127. Those conceded challenges included Challenge 3, asserting that signatures collected by circulators who failed to consent to Maine's jurisdiction should be invalidated; Challenge 6, asserting that petitions notarized by two notaries public who had previously circulated petitions should be invalidated; and Challenge 17, asserting that 39 signatures with ditto marks in the date field should be invalidated. A0119–22. The Secretary also argued that two challenges, involving factual allegations that circulators left their petitions unattended and committed signature fraud, should be remanded for further factfinding as to whether they might prove dispositive. A0122–26.

The Superior Court (Cashman, J.) issued its decision on April 24, 2026. A0186–0203. The decision entirely affirmed the positions of the Secretary in her Rule 80C brief. Because the court's affirmance of those positions reduced the petition's signature margin to as little as 337 signatures above the constitutional threshold, *see* A0122, the court remanded the two fact-based challenges to the Secretary for further

factfinding, as well as to allow the Secretary to revise her determination of validity to incorporate her concessions and to "correct" those concessions as necessary. A0196, 0202–03. The court directed the Secretary to issue a revised Determination of Validity within 30 days. A0203.

*Remand Proceedings*

The same day the court issued its decision and order, counsel for the Secretary notified Gilbert and the Committee that an evidentiary hearing would be held to hear evidence on the matters remanded to the Secretary. R033744. A formal notice of hearing followed. R033364. The hearing was held as scheduled on May 12, 2026, and was extended to May 13. R033382–033712. The evidence at hearing focused on three issues: (1) allegations that three circulators allowed petitions to be signed outside of their presence; (2) allegations that four circulators engaged in signature fraud; and (3) Circulator Cairo's belated attempt to correct her failure to consent to Maine's jurisdiction. A0370–0414. Following the hearing, Gilbert and the Committee filed post-hearing briefs raising various factual and legal arguments. A0204–0299.

On May 21, 2026, Presiding Officer Katherine McBrien, the Chief Deputy Secretary of State, issued a recommended decision. A0300–41. That decision concluded that two circulators on Election Day 2025 repeatedly left their petition forms unattended and that all petition forms gathered by those circulators on those days should be invalidated. A0318–25. Moreover, the decision recommended that all 61 signatures collected by one circulator, Rokelle Harris, be invalidated for not

matching the signatures on file for those voters. A0328–29. That recommendation resulted from a review by Elections Division staff that the Presiding Officer ordered based on credible testimony from a voter and a municipal clerk indicating that signatures on the petition were not those of the indicated voters. A0328. And, finally, the decision recommended invalidation of five additional signatures for which a valid date could not be confirmed. A0332.

Otherwise, the recommended decision declined to invalidate further signatures in response to Gilbert's arguments. It concluded that Gilbert had failed to present sufficient evidence of circulator fraud by three other circulators to warrant additional investigation of those circulators. A0329–31. The decision reasoned that, unlike with Circulator Harris, Gilbert presented no testimony from voters or municipal clerks suggesting fraud but instead based her allegations on irregularities on the face of certain petition forms plus an inconclusive cross-examination of two of the circulators. A0331. The recommended decision concluded that this evidence did not warrant a full review of the circulators' petition forms by Elections Division staff. *Id.*

Finally, the Presiding Officer recommended rejecting the arguments of the Committee that the Secretary should reconsider some of her concessions, including her concession that the signatures collected by the four circulators who failed to consent to Maine's jurisdiction should be invalidated. A0333–37. The Presiding Officer recommended concluding that, to be valid, the consent must be received by the time the petition is filed and, further, that the consent order allowing the Secretary

to continue to enforce the Maine Constitution's out-of-state circulator ban against circulators who fail to consent to Maine's jurisdiction was not "ultra vires," as the Committee argued, but was merely a narrowing of the circumstances in which the Maine Constitution's ban could be enforced. *Id.* The Presiding Officer also recommended finding, based on Cairo's testimony, that her failure to consent to Maine's jurisdiction was "*not* an inadvertent failure to express her agreement to the terms on the affidavit, but a substantive lack of agreement to those terms." A0335.

The parties each filed objections to the recommended decision. A0342–69. On May 26, 2026, the Secretary rejected those objections and adopted the recommended decision as the final decision on remand. A0370. The Secretary also issued a revised Determination of Validity based on her concessions to the Superior Court and findings on remand, which concluded that the petition contained only 67,150 valid signatures, 532 signatures short of the constitutional threshold of 67,682. A0371–72.

*Post-Remand Proceedings*

On May 29, 2026, the Superior Court ordered an expedited briefing schedule to consider the parties' objections to the Secretary's decision on remand. On June 11, 2026, the Superior Court issued a decision affirming the Secretary's decision. A0638–0650. The Superior Court upheld the Secretary's determination that she may properly invalidate signatures gathered by circulators who fail to consent to Maine's jurisdiction by the statutory deadline for filing circulator affidavits. A0644–45. It also rejected the

Committee's argument that compliance with the federal court injunction allowing enforcement of the Maine Constitution's ban on out-of-state circulators in this context was "ultra vires." A0646–47.

The Superior Court further held that the Secretary properly invalidated signatures collected on petitions that were notarized by notaries public who had previously acted as circulators. A0647–49. In so holding, it rejected the Committee's constitutional challenge to the notary conflict-of-interest statutes, concluding that the statutes' restrictions "are sufficiently justified by Maine's regulatory interest in maintaining a fair and honest petition circulator process" and, further, do not constitute impermissible "viewpoint discrimination." A0648–49.

The Superior Court likewise declined to find that the Secretary committed any error of law by invalidating the 39 signatures containing ditto marks in the date field, agreeing that the Secretary "correctly applied" the relevant statutes prohibiting ditto marks in any field other than the address field. A0649–50.

Finally, the Superior Court declined to rule on Gilbert's many challenges to the Secretary's decision, concluding that such a ruling was unnecessary in light of the court's affirmance of the Secretary's other rulings. A0650.

Both the Committee and Gilbert appeal the Superior Court's decision.

## Statement of the Issues

1. Did the Secretary properly invalidate petition signatures collected by out-of-state circulators who never consented to Maine's jurisdiction or consented only

after the petition had been filed, the constitutional deadline for petition submission had passed, and the Secretary's determination of validity had been issued?

2. Should this Court consider whether the Maine Constitution's requirement that all circulators be residents and registered voters in Maine violates the First Amendment, even though a federal court has permanently enjoined the Secretary from enforcing those requirements except in narrow circumstances and there is no allegation that the Secretary is violating the injunction?

3. Does the First Amendment forbid the Secretary from invalidating petition forms where the notarial officers administering the circulator's oath on the relevant forms did so in clear violation of state conflict-of-interest laws?

4. Do the state laws permitting the use of ditto marks on petitions "only" for street address and municipality require invalidation of signatures in which ditto marks are used in the date field?

5. Did the Secretary act within her discretion in declining on remand to further investigate three petition circulators based on irregularities in some of their petition forms and inconclusive cross-examination of two circulators at hearing?

6. Did the Secretary act within her discretion by declining to invalidate over 50,000 petition signatures based on alleged non-compliance with certain petition-organization registration requirements that have never previously been enforced and despite the absence of any such claim in Gilbert's petition for review?

7. Is the Secretary's interpretation of the notarial conflict-of-interest statutes as applying only to the circulator oath requirement cited in those statutes, and not to the uncited circulator's affidavit requirement, entitled to deference?

8. Did the Secretary properly validate signatures in which the date was missing or outside the circulation window but it could be determined from context that the signature was in fact made within the circulation window?

9. Did the Secretary act within her discretion by declining to direct her staff to look up individuals in the central voter registration system to determine registration status based on Gilbert's unsubstantiated assertions that the individuals, despite being certified by municipal registrars as registered voters, were unregistered?

10. Did the Secretary properly validate signatures that did not include street address or municipality where the relevant municipal registrar was nevertheless able to confirm and certify that the voter was a registered voter in the municipality?

## Argument

### I. The Court should reject the Committee's arguments that the Secretary improperly invalidated petition signatures.

#### A. The Secretary properly invalidated signatures collected by four out-of-state circulators.

The Committee's primary argument before the Superior Court following remand was that the Secretary should not have invalidated the signatures collected by the four out-of-state circulators who did not consent to Maine's jurisdiction (1,520 signatures) or, at the very least, should not have invalidated the signatures of Cairo,

who consented to Maine's jurisdiction during the remand proceeding (1,472 signatures).[2] The Court should reject these arguments.

1. *Standard of review.*

In considering an appeal from the Superior Court in a Rule 80C appeal of agency action, this Court "review[s] directly the Secretary of State's decision for errors of law, findings not supported by the evidence, or an abuse of discretion." *Reed v. Sec'y of State*, 2020 ME 57, ¶ 12, 232 A.3d 202. Such review is "deferential and limited." *Friends of Lincoln Lakes v. Bd. of Env't Prot.*, 2010 ME 18, ¶ 12, 989 A.2d 1128. The party seeking to vacate the agency decision bears the burden of persuasion. *Town of Jay v. Androscoggin Energy, LLC*, 2003 ME 64, ¶ 10, 822 A.2d 1114.

In reviewing the agency's determination, the Court should "not substitute its judgment for that of the agency on questions of fact." 5 M.R.S.A. § 11007(3). Rather, the Court should vacate the Secretary's factual findings "only if there is no competent evidence in the record to support the findings." *Ouellette v. Saco River Corridor Comm'n*, 2022 ME 42, ¶ 20, 278 A.3d 1183 (quoting *AngleZ Behav. Health Servs. v. Dep't of Health & Hum. Servs.*, 2020 ME 26, ¶ 12, 226 A.3d 762).

In reviewing the Secretary's interpretation of statutes governing the direct initiative process, this Court has recognized that the Secretary "is the constitutional officer entrusted with administering—and having expertise in—the laws pertaining to

[2] A table showing the number of signatures invalidated on remand under each of Gilbert's successful challenges is included in the Agency Record at R034073.

the direct initiative process." *Caiazzo v. Sec'y of State*, 2021 ME 42, ¶ 17, 256 A.3d 260. Thus, while the Court reviews the Secretary's interpretation of such statutes de novo, it will defer to the Secretary's reasonable interpretation if the statute is ambiguous. *Id.*

2. *The consent-to-jurisdiction requirement does not violate the Maine Constitution.*

The Committee argued below that the Maine Constitution forbids the Secretary from requiring out-of-state circulators to consent to Maine's jurisdiction as a condition of circulating petitions in Maine. Though the Committee acknowledged that the Secretary was permitted to impose these requirements on out-of-state circulators by the permanent injunction issued in *We the People PAC v. Bellows* (*see* Ex. A), which otherwise enjoined the Secretary, on First Amendment grounds, from enforcing the Maine Constitution's ban on out-of-state circulators, the Committee argued that the Secretary nevertheless may not carry out this aspect of the consent order without violating the Maine Constitution.

The flaw in the Committee's argument is that it relies on framing the federal injunction as an affirmative grant of authority to the Secretary to impose new restrictions on circulators not contemplated by the Maine Constitution. But that is not what the injunction does. Rather, based on its 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," *see We the People PAC v. Bellows*, 519 F. Supp. 3d 13, 46 (D.

Me. 2021), *aff'd*, 40 F.4th 1 (1st Cir. 2022), the federal court simply tailored the scope of its injunction to exclude those out-of-state circulators whose conduct cannot be properly regulated by the State: those who fail or refuse to consent to Maine's jurisdiction. As the Superior Court concluded, the injunction simply "narrows the scope" of the Maine Constitution's blanket ban. A0644.

Indeed, the conditions that circulators must meet to avoid the ban—consenting to Maine's jurisdiction and keeping their contact information updated, among other conditions—directly further the goals of the Maine Constitution's ban on out-of-state circulators. In effect, these conditions place out-of-state circulators on close to the same footing as in-state circulators in terms of Maine's ability to police their compliance with Maine's substantive circulator laws. By requiring circulators' consent on the circulator affidavit, the Secretary is—far from violating the Maine Constitution—carrying out the purposes of its ban on out-of-state circulators to the greatest extent permissible under the First Amendment.

The Committee cited no cases below holding that compliance with an injunction like the one contained in the *We the People* consent order is "ultra vires." The only case on which it did rely, *Minnesota v. National Tea Company*, 309 U.S. 551 (1940), stands only for the broad proposition that federal courts should generally avoid interfering with state courts interpreting their own state constitutions. *Id.* at 557. The Court applied that principle by remanding a case to the Minnesota Supreme Court for clarification where it was unclear whether the court had applied state or

federal law in reaching its decision. *Id.* The decision says nothing about the propriety of a federal court order allowing partial enforcement of a state constitutional provision where full enforcement would violate the U.S. Constitution.

As the Supreme Court of the United States has explained, "when confronting a constitutional flaw in a statute, we try to limit the solution to the problem," including by "enjoin[ing] only the unconstitutional applications of a statute while leaving other applications in force." *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328 (2006). The federal court here did exactly that. Instead of simply ending § 20's ban on out-of-state circulators, creating the very risks to the integrity of the petitioning process that § 20 was designed to avoid, the federal court issued a tailored injunction that left the Secretary free to enforce § 20 against those out-of-state circulators who fail or refuse to consent to Maine jurisdiction. Federal courts have recognized this approach is a more narrowly tailored alternative to an outright ban on out-of-state circulators. *See, e.g.*, *Nader v. Brewer*, 531 F.3d 1028, 1037 (9th Cir. 2008). Far from an example of federal judicial overreach, the consent order is an example of narrowly tailoring an injunction to proscribe the ability of a state official to enforce state law only to the extent that enforcement would violate federal law. Since applying the out-of-state circulator ban to nonconsenting circulators is entirely consistent with the First Amendment, it was proper for the federal court to limit its order in such a way.

The Court should further reject the Committee's argument below that by embedding the consent-to-jurisdiction requirement in the federal injunction, the

federal court gave too much authority to the Secretary to make policy determinations, such as determining the deadline for the consent to be filed. The need for the Secretary to make such determinations is hardly unique to the consent-to-jurisdiction requirement. While the various applicable statutes and constitutional provisions provide general rules for the initiative process, innumerable questions arise as to how the Secretary is to apply those general rules to specific circumstances. Indeed, the Secretary had to make such determinations in the remand proceedings here, some of which the Committee does not appeal. *See, e.g.*, A0319–22 (considering whether signatures should be invalidated based on improper conduct by a circulator where it is unclear which petition forms were affected). By authorizing the Secretary to "determine the validity of the petition," 21-A M.R.S.A. § 905(1), the Legislature has entrusted such decisions as an initial matter to the Secretary's judgment.

Finally, the implications of the Committee's argument should give this Court pause. Under the Committee's view, the Secretary would be completely powerless to regulate out-of-state circulators. She could not require them to consent to Maine's jurisdiction.[3] She could not even require them to keep their contact information updated. The practical consequence of accepting the Committee's argument would

[3] The Committee suggested below that the benefits of the conditions imposed on circulators are minimal. But while 5 M.R.S.A. § 9060 independently prevented the issuance of extraterritorial subpoenas in the particular proceeding chosen by the Secretary in this case, the Presiding Officer nevertheless relied on the circulators' consent to jurisdiction in letters to the circulators that successfully procured their attendance at hearing. Moreover, the extra-territorial limitation in § 9060 is unique to the Maine Administrative Procedure Act hearings and does not apply to other types of subpoenas, such as grand jury subpoenas.

likely be even more of the sort of troubling issues that the Secretary found on remand—including two out-of-state circulators who repeatedly left their petition forms unattended, allowing numerous unwitnessed signatures, and an out-of-state circulator who turned in 14 petition forms that were found to consist *entirely* of forged signatures, *see* A0328–29. This consequence would adhere despite the fact that the Framers were so concerned about the possibility of untraceable misconduct by circulators that they chose to ban out-of-state circulators altogether in § 20.

3. *Invalidating signatures collected by circulators who fail to consent to Maine's jurisdiction does not violate signers' right to petition the government.*

The Committee also argued below that invalidation of the signatures on the nonconsenting circulators' petition forms violates signers' constitutional right to petition the government. The Court should reject this argument. The Secretary has long invalidated signatures collected by out-of-state circulators. *Hart v. Sec'y of State*, 1998 ME 189, ¶ 13, 715 A.2d 165. This Court has affirmed that invalidation is consistent with the First Amendment. *Id.*; *see also Jones v. Sec'y of State*, 2020 ME 113, ¶ 23, 238 A.3d 982. While the federal injunction now precludes the Secretary from invalidating signatures for out-of-state circulators who agree to the conditions on the circulator affidavit, it does not preclude the Secretary from continuing to treat out-of-state circulators who fail to consent to Maine's jurisdiction the same way all out-of-state circulators were treated prior to the *We the People* injunction.

Nor does it matter that the Committee asserts the right to petition the government rather than the rights to speech and association considered in *Hart* and *Jones*. As the United States Supreme Court has observed, "[a]lthough the right to petition and the right to free speech are separate guarantees, they are related and generally subject to the same constitutional analysis." *Wayte v. United States*, 470 U.S. 598, 611 n.11 (1985).

4. *Cairo's untimely consent to Maine's jurisdiction was inadequate.*

The Committee also argued below that even if the other three circulators' petition forms were invalid for failure to ever consent to Maine's jurisdiction, Cairo's petition forms should have been saved by her filing of a corrected circulator affidavit, dated May 6, 2026, as part of the remand proceedings. The Superior Court rejected these arguments, affirming that the original affidavit was noncompliant given the Secretary's factual finding that "Cairo affirmatively decided to leave the jurisdiction box blank on her circulator affidavit due to unresolved questions about the implications of such consent" and that the corrected affidavit was untimely given the statutory requirement that the circulator affidavit be filed "with the Secretary of State at the time the petition is filed." 21-A M.R.S.A. § 903-A(4); A0645–46.

The Committee has not contested the Secretary's factual finding that Cairo's failure to consent to jurisdiction on her original circulator affidavit was a conscious choice and not a paperwork error. Instead, the Committee argued that the Secretary should not have relied upon the deadline in § 903-A(4) because it does not specifically

reference consenting to Maine's jurisdiction. But the Legislature has more generally designated the circulator affidavit as the proper form for confirming compliance with the Constitution's out-of-state circulator restrictions. *See id.* § 903-A(4)(C) (requiring circulators to verify they are residents and voters in Maine). The circulator affidavit was thus the logical place to implement the consent requirement, which, again, is simply a narrowed approach to enforcing § 20's ban. The Secretary's power to "establish the form and content of all forms . . . required by or necessary to the efficient operation of this Title" gave her authority to do so. 21-A M.R.S.A. § 21. Once the consent became part of the circulator affidavit, the deadline for the circulator affidavit necessarily applied to the consent as well.

Moreover, even assuming arguendo that § 903-A's deadline was somehow inapplicable, the statutory and constitutional framework still necessarily requires consent no later than the constitutional deadline for filing the petition (which in this case happened to also be the date the petition was filed). The Justices have recognized in the context of the people's veto that petitioners should not be allowed to correct deficiencies in their submission after the expiration of the constitutional deadline for filing the petition. *Opinion of the Justices*, 114 Me. 557, 95 A. 869, 876 (1915) ("Neither certificates nor jurats can be corrected after the expiration of 90 days from the recess of the Legislature. We think no amendments of any kind are permissible after the time fixed in the Constitution has expired."). The same rule should be true of the direct initiative process, which likewise requires petitioners to

meet hard deadlines keyed to the convening of the Legislature to qualify the initiative for placement on the ballot that year. *See* Me. Const. art. IV, pt. 3, § 18(1).

If petitioners could submit defective or incomplete petitions at the deadline, and then cure those defects once the deadline passed, those constitutional deadlines would become effectively meaningless. Thus, just as the Committee on remand could not properly have circulators retake circulator oaths that were improperly executed or taken before conflicted notaries, or have voters re-sign petitions forms where they were found to have committed invalidating errors, the Committee similarly cannot cure fatal problems with their circulator affidavits by correcting them only after the constitutional deadline for submission.

The Committee's argument that out-of-state circulators can wait to consent to jurisdiction after the petition is filed would also greatly undermine the State's ability to enforce its petition circulation laws. If out-of-state circulators need not consent to jurisdiction when the petition is filed, they could adopt a "wait-and-see" approach, submitting to Maine's jurisdiction only if the Secretary's review caught that they failed to do so and, further, that the signature margin was close enough that their signatures might make a difference. In the meantime, the Secretary's ability to investigate petition irregularities during the crucial 30-day window when she must make her determination of validity under 21-A M.R.S.A. § 905(1) would be severely hampered. As the Secretary's decision observed, this 30-day period is "the most crucial part of the petition review process." A0408.

It is worth considering the unworkable nature of the process that would follow from the Committee's position. Under such a process, the Secretary would initially invalidate the circulator's signatures for failure to consent to jurisdiction. If the petition were determined valid without the circulator's signatures, the circulator need not ever consent to Maine's jurisdiction. If, on the other hand, the petition were determined invalid, the circulator could simply file a belated consent to jurisdiction during the ensuing judicial review process. The signatures would become valid again, even though the Secretary never had a full opportunity to investigate them during her 30-day review window. Such an unworkable process would deeply compromise the Secretary's ability to police the initiative process.

Indeed, the events in this action provide a perfect example of the problem with the Committee's deadline-free approach. Even after the Secretary determined that petition forms collected by nonconsenting circulators should be invalidated and indicated in a footnote to her Superior Court brief that she was willing to consider whether the problem could be cured on a remand, only one of the four nonconsenting circulators submitted a corrected affidavit. The other three circulators—presumably armed with the knowledge that the signatures they collected were not needed to reverse the Secretary's decision—still to this day have not consented to the jurisdiction of Maine and presumably never will. As a result, these circulators have successfully made it more difficult for Maine to investigate them for potential circulator crimes under 21-A M.R.S.A. § 904 should any incriminating

evidence someday come to light. To protect its compelling interest in policing the integrity of the direct initiative process, Maine must be permitted to require out-of-state circulators to submit to Maine's jurisdiction *before* they are able to game out the consequences to the petition effort of refusing to do so.

The Committee made much of a purported discrepancy between the initial preliminary injunction in *We the People PAC v. Bellows*, which enjoined enforcement of § 20 against circulators who "first" submit to Maine's jurisdiction before commencing circulation, *see* 519 F. Supp. 3d at 53, and the permanent injunction, which enjoined enforcement of § 20 against circulators who submit to Maine's jurisdiction without specifically requiring them to "first" submit to the jurisdiction. To the extent this slight change in wording reflects any intentionality at all,[4] it is fully explained by the Secretary's determination that the proper place for the consent to jurisdiction is the circulator affidavit, which is filed at the end of the circulation process rather than the beginning. *See* 21-A M.R.S.A. § 903-A(4). It is thus true that circulators need not "first" submit to Maine's jurisdiction; they merely need to do so by the time the petition is filed so that the Secretary can fully investigate any irregularities during her 30-day window to determine validity. The Secretary's decision not to allow Cairo to cure her failure to submit to Maine's jurisdiction long after the statutory deadline for

[4] The Committee, without factual basis, called the Secretary "disingenuous" and worse for suggesting that this wording change could have been unintentional. But the Secretary is simply being candid about a lack of institutional memory on the matter.

submitting circulator affidavits had passed, the constitutional deadline for petition submission had passed, and the Secretary had already completed her 30-day review of petition validity was entirely consistent with the federal injunction.

Finally, the Committee's suggestion below that the Secretary's refusal to consider Cairo's amended affidavit on remand months after the relevant deadline had passed somehow violated the Committee's due process rights due to lack of notice about how the consent requirement would be enforced should be rejected. The circulator affidavit clearly and expressly states the requirement to submit to jurisdiction and the deadline for submitting the affidavit. A0696. No reasonable person reading the form affidavit would be under the misimpression that submitting a fully completed affidavit after petitions were submitted was an option.

### B. There is no live controversy concerning whether the Maine Constitution's blanket ban on out-of-state circulators violates the First Amendment.

The Committee, somewhat puzzlingly, asked the Superior Court to consider whether the ban on out-of-state circulators in article IV, part third, § 20 of the Maine Constitution without the narrowing imposed by the *We the People* injunction, would violate the First Amendment. Because the Secretary—the only official empowered to enforce § 20—is permanently enjoined from enforcing § 20 in that manner and the Committee does not contend she is violating the injunction, this is an entirely hypothetical question. This Court should limit itself to "questions of live controversy, and not hypothetical, abstract, or moot questions." *Jipson v. Liberty Mut. Fire Ins. Co.*,

2007 ME 10, ¶ 5, 912 A.2d 1250 (quoting *Sevigny v. Home Builders Ass'n of Maine, Inc.*, 429 A.2d 197, 201 (Me. 1981)).

Should this Court for some reason consider the question it should follow the reasoning of *Hart*, 1998 ME 189, ¶ 13, 715 A.2d 165, and *Jones*, 2020 ME 113, ¶ 23, 238 A.3d 982, both of which declined to invalidate § 20.

### C. Maine's statutory ban on conflicted notarial officers administering the circulator's oath is constitutional.

This Court affirmed in *Reed v. Secretary of State* the Secretary's interpretation of the notarial conflict-of-interest laws at 21-A M.R.S.A. § 903-E and 4 M.R.S.A. § 1904(5) as prohibiting notarial officers from administering circulator oaths after they act as a circulator for the same initiative campaign. 2020 ME 57, ¶¶ 9, 22, 232 A.3d 202. The Secretary applied the same interpretation here to invalidate 224 signatures collected on petition forms notarized by conflicted circulators. Despite this Court's observation in *Reed* that the Secretary's interpretation "rationally advances the legislative purpose of discouraging fraudulent notarizations by prohibiting the use of notaries who have a demonstrable conflict of interest at the time of their notarial acts in connection with the campaign," *id.* ¶ 21 (emphasis omitted), the Committee challenges these two statutes as unconstitutional.

#### 1. *Standard of review.*

Since "all acts of the Legislature are presumed constitutional," the Committee bears a "heavy" burden to demonstrate that the challenged conflict-of-interest laws

are unconstitutional. *Jones*, 2020 ME 113, ¶ 18, 238 A.3d 982 (quoting *Goggin v. State Tax Assessor*, 2018 ME 111, ¶ 20, 191 A.3d 341). The Committee must "demonstrate convincingly" that the challenged law conflicts with the Constitution, with all reasonable doubts resolved in favor of the law's constitutionality. *Id.* (quoting *Goggin*, 2018 ME 111, ¶ 20, 191 A.3d 341).

2. *Barring conflicted notaries from administering circulator oaths easily satisfies the flexible Anderson-Burdick standard.*

The Committee argued below for application of strict scrutiny to the notary statutes. The Superior Court correctly rejected this argument, reasoning that the conflict-of-interest laws govern "the mechanics of the electoral process" and therefore must be evaluated under the flexible *Anderson-Burdick* analysis.[5] A0648.

The *Anderson-Burdick* framework recognizes that substantial regulation of elections is necessary "if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Jones*, 2020 ME 113, ¶ 20, 238 A.3d 982. Under the framework, "states are accorded considerable leeway in the regulation of the initiative process in order to promote their legitimate state purposes." *Id.* ¶ 20.

To apply the framework, the reviewing court weighs the "character and magnitude" of the burden on the circulators' associational rights against the asserted interests of the state justifying the regulation of petition circulation. *Id.* ¶¶ 23–24.

[5] *See Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992).

Strict scrutiny applies only if the regulation imposes a "severe restriction" on First Amendment rights. *Id.* ¶ 24. In that case, the state must show that the law is narrowly tailored to serve a compelling governmental interest. *Id.* In contrast, "when a state election law provision imposes only reasonable, nondiscriminatory restrictions on First Amendment rights, the State's important regulatory interests are generally sufficient to justify the restrictions." *Id.* (cleaned up); *accord All. for Retired Americans v. Sec'y of State*, 2020 ME 123, ¶ 15, 240 A.3d 45.

Under this flexible standard, Maine's notary conflict of interest requirements easily pass muster. This Court has long recognized Maine's strong interest in ensuring the integrity of the circulator's oath. In *Maine Taxpayer Action Network v. Secretary of State*, 2002 ME 64, 795 A.2d 75 ["*MTAN*"], the Court explained that the "integrity of the initiative and referendum process in many ways hinges on the trustworthiness and veracity of the circulator" and that, therefore, "the circulator's oath is critical to the validation of a petition." *Id.* ¶ 13; *see also Palesky v. Sec'y of State*, 1998 ME 103, ¶ 12, 711 A.2d 129 (affirming invalidation of petition forms not sworn in the presence of the notary); *Opinion of the Justices*, 116 Me. 557, 103 A. 761, 767 (1917) (describing the sworn circulator's oath as an "indispensable accompaniment[]" of a valid petition). Indeed, short of a full-blown investigation, a valid oath is the only way for the Secretary to verify that "a signing voter actually signed the petition." *MTAN*, 2002 ME 64, ¶ 13, 795 A.2d 75. Allowing someone to administer the oath who has a conflict of interest because they have been working for the campaign undermines the

trustworthiness of the oath and thus calls into question the veracity of the signatures on the petition. Maine's interest in avoiding this scenario is compelling.

On the other side of the ledger, the burden on initiative campaigns is negligible. As of 2021, there were approximately 29,000 notaries public commissioned in Maine.[6] That is in addition to thousands of licensed attorneys who may also properly perform notarial acts. 4 M.R.S.A. § 1910(1)(C). To avoid running afoul of the conflict-of-interest statutes, all that petition circulators need to do is procure the services of any of thousands of non-conflicted notarial officers.

The Committee's argument to the contrary focused not on the minimal burden of locating a non-conflicted notary to administer circulator oaths, but on the consequences that ensue if the campaign ignores or flouts Maine law. The Court should reject this approach. But even assuming the burden analysis can take into account the consequences of flouting the law, those consequences are still narrowly tailored to the harm that results from that violation: invalidation of those petition forms that are rendered untrustworthy by the lack of a properly administered circulator oath by an impartial official. Such a targeted remedy cannot be understood as a severe burden on First Amendment rights.

[6] Maine Secretary of State, Notary Public Handbook and Resource Guide at 4 (Jan. 2021), *available at* https://legislature.maine.gov/testimony/resources/JUD20220316@OPLA132921209305078421.pdf.

Given that the burden on First Amendment rights imposed by the notary conflict-of-interest statutes is far from "severe," those laws easily satisfy the remaining requirements that the restrictions be "reasonable" and "non-discriminatory." *Jones*, 2020 ME 113, ¶ 24, 238 A.3d 982. This Court in *Reed* has already confirmed that the Secretary' s approach to conflicted notarial officers "rationally advances the legislative purpose of discouraging fraudulent notarizations." *Id.* ¶ 21. Moreover, the requirement is nondiscriminatory, applying equally to all notaries and all direct initiative and people's veto campaigns.

The Committee's arguments below that a more narrowly tailored approach to this problem would be to simply trust that notaries will be deterred from engaging in fraud based on the possibility of reputational damage and disciplinary action should be rejected. While these considerations may be sufficient to regulate notaries in private transactions, the Maine Legislature could properly determine that additional safeguards are necessary given the awesome power of the initiative process, which can enact new laws regulating the conduct of every Maine citizen.

Finally, the Court should reject the Committee's arguments that seek to analogize the conflict-of-interest provisions to campaign finance laws limiting election expenditures and contributions. Such laws are not subject to the *Anderson-Burdick* balancing test, since they regulate "pure speech" rather than the "mechanics of the electoral process." *Jones*, 2020 ME 113, ¶ 21, 238 A.3d 982.

3. *The bar on notary conflicts of interest is not viewpoint discrimination.*

The Committee also suggested below, in passing, that the conflict-of-interest statutes constitute "viewpoint discrimination." This theory, if raised again, should be rejected. Notaries public are commissioned public officers. *See* 66 C.J.S. Notaries § 1. The state cannot prohibit notaries from providing services to campaigns that align with their political views, but it may properly require notaries to recuse from their public functions when their prior conduct creates reasonable grounds to question their impartiality. It is no more "viewpoint discrimination" to prevent notaries public from administering oaths in these circumstances than it is to bar legislators from voting on legislation in cases in which they have a personal financial stake, *see* 1 M.R.S.A. § 1014, or judges from presiding over cases in which they previously acted as an advocate.

### D. The Secretary did not err in invalidating signatures with ditto marks in the date field, as required by Maine statute.

Finally, the Committee challenged below the Secretary's invalidation of 39 signatures for use of ditto marks in the date field, arguing that the Secretary' s reading of the relevant statutes was overly technical.

But, as the Superior Court affirmed, A0649–50, the Secretary correctly applied the ditto mark prohibition in Maine statute. Under 21-A M.R.S.A. § 902, direct initiative petitions must be "signed in the same manner as are nonparty nomination petitions under section 354, subsections 3 and 4." Under those provisions, "[d]itto

marks are permitted for residence address and municipality of registration *only*." 21-A M.R.S.A. § 354(4) (emphasis added). Together, these statutes amount to a clear ban on the use of ditto marks in the date field.

Moreover, while this approach to ditto marks may seem in tension with the Secretary's approach to other date issues, *see* Part II.D, there is good reason for a stricter ban on ditto marks in the date field. With no ban on ditto marks, potential petition signers would likely be confronted with petition forms with long columns of ditto marks instead of written dates. The temptation for signers to add their own ditto marks without first considering whether those marks accurately reflect the date would be high. Allowing ditto marks also creates the risk that circulators will pre-fill the date fields on their petition forms with ditto marks, as actually occurred on a presidential candidate's petition in 2024.[7] As this Court has recognized, the Secretary may invalidate signatures "for a failure to follow the requirements of the Constitution *or its statutory overlay*." *MTAN*, 2002 ME 64, ¶ 12, 795 A.2d 75. The Secretary thus did not abuse her discretion by invalidating signatures for ditto marks in the date field.

[7] See *In re Challenges to the Nomination of Slate of Presidential Electors to Support Dr. Cornel West*, at 23 (Aug. 20, 2024), available at https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/FINAL%20-%20West%20Decision.pdf

## II. The Court should reject Gilbert's arguments that the Secretary should have invalidated more signatures.

If the Court rejects the Committee's arguments above, there is no reason for it to consider or decide Gilbert's many arguments to invalidate additional signatures. However, if it does reach Gilbert's arguments it should reject them.

### A. Standard of review.

The same deferential and limited standard of review applicable to the Committee's challenges applies to Gilbert's challenges. *See* Part I.A.1.

### B. The Secretary did not abuse her discretion by declining to order additional investigation of three circulators.

Gilbert argued below that the Secretary abused her discretion by not investigating three circulators based on irregularities that Gilbert points to on the face of some of their petition forms and what the Presiding Officer found to be an inconclusive cross-examination of two of the circulators.

In *Reed,* this Court considered and rejected a similar argument. The challenger in *Reed* pointed to irregularities on petition forms similar to those claimed here—specifically, that petition forms contained duplicate signatures in different handwriting. 2020 ME 57, ¶ 24, 232 A.3d 202. Moreover, unlike here, the record in *Reed* included sworn testimony from voters that their signatures were forged. *Id.* Despite this evidence, this Court rejected the challenger's assertion that additional investigation was required based on "indicia of systemic irregularities," concluding that while the Secretary could have undertaken an investigation, "we cannot, in these

circumstances, conclude that the Secretary of State's failure to do so constitutes an error of law or an abuse of discretion." *Id.*

The same is true here. The Presiding Officer ordered further investigation of Circulator Harris due to the testimony of multiple witnesses, including the testimony of the Oxford municipal clerk detailing her investigation finding actual and suspected forged signatures. No similar testimony or evidence was offered with regard to the other three circulators. Instead, Gilbert's showing was limited to pointing out suspicious signatures on the petition forms themselves, most of which had already been invalidated by the municipal clerks. A0227–47. And, as in *Reed*, no municipal officers, who are primarily tasked with detecting forged signatures, and required to report violations to the Secretary, *see* 21-A M.R.S.A. § 902-A, testified to any actual or suspected fraud. *See Reed*, 2020 ME 57, ¶ 24, 232 A.3d 202. Under these circumstances, it was not an abuse of discretion for the Presiding Officer not to order further investigation, especially given the limited time available on remand.

### C. The Secretary did not err by declining to invalidate over 50,000 signatures for alleged noncompliance with never-before-enforced registration requirements.

Gilbert also argued below that the Secretary should have invalidated the majority of signatures collected by the petitioners for failure to fully comply with the Maine law requiring registration of petition organizations.

As the Superior Court correctly held, Gilbert waived this challenge to the petition by failing to raise it in her Petition for Review. The Maine Administrative

Procedure Act expressly requires that a petition for review state the "grounds upon which relief is sought." 5 M.R.S.A. § 11002. While Gilbert's petition for review mentioned the petition organization registration requirements in passing, nowhere does it allege that the petition is invalid due to a failure to comply with the registration requirements. Especially given the highly expedited nature of petition challenges under 21-A M.R.S.A. § 905, petitioners should be held to the plain language of § 11002 and be required to set forth all of their grounds for relief in their initial pleading to avoid potential prejudice to the other parties.

Alternatively, the Court should affirm the Superior Court's alternative basis for rejecting this challenge—that "given the lack of notice, instruction, or prior enforcement, and the weighty speech and associational interest at stake, invalidation . . . may not be an appropriate remedy in the context of this specific case." A0195 n.1 (quoting Sec'y Rule 80C Brief at A0099). The record shows that the Secretary's Elections Division at the time the Initiative was being circulated was not instructing petition campaigns on compliance with the intricacies of the registration statute—such as the need for out-of-state petition organizations to register as foreign corporations under Maine's corporation laws, *see* 21-A M.R.S.A. § 903-C(1)—nor did it have a historical practice of reviewing petitions for compliance with these requirements. A0657–62, A0666. Under those circumstances, strict enforcement of the registration requirements would have been unfair and may have implicated the constitutional rights of petition signers.

While this Court has required the Secretary to strictly enforce petition deadlines, *see McGee v. Sec'y of State*, 2006 ME 50, ¶ 15, 896 A.2d 933, it has in other contexts described the Secretary's power to invalidate petition signatures in discretionary terms. *See MTAN*, 2002 ME 64, ¶ 12, 795 A.2d 75 (stating that the Secretary "may" invalidate signatures for noncompliance with constitutional and statutory requirements). Moreover, 21-A M.R.S.A. § 905(1), the statute requiring the Secretary to review petitions for validity, specifies no mandatory grounds for the invalidation of signatures. Here, declining to invalidate most of the Initiative's signatures for less-than-perfect compliance with 21-A M.R.S.A. § 903-C, under the circumstances, was not an abuse of that discretion.

### D. The Secretary properly construed the notary conflict-of-interest statutes as inapplicable to circulator affidavits.

Gilbert also asserts that the Secretary should have invoked the notary conflict-of-interest statutes to invalidate signatures gathered by circulators who submitted circulator affidavits notarized by notaries who previously circulated for the campaign. But the conflict-of-interest statutes, by their plain terms, apply only to the "oath or affirmation to a circulator of a petition for a direct initiative or people's veto referendum *under Title 21-A, section 902*." 4 M.R.S.A. § 1904(5) (emphasis added); *accord* 21-A M.R.S.A. § 903-A. Section 902 contains the requirements for the circulator's oath that appears on each petition form. 21-A M.R.S.A. § 902. It does

not contain the requirements for the separate circulator's affidavit, which are set forth in 21-A M.R.S.A. § 903-A.

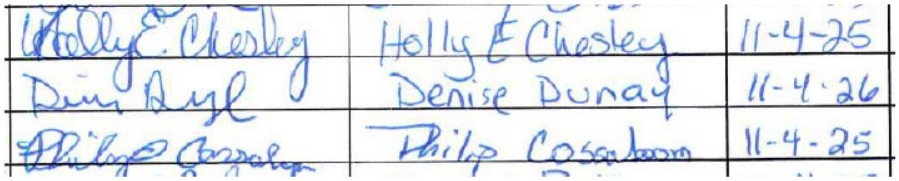
Gilbert below argued that "under Title 21-A M.R.S.A., section 902" does not modify "oath or affirmation," so that the section should be read to apply to *all* oaths that must be administered to the circulator, including the oath on the circulator's affidavit. But Gilbert's reading violates the rule against surplusage since, under her reading, the statute would mean the same thing even if "under Title 21-A, section 902" were excised. *See Waterman v. Wheeler*, 2025 ME 96, ¶ 4, 347 A.3d 1028. In any event, even if the statute is ambiguous, the Court should defer to the Secretary's interpretation of the statute as applying exclusively to the circulator's oath, *see Caiazzo*, 2021 ME 42, ¶ 17, 256 A.3d 260, which is reasonable given the "critical" role of that particular oath. *MTAN*, 2002 ME 64, ¶ 13, 795 A.2d 75.

### E. The Secretary did not err by validating signatures with date issues where it could be determined from context that the signatures was timely made.

Gilbert also attacks the Secretary's longstanding practice of validating signatures that have missing or invalid dates where it can be determined from context that the signature was made on a valid date. The Court should reject this challenge.

The Secretary agrees that she must be able to confirm a signature's date in order to validate it. To be valid, signatures must be made (a) within 1 year of the date of filing with the Secretary, *see* Me. Const. art. IV, pt. 3, § 18(2) and (b) prior to the taking of the circulator's oath on that petition form, *see* 21-A M.R.S.A. § 902. But

there are many cases where the Secretary can verify a signature's date even if the written date is missing, incomplete, or even wrong. For example:




R026119. Because petition signers sign sequentially on the first available line on the petition, the presence of a validly dated signature both above and below the signature in question confirms that the signature was made within the required period. In the example above, there is no serious question that the middle signer signed on November 4, 2025, even though a different (impossible) date is listed.

The Secretary has delegated authority under 21-A M.R.S.A. § 905(1) to determine the validity of petitions. Moreover, she has an obligation to "liberally construe[]" direct initiative laws "to facilitate, rather than to handicap, the people's exercise of their sovereign power to legislate." *Allen v. Quinn*, 459 A.2d 1098, 1102–03 (Me. 1983). Unlike the issue of ditto marks, where the Legislature has enacted a specific prohibition, *see* Part I.D, the Legislature has not spoken on how the Secretary should evaluate missing or garbled dates. The Secretary's approach, which has been now twice affirmed by the Superior Court, *see* A0197; *Johnson v. Dunlap*, No. AP-09-56, slip op. at 9 (Ken. Cty. Super. Ct. Dec. 23, 2009), allows full enforcement of the requirements that signatures be made within a certain date-range to be valid without

needlessly disenfranchising signers for technical errors that do not implicate those substantive requirements. The Court should affirm this functional approach.

### F. The Secretary did not abuse her discretion by relying on municipal registrars' determinations that signers were registered voters.

Gilbert argued below that the Secretary on remand should have directed Elections Division staff to query the state's Central Voter Registration system to determine the registration status of a list of 59 voters even though municipal registrars certified those voters to be registered voters in the municipality. Gilbert's argument is not based on any evidence admitted on remand but, rather, is based entirely on her say-so that the municipal clerks erred.

The Superior Court correctly held that, "as a matter of law, the Secretary 'cannot commit reversible error in a petition validation decision by rel[]ying on municipal certification decisions.'" A0201; *accord Johnson*, slip op. at 7 n.5. Municipal registrars are both entrusted by the Maine Constitution to certify registered voters on a petition, Me. Const. art. IV, pt. 3, § 20, and are in the best practical position to do so, given that they hold the original voter registration records of their voters. *See* 21-A M.R.S.A. § 172. Although the Secretary has discretion to open such investigations if she determines it is warranted, she is under no obligation to do so simply because a challenger asserts that some signers might not be registered. Moreover, even assuming an abuse-of-discretion standard applies to such decisions, the Secretary did

not abuse it here where Gilbert presented only her assertions, not evidence, that registrars erred.

### G. The Secretary did not err by validating signatures with missing address information where the municipal registrar was able to certify that the signer was a registered voter in the municipality.

Finally, Gilbert challenges the Secretary's refusal to invalidate certain signatures for missing street addresses or municipalities. Gilbert relies on a statutory provision stating that "[t]he voter or the circulator of the petition must write or print the voter's residence address and municipality of registration." 21-A M.R.S.A. §§ 354(4), 902.

As with her challenges to garbled or missing dates, *see* Part II.D, Gilbert is taking issue with a longstanding practice of the Secretary to "liberally construe[]" petition circulating laws, *see Allen*, 459 A.2d at 1102–03, to require invalidation of signatures for missing information only where the lack of that information prevents verification that the signature meets substantive statutory and constitutional requirements. Address information is required on the petition to assist municipal clerks in determining whether the signer is a registered voter in the municipality. But registrars ultimately make their certification decisions not by reviewing address information, but by comparing the voter's signature on the petition to their signature on the voter registration card. Where incomplete address information does not prevent the registrar from identifying the voter and making the certification, invalidating the signature would disenfranchise the signer without furthering the substantive policies behind the address requirement of preventing signature fraud and

limiting the initiative process to registered voters. The Court should uphold the Secretary's decision not to invalidate certain signatures for missing street addresses of municipalities.

## Conclusion

The Court should affirm the decision of the Superior Court.

Respectfully submitted,

June 22, 2026

AARON M. FREY
Attorney General

JONATHAN R. BOLTON, No. 4597
Assistant Attorney General
6 State House Station
Augusta, Maine 04333–0006
(207) 626–8551
jonathan.bolton@maine.gov

*Attorneys for Respondent-Appellee Secretary of State*

**Exhibit A**

Consent Order and Judgment
*We the People PAC v. Bellows*

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

| | |
|---|---|
| WE THE PEOPLE PAC; State Representative BILLY BOB FAULKINGHAM; LIBERTY INITIATIVE FUND; and NICHOLAS KOWALSKI,<br><br>Plaintiffs<br><br>v.<br><br>SHENNA BELLOWS, in her official capacity as Secretary of State for the State of Maine, JULIE FLYNN, in her official capacity as the Deputy Secretary of State of Maine for the Bureau of Corporations, Elections and Commissioners,<br><br>Defendants. | Civil No. 1:20-cv-00489-JAW |

**CONSENT ORDER AND JUDGMENT**

For the reasons stated in the order granting Plaintiffs' Motion for Preliminary Injunction (ECF No. 46), and the decision of the United States Court of Appeals for the First Circuit affirming that order, and the parties having agreed, it is HEREBY ADJUDGED that:

1. Judgment shall enter for Plaintiffs We the People PAC, Billy Bob Faulkingham, Liberty Initiative Fund, and Nicholas Kowalski, and against Defendants Shenna Bellows, in her official capacity as Secretary of State for the State of Maine, and Julie Flynn, in her official capacity as Deputy Secretary of State of Maine for the Bureau of Corporations, Elections, and Commissioners, on Counts I-IV of Plaintiffs' Complaint.
2. Defendants are permanently enjoined from enforcing 21-A M.R.S. § 903-A and Me. Const., art. IV, pt. 3, § 20, to the extent they require that initiative or people's veto petitions only be circulated by Maine residents, against circulators who (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 petitions; (b) maintain up-to-date contact information with the Maine Secretary of State's office, by whatever means identified by the Secretary of State's office, for the duration of any petition drive for which they circulation petitions, which drive includes the collection of signatures and review of those signatures by the Secretary of State's office; and (c) are responsive to requests for information from the Secretary of State's office for the duration of the petition drive, as defined above.

3. Defendants are permanently enjoined from enforcing 21-A M.R.S. § 903-A and Me. Const., art. IV, pt. 3, § 20, to the extent they require that initiative or people's veto petitions only be circulated by registered voters of Maine.
4. Defendants shall pay Plaintiffs the sum of $92,189.32 in attorneys' fees and costs, in accordance with 42 U.S.C. §§ 1983 and 1988(b), by December 31, 2023. The Court finds that the amount of fees requested is reasonable.
5. Should Defendants fail to pay the aforementioned fees and costs by December 31, 2023, post-judgment interest shall be owed from the date of this Order.
6. At Plaintiffs' request, and pursuant to an agreement of the parties, Counts V-IX of Plaintiffs' Complaint are dismissed with prejudice.
7. To the extent Plaintiffs' complaint seeks further relief beyond the relief ordered above, such relief is denied.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 9th day of February, 2023

**Certificate of Service**

I, Jonathan R. Bolton, hereby certify that the foregoing Brief of the Secretary of State was served upon counsel of record as follows

**Via E-mail and U.S. Mail**

Timothy Woodcock, Esq.
Katahdin Law, LLC
P.O. Box 895
Bangor, ME 04402-0895
twoodcock@katahdin-law.com

James G. Monteleone, Esq.
Bernstein Shur
P.O. Box 9729
Portland, ME 04104-5029
jmonteleone@bernsteinshur.com

June 22, 2026

JONATHAN R. BOLTON, No. 4597
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, Maine 04333–0006
(207) 626–8551
jonathan.bolton@maine.gov