STATE OF MAINE **SUPREME JUDICIAL COURT**
Sitting as the Law Court
Docket No. Cum-26-288

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

v.

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

and

PROTECT GIRLS' SPORTS IN MAINE.
Intervenor-Appellant

On Appeal from the Cumberland County Superior Court, No. AP-26-10

BRIEF FOR PETITIONER-APPELLEES

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INTRODUCTION

The Secretary of State correctly determined that Protect Girls Sports in Maine ("PGS") failed to gather enough valid signatures to qualify a ballot initiative ("Initiative") for the November ballot. While the Secretary initially validated the Initiative by a narrow margin, Petitioners came forward with irrefutable evidence of wrongdoing by PGS circulators and various other legal deficiencies with PGS's signatures. The Secretary conceded many of Petitioners' challenges but asked for remand to conduct fact-finding about alleged circulator misconduct. Over a two-day hearing, Petitioners established numerous problems with PGS's petition sheets: circulators who abandoned their sheets in public but then falsely swore to witnessing every signature; a circulator whose petition sheets were comprised *entirely* of false signatures; and out-of-state circulators who failed to comply with mandatory conditions for petition circulation, including consenting to Maine's legal jurisdiction. The Secretary credited that evidence and, after invalidating the affected signatures, rightly concluded PGS failed to clear the required threshold.

None of those factual findings remain in dispute. When this case returned to the Superior Court post-remand, PGS—faced with the immovable mountain of evidence against it—forfeited most issues and effectively conceded the bulk of Petitioners' challenges. With little room to maneuver, PGS instead raised only a small handful of half-baked challenges to the Secretary's revised conclusion.

Affirming the Secretary on those few remaining points—as the Superior Court did, and as this Court should—will resolve this case.[1]

PGS staked the bulk of its appeal below on the contorted theory that non-residents are free to circulate in Maine without adhering to conditions set by Maine law, as enforced by the Secretary in accordance with federal court orders. At bottom, PGS's theory is that the Secretary cannot regulate out-of-state circulators *at all* because they are not contemplated by the Maine Constitution. But that is a strange contention—the Maine Constitution categorically *bans* non-resident circulators. They are only permitted to operate in Maine due to a recent federal consent decree, entered into by the Secretary, and only then if the circulator first submits to Maine's jurisdiction. *See* Consent Order, *We the People PAC v. Bellows*, No. 1:20-cv-489 (D. Me. Feb. 9, 2023), ECF No. 88 ("Consent Order").

PGS, one might think, would be a fan of the Consent Order: PGS recruited *120 non-resident circulators*, who submitted *over half* of the signatures it submitted to the Secretary. But for the Consent Order, PGS's petition would be dust in the wind. Yet PGS spent nearly *all* its briefing in the Superior Court attacking the Consent Order as ultra vires and claiming the Secretary could not enforce its terms—save for the bit about letting non-Mainers collect signatures. PGS thus wants the

[1] To the extent PGS attempts to revive arguments it declined to raise before the Superior Court, the Court should find such arguments waived. *See Gov't Oversight Comm. v. Dep't of Health & Hum. Servs.*, 2024 ME 81, ¶ 38, 327 A.3d 1115.

benefit of the Consent Order—an exception to Maine's constitutional prohibition on out-of-state circulators—without any of the conditions that a federal court set to obtain that privilege. But the Consent Order is not a choose-your-own-adventure book and PGS must take the bitter with the sweet. PGS's attacks on the Consent Order fail for myriad reasons, not least of all because Maine courts plainly cannot modify a federal order to which the Secretary is bound to comply.

PGS's remaining arguments fare no better. It argued below that Maine's common sense notary rules violate notaries' constitutional rights. Not so. Notaries in Maine can engage in whatever political activity they wish, including circulating petitions. Once they perform such services on behalf of a ballot measure campaign, however, they cannot then serve as impartial notaries for the campaign's other circulators. That sensible rule regulates their *notarial* conduct, not their *political* conduct, and Maine has ample justification for ensuring registered notaries avoid obvious conflicts of interest. Lastly, PGS attacks the clear statutory prohibition on the use of ditto marks for certain petition fields, but this reflects a bare policy disagreement with the Legislature, not any viable legal theory.

In sum, once the full set of facts came to light, the Secretary rightly concluded the Initiative failed to obtain enough valid signatures. Her conclusion is firmly rooted in factual findings that PGS does not challenge and the plain letter of the law. PGS's contrary arguments boil down to a plea to excuse or exempt clear violations

of Maine law, as the Superior Court discerned. The Court can resolve this case by rejecting PGS's last-ditch attacks and affirming. To the extent it adversely modifies any finding by the Secretary, however, the Court must remand to allow consideration of Petitioners' many outstanding and preserved challenges, any number (or combination) of which also suffice to doom the Initiative.

STATEMENT OT FACTS AND PROCEDURAL HISTORY

I. Following failed legislative efforts to enact anti-trans measures, interest groups with out-of-state roots applied to put such measures on the ballot.

Maine has faced heavy pressure from the Trump Administration to change state antidiscrimination laws as applied to transgender student athletes. *See* A.23-24. Even so, the Legislature has repeatedly debated and rejected proposals that, like the Initiative, would discriminate against children based on gender. *See* A.23. Against this charged backdrop, a group called "Protect Girls Sports in Maine," backed by out-of-state billionaire Richard Uihlein, applied to place the Initiative on Maine's November 2026 ballot. R.0003. The Initiative seeks to force school sports programs and facilities to mandate that participation or use be limited by sex at birth—vitiating Maine's existing antidiscrimination protections. *See* R.0004-05.

Four groups applied to circulate petitions for the Initiative. The first, "Morning in America II," is based in Arizona. R.0042-43. The second, "Canyon State Marketing," is based in California. R.0032. The third, "1st Amendment Pros LLC," is registered to a storefront address in Wyoming that has repeatedly been tied

to scams and fraudulent schemes. R.0028-29.[2] The last—and the only one based in Maine—is "Phil Hendricks (DBA Mainely Strategies)." R.0036-41, R.0044-45.

Neither PGS nor the Secretary have ever disputed that these organizations failed to comply with basic legal requirements for petition organizations. *First*, none of the out-of-state organizations complied with the necessary "requirement[s] to transact business in this State," 21-A M.R.S. § 903-C(1), which includes registering as an out-of-state LLC, *see* 31 M.R.S. § 1622(1) (prohibiting foreign LLCs from conducting activities in Maine "until its statement of foreign qualification is filed in the records of the Secretary of State").[3] *Second*, none of these organizations "include[d] a statement indicating the method by which the individuals hired to assist in circulating petitions are being compensated," 21-A M.R.S. § 903-C(1)(D), though one belatedly attempted to comply with this requirement by email. R.0028-45 (forms failing to include requisite statement about how circulators were paid).

These entities relied heavily upon out-of-state circulators to support the Initiative. The circulator affidavits in the record indicate that PGS recruited 120 non-

[2] The modest storefront—30 N. Gould Street—has *260,000* different business registered to the address and has been subject to extensive scrutiny for facilitating crime by so-called anonymous LLCs. *See, e.g.*, Ashleigh Snoozy, *Another Scam Recorded from Business Related to 30 N. Gould St. Registered Agent*, The Sheridan Press (May 27, 2025), https://perma.cc/B3NX-T43P; Spencer Woodman, *Millions in Covid Relief Funds Went to Shadowy Companies Registered at a Wyoming Storefront that Hundreds of Thousands of Firms Used as an Address*, Int'l Consortium of Investigative Journalists (Mar. 4, 2025), https://perma.cc/R84T-QXE7; Will Fitzgibbon, Debbie Cenziper & Alice Crites, *The Gatekeepers Who Help Open America to Oligarchs and Scammers*, Int'l Consortium of Investigative Journalists (Apr. 5, 2022), https://perma.cc/BK7H-3A2S.

[3] The Secretary of State's Corporate Search website does not indicate that any of these out-of-state LLCs are registered in Maine, nor has any party presented evidence that they are.

resident circulators, who submitted over 41,000 signatures on PGS's behalf—more than half of the 79,692 signatures submitted to the Secretary. In doing so, these non-resident circulators relied upon a new exception to Maine's more than a century-old constitutional rule prohibiting out-of-state circulators for ballot initiatives. *See* Me. Const. art. IV, pt. 3, § 20; *see also* 21-A M.R.S. § 903-A. That exception—the result of federal litigation that resulted in a preliminary injunction and, ultimately, a consent decree—grants non-Mainers the privilege of circulating petitions, but only so long as they "first submit to the jurisdiction of the state of Maine[.]" *We the People PAC v. Bellows*, 519 F. Supp. 3d 13, 53 (D. Me. 2021), *aff'd,* 40 F.4th 1 (1st Cir. 2022).

II. The Secretary's office properly invalidated large numbers of petition signatures but nonetheless initially certified the Initiative.

On February 2, 2026, PGS submitted its signatures to the Secretary's office. A.651. The Secretary's staff is afforded only a brief period to review tens of thousands of signatures, *see* 21-A M.R.S. § 905(1), but they readily discerned that many signatures, and even entire petition sheets, submitted by PGS were legally invalid. A.651 & n.1. During its initial review, the Secretary's office invalidated 8,659 signatures due to various statutory and constitutional deficiencies, leaving the Initiative just a few thousand signatures above the necessary threshold of 67,682. A.652. The Secretary issued a Determination of Validity on March 17, 2026, approving the Initiative. *Id.*

Although the Secretary's staff diligently identified these invalid signatures, the record now shows—and the Secretary now agrees—that a substantial number of additional signatures required invalidation due to widespread violations of Maine law, including serious circulator misconduct.

III. Petitioners uncover widespread evidence of misconduct, resulting in a remand for further factfinding about out-of-state circulators.

On March 27, 2026, the Petitioners—three Maine voters aggrieved by the Secretary's Determination of Validity—timely filed this challenge. Petitioners set forth an array of evidence and arguments showing that the Initiative failed to submit enough valid signatures to clear the required statutory threshold.

Much of this evidence concerned matters—extensively litigated below and before the Secretary—that are no longer in dispute. For example, Petitioners established that multiple PGS circulators abandoned their petition sheets while members of the public continued to mark them, and that these same circulators therefore falsely attested to "personally witness[ing] all of the signatures to this petition[.]" A.656; *see also* A.378-85; A.391-98. PGS vigorously contested this charge at first but later forfeited it when back before the Superior Court. That concession was prudent: video and photographic evidence, backed by credible witness testimony, established this wrongdoing beyond any serious doubt. *See* A.699-706. Further still, the offending circulators either failed to appear before the Secretary or testified falsely when doing so, including one circulator who testified

to "destroying" any sheets marked in her absence—a claim disproven by photographic evidence. A.322-23.

Petitioners also highlighted other undisputed violations, including duplicate signatures not invalidated by election officials; petition sheets that were never properly notarized; and signatures that contained fatal errors, such as dates that post-dated the relevant circulator oath or notarization date. A.77-83. No party has ever disputed these errors constitute straightforward violations of Maine law that required further invalidation of signatures initially counted by the Secretary.

Most relevant here, however, Petitioners identified problems where the Secretary ultimately agreed Maine law was violated, but PGS did not. This included identifying four out-of-state circulators—Cairo, Jordan Albert, Kewechi Chukwuma, and Ummsalaamah Hakeem—who failed to affirm by oath that they consented to Maine's legal jurisdiction for purposes of their petitioning conduct. *See* A.695-98. Petitioners also established that two PGS circulators—Robert J. De Clercq and Patrick Harrington—later notarized petition sheets and circulator affidavits on PGS's behalf, violating Maine's conflict rules for notaries. A.39-40. Finally, Petitioners identified signatures that used "ditto marks" in fields where Maine law forbids them. A.79.

The Secretary responded to the Petition on April 17. As explained, the Secretary conceded the merit of numerous challenges, conceded others in part, and

resisted several others in full. The Secretary also agreed that remand to the agency was appropriate to permit additional factfinding about various circulator misconduct. PGS, which moved to intervene without opposition on April 1, 2026, also responded to the Petition on April 17, 2026. It contested most challenges—several of which PGS has since forfeited—but notably failed to dispute many other straightforward violations of Maine law identified by Petitioners, thus conceding them.

The Superior Court issued its initial decision on April 24, largely crediting the Secretary's positions, including its numerous concessions to Petitioners. A.186-203. Accordingly, the Superior Court's order had the effect of immediately invalidating several thousand additional signatures, leaving the Initiative just a few hundred above the required threshold. A.196-97. The court's order further agreed that remand was required to "find additional facts, and [to] determine based on those facts whether any additional signatures should be invalidated." A.194.

IV. The administrative hearing confirms Petitioners' allegations regarding circulator misconduct.

On May 12 and 13, the Secretary's office conducted a hearing to take additional evidence and consider arguments about whether to revisit any of its prior concessions to Petitioners. At the hearing, Petitioners introduced evidence that firmly established three additional categories of violations by PGS circulators.

A. PGS circulators abandoned their sheets and then swore false oaths.

In the hearing, Petitioners presented substantial evidence that multiple PGS circulators swore false circulator affidavits—claiming that they had personally witnessed all signatures on petitions—when, in fact, they had abandoned petitions.

Three witnesses for Petitioners—bolstered by video and photographic evidence—testified that an out-of-state circulator, Elias Vasquez, abandoned his petition sheets while circulating at a polling location in Topsham on Election Day in 2025. *See* Transcript of May 12-13, 2026 Hearing ("Tr.") at 40:2-53:12; Tr.90:22-99:9; Tr.106:8-112:1; A.699-706. Vasquez did not appear to refute this testimony, which confirmed that members of the public marked his sheets while he was absent. Two other witnesses—again backed by video and photographic evidence—testified that another out-of-state circulator, Susan Mays, likewise abandoned her petition sheets at a polling location in Saco on Election Day. Tr.116:15-127:19; Tr.139:18-148:1. Mays did appear, but the Secretary did not credit her testimony. A.395. The Secretary found that Mays gave false testimony about destroying petition sheets marked in her absence. Indeed, a photograph of Mays' abandoned petition sheets clearly identified at least one petition sheet she later submitted, contradicting her testimony. A.703. Even beyond this glaringly false testimony, Mays gave "shifting accounts of what happened that day," A.323, that rendered her an unreliable witness.

B. PGS circulators submitted large numbers of fraudulent signatures.

Petitioners next established at least one circulator—and likely several more—submitted scores of invalid (and almost certainly fraudulent) signatures. Oxford Town Clerk Kathleen Dillingham, a former Republican member of the Legislature, credibly testified that she "knew for a fact" that several signatures submitted by circulator Rokelle Harris "were not authentic signatures," based on her conversations with voters and independent review of voter registration cards. Tr.79:13-80:4; *see also* Tr.83:7-84:3. Nancy Penn, a Hiram resident, credibly testified that her purported signature on a petition circulated by Harris was fraudulent; she had no idea how her purported signature came to be on one of Harris's petition sheets. *See* Tr.86:15-88:4. PGS later requested production of Penn's signature, which the Secretary produced under seal. A comparison of Penn's voter registration signature to the false signature in her name on the PGS petition sheet confirms her testimony. *Compare* R.034355 (sealed) (Penn signature on voter registration card), *with* R.013152 (Penn signature on petition).

Harris was present on Zoom during the hearing when Penn and Dillingham testified. But when she testified herself, she did not even attempt to explain this pattern of fraudulent signatures. Rather, she expressed the view that it was not her duty to discern the accuracy of the information on her petition sheets,

notwithstanding that the circulator oath obliges her to ensure "to the best of [her] knowledge" that signatures are from who they purport to be. Tr.211:15-215:8.

Beyond Harris, Petitioners also examined two non-resident circulators—Fritz Jean-Baptiste and Kendrick Jackson. These circulators submitted numerous petition sheets—mostly from Lewiston and Auburn—with astronomically high invalidation rates relative to PGS's hundreds of other circulators. Indeed, Jackson submitted the *three* petition sheets with the highest invalidation rates for duplicative signatures—a virtual statistical impossibility if one assumes that accidental or non-fraudulent duplicates are randomly distributed across State. *See* Master List of Petitions.

The sheets these circulators submitted—as well as those of a third circulator, Adam Turner, who did not testify—were marred by obvious indicia of fraud. A.225-45. For example, all three circulators submitted numerous petition sheets largely containing duplicative signatures written in obviously different handwriting from the original signatures, often accompanied by voters misspelling their own names and addresses. *See id.* Jean-Baptiste, for instance, submitted a petition sheet where various Lewiston residents purportedly misspelled Lisbon Street—one of the city's major thoroughfares—as "Libson" Street, while often incorrectly recording their own street numbers or street names. A.229-30. Jackson submitted a sheet where multiple supposed residents of Auburn listed *Lewiston* street addresses—an

extremely improbable error for just *one* Auburn resident to make, never mind for *three* to make on the very same sheet and in the very same handwriting. A.238.

Both Jean-Baptiste and Jackson also gave testimony that undercut their credibility. Most notably, both insisted that they never pre-filled fields on any petition sheets, even when presented with petition sheets where the same handwriting was clearly used to fill out most fields. A.231-32; A.238-43. Ironically, Maine law *permits* such pre-filling save as to the signature field, but in their haste to disclaim misconduct, both Jean-Baptiste and Jackson gave obviously false testimony about how they handled their sheets.

C. Testimony from circulator Cairo confirmed that she deliberately chose not to consent to Maine's jurisdiction while circulating.

Finally, Petitioners established that four circulators failed to consent to Maine's jurisdiction on their circulator affidavits, which contains a clearly identified residency section stating the circulator "**must check <u>one</u> box**." *See e.g.* A.696. The two options permit a circulator to either affirm they were "a resident of the State of Maine at all times when [they] circulated the petition," *id.* or alternatively that they were "not a resident of the State of Maine" but that they agreed to various requirements "as a condition of circulating a petition in the State of Maine." *Id.* These requirements include agreeing to be responsive to investigatory requests from the Secretary, as well as "agree[ing] to maintain up-to-date contact information" with the Secretary "for the duration of any petition drive … including while

signatures are being collected and through the review of those signatures by the Secretary[.]" *Id.* Most critically, this second option required non-residents to "agree to submit [themselves] to the jurisdiction of the State of Maine" for purposes of their circulating activity. *Id.*

Three out-of-resident circulators who failed to check this second box for non-residents failed to appear at the hearing. The fourth—an individual with the legal mononym of "Cairo"—did testify, but in doing so *confirmed* she had deliberately refused Maine's jurisdiction while circulating petitions. She testified that she knew she was not a Maine resident—and that the first box therefore did not apply to her—but also that she had concerns about the consequences of checking the second box. In her own words, she wanted to "get the actual data of what was being asked from [her]," so she put the affidavit "aside" to "get clarity on [the second box] to make sure that [she was] marking the right box." Tr.24:8-25:4. As she explained, she was "inundated" with paperwork at that time and her PGS supervisor never "g[o]t back to addressing the specificities of the matter." Tr.25:5-10. Cairo consistently testified to this sequence—knowingly setting aside the incomplete affidavit due to unresolved concerns about the jurisdictional portion—several times. *See* Tr.29:8-13 ("So, we did have some questions, and I don't think that we were able to address those questions … So, we did not get the chance to go back to that to mark that box off."); Tr.30:19-23 (saying she had "a question or concern that needed to be addressed" but

that she was "not able to address that"); Tr.34:19-21 ("we had intended to specifically discuss this second box here, and we did not get the opportunity to do so").

V. The Secretary issues a Revised Determination concluding the Initiative failed to collect enough signatures and the Superior Court affirms.

On May 21, the Chief Deputy Secretary of State issued a recommended decision about what further determinations the Secretary should make based on the hearing evidence. A.300-41. Both PGS and Petitioners filed objections to that recommended decision on May 23, A.342-69, and the Secretary adopted the recommendation as her final decision on May 26, A.370.

The Secretary's final decision made several critical determinations. *First*, as to abandoned petition sheets, the Secretary invalidated petition sheets submitted by circulators Vasquez and Mays from Election Day in Topsham and Saco, as evidence showed these circulators had sworn false oaths on these sheets. A.391-98.

Second, based on the hearing evidence, the Secretary's staff re-reviewed all signatures submitted by circulator Harris for the towns of Oxford and Hiram. Staff concluded that "none of the signatures on these … petition forms matched the voters' signatures on their voter registration applications." A.401-02. Accordingly, the Secretary's staff then reviewed *all* of Harris's submissions and concluded "each of the validated signatures collected by Harris on these forms also should have been

invalidated," and thus that "100% of Circulator Harris's signatures should have been invalidated" because they did not actually come from the purported voter. A.402.

As to Jean-Baptiste, Jackson, and Turner, the Secretary conceded these circulators submitted "troubling entries," A.403, and acknowledged that Petitioners had raised "substantial issues" as to Jean-Baptiste and Jackson, A.404. She agreed that testimony from Jean-Baptiste and Jackson "called into question their credibility," A.403. Nonetheless, the Secretary declined to order further review of their signatures, apparently because Petitioners' evidence was based chiefly on a "paper review" of their submissions, rather than witness testimony. *Id.* The Secretary did not offer any explanation, however, for how the "troubling entries" identified by Petitioners could have been the result of inadvertent error, or really anything beyond intentional fraud.

Third, the Secretary reaffirmed her earlier determination that out-of-state circulators who failed to properly submit to Maine's jurisdiction could not legally circulate petitions in Maine. A.406. In particular, the Secretary found that Cairo "had concerns about the implications of agreeing to Maine's jurisdiction" that were never "assuaged." A.407. Accordingly, the Secretary determined as a factual matter that Cairo's choice to not check the box was "*not* an inadvertent failure to express her agreement to the terms of the affidavit, but [rather] a substantive lack of agreement

to those terms." A.408 (emphasis in original). The Secretary invalidated signatures collected by these four circulators, including Cairo.

Finally, the Secretary invalidated a handful of additional signatures based on Petitioners' other challenges, A.405, but otherwise largely reaffirmed her earlier positions opposing Petitioners' remaining challenges, A.405-06. This included:

- Challenge 1: Contending that the failure of the four petition organizations to comply with 21-A M.R.S. § 903-C required invalidating signatures;
- Challenge 5: Contending Maine's notarial conflict rules prohibited circulators De Clercq and Harrington from notarizing circulator affidavits, in addition to petition sheets (as the Secretary conceded);
- Challenges 14 and 15: Contending various signatures did not comply with mandatory date requirements in the Maine Constitution;
- Challenge 18: Contending the Secretary was obliged to double check the voter registration status of 59 signatories;
- Challenges 20 and 21: Contending various signatures failed to comply with mandatory address and municipality requirements in Maine law.

Based on the foregoing conclusions, the Secretary issued a Revised Determination of Validity ("Revised Determination") concluding that PGS submitted only 67,150 valid signatures, more than 500 below the necessary threshold. A.371-72. Accordingly, the Secretary declared "the petition to be invalid." A.372.

VI. The Superior Court affirms the Revised Determination and notes that Petitioners preserved additional challenges.

After the Secretary issued her Revised Determination, the parties returned to the Superior Court. On June 3, PGS and Petitioners concurrently filed their opening briefs. Critically, PGS's opening brief raised only a narrow set of challenges to the Revised Determination. Specifically, PGS raised just three issues: (1) the invalidation of petition sheets submitted by non-resident circulators who failed to submit to Maine's jurisdiction; (2) the invalidation of petition sheets notarized by conflicted notaries who had performed other services for PGS; and (3) the invalidation of signatures that improperly used ditto marks in particular fields. *See* A.415-60. PGS did not dispute *any* of the Secretary's factual determinations from the hearing, or the Secretary's invalidation of petition sheets submitted by circulators Vasquez, Mays, and Harris, who had been the primary focus of the hearing. PGS proffered no explanation for the problematic petition sheets submitted by Jean-Baptiste, Jackson, and Turner, choosing to rest instead on the Secretary's choice to not re-review their signatures.

Petitioners principally argued that the Secretary had gotten things right, including with respect to circulators Vasquez, Mays, and Harris, as well as the four non-resident circulators who failed to consent to jurisdiction. They argued for affirmance of the Revised Determination, while also presenting argument to preserve their challenges rejected by the Secretary, in case they became dispositive.

That included allegations against Jean-Baptiste, Jackson, and Turner based on the hearing evidence, as well as their earlier legal challenges. *See* A.461-522.

The Secretary filed a response on June 5 that defended the Revised Determination, to which PGS and Petitioners replied on June 8.

The Superior Court issued its second decision on June 11. *See* A.638-50. Once more, the Superior Court largely agreed with the Secretary's views. It rejected PGS's argument that signatures from out-of-state circulators should have counted, even though they refused to consent to Maine's jurisdiction. The Court found that the Secretary acted properly by applying Maine's longstanding ban on non-resident circulators to circulators who failed to consent to jurisdiction, consistent with Judge Woodcock's ruling in *We the People PAC*. A.644-46. The Court further explained that, regardless, the Secretary was *bound* by the Consent Order entered in that litigation, and that no Maine court could modify that decree. A.646-47. The Court further upheld the Secretary's factual determination that Cairo specifically chose not to consent to Maine's jurisdiction due to unresolved concerns she had about doing so. A.646.

Next, the Superior Court rejected PGS's challenge to Maine's notarial conflict of interest rules, explaining that those rules protected legitimate state interests and did not impermissibly burden constitutional rights. A.647-49. The court also rejected PGS's challenge to the ditto mark rule, concluding the Secretary straightforwardly

applied the Legislature's statutory prohibition on their use in certain fields. A.649-50.

Because it ultimately affirmed the Secretary's Revised Determination, the Superior Court expressly "decline[d] to reach the merits of Petitioners' remaining challenges" but "note[d] that Petitioners' challenges are fully preserved for appeal." A.650. Accordingly, the Court did not address Petitioners' challenges concerning circulators Jean-Baptiste, Jackson, and Turner, and also did not make final determinations with respect to its earlier, interlocutory rulings rejecting some of Petitioners' other challenges.

PGS filed a timely notice of appeal. Petitioners filed their own cross-notice, making clear that they "ultimately seek affirmance of the Superior Court's orders, as well as of the Secretary of State's Revised Determination of Validity" and that they noticed their appeal solely "to ensure preservation of [certain] issues" for future proceedings, if needed. *See* Pets.' Notice of Cross-Appeal.

ISSUES PRESENTED FOR REVIEW

Because PGS forfeited challenges to most of the Secretary's conclusions before the Superior Court, this appeal asks only the following questions:

1. Did the Secretary clearly err in determining that four non-resident circulators failed to properly consent to Maine's jurisdiction, and therefore did not validly submit petition sheets?

2. Did the Secretary err by invalidating petition sheets notarized by individuals who previously circulated petition sheets on behalf of PGS, in direct contravention of Maine law?

3. Did the Secretary err by invalidating signatures that used ditto marks in fields where doing so is expressly prohibited by Maine law?

4. In the event this Court reverses the Revised Determination, is remand required to allow for final merits determinations on Petitioners' outstanding challenges to the Initiative?

The answer to the first three questions is "no," as the Superior Court correctly determined. The answer to the last question—if the Court has occasion to reach it—would be "yes," as the Superior Court recognized in declining to reach those issues while noting them as preserved.

STANDARD OF REVIEW

This Court's "standard of review must be the same as for the Superior Court." 21-A M.R.S. § 905(3). Such review is deferential to the Secretary. The Court does not ask whether it "would have reached the same conclusion as the agency, 'but whether the record contains competent and substantial evidence that supports the result reached.'" *CWCO, Inc. v. Superintendent of Ins.*, 1997 ME 226, ¶ 6, 703 A.2d 1258 (quoting *In re Me. Clean Fuels, Inc.,* 310 A.2d 736, 741 (Me. 1973)). "The agency's factual determinations must be sustained unless shown to be clearly erroneous." *Imagineering, Inc. v. Superintendent of Ins.*, 593 A.2d 1050, 1053 (Me. 1991). A factual finding is only "clearly erroneous when there is no competent evidence in the record to support it." *Lewin v. Skehan*, 2012 ME 31, ¶ 18, 39 A.3d

58. "A party seeking review of an agency's findings must prove they are unsupported by any competent evidence." *Me. Bankers Ass'n v. Bureau of Banking,* 684 A.2d 1304, 1306 (Me. 1996).

"When reviewing an agency's interpretation of a statute it administers," courts "look to the plain meaning of an unambiguous statute in order to give effect to the intent of the Legislature." *Maine Health Care Ass'n Workers' Comp. Fund*, 2009 ME 5, ¶ 8, 962 A.2d 968. An agency receives deference to its construction of a statute if the Court first finds the statute ambiguous. *See Snakeroot Solar, LLC v. Pub. Utils. Comm'n*, 2025 ME 64, ¶ 26, 340 A.3d 99.

ARGUMENT

I. The Secretary properly rejected petitions submitted by non-resident circulators who did not consent to Maine's jurisdiction.

A. The Secretary did not clearly err in determining that four circulators refused to submit to Maine's jurisdiction.

The Maine Constitution bars nonresidents from circulating initiative petitions. Under the Consent Order, an exception is made for nonresidents who first consent to Maine jurisdiction. PGS makes little effort to disturb the Secretary's factual determination that four non-resident circulators—Cairo, Kewechi Chukwuma, Jordan Albert, and Ummsalaamah Hakeem—failed to "agree to submit to the personal jurisdiction of Maine," as required to come within the protective scope of the Consent Order. *See* Consent Order ¶ 2; *see also* R.033335-36 ¶¶ 97-100; R.033352-55. And, as the Superior Court found, the record amply supports the

Secretary's determination. A.644-46. Indeed, PGS did not even argue below that Chukwuma, Albert, or Hakeem consented to Maine's jurisdiction, nor is there any record evidence that could support such a finding.

PGS did claim that Cairo adequately submitted to jurisdiction after-the-fact, but that argument should again be rejected, as it was by both the Secretary and the Superior Court. PGS did not dispute the Secretary's finding that Cairo intentionally refused to submit to Maine's jurisdiction before she submitted her petitions. *See* R.033335 ¶ 96 (citing R.032665). Cairo's own testimony compels this conclusion, as she repeatedly confirmed that she affirmatively chose *not* to submit to Maine's jurisdiction when completing her circulator affidavit. *See* Tr.24:3-25:10; Tr.29:8-30:23; Tr.34:4-35:21. Based on that testimony, the Secretary determined as a factual matter that Cairo had "a substantive lack of agreement" with the relevant portion of the circulator affidavit and therefore was "intentional" in not submitting to Maine's jurisdiction during the circulation period. A.335-36. The Secretary's factual determination about Cairo's intent is subject to review for clear error, *see Tinsman v. Town of Falmouth*, 2004 ME 2, ¶ 12, 840 A.2d 100, a bar that PGS cannot clear given Cairo's consistent testimony that she purposefully chose not to consent due to concerns that were never addressed by PGS, *e.g.*, Tr.24:3-25:10; Tr.29:8-30:23; Tr.34:4-35:21.

Unable to erase Cairo's testimony, PGS argued below that Cairo complied with the Consent Order by submitting a new affidavit months after the circulation period ended—and only after Petitioners filed suit. That too is wrong, as circulators cannot comply with the Consent Order by opportunistically consenting to jurisdiction *ex post facto*. In support of this theory, PGS asserted below that the Consent Order does not explicitly say "*when* an out-of-state circulator must confirm their agreement to submit to the State's jurisdiction." A.363 (emphasis added). But Maine law answers that question.

Specifically, § 903-A makes clear that circulators must submit their affidavits "*at the time the petition is filed*." 21-A M.R.S. § 903-A(4) (emphasis added). And the circulator affidavit is the key form for determining *whether* a circulator is qualified to collect signatures in Maine. As this Court has explained, the affidavit forms part of the "established procedure" for determining if "[s]ignatures [are] obtained by qualified petition circulators." *Reed v. Sec'y of State*, 2020 ME 57, ¶ 3, 232 A.3d 202 (first citing Me. Const. art. IV, pt. 3, § 20; and then citing 21-A M.R.S. § 903-A); *cf. We the People PAC*, 519 F. Supp. 3d at 20 (explaining that § 903-A "defines the role of a petition circulator," and "enforce[s]" the State's "restrictions" on circulators).

PGS argued below that § 903-A does not answer this timing question because it does not specifically refer to out-of-state circulators. That misses the point. Section

903-A prescribes when *every* circulator must submit their affidavit form. *See* 21-A M.R.S. § 903-A(4) ("A person who circulates a petition *shall* execute an affidavit …"). It further makes clear that the circulator affidavit is the form Maine law employs for establishing a circulator's qualification. *See id.* § 903-A(4)(B)-(D). And it is temporally focused on ensuring circulators follow the rules *when circulating*. For example, it requires circulators to confirm they "understand[] the laws governing the circulation of petitions in the State," *id.* § 903-A(4)(B), and further requires that they confirm their qualification under the residency rule "at the time of circulating the petition," *id.* § 903-A(4)(C). Those mandates make no sense if circulators can submit their affidavits *after* the petition is submitted. Indeed, PGS fails to explain how hundreds of circulators engaged in the petition process even *could* indicate their consent to Maine's jurisdiction beyond use of the circulator affidavit—no other relevant form or oath exists. Simply put, Maine law is clear about *how* circulators confirm their qualifications—through the circulator affidavit—and *when* they must submit it—by the time their petition sheets are filed.

Even reading the Consent Order in isolation refutes PGS's view. That order entered judgment "[f]or the reasons stated" in both the district court's preliminary injunction order and the First Circuit's opinion affirming that order. Consent Order at 1. The reasons given by those courts left no ambiguity that circulators must "*first* submit to the jurisdiction of the state of Maine." *We the People PAC*, 40 F.4th at 20

(quoting *We the People PAC*, 519 F. Supp. 3d at 53) (emphasis added). The Consent Order also requires non-resident circulators to take various steps "for the duration of the petition drive," reinforcing that timing point. Consent Order ¶ 2. Further still, the Consent Order's command that the residency rule not be "*enforce[d]* … against circulators who … agree to submit to the personal jurisdiction of Maine," Consent Order ¶ 2 (emphasis added), only makes sense in reference to *when* the Secretary actively enforces that rule—prior to making her determination of validity. *See* 21-A M.R.S. § 905(1) (granting Secretary only a 30-day window for making determination). Indeed, on PGS's logic, a statute that says "a driver must obtain a license to operate a motor vehicle" would permit a person to obtain the license months after being pulled over by the police. That would be absurd. The Court should not assume that Judge Woodcock, in issuing the Consent Order, or the Secretary, in entering into it, intended for such absurdity either. *Cf. Coker v. City of Lewiston*, 1998 ME 93, ¶ 7, 710 A.2d 909 (Maine courts do not "construe statutory language to effect absurd, illogical, or inconsistent results").

Even if the Consent Order was ambiguous—and it is not—the Secretary should be entitled to deference in how to construe it. After all, when an ambiguous law "is both administered by [an] agency and within the agency's expertise," the Court will defer to the agency's reasonable interpretation in such cases. *Snakeroot Solar*, 2025 ME 64, ¶ 26, 340 A.3d 99. To the extent the Consent Order requires

gap-filling, the Secretary was also entitled to do so through her amendments to the circulator affidavit. *See* 21-A M.R.S. § 21 (making Secretary responsible for designing and promulgating election-related forms). Those amendments reinforce that non-resident circulators are required to comply with its terms "for the duration of any petition drive … including while signatures are being collected and through the review of those signatures by the Secretary of State's office." A.665.

Finally, basic commonsense supports construing the Consent Order to require non-resident circulators to consent to jurisdiction *before* the petition is submitted. For one, the Secretary lacks subpoena power over non-residents. *See* 5 M.R.S. § 9060(1)(A). Absent their consent to jurisdiction *ex ante*, the Secretary would lack any authority to compel non-resident circulators to cooperate, undercutting "the State's strong interest in protecting its elections." *We the People PAC*, 519 F. Supp. 3d at 46. As this case shows, many non-resident circulators will simply ignore their obligation to cooperate with the Secretary. Had town registrars or the Secretary attempted to address problems *during* PGS's petition drive, these circulators could have rightly insisted that they had not consented to Maine's jurisdiction. And if after-the-fact consent suffices moving forward, then the rational calculus for non-resident circulators is to *never* check the consent box. At best, no one ever notices or complains and, at worst, the circulator can simply assess from a distance whether they wish to cooperate or not. As the Secretary ably explained below, this "deadline-

free approach" would be "bizarre and unworkable." A.544-45; *see also* R.033353-55 (further explaining why this approach would be "unworkable"). And it would shortchange Maine's legitimate interest in ensuring "jurisdiction over the circulators … if there is a question as to the validity of the signatures collected." *Hart v. Sec'y of State*, 1998 ME 189, ¶ 13, 715 A.2d 165; *see also We the People PAC*, 519 F. Supp. 3d at 47 (noting Maine's interest in a "legally binding agreement" with circulators to ensure adherence with Maine law).

B. The Secretary has the authority—and legal duty—to comply with federal consent decrees and rulings.

Because PGS cannot seriously say these four circulators complied with the Consent Order, it has repeatedly searched for ways to get *around* the Consent Order. But that creates a conundrum for PGS because the Consent Order is the only reason why these four non-resident circulators—among 120 out-of-state circulators recruited by PGS—could even collect signatures in Maine in the first place. Absent the Consent Order, *all* of the more than 41,000 signatures submitted by these non-resident circulators would be invalidated under Maine's century-old residency rule. *See* Me. Const. art. IV, pt. 3, § 20; 21-A M.R.S. § 903-A(4)(C); *see also Hart*, 1998 ME 189, ¶¶ 11-13, 715 A.2d 165. So PGS instead claims that it is *not* bound by the Maine Constitution on some issues—like the residency rule—while the Secretary *is* handcuffed by the very same constitutional provision. That makes no sense. Either the Consent Order is valid—and PGS's non-resident circulators can enjoy its benefit

subject to its terms—or it is invalid, and PGS's entire petition goes up in smoke under the residency rule. At bottom, the Secretary—who is indisputably bound by the Consent Order—acted appropriately given her dual federal and state obligations.

1. The Secretary is charged with assessing the qualifications of circulators, and must do so in accordance with federal law.

The Secretary is "the constitutional officer entrusted with administering—and having expertise in—the laws pertaining to the direct initiative process," *Reed*, 2020 ME 57, ¶ 18, 232 A.3d 202. Indeed, this Court has "long recognized that the executive officer charged with overseeing the petition process—formerly the Governor, *now the Secretary of State*—has plenary power to investigate and determine the validity of petitions." *Me. Taxpayers Action Network v. Sec'y of State* ("*MTAN*"), 2002 ME 64, ¶ 12 n.8, 795 A.2d 75 (citing *Opinion of the Justices*, 116 Me. 557, 580-82, 103 A. 761 (1917)) (emphasis added). The Legislature granted her such responsibility pursuant to its express constitutional authority to "enact laws … for determination of the validity of written petitions." Me. Const. art. IV, pt. 3, § 22; *see also* 21-A M.R.S. §§ 902, 903-A, 903-C, 904. This Court's case law confirms that the Secretary's plenary authority includes the power to disqualify circulators who violate Maine law. *See, e.g.*, *MTAN*, 2002 ME 64, ¶ 12, 795 A.2d 75; *Hart*, 1998 ME 189, ¶ 6, 715 A.2d 165; *Jones v. Sec'y of State*, 2020 ME 113, ¶ 35, 238 A.3d 982; *Knutson v. Dep't of Sec'y of State*, 2008 ME 124, ¶ 16, 954 A.2d 1054. Signatures "must be obtained by qualified petition circulators," *Reed*, 2020 ME 57,

¶ 3, 232 A.3d 202, and the Secretary is the officer charged with making that determination.

Before the trial court, PGS argued that the Secretary had no authority to enforce a requirement—that non-resident circulators submit to Maine's jurisdiction—that originates not in the Maine Constitution itself, but in a federal court order and precedential federal opinions that determine how the First Amendment constrains application of the residency rule. *See* A.442-46. In PGS's telling, because the Maine Constitution does not delineate how to regulate out-of-state circulators (again, because it expressly bans them), the Secretary cannot regulate such circulators. *See* A.442-46.

In reality, the Secretary is obliged to carry out her duties pursuant to state *and* federal law: "The States and their officers are bound by obligations imposed by the Constitution and by federal statutes that comport with the constitutional design." *Alden v. Maine*, 527 U.S. 706, 755 (1999). Indeed, "although the States are sovereign entities, they are bound along with their officials … by the Constitution and the federal statutory law." *Webb v. Webb*, 451 U.S. 493, 499 (1981). Thus, the "Constitution of the United States is as much a part of the law of [a State] as its own Constitution," which carries with it the obligation "to respect and uphold the acts and process of" federal courts. *Taylor v. Carryl*, 61 U.S. 583, 605 (1857). Indeed,

both the Maine and U.S. Constitutions oblige the Secretary to swear an oath to adhere to the U.S. Constitution. *See* Me. Const. art. IX, § 1; U.S. Const. art. VI.

It is therefore beyond dispute that the Secretary must enforce the Maine Constitution's mandatory residency rule to the greatest extent allowable under federal law. Two federal courts with jurisdiction over Maine have delineated precisely how she may do so in a manner consistent with the First Amendment. *See We the People PAC*, 40 F.4th at 20; *We the People PAC*, 519 F. Supp. 3d at 53. Both courts agree that, under federal law, Maine's residency rule as written does not comply with the narrow tailoring demanded by the First Amendment, but only "as applied to out-of-state circulators who first submit to the jurisdiction of the state of Maine." *We the People PAC*, 40 F.4th at 9 (quoting *We the People PAC*, 519 F. Supp. 3d at 52-53).

In other words, the Secretary *can*—and must—enforce the Constitution's residency rule save when a non-resident circulator "first submit[s]" to Maine's jurisdiction. *Id.* Even apart from the ensuing Consent Order, *infra* § I.B.2, there is nothing remarkable or problematic about the Secretary enforcing the residency rule—a duty she is tasked with by the Maine Constitution—in a manner consistent with the federal Constitution—another duty she is charged with. The fact that the latter duty modifies the former is unremarkable because "state constitutions must give way to the requirements of the Supremacy Clause when there is a conflict with

the federal Constitution." *Bd. of Cnty. Comm'rs of Shelby Cnty. v. Burson*, 121 F.3d 244, 249 (6th Cir. 1997); *accord Reynolds v. Sims*, 377 U.S. 533, 584 (1964) ("When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls.").

Indeed, it is commonplace for state officers to enforce state laws subject to application-specific injunctions rooted in federal constitutional rights. *See Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328-31 (2006) (collecting authorities); *see also Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504 (1985) (enjoining application of state moral nuisance law but only "insofar" as the law was construed a specific way (collecting authority)). As in these past cases, the federal courts here enjoined "only a few applications of" Maine's residency requirement as to a *specific* class of circulators who properly submitted to Maine's jurisdiction. *Ayotte*, 546 U.S. at 331. The preservation of First Amendment rights does "not extend [the] invalidation" of Maine's residency rule any "further than necessary." *Brockett*, 472 U.S. at 502.[4]

[4] Indeed, the Supreme Court has often enjoined state election laws in application-specific ways, leaving state election officials free to otherwise enforce such laws. *E.g.*, *Anderson v. Celebrezze*, 460 U.S. 780, 793 (1983) (concluding state filing deadline law unduly burdened independent candidates, but not major party candidates); *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 101 (1982) (enjoining application of state disclosure law to minor party whose members were subject to risk of reprisal); *cf. Buckley v. Valeo*, 424 U.S. 1, 143-44, (1976) (rejecting facial challenge to federal campaign finance laws, but enjoining certain applications).

2. The federal Consent Order is binding on the Secretary, and Maine courts cannot modify or set aside that federal decree.

Beyond her general obligation to act in compliance with the U.S. Constitution, the Secretary is bound to adhere to specific federal court orders directed to her in her official capacity. A consent decree entered by an Article III court acts as "a final judgment," *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 391 (1992), and carries the "force of law." *Lackey v. Stinnie*, 604 U.S. 192, 207 (2025) (citing *Firefighters v. Cleveland*, 478 U.S. 501, 523 (1986)). Like any other final judgment, a consent decree "may grant enduring relief that materially alters the legal relationship between the parties." *Id.* And as the "last word of the [federal] judicial department," *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 221, 227 (1995), such decrees naturally supersede and modify any conflicting state law obligations, *see Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 440 (2004). As the Superior Court recognized, the Secretary *must* act in accordance with the Consent Order. A.646-47.

PGS argued below that the Secretary cannot take "affirmative acts" meant to comply with the terms of the Consent Order because state law does not expressly authorize her to do so. *See* A.444. That argument is misplaced. The Secretary's duty to act arises *from the Consent Order*, as failure to comply with it would subject her to contempt. *Lackey*, 604 U.S. at 207. Nor is there anything remarkable about a federal decree requiring state officials to take affirmative compliance steps. After all, "the power of federal courts to enforce federal law thus presupposes some

authority to order state officials to comply." *New York v. United States*, 505 U.S. 144, 179 (1992); *see also Spain v. Mountanos*, 690 F.2d 742, 746 (9th Cir. 1982) ("[A] court, in enforcing federal law, may order state officials to take actions despite contravening state laws."). Moreover, the affirmative act that appears to most aggrieve PGS—modifying the circulator affidavit to include the non-resident checkbox—is an act the Secretary is permitted to take under *Maine law*. *See* 21-A M.R.S. § 21. PGS cannot complain that the Secretary is carrying out her state law charge—maintaining state election forms—pursuant to a binding consent decree. That is not just her prerogative, but her duty.

Finally, to the extent PGS asks this Court to simply look past the Consent Order, such a request must be squarely rejected. Only a *federal* tribunal can modify a *federal* decree, *see Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 347-48 (1816) (holding state courts are bound by federal judgments); *see also W. Sys., Inc. v. Ulloa*, 958 F.2d 864, 868 (9th Cir. 1992) ("State courts have no power to void federal court decrees."); *Harriman v. Fleet Bank of Maine*, No. CIV.A. RE-02-007, 2003 WL 1623991, at *3 (Me. Super. Ct. Jan. 30, 2003) ("Obviously, this court has no authority to affect orders of a federal court."), *aff'd sub nom. Harriman v. Border Tr. Co.*, 2004 ME 28, 842 A.2d 1266. In this regard, a consent decree is no different than any other final judgment. *See League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 434 (5th Cir. 2011) (noting a "a state court … lack[s]

power to vacate the federal court's consent decree"); *Nat'l R.R. Passenger Corp. v. Pa. Pub. Util. Comm'n*, 342 F.3d 242, 259-60 (3d Cir. 2003) (explaining "a state court cannot grant an order nullifying a federal consent decree"). Accordingly, PGS can obtain no relief from the Consent Order from any Maine court.

3. The Consent Order best preserves Maine's longstanding constitutional residency rule.

Finally, even if the Secretary somehow was immunized from her duty to uphold federal law, and even if this Court could modify a binding federal consent decree, it bears emphasis that PGS seeks the outcome *least* consistent with the Maine Constitution—allowing non-residents to circulate in Maine but *without* any conditions or duties that can be enforced by the Secretary. The Court *cannot* afford that remedy for the reasons above, but there are also two additional reasons why no court *should* afford such relief, even if given the opportunity.

First, the First Circuit's reasoning in *We the People PAC* makes clear that Maine's residency rule is not wholly invalid, but only to the extent it is not narrowly tailored to serve Maine's compelling "interest in protecting the integrity of its elections." 40 F.4th at 21. The First Circuit made clear that Maine could achieve that narrow tailoring by permitting out-of-state circulators to participate in Maine's petition process so long as they first submit to its jurisdiction. *Id.* at 20. In other words, when it comes to Maine's residency rule, the First Amendment does not require throwing out the baby with the bathwater. *See Ayotte*, 546 U.S. at 328-29

(explaining courts need "enjoin only the unconstitutional applications of a statute while leaving other applications in force"). Indeed, Judge Woodcock's preliminary injunction expressly did *not* enjoin the residency rule as applied to non-residents who failed or refused to first submit to jurisdiction, *see We the People PAC*, 519 F. Supp. 3d at 47, 53. The First Circuit's analysis likewise supports leaving Maine's residency rule in place to the greatest extent the First Amendment permits, rather than enjoining it entirely. *See We the People PAC*, 40 F.4th at 20.

Second, even if this Court were a policymaking body tasked with legislating on a blank slate, there is no question that the drafters of Maine's residency rule would prefer a modified residency rule over no residency rule whatsoever. For over a century, the Maine Constitution prohibited *any* non-resident circulators from operating in Maine, *see* Me. Const. art. IV, pt. 3, § 20, an approach firmly endorsed by this Court, *see Hart*, 1998 ME 189, ¶ 13, 715 A.2d 165, and Maine voters in 2023 when they voted two-to-one to keep the residency rule, *see* Me. Dep't of the Sec'y of State, *Election Results 2023*, https://perma.cc/9D3W-KT44 (rejecting Question 7). While the Consent Order has obliged Maine to crack open the door to circulators from away, the best way to preserve Maine's default constitutional rule is through a limited exception, rather than tossing out the residency rule entirely. Indeed, Maine law itself imposes that principle as a rule of construction, explaining that "if the application" of a statute to a particular "circumstance is invalid, such invalidity does

not affect other … applications which can be given effect without the invalid … application." 1 M.R.S. § 71(8). That is true here, where the Secretary can continue to apply the residency rule to out-of-state circulators who do not first submit to Maine's jurisdiction. Thus, even if this Court could act on a blank slate, it would still make sense to adopt the balance achieved in the Consent Order and *We the People PAC* decisions.

C. Maine is permitted to invalidate petitions submitted by non-resident circulators who refuse Maine's jurisdiction.

Finally, no authority supports the notion, briefly floated by PGS below, that it violates either the U.S. or Maine constitutions to invalidate petition sheets submitted by unqualified circulators. Indeed, the most on point federal decision *rejects* that argument. *See Hoffman v. Sec'y of State of Me.*, 574 F. Supp. 2d 179, 188 (D. Me. 2008) (rejecting the argument that voiding a petition sheet due to circulator error "unconstitutionally infringes First Amendment rights" of electors). State courts across the country have held that "invalidat[ing] all the signatures" on a petition sheet is a proper remedy for circulator error or misconduct. *Zaiser v. Jaeger*, 822 N.W.2d 472, 480 (N.D. 2012) (collecting authority). Moreover, as decisions from both this Court and First Circuit confirm, Maine is free to enforce *reasonable* restrictions on circulators without offending the state or federal constitutions. *See, e.g.*, *We the People PAC*, 40 F.4th at 20-21; *Hart*, 1998 ME 189 ¶ 13, 715 A.2d 165; *Jones*, 2020 ME 113, ¶ 17, 238 A.3d 982.

II. Maine's commonsense conflict-of-interest rules for notaries do not violate any speech or associational rights.

The Court should also affirm the Secretary's invalidation of petitions notarized by De Clercq and Harrington. These circulators indisputably violated Maine's conflict-of-interest law for notaries because they performed notarial acts for PGS after circulating petitions on PGS's behalf. *See* 21-A M.R.S. § 903-E(1); A.64. PGS does not dispute this constitutes a violation of Maine law, and this Court has likewise already held that petitions notarized in such circumstances are invalid. *See Reed*, 2020 ME 57, ¶ 19, 232 A.3d 202 (affirming the Secretary's invalidation of petition sheets under 21-A M.R.S. § 903-E). Simply put, a notary who circulates a petition for a ballot measure is no longer "authorized" to serve the public function of "administer[ing] an oath or affirmation" for the same measure. 21-A M.R.S. § 903-E(1).

Because PGS cannot argue its circulators complied with state notarial laws, it instead argued below that Maine's conflict-of-interest rules for notaries constitute impermissible "viewpoint discrimination" against circulators or, alternatively, that they place an undue burden on their petitioning rights. A.454-56. In doing so, PGS never identified authority supporting the notion that a commonsense notary conflict-of-interest law is unconstitutional—nor could it, because there is nothing in the record or otherwise to suggest the law infringes any rights, and this Court already held it serves the State's interests in the sanctity of state-administered oaths and the

integrity of the ballot-initiative process, *Reed*, 2020 ME 57, ¶¶ 19-21, 232 A.3d 202. The Secretary therefore properly invalidated petition sheets on this basis.

A. There is no constitutional right to engage in notarial acts.

PGS's constitutional theory is confused from the start because Maine's conflict-of-interest rule for notaries does not regulate speech or petitioning conduct *at all*. Any notary in Maine can circulate petitions on behalf of an initiative, speak out on that initiative's behalf, and promote such an initiative in any lawful way they see fit. To that end, both De Clercq and Harrington were entitled to circulate as many petitions as they wished on behalf of PGS and seemingly did so without issue—no party has ever challenged the validity of the petitions they circulated. The dispute concerns their subsequent *notarial* acts.

While attempting to shoehorn this conduct under speech protections, what PGS actually asserts is, in effect, a constitutional right to engage in notarial acts without regard to reasonable state regulations. But there is no authority for such a right—nor would such a right make sense when it comes to notarial conduct: Notaries public are state-licensed officers who perform public functions. *See, e.g.*, *Nicholls v. Webb*, 21 U.S. (8 Wheat.) 326, 337 (1823) (noting that a "notary public" is a "public officer"); *Villanueva v. Brown*, 103 F.3d 1128, 1137 (3d Cir. 1997) ("A notary is a public officer and owes a duty to the public to discharge his or her functions with diligence.").

In Maine, notaries are "commissioned … by the Secretary of State," 4 M.R.S. § 1902(7), and "[o]nce a notary, that person may perform certain official duties," *Beall v. Becker*, No. 1:13-CV-00131, 2013 WL 1760555, at *1 (D. Me. Apr. 24, 2013); 4 M.R.S. § 1902(5) (notarial acts are performed "under the laws of this State"). As PGS aptly summarized below, notaries in Maine "are entrusted with a critical *public function*." A.455 (emphasis added). To ensure the integrity of that public function, Maine—like many other states[5]—requires that notaries "may not perform a notarial act with regard to which the notarial officer has a conflict of interest," as defined by law. 4 M.R.S. § 1904(3). The restriction at issue here—performing notarial acts on behalf of an initiative campaign the notary has provided other services for, 21-A M.R.S. § 903-E(1)—is simply one such conflict rule.

These regulations direct how notaries perform an official, public role under color of state law, and have nothing to do with speech or petition rights. *See Miller v. Thurston*, 967 F.3d 727, 738 (8th Cir. 2020) (explaining that "[d]uring the notarization process" the notary is not "engaged in any exchange or communication of ideas"). And in regulating notarial acts, States plainly have legitimate and compelling interests in ensuring that officers engaged in such work are perceived as impartial, disinterested, and trustworthy. *See, e.g.*, *Klem v. Wash. Mut. Bank*, 295 P.3d 1179, 1190 (Wash. 2013) ("The proper functioning of the legal system depends

[5] *See, e.g.*, Ga. Code Ann. §§ 21-2-170(d), 45-17-8(c); 57 Pa. Stat. § 304; Mich. Comp. Laws § 55.291.

on the honesty of notaries who are entrusted to verify the signing of legally significant documents."); *Thames v. Jackson Prod. Credit Ass'n*, 600 So. 2d 208, 210 (Miss. 1992) (describing state law intended to "prevent fraud by maintaining an impartial relationship between the notary and the parties to the document"); *Parks v. McWhorter*, 494 N.E.2d 234, 238 (Ill. App. Ct. 1986) ("It is axiomatic that oaths and affidavits should be taken before officers that are disinterested or unbiased[.]"). Unsurprisingly, PGS has thus far not cited a single case suggesting notaries have a *private* constitutional right to engage in notarial work, regardless of sensible and uniformly applicable state rules.

B. The conflict-of-interest rules do not infringe speech rights and easily survive scrutiny anyway.

Even generously assuming that Maine's notary laws impact constitutionally-protected conduct, PGS's arguments wither under scrutiny. Maine's conflict law does not disfavor any "viewpoint," and it does not otherwise burden speech or petitioning rights. Moreover, compelling interests in the regulation of official acts and the integrity of the ballot-initiative process justify any such restriction.

Starting with viewpoint discrimination, PGS cannot show that the notary conflict-of-interest law disfavors or discriminates against any view. "The essence of a viewpoint discrimination claim is that the government has preferred the message of one speaker over another." *McGuire v. Reilly*, 386 F.3d 45, 62 (1st Cir. 2004). A government regulation is viewpoint based if it "denies access to a speaker solely to

suppress the point of view he espouses." *Cornelius v. NAACP*, 473 U.S. 788, 806 (1985). The fact that a law may incidentally burden certain viewpoints does not make it viewpoint discrimination. As the U.S. Supreme Court has explained, a "regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *see also McGuire*, 386 F.3d at 61-63 (explaining the fact that a "buffer zone" statute around abortion clinics might incidentally burden anti-abortion speech more than pro-abortion speech is irrelevant to assessing its viewpoint neutrality).

Below, PGS claimed that Maine's notary conflict law amounts to viewpoint discrimination because it "allow[s] a notary to speak out publicly against an initiative while still lawfully notarizing petitions," but not in favor. A.456. But this makes little sense, as the conflict rule applies regardless of the subject matter of a given ballot measure. In other words, a notary circulating for a hypothetical initiative seeking *the opposite* of the present Initiative would be bound by the same notary rule. And Maine's ballot initiatives in recent years have concerned everything from replacing the State flag, to legalizing marijuana, erecting transmission lines, reforming campaign finance laws, and limiting absentee voting. Maine's conflict-of-interest rule does not draw distinctions based on the viewpoint of any given notary

who circulates petitions for any of these diverse issues. And it does not prohibit a notary from "speaking" about any given petition in any particular way.

Instead, the notary conflict law narrowly precludes a person from engaging in specific regulated conduct—notarizing petitions—if they have certain conflicts of interest, no matter the content of a given petition. 21-A M.R.S. § 903-E(1). On its face, such a restriction is "neutral" as to viewpoint and "serves purposes unrelated to the content" of any given initiative. *Ward*, 491 U.S. at 791. Specifically, it ensures that petitions submitted to the Secretary are accompanied by the "indispensable accompaniments of a valid petition," including proper notarization before a conflict-free notary. *Opinion of the Justices*, 116 Me. at 569, 103 A. 761; *see also Palesky v. Sec'y of State*, 1998 ME 103, ¶ 11, 711 A.2d 129.

There is similarly no basis to conclude that Maine's conflict law places a burden on core political speech or "petitioning" rights. *See Jones*, 2020 ME 113, ¶¶ 23-24, 238 A.3d 982 (citing *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 345 (1995)) (explaining that, in this context, the Court weighs the character and magnitude of the claimed injury against the state's interests in enacting the rule). Nothing in the record suggests that the law suppresses any amount of speech or the availability of petition circulators in the State, *see id.* ¶¶ 23-24 (assessing impact of alleged restriction on initiative process), and PGS never suggested otherwise below. Indeed, as the facts of this case show, both impacted notaries were free to circulate

as many petition sheets as they wished. And their subsequential notarial acts are not protected expressive speech; indeed, the entire purpose is for those acts to be *neutral*. *See Miller*, 967 F.3d at 738 (explaining notarization does not "implicate the First Amendment").

The law also plainly serves the State's legitimate and compelling interests in ensuring notaries are disinterested and impartial administrators of oaths, and it is carefully tailored to further that interest. *See, e.g.*, *Am. Party of Tex. v. White*, 415 U.S. 767, 787 (1974) (holding that Texas's petition notarization law served a compelling state interest in guarding against fraud during the circulation process). This Court in *Reed* essentially said as much. *See* 2020 ME 57, ¶¶ 19-21, 232 A.3d 202 (similar). And courts throughout the country have consistently upheld similar requirements for notaries. *See Gathercoal v. Purcell*, 517 S.E.2d 780 (Ga. 1999) (upholding invalidation of petition pages notarized by disqualified circulator under Georgia's notary conflict-of-interest law); *Citizens Comm. to Recall Rizzo v. Bd. of Elections of City & Cnty. of Phila.*, 367 A.2d 232, 242 (Pa. 1976) (upholding similar requirement given the need "to ensure impartiality on the part of a notary with regard to the matter before him"); *see also Am. Party of Tex.*, 415 U.S. at 787 (upholding enforcement of Texas' notary requirements for valid circulator petitions against First Amendment challenge); *Miller*, 967 F.3d at 738 (8th Cir. 2020) (similar); *Tripp v.*

Scholz, 872 F.3d 857 (7th Cir. 2017) (similar); *Howlette v. City of Richmond*, 580 F.2d 704 (4th Cir. 1978) (similar).

III. The Secretary properly carried out the Legislature's express prohibition on the use of ditto marks in specific petition fields.

The Secretary's invalidation of signatures that improperly used "ditto" marks in the date field of petition sheets was also proper and should be affirmed. The Constitution expressly states that the date for each signature must be "written" next to the voter's signature. Me. Const. art. IV, pt. 3, § 18(2). Consistent with that requirement, 21-A M.R.S. § 354—which applies to direct initiatives via incorporating language in § 902—provides that "[d]itto marks are permitted for residence address and municipality of registration *only*." 21-A M.R.S. § 354(4) (emphasis added). The Legislature's intent for this prohibitory statutory language is particularly clear, because a prior version of the same statute omitted the term "only." *See* R.S. 1954, ch. 3-A, § 48(IV) ("After his name, the voter must personally add his place of residence and his street address. Ditto marks are permitted.").[6] As the Secretary has explained when previously enforcing this rule, by adding the term "only" the "Legislature sent a clear message that use of ditto marks is to be strictly confined" to specific fields. Decision of the Sec'y of State at 23, *In re: Challenges*

[6] Available at https://perma.cc/JN5G-EXPB.

to the Nomination of Slate of Presidential Electors to Support Dr. Cornel West (Me. Aug. 20, 2024) (enforcing § 354(4) to invalidate signatures).[7]

PGS did not dispute that the signatures at issue violate § 354(4) but contended that the law itself clashes with the "self executing" nature of the Constitution's ballot initiative provisions. A.290. But the Constitution merely explains those amendments were "self executing" upon enactment and "[u]ntil the Legislature shall enact further laws not inconsistent with the Constitution for applying" them. Me. Const. art. IV, pt. 3, § 22. In other words, the Legislature is empowered to enact laws to carry out the initiative process, so long as they do not conflict with the Constitution. *See id.* And nothing in the Constitution prohibits a ban on ditto marks in the mandatory date fields; to the contrary, the Constitution itself requires the date to be "*written*" next to the voter's signature. *See id.* art. IV, pt. 3, § 18(2) (emphasis added).

PGS is therefore left only with an appeal to policy arguments, but this Court has long held that "is the province of the legislature to make and establish laws; and it is the province and duty of Judges to expound and apply them." *Lewis v. Webb*, 3 Me. 326, 333 (1825). And because this Court is "bound by the Legislature's choice of language," *Knutson*, 2008 ME 124, ¶ 28, 954 A.3d 1054, the rejection of signatures with "ditto" marks in the date field must be affirmed.

[7] Available at https://perma.cc/HAF5-C67Q.

IV. This Court should affirm the Revised Determination, but remand would become necessary if it does not.

A. The Superior Court did not resolve Petitioners' preserved challenge to the fraudulent conduct of circulators Jean-Baptiste, Jackson, and Turner.

Before the agency, Petitioners proffered heaps of record evidence indicating that at least three circulators other than Harris engaged in fraud. A.225-45. The Secretary conceded this evidence raised "substantial issues" with respect to circulators who gave testimony that "called into question their credibility." A.330-31. Nevertheless, the Secretary declined to undertake further review, perhaps in part because her other determinations already rendered the Initiative invalid, making the review of thousands of other signatures largely moot.

The Superior Court, in turn, never adjudicated these issues either because it affirmed the Revised Determination on other grounds. But it agreed Petitioners had preserved these challenges. A.650. If this Court disturbs the Revised Determination for any reason, it must remand for the trial court to fully consider these issues, as § 905 requires that the trial court "issue [a] written decision containing its findings of fact and stating the reasons for its decision." 21-A M.R.S. § 905(2). The trial court has not yet issued such a reasoned decision as to these challenges and is best positioned to do so in the first instance. *See McMullen v. Dowley*, 418 A.2d 1147, 1154 (Me. 1980).

B. The Superior Court did not finally determine the merits of several outstanding challenges that require invalidating more signatures.

For similar reasons, if the Court does not otherwise affirm, it should remand on Petitioners' remaining preserved challenges as well. The trial court briefly touched on some of these in its pre-remand order but did not resolve them on the merits in its final decision. Rather, it expressly "decline[d] to reach the merits of Petitioners' remaining challenges." A.650. The Court should therefore remand on these issues, if necessary, to permit the trial court an opportunity to issue a final merits decision on them, rather than reviewing an interlocutory order the Superior Court declined to make final due to resolving the case on other grounds. *See Kilton v. Kilton*, 2016 ME 63, ¶ 7, 137 A.3d 1026 ("Responsible appellate review requires that issues of concern be first addressed to and considered by the trial court."). If the Court does reach them—which, for many reasons, it need not—it should reverse the Secretary.

Challenges 20 and 21. Maine law is clear: "[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. § 354(4) (emphasis added); *see also* 21-A M.R.S. § 902 (incorporating § 354). The Legislature's use of the word "must … impose[s] an obligation to act in the manner specified[.]" 21-A M.R.S. § 7. Petitioners therefore narrowly challenged signatures the lack of <u>any</u> residence or municipality information, or that list only a PO Box—a facially invalid residence address.

The Secretary resisted this challenge on the ground that this information is not necessary to confirm whether someone is a registered voter, but that is self-evidently "the Secretary's *policy* decision." *Knutson*, 2008 ME 124, ¶ 27, 954 A.2d 1054 (rejecting such argument). Ultimately, the Secretary is "bound by the Legislature's choice of language" and the "plain language of the statute must be effectuated." *Id.* ¶¶ 27-28. The Secretary's view is not rooted in the statutory language, nor entitled to deference in this case, given the exceptionally straightforward language in § 354(4).

Challenge 15. The Constitution mandates than when a registered voter signs a petition sheet, "[t]he date each signature was made ***shall*** be written next to the signature on the petition." Me. Const. art. IV, pt. 3, § 18(2) (emphasis added). This mandatory command leaves no discretion for enforcement on the Secretary's part. *See State v. Bishop*, 392 A.2d 20, 22 (Me. 1978) ("The use of the word 'shall' makes compliance mandatory."). Thus, Petitioners challenged signatures containing no date whatsoever. A.78-79.

The Secretary again resisted this challenge, claiming this mandatory constitutional provision can be set aside where election officials can otherwise determine the signature was timely. But that again is a *policy* rationale at odds with clear, mandatory text. Maine law "gives the Secretary no discretion or authority to accept" invalid signatures, "no matter how substantially they may comply with other

statutory or constitutional requirements." *McGee v. Sec'y of State*, 2006 ME 50, ¶ 16, 896 A.2d 933. On this issue, the text of the Constitution "plainly compels a decision contrary to that of the Secretary of State, and the [signatures] at issue are void." *Knutson*, 2008 ME 124, ¶ 28, 954 A.2d 1054.

Challenge 5. As explained, *supra* Argument § II, the Secretary rightly agrees that Maine's notary conflict law prohibits a notary from doing work for a ballot initiative campaign and then notarizing petition sheets for other circulators on behalf of the same campaign. But the Secretary wrongly cabins this rule to the notarization of petition sheets alone, rather than to all initiative materials requiring notarization, including circulator affidavits. A.563-65.

Nothing in the relevant statutory text justifies this distinction. The relevant language prohibits a notary—once conflicted due to performing other work on behalf of a campaign—from "administer[ing] an oath or affirmation *to the circulator* of a petition under section 902." 21-A M.R.S. § 903-E(1) (emphasis added). This language makes clear the relevant prohibition concerns administering an oath *to a person*, rather than just on a specific form, as the Secretary suggests. *Cf.* Me. Const. art. IV, pt. 3, § 20 (noting a "circulator" is "a person who solicits signatures for written petitions"). The Secretary's reading omits the language "to the circulator" from the statute entirely. If the Legislature had intended to merely prohibit conflicted notaries from administering oaths *on* a petition sheet or *under* § 902, it could have

easily said so. Instead, it added the phrase "to the circulator," language which the Secretary gives no meaning. *See Carrier v. Sec'y of State*, 2012 ME 142, ¶ 12, 60 A.3d 1241.[8]

This Court's decision in *Reed* further undermines the Secretary's proposed distinction. *Reed* embraced the reading put forward by the Secretary in that case because it "rationally advance[d] 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." *Reed*, 2020 ME 57, ¶ 21, 232 A.3d 202. *Reed* did not distinguish between which "notarial acts" were being made so long as they were "in connection with the campaign." *Id.* The Secretary's interpretation here does the opposite, permitting "the use of notaries who have a demonstrable conflict of interest at the time of their notarial acts in connection with the campaign," *id.* (emphasis removed) so long as they are notarizing circulator affidavits, rather than petition sheets. The Secretary's reading thus permits *the same circulator* with the *same conflict* to notarize one essential document for initiative campaigns (circulator affidavits) but not others (petition sheets). Even the Secretary has acknowledged a "strong policy argument" against that illogical result. A.103. *Reed* weighs against contorting § 903-E to reach such an

[8] Moreover, even on the Secretary's logic, a circulator who signs an affidavit under § 903-A(4) ***is*** the "circulator of a petition under section 902." Section 903-A(4) does not create a separate species of circulator; it imposes an additional obligation on the "circulator of a petition" under section 902. 21-A M.R.S. § 903-A. Section 903-E, in turn, makes clear conflicted notaries cannot issue oaths to such *persons.*

illogical outcome and, as Petitioners have explained, the statutory text is in any event best read as prohibiting conflicted notaries from administering oaths to a circulator for *any* campaign-related purpose. *See also* A.172-75.

Challenge 1. Neither PGS nor the Secretary have ever disputed that PGS's petition organizations failed to comply with several clear legal requirements, including by registering as foreign LLCs with the Secretary and properly disclosing how they paid circulators. *See supra* Statement of Facts § I; *see also* 21-A M.R.S. § 903-C. PGS has never grappled with this issue, while the Secretary—after essentially conceding the merits—has suggested the appropriate remedy can be determined in future cases. But the fact that past Secretaries have not enforced these clear requirements is no reason to excuse the undisputed violations of § 903-C. *See District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 113-14 (1953) ("The failure of the executive branch to enforce a law does not result in its modification or repeal." (collecting authority)).

The Secretary also suggested Petitioners waived this challenge by not raising it in the Petition. That is twice wrong. Petitioners *did* allege the petition organizations failed to "satisfy the governing legal requirements," A.11-12; A.21, and further made clear that production of the record would shed further light on those violations, A.11-12 & n.1; A.13-14 & n.2—precisely what occurred. Indeed, Petitioners could *not* have fully alleged this issue in the Petition because much of the

underlying information was not public and did not emerge until the record was produced. A.168-72. Under those circumstances, Petitioners satisfied their duty to provide "a concise statement as to the nature of the action[.]" 5 M.R.S. § 11002(2). Further still, because the Secretary had no duty to even respond to this theory until Petitioners filed their opening brief—which sets out this issue in detail—she does not claim (and could not plausibly claim) prejudice. Absent such prejudice, "[t]here is a strong preference in [Maine] law for deciding cases on the merits." *Thomas v. Thompson*, 653 A.2d 417, 420 (Me. 1995). The Court should therefore, if it becomes necessary, remand on this issue to determine the proper remedy.

Challenge 18. Petitioners presented prima facie evidence that 59 validated signatures came from voters not registered to vote, based on public versions of the Secretary's own voter registration list. A.79-80. The Secretary declined to double check these individuals' registration status on the basis that municipal clerks are chiefly responsible for determining registration status. Petitioners do not dispute that, but the Secretary also has an independent duty to "determine the validity of the petition," 21-A M.R.S. § 905(1), which "require[s] … an independent review of all direct initiative petitions to determine the validity of the petitions," *Me. Taxpayers Action Network v. Gwadosky*, No. Civ.A. AP–02–005, 2002 WL 747912, at *2 (Me. Sup. Ct. Mar. 19, 2002), *aff'd*, 2022 ME 64, 795 A.2d 75. This includes the duty and "authority to determine whether any petition filed in support of a citizens initiative

is valid." *MTAN*, 2002 ME 64, ¶ 12, 795 A.2d 75. Accordingly, to the extent these signatures prove determinative, the Secretary should be required to double check them to ensure only registered voters signed the petition.

CONCLUSION

For the foregoing reasons, Petitioners-Appellees respectfully ask that the Court affirm the Superior Court's June 11 decision upholding the Secretary's Revised Determination.

Respectfully submitted,

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CERTIFICATE OF M.R. APP. 7A(f) COMPLIANCE

The foregoing brief, which also addresses Petitioner-Appellees' cross-appeal, contains 12,966 words in satisfaction of M.R. App. R. 7A(f)(1), (3), excluding the cover page, tables, signature block and certificates.

Dated: June 22, 2026

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CERTIFICATE OF SERVICE

I, James G. Monteleone, hereby certify that on this 22nd day of June 2026, I served the foregoing brief of the Petitioner-Appellees on the following counsel by electronic mail:

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