

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
DOCKET NO. AP-26-10

JANE GILBERT, MARK SAYRE, and
KAITLIN WEBBER,

Petitioners,

v.

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

Respondent,

PROTECT GIRLS' SPORTS IN MAINE, a
registered Ballot Question Committee,

Intervenor.

REC'D CUMB CLERKS OF
JUN 4 '28 AM 3:10

**BRIEF OF INTERVENOR, PROTECT GIRLS SPORTS IN MAINE BALLOT
QUESTION COMMITTEE, ON FINAL DECISION OF SECRETARY OF STATE
ON REMAND FROM THIS COURT**

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NOW COMES, Intervenor, Protect Girls Sports in Maine Ballot Question Committee, and submits its Initial Brief objecting to certain aspects of the Secretary of State’s Final Decision on Remand from this Court, as follows:

I. SUMMARY

This matter concerns “An Act to Designate School Sports Participation and Facilities by Sex” (“the Ballot Initiative”), a citizen-initiated legislation proposed pursuant to Article IV, Part Third, Section 18 of the Maine Constitution. Intervenor, Protect Girls Sports in Maine Ballot Question Committee (“the Committee”) seeks the voters’ consideration of and approval of the Ballot Initiative.

Initially, the Secretary of State approved the Ballot Initiative’s placement on the November 3, 2026 general election ballot. Following a challenge by Petitioners, Jane Gilbert, Mark Sayre, and Kaitlin Webber (“Petitioners”), the Secretary reversed her initial decision and issued a Final Decision disqualifying the Ballot Initiative from the November 3 ballot. In doing so, the Secretary relied entirely on the Recommended Decision of the Deputy Secretary of State, accepting both her reasoning and her conclusion without change or comment.

The question before the Secretary—the disqualification of the Ballot Initiative from the November 3 ballot—was of the utmost gravity resulting, by the Secretary’s own count, in the frustration of a legally expressed desire of 67,150 Maine electors that their fellow Maine electors consider and vote on the merits of the Ballot Initiative in November. For a decision of this magnitude, the Secretary’s decision should manifest her full understanding and application of the longstanding constitutionally-mandated principles governing the people’s exercise of their sovereign lawmaking power. But, as will be shown below, the Secretary not only failed to acknowledge those binding principles, she disregarded and violated them. In doing so, she violated

the letter and the spirit of the initiative power, effectively disenfranchised those voters who signed petitions their right to petition the government and to exercise their related rights of freedom of speech, freedom of assembly, and all associated rights inherent therein as protected by the First Amendment to the U.S. Constitution and by Article I, Sections 4 and 15 of the Maine Constitution.

In addition, to invalidate more than 1,500 otherwise valid signatures of Maine voters, the Secretary invoked powers she does not possess. To the contrary, she invoked an authority lying outside of Maine's constitutional structure to exercise powers expressly denied her by the Maine Constitution. The Secretary's reliance on these *ultra vires* powers were essential to her invalidation of enough signatures to bar the Ballot Initiative from the November 2026 ballot.

The Secretary disqualified petitions witnessed by notaries who had earlier acted as petition circulators. But the statute on which she relied not only violated the notaries' freedom of speech but also their right to petition the government. Moreover, the disqualification of the electors' signatures on these otherwise valid petitions nullified and rendered meaningless each voter's clearly manifested direction that, this November, Maine voters consider the Ballot Initiative on the merits.

Finally, the Secretary invoked statutory authority alone to invalidate the signatures of voters who chose to indicate the date by use of "dittos" rather than printing the date. Although the Secretary's error on this point does not involve a large number of signatures, those signatures are important to the electors who dated their signatures in this fashion. Moreover, as with all her decisions, the Secretary excluded these signatures without applying the directives that the Law Court has repeatedly articulated for administering the Constitution's initiative and referendum amendments.

For these and other reasons, as set forth below, the Committee respectfully requests this Court to find that the Secretary erred in disqualifying the Ballot Initiative from the November ballot and to restore it to that ballot so that it may be decided by Maine voters.

II. PROCEDURAL BACKGROUND

On February 2, 2026, petitions supporting the placement of the Ballot Initiative on the November ballot were submitted to the Secretary of State. [R 0097]. On March 17, the Secretary issued her Determination of the Validity (“Determination”) finding that of the 79,692 signatures that were submitted to her, 71,033 signatures were valid. [R 0102]. The Secretary’s Determination placed the Ballot Initiative above the required threshold of 67,682 valid signatures. *Id.* (R 0102-0103).

By Complaint dated March 27, Petitioners Jane Gilbert, Mark Sayre, and Kaitlin Webber (“Petitioners”) challenged the Secretary’s Determination. *Petitioners’ Complaint* (“Complaint”); see also, Me. Const. art. IV, pt. 3d, § 22; 21-A M.R.S. § 905. Pursuant to a schedule approved by this Court, the Petitioners, the Committee, and the Secretary briefed the issues raised in the Complaint. By Order dated April 24 (“Remand Order”), this Court remanded the matter to the Secretary to take evidence on particular challenges and, as might be warranted, reconsidering concessions she had made in her brief. The Remand Order concluded by providing that the Secretary’s review included, “correcting the concessions identified herein, taking new evidence, and developing further findings of fact as necessary.” Remand Order at 17.

On May 12 and 13, a hearing was held before the Secretary’s designee, Katherine McBrien, Chief Deputy Secretary of State, sitting as the Presiding Officer. On May 15, Petitioners and the Committee filed their post-hearing briefs with the Presiding Officer. On May 21, the Presiding Officer issued her Recommended Decision by which she recommended the invalidation of an

additional 3,883 signatures [*see*, Recommended Decision at R 033318], which would drop the number of valid signatures to 67,150; that is, 532 signatures below required minimum of 67,682. [*see*, R 033316-033359].

On May 23, the parties filed their objections to the Recommended Decision. On May 26, in accordance with the Remand Order, the Secretary issued a Final Decision by which she affirmed the Recommended Decision without change. [R 033316-17] On May 28, this Court held a status conference. At that time, the Court advised that, in remanding the matter to the Secretary, it had retained jurisdiction and that, with the Secretary's issuance of her Final Decision, it had returned to this Court for further proceedings.¹ At this Court's direction, the parties conferred on a briefing schedule which, on May 29, this Court approved. The Committee's Initial Brief was submitted in accordance with that schedule.

III. STANDARDS OF REVIEW

The Court's review of the Secretary's Final Decision has been authorized by Article IV, Part Third, Sec. 22 of the Maine Constitution. This judicial review is subject to Section 22's broad directive that "the election officers and other officials shall be governed the provisions of this Constitution and of the general law, supplemented by such reasonable action as may be necessary to render the preceding sections self-executing." Me. Const. art. IV, pt. 3d, § 22. In authorizing judicial review of written petitions and the enactment of statutes implementing such review, Section 22 provides that any such law must "not be inconsistent with the Constitution." *Id.*

¹ The Secretary's Final Decision included a notice advising the parties of their right to appeal within 10 days, pursuant to 21-A M.R.S. § 905(2). At the May 26 status conference, the Court explained that in remanding this matter to the Secretary, it had retained jurisdiction over it. With the issuance of the Final Decision, the matter had been returned to the Court. Therefore, the filing of a complaint pursuant Section 905(2) was not in order.

Pursuant to Section 22's authorization, the Legislature enacted the statutory framework that sets the procedure for this review. Title 21-A M.R.S. § 905. Subject to the terms of Section 905, the procedure for this review is further governed by Rule 80C of the Maine Rules of Civil Procedure which, in turn, incorporates the Administrative Procedures Act. *See, id.*, § 905(2); Rule 80C(a), M. R. Civ. P.

While deference is accorded to the Secretary's findings of fact, "the interpretation of constitutional and statutory provisions, which are issues of law that we review de novo." *McGee v. Sec'y of State*, 2006 ME 50, ¶ 5, 896 A.2d 933.

IV. CONSTITUTIONAL BACKGROUND TO LEGAL ARGUMENT

In invalidating some petitions, the Secretary exercised authority that the people of Maine not only never granted to her, but expressly denied to her. Her exercise of these unauthorized powers implicate the most fundamental precepts undergirding the powers with which the people of Maine, through the Maine Constitution, vested in their state representatives, including constitutional officers, and those they withheld. To place the Secretary's arrogation of power in full context, a review of the foundations of the Maine Constitution is warranted.

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

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

U.S. Constitution assumes and the constitutional ratification conventions palpably manifested²— that the people are the ultimate source of sovereignty and, through the constitutions they approve, they choose what powers the government may exercise and what powers it may not. See, James Madison, *Memorial and Remonstrance Against Religious Assessments*, in Madison Writings, 29, 30 (Jack N. Rakove, ed. 1999) (The legislature’s “jurisdiction is both derivative and limited.”); Alexander Hamilton, “Publius.” *The Federalist* 78, in The Debate on the Constitution, 467, 470 (Bernard Bailyn, ed. 1993) (“No legislative act... contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.”).

In many ways, Article III, Section 2, which expressly directs that none of the branches of government shall exercise powers that the Maine Constitution assigns to a different branch, complements and reinforces Article I, Section 2. It requires that the executive, legislative, and judicial departments of government respect their constitutional assignments, as defined and circumscribed by the people in their ratification of the constitution and their approval of amendments thereto. See, *In re Dunleavy*, 2003 ME 1240, ¶18, 838 A.2d 338; *State v. Hunter*, 447 A.2d 797, 799-800 (Me. 1982); see also, M. Tinkle, *The Maine State Constitution* (2d. ed. 2013), pp. 70-72.

The Law Court explained the need for each department to remain within its realm. “[T]he more [the] independence of each department, within its constitutional limits, can be preserved, the nearer the system will approach the perfection of civil government and the security of civil liberty.”

² Gordon Wood, *Creation of the American Republic*, University of North Carolina Press, (ed. 1998) at 340-341.

Lewis v. Webb, 3 Me. 326, 329 (1825); *see also*, *Chadha v. Immigration and Naturalization Service*, 462 U.S. 919, 948-959 (1983) (discussing importance of enforcing separation of powers). The same purposes apply equally to the imperative that state officials only exercise powers that the Maine Constitution grants to them and reject invitations to exercise powers inconsistent with or in violation of the Constitution.

Taken together, Article I, Section 2 and Article III, Section 2, stand for these principles: first, that no department of Maine government and no state official may exercise powers that the people have not granted to that department or that official; second, that in their exercise of the powers with the Maine Constitution entrust the departments of Maine government must stay in their lanes.

B. THE CONSTITUTION AUTHORIZES AND LIMITS THE LEGISLATIVE POWER, INCLUDING THE LEGISLATURE'S DELEGATION OF POWER.

The Maine Constitution describes the legislative power at Article IV, Part Third, Section 1 and, “the Legislature’s powers, though broad, are subject to the three-fold limitations that its enactments be ‘reasonable,’ be ‘for the benefit of the people,’ and not be repugnant to any other provision of the Maine or United States Constitution.” *Opinion of the Justices*, 437 A.2d 597, 606 (Me. 1981); *see also*, Me. Const. art. IV, pt. 3d, § 1; *Avangrid Networks, Inc. v. Sec’y of State*, 2020 ME 109, ¶ 30, 237 A.3d 882 (listing nine factors to determine whether a proposed act is “legislative”). The determination of whether a particular legislative enactment complies with these standards is entrusted to the Law Court. *Id.*

The Legislature may delegate powers to executive agencies, but such delegations must include sufficiently detailed standards to guide that agency in its administration of such delegated

powers. *State v. Boyajian*, 344 A.2d 410, 412 (Me. 1975); *Smith v. Speers*, 253 A.2d 701, 704 (Me. 1969).

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

Effective in 1909, Maine voters amended the Maine Constitution to allow for the enactment of law and their repeal by direct action. Me. Const. art. IV, Pt. 3d, §§ 17-22 (“Initiative Amendments”). Before the adoption of the Initiative Amendments, the Maine Constitution vested the authority to make and repeal laws exclusively in the Legislature. See, Me. Const. art. IV, Pt. 3d, § 1.³

1. Purpose and Character of Initiative Amendments.

In general, when provisions of the Maine Constitution are construed, the Law Court has required that they be given “liberal interpretation to carry out their broad purpose because they are expected to last over time and are cumbersome to amend.” *Allen v. Quinn*, 459 A.2d 1098, 1102 (Me. 1983). This interpretive rule is supplemented by the further requirement that “[a]ny analysis of the initiative provisions in the Constitution must take account of their significance and purpose.” *McGee*, 2006 ME 50, ¶ 24, 896 A.2d 933.

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

³ The Committee incorporates by reference all the arguments set forth in its initial brief of April 17, 2026 to the Superior Court.

and referendum power prominent manifestations was distrust of those elected to legislatures and the legislatures, themselves. See, Steven Diner, *A Very Different Age*, 209 (1998) (“Progressive reforms also captured many state governments in the early twentieth century. Concerned about corruption and the power of the trusts over elected officials, reformers called for primary elections, laws prohibiting corrupt practices, campaign expenditure limits, strengthened voter registration systems to minimize voter fraud, the short ballot, initiative and referendum in which voters could bypass the legislature to enact or repeal laws, and recall procedures whereby citizens could require an elected official to face the voters prior to normally scheduled election.”).⁴

“The broad purpose of the direct initiative is the encouragement of participatory democracy.” *Id.* at 1102 (emphasis supplied). Therefore, in construing these amendments, a court’s “primary consideration” must do so “liberally” in order to “facilitate [rather than handicap] the people’s exercise of their sovereign power.” *League of Women Voters v. Secretary of State*, 683 A.2d 769, 771 (Me. 1996); see also, *McGee*, 2006 ME 50, ¶ 25, quoting, *Allen*, 459 A.2d at 1102-03. Consistent with this principle, the Law Court has admonished that, “[t]he significance of this change must not be overlooked, particularly by this court whose duty it is to so construe legislative action that the power of the people to enact their laws shall be given the scope which their action in adopting this amendment intended them to have.” *Id.* at 231; see also, *Opinion of the Justices*, 275 A.2d 800, 803 (Me. 1971) (“Our primary consideration, therefore, must be that by the initiative

⁴ “What the majority of Progressives hoped to do in the political field was to restore popular government as they imagined it to have existed in an earlier and purer age. This could be done, it was widely believed, only by revivifying the morale of the citizen, and using his newly aroused zeal to push through a series of changes in the mechanics of political life—direct primaries, popular election of Senators, initiative, referendum, recall, the short ballot, commission government, and the like. Such measures, it was expected would deprive machine government of the advantages it had in checkmating popular control, and make government accessible to the superior disinterestedness and honesty of the average citizen.” Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.*, 257 (1955).

amendment the people, as sovereign, have retaken unto themselves legislative power and that particular undertaking by them shall be construed to effectuate that purpose.”)

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

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

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

The Law Court explained the nature and character of the powers that the Initiative Amendments placed in the voters. “By the amendment the people reserved to themselves power to propose laws and to enact or reject the same at the polls independent of the legislature, and also reserved power at their own option to approve or reject at the polls any act, bill, resolve or resolution passed by joint action of both branches of the legislature.” *Farris ex rel. Dorsky v. Goss*, 143 Me. 227, 230-231, 60 A.2d 908 (1948). “In short, the sovereign which is the people has taken back, subject to the terms and limitations of the [Initiative Amendments], a power which the people vested in the legislature when Maine became a state.” *Id.* 143 Me. at 231.

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

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

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

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

The Law Court has recognized the “self-executing” effect of the Initiative Amendments and the self-evident intent of electors, in approving these amendments, noting that they had “laid out in unusual detail the procedure by which they will legislate by direct vote.” *Allen*, 459 A.2d at 1103. Indeed, as the *Allen* Court noted, even without Section 22’s express self-executing directive that the Initiative Amendments are self-executing, “section 18 is detailed enough to be self-executing.” *Id.*; *see also*, Me. Const. art. IV, pt. 3d, §§ 18, 22.

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

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

McGee, 2006 ME 50, ¶ 24.

This is not to say that the Initiative Amendments excluded the Legislature altogether. The amendments authorized the Legislature to enact “further laws for **applying** the people’s veto and direct initiative.” Me. Const, art. IV, Pt. 3d, § 20. Similarly, and more particularly, the amendments provided that the Legislature could “enact laws not inconsistent with the Constitution to establish **procedures** for determination of the validity of written petitions.” Me. Const. art. IV, Pt 3d, § 22. (emphasis supplied).

In recognition of the fundamental popular and populist rationales undergirding the Initiative Amendments and the broad powers they expressly reinvested in the people, the Law Court cautioned, a court should be “chary” of reading other limitations into these amendments. *Allen*, 459 A.2d at 1103 (rejecting deadline outside of Section 18). *Allen* further cautioned further that a “court should infer additional procedural requirements only if they are **clearly necessary** to achieve consistency with other constitutional provisions or to accomplish the general purpose of the direct initiative.” *Id.* (emphasis supplied),

Thus, although the Legislature has the authority to enact laws for the implementation of the initiative right, any legislative implementation must respect the substance of the constitutional right. *McGee*, 2006 ME 50, ¶ 20. In other words, as the Law Court also explained, “[t]he right of the people... to enact legislation and approve or disapprove legislation enacted by the legislature is an absolute one and cannot be abridged directly or indirectly by **any** action of the legislature.” *Farris*, 143 Me. at 231 (emphasis supplied); *accord*, *McGee*, 2006 ME 50, ¶ 21; see also, *Opinion of the Justices*, 132 Me 512, 174 A. 853, 855 (1933) (“The right of the voters to pass upon the act is absolute. It **cannot** be abridged by further action of the Legislature.” (emphasis supplied)). Put another way, “[n]either by action nor by inaction can the legislature interfere with submission of

measures as provided by the constitution.” *Opinion of the Justices*, 275 A.2d at 803, citing, *Farris*, 143 Me. at 231 (emphasis supplied).

In sum, the courts, the executive branch, and the Legislature may facilitate but they may not hinder the electors’ exercise of their lawmaking and repealing rights under the Initiative Amendments. They may not change the substance of these rights or, in the name of efficiency or integrity, unnecessarily impede their exercise. These principles apply equally to the full range of the electors’ constitutional rights to initiate legislative proposals, and to their rights to campaign for or against them, before the election and to cast their vote as they see fit.

4. Role of Electors under Initiative Amendments.

The Initiative Amendments provide that Maine voters—electors—may initiate initiatives and referenda; they may sign petitions, they may circulate petitions, and, when an election is held, they may vote on the proposed legislation. Me. Const. art. IV, pt. 3d, ¶¶ 17-22.⁶ The Initiative Amendments draw on the voters status as electors as provided by the Maine Constitution at Article II which, in recognition of their essential, if temporally limited, role in the function of the state’s representative form of government, cloaks them with discrete protections while discharging their electoral rights. *Id.* art. II, §§ 2-3.⁷ Electors exercising their rights under the Initiative Amendments are, therefore, also acting as constitutional officers as provided in Article II.

Thus, when an elector initiates, circulates, or signs an initiative petition, they are acting in a legislative capacity. *See, John Doe No. 1 v. Reed*, 561 U.S. 186, 221 (2010), (Scalia, J., concurring) (when a voter signs a petition, “he is acting as a legislator”). When the petition on which an elector’s name appears has been invalidated, all the electors on that petition have been

⁶ See, Me. Const. art. IV, pt. 3d, § 20, defining “elector” as one qualified to vote for governor.

⁷ See, art. II, §§ 2-3; see also, *Hobbs v. Getchell*, 8 Me. 187 (1832) (discussing immunity from arrest going to and from the polls).

“disenfranchise[d].” *Maine Taxpayers Action Network v. Sec’y of State*, 2002 ME 64, ¶, 23, 795 A.2d 75 (Dana, J., concurring).

D. THE ELECTORS’ RIGHTS TO INITIATE AND PROMOTE INITIATIVES AND REFERENDA, INCLUDING SIGNING PETITIONS, ARE JOINED WITH AND PROTECED BY THE RIGHT TO PETITION THE GOVERNMENT.

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

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

Me. Const. art. I, § 15.

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

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

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

At its core, the Petition Clause has always protected the people’s right to seek redress of grievances, including changes in policy, from the executive and lawmaking governmental bodies. *Borough of Duryea, Pennsylvania v. Guarnieri*, 564 U.S. 379, 395-398 (2011) (recounting history of Petition Clause); *see also, id.* at 403 (Scalia, J, concurring and dissenting), (“There is abundant

historical evidence that ‘Petitions’ were directed to the executive and legislative branches of government...”). As the *Duryea* Court explained, “[t]he right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives.” *Id.* at 388; accord, *Pollack v. Fournier*, 2020 ME 93, ¶15, 237 A.3d 149. Thus, when, with the adoption of the Initiative Amendments, Maine voters regained their sovereign lawmaking power, within the confines of those amendments, they, as the lawmakers, invested with the authority to enact or reject legislative proposals, became subject to the Petition Clauses of the Maine and United States Constitutions.

As will be discussed in more detail below, the foregoing discussion, therefore, establishes two points: first, as limited and confined by the Initiative Amendments, statutory limitations on the rights to initiate and effectuate initiatives and referenda may not impose substantive limitations on those rights nor unnecessarily burden them; and second, burdens placed on the initiative process, whether statutory or regulatory, must be considered to the extent they limit or impair the electors’ rights under the Petition Clauses of the Maine and U.S. Constitutions, as well as under the Freedom of Speech and Freedom of Assembly Clauses of both Constitutions, including the rights of association inherent in each of these rights. In other words, the electors’ rights must also be considered along with those of others involved in the commencement and advancement of proposed initiatives and referenda, including petition circulators.

V. ARGUMENT

A. **THE SECRETARY ERRED IN INVALIDATING PETITIONS CIRCULATED BY OUT-OF-STATE CIRCULATORS WHO DID NOT CHECK THE JURISDICTION BOX ON THE CIRCULATOR AFFIDAVIT.**

Petitioners challenged the validity of petitions circulated by four out-of-state circulators, Cairo (her full name), Ummsalaamah Hakeem, Kewechi Chukwuma, and Jordan Albert, for failure

to check a box on the Circulator Affidavit form agreeing to submit to Maine's jurisdiction with respect to their discharge of their circulator duties. In her initial brief to this Court, with a bare minimum of analysis⁸, the Secretary took the position that, because these four circulators had not checked the jurisdiction box on their circulator affidavit form, they were ineligible to circulate petitions for the Ballot Initiative and signatures of all the electors who signed the petitions they circulated, though otherwise valid, must be invalidated.

Significantly, the Secretary appeared to leave the door open to the four out-of-state circulators to possibly cure their failure to check the box. In a footnote, the Secretary advised: "Should the Court order a remand, it is possible that circulators might seek to offer amended circulator affidavits with the appropriate box checked. The Secretary at this stage takes no position on whether such remedial efforts would be permissible." Secretary's Rule 80C Merits Brief at 32, n. 4.⁹

1. Consent Order - *We the People v. Bellows*.

To place the Secretary's ruling on the out-of-state circulators in full context, the following background is warranted.

First, the Maine Constitution states that the term "'circulator' means a person who solicits signatures for written petitions, and who **must** be a resident of this State and whose name **must** appear on the voting list of the city, town or plantation of the circulator's residence as qualified to

⁸ The Secretary's justification consisted of a cursory citation to *Hart v. Sec'y of State*. Secretary's Rule 80C Merits Brief at 32, citing *Hart* 1998 ME 189, ¶ 13, 715 A.2d 165.

⁹ Consistent with the Secretary's practice throughout this litigation, culminating in the Secretary's acceptance of the Recommended Decision, the Secretary did not employ any of the Law Court's directives for administering the Initiative Amendments, including the Secretary's obligation to facilitate rather than handicap the voters' exercise of their rights to initiate and vote on proposed legislation. Neither at any point did the Secretary acknowledge that she was invalidating and effectively disenfranchising the signatures of all the electors who signed the out-of-state circulators' petitions. See, *Maine Taxpayer Action Network v. Sec'y of State*, 2002 ME 64, ¶ 23, 795 A.2d 75 (Dana, J., concurring).

vote for Governor.” Me. Const. art. IV, pt. 3d., § 20 (emphases supplied). Notably, the Initiative Amendment’s residency requirement was challenged as violative of freedom of speech, freedom of expression, and freedom of association as guaranteed and protected by the First Amendment to the United States Constitution. *Hart v. Secretary of State*, 1998 ME 189, ¶ 6, 715 A.2d 165.¹⁰

The Law Court rejected the plaintiffs challenge ruling that the Maine Constitution’s residency requirement “enhances the integrity of the initiative process by ensuring that citizen initiatives are brought by citizens of Maine” and because, if questions arose about a particular petition, Maine resident circulators “would be easier to locate.” *Id.* at ¶ 13. In rejecting plaintiffs’ challenge, *Hart* considered and distinguished the Supreme Court’s decision in *Meyer v. Grant*, 486 U.S. 414 (1988). *Id.* at ¶¶ 9-12.

The Law Court considered a First Amendment challenge to the Initiative Amendment’s voter registration requirement in *Jones v. Secretary of State*, 2020 ME 113, 238 A.3d 982.¹¹ In rejecting the challenge, the Law Court once again considered the Supreme Court’s decision in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), which had not been issued when the Law Court decided *Hart*. *Id.* at ¶ 6. Applying the *Anderson-Burdick* test¹², the *Jones* court found that “[t]he requirement that the circulator be registered in the circulator’s municipality of residence while circulating a petition...imposes only ‘reasonable, nondiscriminatory restrictions’ on the First Amendment rights of petition supporters for the

¹⁰ It does not appear that the *Hart* Plaintiffs claimed that the Initiative Amendments’ residency requirement violated comparable rights protected under the Maine Constitution. See, Me. Const. art. I, § 4. Nor does it appear that, as the Committee does now, the *Hart* Plaintiffs claimed that the residency requirements impermissibly burdened their right to petition the government under the First Amendment or Article I, Section 15 of the Maine Constitution.

¹¹ It appears that the challenge was limited to First Amendment’s guarantee of freedom of speech. It does not appear that *Jones* claimed violations of comparable rights under the Maine Constitution. See, Me. Const. art. I, § 4. Nor does it appear that *Jones* claimed violation of his right to petition the government under either the U.S. Constitution or the Maine Constitution.

¹² *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

purpose of ensuring compliance with the residency requirements of the Maine Constitution.” *Id.* at ¶ 34. Thus, at two separate points, the Law Court had upheld the voter registration and residency requirements of Article IV, part third, section 20. To this day, the Law Court has never overruled or modified either *Hart* or *Jones*.

In 2022, the residency and voter registration requirements were challenged in federal court as violative of the First Amendment rights of initiative proponents and out-of-state circulators. *We the People PAC v. Bellows*, 519 F. Supp. 3d 13 (D. Me. 2021). Notwithstanding *Hart* and *Jones*, the District Court concluded that the plaintiffs were likely to succeed as to both claims and issued an injunction barring the Secretary from enforcing the residency and voter registration requirements. *Id.* at 53.¹³ On appeal, the First Circuit upheld the District Court’s likelihood determination and its injunctive relief. *We the People v. Bellows*, 40 F.4th 1, 25-27 (1st Cir. 2022).

Upon remand to the District Court, the parties did not proceed to summary judgment or a trial on the merits, but, rather, entered into a Consent Order and Judgment. *We the People v. Bellows*, Civil No. 1:20-cv-00489-JAW. Consent Order and Judgment, (2-09-2023) (ECF Doc. 88). (“Consent Order”). (Exhibit B, Secretary’s Rule 80C Merits Brief, dated April 17, 2026).¹⁴ The Consent Order entered judgment for the Plaintiffs on Count I through IV of their claims. *Id.*, ¶ 1. The Consent Order then barred the Secretary from enforcing residency and voter registration requirements in Article IV, part third, section 20 of the Maine Constitution and in Maine statute at 21-A M.R.S. §903-A. *Id.* at ¶ 2. It conditioned this prohibition by limiting it to out-of-state circulators who (a) agreed to submit to personal jurisdiction of Maine for investigation or prosecution of initiatives or referenda petitions; (b) agreed to maintain up to date contact

¹³ The District Court noted that the record before the *Jones* Court was limited and, in contrast, the District Court had the benefit of a ‘substantial factual record.’ *We the People*, 519 F.Supp.3d at 50.

¹⁴ Exhibit B to Secretary’s Brief to Superior Court, April 17, 2026.

information “for the duration of the petition drive’ which included “review of those signatures by the Secretary of State”; and (c) agreed to be “responsive to” the Secretary’s requests for information. *Id.* ¹⁵

The foregoing summary establishes the following points: (1) the Law Court has never overruled *Hart* or *Jones*; (2) although the District Court, upheld by the First Circuit, has ruled that the *We the People* plaintiffs had shown a likelihood of success in their First Amendment challenge to the Initiative Amendment’s residency and voter registration requirements, the District Court did not proceed to a judgment on the merits on *We the People*’s claims; (3) the Consent Order, issued with the Secretary’s consent, superseded the District Court’s preliminary injunction; (4) with the Secretary’s consent, the District Court issued the Consent Order which (a) barred the Secretary from enforcing the residency and voter registration requirements against out-of-state circulators, and (b) purported to authorize the Secretary to impose conditions on out-of-state circulators by which they would agree to submit to Maine’s jurisdiction, upon their consent, the Secretary would forebear from enforcing the Maine Constitution’s residency and voter registration requirements against them—the same residency and voter registration requirements that the District Court and the First Circuit, applying a likelihood of success standard, had concluded likely violated the First Amendment. ¹⁶

¹⁵ The Consent Order described “duration of the petition drive” as “includ[ing] the collection of signatures and review of those signatures by the Secretary of State’s office.” Consent Order at ¶ 2. (Exhibit B, Secretary’s Rule 80C Merits Brief, April 17, 2026.

¹⁶ As a point of contrast, see, *Desena v. LePage*, 793 F.Supp.2d 456 (D. Me. 2011) which found the Maine Constitution’s delayed implementation of census data unconstitutional at Article IV, Part 2, Section 2 as violative of Article I, Section 2 of the U.S. Constitution. *Id.* at 462-263. Maine’s solution was not to enter into some kind of a consent judgment. Instead, it amended its Constitution to comply with the U.S. Constitution. See, Me. Const. art. IX, § 25.

Following the District Court's approval of the Consent Order, the Secretary issued a revised State of Maine Circulator Affidavit which included a box to be checked by out-of-state circulators with the following conditions:

- I agree to submit myself to the jurisdiction of the State of Maine for any investigation or prosecution of any alleged violation of law with respect to initiative or people's veto petition.
- I agree to maintain up-to-date contact information with the Maine Secretary of State's office for the duration of the petition drive for which I am circulating petitions, including through review of those signatures by the Secretary of State's office.
- I agree to respond to information requests from the Maine Secretary of State's office for the duration of the petition drive for which I am circulating petitions, including while signatures are being collected and through the review of those signatures by the Secretary of State's office.

Since the Consent Order could not authorize the Secretary to violate the Maine Constitution's residency and voter registration requirements, it follows that the Secretary had no power to amend the Circulator's Affidavit¹⁷ to include the submission-to-jurisdiction requirements for out-of-state circulators. [R 0026]

2. The Consent Order Does Not and Cannot Empower the Secretary to Violate or Circumvent the Maine Constitution.

As has been noted above, the Maine Constitution plainly states that the people of Maine are the ultimate sources of state sovereignty and subordinate only to the United States Constitution and laws and rules issued pursuant thereto, the Maine Constitution is the supreme law of the state, binding all branches of government and all state officials. *See, e.g., La Fleur ex rel. Frost, v. Anderson*, 146 Me. 270, 280, 80 A.2d 407 ("It needs no citation of authority to establish the

¹⁷ Consistent with the Consent Order, the submission—to-jurisdiction portion of the Circulator's Affidavit contains no requirement as to when the out-of-state circulator must check the box.

principle that the Constitution of Maine is the supreme law of the State (limited, of course, by the Federal Constitution). A power granted or reserved by the Constitution may not be limited by the Legislature.”).

Section 20 of the Initiative Amendments bars circulators who are not Maine residents and who have not registered to vote from circulating petitions for initiatives and referenda. There are no exceptions. Me. Const. art. IV, pt. 3d, § 20. Moreover, in the face of challenges based on the First Amendment, the Law Court has upheld the residency and voter registration requirements in successive decisions. *Hart*, 1998 ME 189, ¶¶ 1-13, *Jones* 2020 ME 113, ¶¶ 32-34.

With both the District Court and the First Circuit concluding that, *Hart* and *Jones* notwithstanding, the Maine Constitution’s unconditional residency and voter registration likely violated the First Amendment, the Secretary failed to confront the invalidity these requirements but, instead, attempted to delay the day of reckoning by attempting an end run around the Maine Constitution. Instead of pressing forward in District Court for an adjudication on the merits, the Secretary devised the Consent Order which more than simply restraining her from enforcing these unenforceable prerequisites on out-of-state circulators, the Secretary enlisted the District Court to equip her with the very power the Maine Constitution denied her—the power to impose conditions on out-of-state circulators’ circulation of initiative and referenda petitions in Maine.

Here it must be emphasized that, although under Article V, Part Second of the Maine Constitution, the Secretary is a constitutional officer, none of the Secretary’s authority over initiatives and referenda are found in Article V. All the Secretary’s substantive powers with respect to initiatives and referenda come solely from the Initiative Amendments and nowhere else. Me. Const. art IV, pt. 3d, §§ 1-22. Yet, those amendments contain no authorization to the Secretary to

violate in whole or in part the Initiative Amendment's requirements that circulators be Maine residents, registered to vote in Maine.

The Recommended Decision's response to the Committee's contention that the Consent Order's conditions on out-of-state circulators was *ultra vires* revealed the illusory source of the power the Secretary claimed. Pressed to explain the source of the Secretary's power to impose affirmative obligations on out-of-state circulators, the Decision does not point to the Maine Constitution, because it cannot. Instead, the Decision contends:

“The United States District Court **authorized** Maine to impose [jurisdiction submission requirements] by limiting its injunction to Maine's ability to enforce the residency requirement to circumstances in which the circulator fails to consent to Maine's jurisdiction.”

Dec. at 35 (emphasis supplied). At the close of the Recommended Decision's response to the Committee's challenge to the purported jurisdiction requirement, the Decision makes an extraordinary argument. It asserts that the federal District Court's Consent Order “**narrows the scope** of [the Maine Constitution's] prohibition alleging enforcement against only those out-of-state circulators most likely to cause enforcement challenges—those who fail to agree to consent to the State's jurisdiction.” *Id.* at 38 (emphasis supplied).

Not surprisingly, the Secretary cited no authority, state or federal, for the proposition that a federal court could authorize a state official to exercise affirmative powers with respect to third parties (as opposed to refraining from acting) when the state constitution governing that state official not only did not authorize those affirmative acts but expressly prohibited them. That is because there is no such authority. There is, however, contrary authority. *Minnesota v. National Tea Company*, 309 U.S. 551, 557 (1940) (“It is fundamental that state courts be left free by us in interpreting their state constitutions.”)

The purported “authorization” from the District Court and its supposed narrowing of the Maine Constitution—actions that in no way appears that the District Court actually took—would have been entirely inconsistent with the most basic notions of federalism. See, e.g., *Younger v. Harris*, 401 U.S. 37, 44-45 (1971) (discussing “Our Federalism”).

Seen for what it is, what the Recommended Decision is describing is the effective amendment of Section 20’s residence and registered voter requirements, limiting and conditioning the applicability of these hitherto mandatory and unwaivable requirements, **by federal court order**. Without citing any authority for this point nor engaging in any detailed analysis, the Decision when goes onto to say, “there is no serious question that the framers of that provision would have preferred that ‘half a loaf’ to no loaf at all.” *Id.* In other words, faced with problematical state constitutional standards, the Secretary goes to the federal judicial bakery to accept, with the Secretary’s full cooperation, what reflects the supposed wishes of the framers of the Maine Constitution.¹⁸

If left intact, the Recommended Decision’s reasoning on this point would render longstanding rules of constitutional construction elastic and wholly unreliable. *Cf.*, *Opinion of the Justices*, 2023 ME 34, ¶ 13, 295 A.3d 1212 (“In construing the Maine Constitution, we may conduct an examination of the ‘text; purpose; history; common law, statutes, and rules; economic and sociological considerations; and precedent.’” (citing *Winchester v. State*, 2023 ME 23, ¶ 14, 291 A.3d 707); see also, *McGee*, 2006 ME 50, ¶ 24 (“Any analysis of the initiative provisions in the Constitution must take account of their significance and purpose.”)).

¹⁸ Although it should go without saying, the power over the Maine Constitution that the Secretary claims for the District Court could not be exercised by the Maine judiciary. That is, a Maine Court cannot, by interpretation, effectively amend the Maine Constitution. See, Me. Const. art. III, § 2; see also, *Lewis v. Webb*, 3 Me. (3. Greenl.) 326, 337 (1825); see also, *Ex Parte Davis*, 41 Me. 38, 54, (1856) acts of the legislative and executive departments that are inconsistent with the fundamental law are void)). The Davis directive applies equally to the judiciary.

For these reasons, the Consent Order's purported revision of the Maine Constitution to "authorize" the Secretary to set conditions for out-of-state circulators inconsistent with the Initiative Amendments could not and did not infuse the Secretary with those powers. The Secretary's attempt to impose those conditions through the Circulator's Affidavit was invalid and of no force or effect.

If the Secretary has concluded that the Initiative Amendments residency and voting registration requirements are unconstitutional, the remedy would be to seek an amendment to the Initiative Amendments revising them to eliminate the conflict.¹⁹ For the foregoing reasons, the Consent Order could not and did not empower the Secretary to impose conditions on out-of-state circulators. Therefore, the petitions circulated by Ummsalaamah Hakeem, Kewechi Chukwuma, Jordan Albert, Cairo, cannot be invalidated based on their failure to check the jurisdiction box on the Circulator Affidavit.²⁰

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

None of the signatures on the petitions circulated by the four out-of-state circulators has been challenged as invalid. In signing those petitions, each elector was exercising his or her right

¹⁹ Given the Initiative Amendment's considerable detail, if Maine voters were to approve an amendment eliminating or modifying the residence and voter registration requirements, they could impose different standards than those to which the Secretary agreed. They might, for example, only require out-of-state circulators to submit to the Secretary's jurisdiction if questions arose about the petitions they circulated. This would be a policy choice. That it would be available to the voters demonstrates that the affirmative terms in the Consent Order are legislative in their nature.

²⁰ It bears mention that the Consent Order's endorsement of the affirmative conditions it "authorized" the Secretary to impose on out-of-state circulators likely exceeded its remedial powers. See, *Ayotte v. Planned Parenthood of Northern New England*, 546 U.S. 320, 330 (2006). However that may be, this Court need not resolve that question. The Committee's point is that, irrespective of whether the District Court was a valid exercise of its injunctive power to prevent violations of the First Amendment (an objective that would have been fully served by a prohibitory injunction), it could not empower the Secretary to violate, in whole or in part, standards set forth in the Maine Constitution. The question turns not on the District Court's injunctive powers, but on the limitations that the Maine Constitution in general and the Initiative Amendments in particular impose on the Secretary.

to petition the government under both the Maine and U.S. Constitutions. They were also exercising their rights to freedom of speech, freedom of assembly, and rights of association inherent therein and in the right to petition the government, all as protected by the Maine and U.S. Constitutions.

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

4. Circulator Cairo Complied with the Consent Order:

Assuming, solely for the sake of argument, that the Consent Order's "authorization" to the Secretary to impose affirmative jurisdiction obligations on out-of-state circulators is valid, then Circulator Cairo has met the Consent Order's conditions. That is because the Consent Order does not say when an out-of-state circulator must confirm their agreement to submit to the State's jurisdiction.

The Recommended Decision acknowledges, as it must, that, when her omission was brought to her attention, Circulator Cairo completed the jurisdiction form, confirmed her agreement to submit under oath, and appeared at the May 12 hearing by videoconference. But, the Decision recommends rejecting all of Circulator Cairo's otherwise valid elector signatures, on the grounds that she was required to confirm her consent *before* she commenced her circulator duties. The reasoning the Decision employs to justify this position shows the slippery constitutional slope to which its reliance on the Consent Order has brought it.

In response to the Committee’s argument, the Decision insists that, **at the outset**, out-of-state circulators must consent to Maine’s jurisdiction or cause all of the otherwise valid elector signatures they gather to be invalid. *Id.* But it is indisputable that, when the District Court issued its preliminary injunction, it included the requirement that out-of-state circulators must “first” submit to Maine’s jurisdiction—that is, **before** commencing circulation. *We the People*, 519 F.Supp.3d at 53.

When, upon remand to the District Court, the Secretary decided to enter into the Consent Order, the word “first” was deleted. The Consent Order contains **no** timing requirement. In contrast with the preliminary injunction, it does **not** say **when** the circulator must comply. Because the Secretary was a party to the *We the People* litigation, it follows that the “first” precondition was omitted from the Consent Order with the Secretary’s full knowledge and consent.

On this point, it will be remembered that, in the Secretary’s April 17 merits brief, she acknowledged the possibility that one or more of the four out-of-state circulators might attempt to remedy their failure to check the box by doing so in the course of these proceedings. She then advised that she took no position on whether taking that step could remedy the circulator’s failure to check the box earlier. Secretary’s Rule 80C Merits Brief at 32, n. 4.

The Secretary’s footnote on this point is highly revealing. It means that the Secretary, who clearly participated in the drafting and final approval of the Consent Order, could not tell based on the Consent Order alone, whether it precluded an out-of-state circulator from checking the jurisdiction box after the Secretary had completed her Determination but while that Determination was undergoing judicial review. This shows that the omission from the Consent Order of the word “first,” as it appeared in the original preliminary injunction deprived the Consent Order of any identifiable timing requirement. This, by itself, raises significant lack of notice issues under the

Due Process Clause. See, *Grayned v. City of Rockford*, 408 U.S. 104 , 109, n. 4 (1972) (collecting cases). In other words, how were the four out-of-state circulators to know that they were required to check the box before they began circulating and, if they failed to do so, they could not cure the omission by doing so later—even if, as is the case here, the petitions were still under review.

In endorsing the Recommended Decision’s reasoning invalidating Circulator Cairo’s petitions, the Secretary tacitly acknowledged that it cannot cite the Consent Order for supposedly indispensable, incurable timing prerequisite. Therefore, in a desperate effort to invalidate Circulator Cairo’s 1,400 otherwise valid elector signatures, the Recommended Decision invokes an entirely inapposite source—21-A M.R.S. § 903-A(4).²¹ But, of course, Section 903-A(4) cannot be the source of any disqualifying conditions on out-of-state because it does not refer to out-of-state circulators at all. It does not refer to them because it cannot refer to them.

The Legislature’s authority to enact Section 903(4) did not come from any federal District Court Consent Order. It came solely from the Initiative Amendments which ban circulators who are not resident in Maine and are not registered to vote in Maine. Me. Const. art. IV, pt. 3d, § 20. Although, as has been noted, the Initiative Amendments authorize the Legislature to enact laws “to establish the validity of written petitions”, they expressly provide that such laws shall “not be inconsistent with the Constitution.” Me. Const. art. IV, pt. 3d, § 22.

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

Therefore, Section 903-A(4) **cannot** be the source of the requirement that Circulator Cairo had to confirm her consent to Maine’s jurisdiction any earlier than she did. If Section 903-A(4) cannot be the source of the pre-circulation submission to jurisdiction, that brings us back to the Consent Order which contains no such requirement but which contains other requirements, all of which Circulator Cairo has complied with.

a. The Secretary erred in Invalidating Circulator Cairo’s Petitions.

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

The Recommended Decision’s insistence on invalidating all Circulator Cairo’s petitions and all the otherwise valid signatures of the Maine voters who signed them, not because Circulator Cairo engaged in any serious errors or misconduct, not because one or some of her petitions proved problematical, not because she did not appear before the Presiding Officer when requested by the Committee. But, because she failed to comply with a rigid deadline which, as noted above, the Decision has traced to a statute that does not authorize any out-of-state circulator to circulate petitions in Maine.

The Recommended Decision’s insistence on this point, with its consequent invalidation of large numbers of electors’ signatures and disqualification of the Initiative from the November ballot on this decision alone, violates the requirement to “facilitate rather than handicap” initiatives such as this—a requirement that springs as a constitutional mandate from the Initiative Amendments, themselves. The Secretary erred in endorsing the Recommended Decision’s

recommendation on this point and fails to conform to the Initiative Amendment's mandate and the Law Court's directives.

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

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

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

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

B. THE INITIATIVE AMENDMENT’S RESIDENCY AND REGISTRATION REQUIREMENTS VIOLATE THE FIRST AMENDMENT’S GUARANTEE OF FREEDOM OF SPEECH.

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

As the District Court noted, in contrast to *Hart* and *Jones*, the parties had provided the court with “a substantial factual record.” *We the People PAC v. Bellows*, 519 F. Supp.3d 13, 50 (D. Me. 2021). Based on that record, the District Court concluded that the residency requirement imposed a severe burden on the plaintiffs’ first amendment rights. *Id.* at 42. Although noting the Secretary’s argument that other avenues remained open to circulators, the District Court concluded that the residency burden “heavily burdened protected speech.” *Id.* at 43. The District Court also concluded that the Initiative Amendment’s registration requirement also placed a severe burden on First Amendment rights. *Id.* at 50. It then concluded that the State’s proffered interests were insufficient to sustain the registration requirement in light of the burden it imposed on First Amendment rights. *Id.* at 50-51.

Therefore, as to their challenges to both the residency and the voter registration requirements, the District Court found that the plaintiffs had demonstrated a likelihood of success. *Id.* at 48, 51. The First Circuit upheld the District Court’s findings on both points. *We the People v. Bellows*, 40 F.4th 1, 19, 24-25 (1st Cir. 2022).

The tension between both the decisions and the reasoning of the District Court and the First Circuit in *We the People* and the decisions and reasoning in *Hart* and *Jones* should be resolved. This Court should find, consistent with the *We the People* decisions, that the Initiative Amendments' residency and voter registration requirements impose a severe burden on the First Amendment rights of out-of-state circulators and those in Maine, including Maine electors, who wish to use their services.

This Court should, therefore, find that the residency and voter registration requirements violate the First Amendment. Such a finding would resolve ambiguity that has afflicted these prohibitory standards ever since the Secretary and the *We the People* parties agreed to the vague and invalid terms of the Consent Order. Neither the Committee, nor the out-of-state circulators, nor the 1,500 and more electors who signed the petitions circulated by the four circulators who did not check the jurisdiction box or, as the Secretary would have it as to Circulator Cairo, did not check the box in time, should forfeit their right to petition the government and to fully exercise their First Amendment rights because of a Consent Order that the Secretary claims invests her with powers that the Maine Constitution never gave her.

Should the Court invalidate the Initiative Amendments' residency and voter registration requirements, the Committee respectfully asks this Court to vacate that part of the Secretary's decision that invalidated the petitions of the four circulators who did not initially check the jurisdiction box on the Circulator Affidavit—Ummsalaamah Hakeem, Kewechi Chukwuma, Jordan Albert, and Cairo. The Committee asks further that, having invalidated the Secretary's decision as to these four circulators, it order the Ballot Initiative restored to the ballot for the November 2026 general election.

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

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

In invalidating the petitions witnessed by notaries DeClercq and Harrington, the Secretary also invalidated and effectively disenfranchised all the electors who signed the petitions they witnessed as notaries. The Secretary’s invalidation of these petitions thereby frustrated and nullified the electors’ self-evident expression that the voters of Maine should have the opportunity to vote on the merits of the Ballot Initiative at the November 2026 general election.

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

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

Notaries are licensed professionals regulated by the Secretary, who are entrusted with a critical public function, and who have their own reputations to protect. In an analogous context, the Supreme Court held that it was “not prepared to assume that a professional circulator—whose qualifications for similar future assignments may well depend on a reputation for competence and integrity—is any more likely to accept false signatures than a volunteer who is motivated entirely by an interest in having the proposition placed on the ballot.” *Buckley*, 525 U.S. at 204 (quoting *Meyer*, 486 U.S. at 426). The same is true for notaries, who are interested in upholding their reputations for competence and integrity, and in avoiding potential discipline by the Secretary.

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

administer oaths to petition gatherers) for exercising core political speech.

1. Notary Statutes Constitute Unconstitutional Viewpoint Discrimination.

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

For these foregoing reasons, the Committee contends that the Section 903-E's ban on notaries circulating petitions and later notarizing the petitions circulated by others violates the Maine Constitution and both the Free Speech, Freedom of Assembly, and Right to Petition provisions of First Amendment to the United States Constitution²² as well as Article I, Sections 4 and 15 of the Maine Constitution.

For the foregoing reasons, the Committee respectfully asks this Court to hold that the prohibitions on notaries circulating petitions as set forth in 21-A M.R.S. § 903-E, 4 M.R.S. § 1904(5) violate the First Amendment and, thereby, invalid and unenforceable. The Committee further prays that this Court restore the petitions witnessed by notaries DeClercq and Harrington, including the signatures of the electors who, in their exercise of their rights under the Initiative Amendments, signed the petitions so that their fellow electors could consider and vote on the Ballot Initiative on the merits in the November 2026 general election.

²² The Supreme Court has recognized these First Amendment rights as "cognate" to one another. *Thomas v. Collins*, 323 U.S. 516, 530 (1945), citing, *De Jong v. Oregon*, 299 U.S. 353, 364 (1937)

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

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

But, the Secretary justified her invalidation of these electors' exercise of their initiative rights, including the right to petition the government and freedom of expression on the grounds that, by cobbling together statutory authorities—21-A M.R.S. § 354(4) and 21-A M.R.S. §902—seemed to "cabin the Secretary's discretion to apply her usual contextual approach to determining the signature date." *Id.* at 39-40. Proclaiming herself hemmed in, the Secretary then justified this hyper-technical result as "a reasonable way to prompt each petition signer to independently determine the date and not simply add a column of ditto marks that may or may not have been made on the same day." *Id.*

Although the Secretary's "ditto" ruling does not invalidate many signatures, it is emblematic of a general failure in the Secretary's approach to all the contested issues. For nowhere does the Secretary acknowledge that this ruling is not a matter of mere discretion, subject to a "reasonableness" justification that it is evident the Secretary conjured up for the purpose. The Secretary has determinedly erased the constitutional standards that the Initiative Amendments require her to apply in instances such as this. Nowhere does the Secretary suggest that she cannot

determine the actual date indicated by the ditto marks. She simply allows that they might be confusing.

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

Lost from the Secretary's analysis is any recognition that, as has been noted repeatedly above, the Initiative Amendments occupy a special place in the Constitution. Having arisen out of a fundamental distrust of the elected legislature and a countervailing confidence in the voters at large, the Initiative Amendments were "self-executing" and were designed to be untrammelled by post-adoption impediments the Legislature might devise. The origins and purposes of the Initiative Amendments prompted the Law Court's longstanding admonition that courts should construe these amendments and any implementing (not substantive) legislation to "facilitate" not to "handicap" the electors exercise of their hard-won popular lawmaking power. See, *McGee*, 2006 ME 50, ¶ 24.

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

If the Secretary were to apply these standards to her “ditto” ruling and similar exercises in the picayune, the Secretary would be able to reconcile all her decisions. Because, absent a compelling, constitutionally based reason, she would err in favor of the electors’ exercise of their sovereign lawmaking right.

This Court should reject the Secretary decision invalidating electors’ signatures on the grounds that they wrote “ditto” marks to indicate the date rather than write out the date. In doing so, this Court should apply the constitutional directives that the Law Court has admonished must govern the exercise of the voters’ rights under the Initiative Amendments lest it be smothered in an ever-growing cascade of procedure and technicality.

VI. CONCLUSION

The Initiative Amendments are self-executing and their exercise by the voters cannot be hindered or impeded statute or hyper-technical administration. The right to petition the government and of freedom of speech and associated rights, all at issue in this case, involve core political speech and core political rights. As stated herein, the Secretary’s administration of the statutes intended to implement, not obstruct, the Initiative Amendments impose severe burdens on those rights. So, too, do the statutes barring circulators from exercising their rights to free speech and to petition the government by circulating petitions and then denying them the ability to witness the signatures of other circulators.


The Consent Order did not and could not authorize the Secretary to impose jurisdiction conditions on out-of-state circulators. The Secretary’s affirmative jurisdiction submission requirements for out-of-state circulators are invalid and unenforceable. The petitions of the out-of-state circulators and the elector signatures contained on those petitions should be restored.

The Secretary should have applied the constitutional standards for the implementation and administration of the Initiative Amendments throughout her decision. Her failure to do so, skewed her decision against the Ballot Initiative. The Secretary's erroneous and hyper-technical exclusion of the "ditto" date signatures is one example of the Secretary's failure to apply these standards.

The Committee respectfully asks this Court to reverse the Secretary on each of the Secretary's rulings as raised herein. The Committee further respectfully asks this Court to restore the Ballot Initiative to the ballot for the November general election so that Maine voters can debate it on the merits and cast their votes as they see fit, just as the Initiative Amendments always intended.

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Respectfully submitted,



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