

STATE OF MAINE  
CUMBERLAND COUNTY

DOCKET NO. AP-2026-10

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.*

**PETITIONERS' POST-REMAND  
RESPONSE BRIEF**

REC'D CUMB CLERKS DFC  
JUN 9 12 54 PM '26

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## INTRODUCTION

Protect Girls Sports' (PGS) brief only confirms that the Secretary got things right in her Revised Determination. Among other things, PGS does not dispute that circulators Vasquez and Mays abandoned their petition sheets and that the Secretary was correct to invalidate their petition sheets from the days in question. Nor does PGS dispute that Rokelle Harris's petition sheets were composed entirely of invalid signatures. Indeed, PGS disputes essentially *none* of the Secretary's factual findings, including that four non-resident circulators failed to consent to Maine's jurisdiction *while* circulating petitions in Maine. Accordingly, the Court should accept the Secretary's factual findings which, under Maine law, require concluding that PGS's petition **falls 532 signatures short** of the required number needed to qualify for the ballot.

Unable to find fault with the Secretary's findings or her faithful application of Maine's ballot initiative rules, PGS instead makes the extraordinary ask that the Court disregard Maine law and excuse PGS's noncompliance with its express requirements. In particular, PGS hitches nearly its entire appeal to the novel theory that the Secretary has no authority to invalidate petition sheets from four non-resident circulators who failed to submit to Maine's jurisdiction. PGS's theory on this score is deeply confusing but appears to boil down to the idea 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, not least of all because by its plain text the Maine Constitution categorically *bans* non-resident circulators. They are only permitted to now operate in Maine as the result of a recent federal consent decree, entered into by the Secretary, and only if the circulator submits to Maine's jurisdiction. *See We the People PAC v. Bellows, et al.*, Case 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. After all, it recruited (and typically paid) *120 non-resident circulators*, who came to Maine and collectively submitted *over*

41,000 signatures on behalf of PGS—close to 60 percent of the signatures initially validated by the Secretary. In other words, absent the Consent Order, PGS’s petition would go up in smoke. Yet nearly the entirety of PGS’s brief is spent *attacking* the Consent Order and the Secretary’s authority to carry out its terms. PGS seems to want the *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 federal court orders are not buffets, and PGS cannot simply pick and choose which aspects of the Consent Order it wants to apply.

PGS’s theory mangles many basic precepts, any one of which dooms its argument. To start, the Secretary—as the officer charged by the Legislature with enforcing Maine’s circulator rules—indisputably has the duty to abide by *both* state and federal law in carrying out her charge. PGS repeatedly claims that the Secretary is restricted to enforcing Maine’s Constitution as written—save the portions PGS does not like, such as the residency rule, of course—but ignores that she must *also* do so in a manner consistent with federal law. That duty is relevant here, where two federal court decisions and the federal Consent Order make clear the Secretary *can* enforce the residency rule, as required by Maine law, save as to circulators who “first submit to the jurisdiction of the state of Maine.” *We the People PAC v. Bellows*, 40 F.4th 1, 9 (1st Cir. 2022) (quoting *We the People PAC v. Bellows*, 519 F. Supp. 3d 13, 52–53 (D. Me. 2021)). PGS also claims the Secretary is prohibited from carrying out the Consent Order’s terms and that the Consent Order itself may be “*ultra vires*.” PGS Post-Remand Br. 22. All of that is wrong. Federal courts routinely issue orders with which state officials must comply, and the Consent Order itself acts as a binding federal judgment. And even if the Consent Order *were* deficient in some way—which, again, would only make things *worse* for PGS—no Maine court can afford relief by modifying or setting

aside a binding *federal* decree. Simply put, the Consent Order is binding and compels the Secretary to enforce *all* its terms—not just those convenient for PGS.

PGS's handful of remaining arguments fare no better. It claims, for example, that upholding the Consent Order violates the constitutional rights of Maine electors. Even assuming PGS has standing to assert such claims on behalf of unidentified electors, it cites no authority for the notion that voters have a constitutional right to submit petition signatures to circulators who violate the laws governing petition circulation. Both federal and state authority refute that notion which, if accepted, would eviscerate all circulator regulations. Next, PGS claims that Maine's common sense notary regulations violate constitutional rights. Not so. Those rules permit notaries in Maine to 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 such obvious conflicts of interest. Lastly, PGS attacks the clear prohibition on the use of ditto marks for certain petition fields in 21-A M.R.S. § 354. But PGS's complaint reflects a bare policy disagreement with the Legislature, not any viable legal theory.

In sum, the Secretary's conclusion—that the Measure failed to obtain enough valid signatures—is firmly rooted in factual findings that are not clearly erroneous, and PGS's attacks on that conclusion largely boil down to a plea to excuse or exempt clear violations of Maine law. The Court can resolve this case by rejecting PGS's last-ditch attacks and upholding the Secretary's Revised Determination. However, to the extent it adversely modifies any finding by the Secretary, the Court must then grapple with a litany of outstanding challenges raised by Petitioners, any

number (or combination) of which also suffice to doom the Measure. Accordingly, whichever approach the Court takes, the end is the same: it must affirm the Revised Determination.

### ARGUMENT

**I. The Secretary properly rejected petitions submitted by out-of-state circulators who did not consent to Maine’s jurisdiction.**

**A. The Secretary did not clearly err in concluding that four circulators failed to submit to Maine’s jurisdiction and accordingly did not properly circulate petitions.**

PGS makes little effort to disturb the Secretary’s factual finding 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. Yet PGS only reaches this elemental question after laboring to erase this requirement from the Consent Order. PGS’s attempt to avoid the issue is not surprising; the record amply supports the Secretary’s determination. In fact, even when it finally reaches the question, PGS does not even bother to contend that Chukwuma, Albert, or Hakeem consented to Maine’s jurisdiction, nor is there any evidence in the record that could possibly support such a finding. Indeed, all three of these circulators failed to appear at the post-remand hearing altogether.

PGS does attempt to argue that at least one circulator—Cairo—adequately submitted to jurisdiction after-the-fact, but that argument should be rejected. PGS does not dispute the Secretary’s finding that Cairo did not 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 to *not* check the box on her circulator affidavit submitting to Maine’s jurisdiction during PGS’s petition drive, due to never resolved questions she had about the consequences of doing so. *See* R.033405–06; R.033410–11;

R.033415–16. 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. R.033353–54. 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 does not even try to clear. Nor could it, given Cairo’s *repeated* and consistent testimony that she purposefully chose not to consent to Maine’s jurisdiction while collecting signatures due to concerns that were never addressed, *see, e.g.*, R.033405–06; R.033410–11; R.033415–16.

Instead, PGS contends that it was sufficient under the Consent Order that Cairo submitted a new affidavit *months* after the circulation period ended. *See* PGS Post-Remand Br. 25–29. That too is wrong. In support, PGS asserts that the Consent Order does not explicitly say exactly “*when* an out-of-state circulator must confirm their agreement to submit to the State’s jurisdiction.” PGS Post-Remand Br. 25. But that too-cute-by-half argument goes nowhere because a different provision of Maine law answers that question. Specifically, § 903-A makes clear that circulators must submit their affidavits—the forms used to determine whether a circulator is qualified—“*at the time the petition is filed.*” 21-A M.R.S. § 903-A(4) (emphasis added).

As both Petitioners and the Secretary have explained at length, not only is PGS’s position contrary to explicit Maine law, it makes no sense to permit after-the-fact submission of an affidavit, the entire purpose of which is to ensure (1) that circulators follow the law *while circulating petitions* and, (2) that they are subject to Maine’s jurisdiction when election officials review the circulator’s work. *See* Pets.’ Post-Remand Br. 14–16; *see also* SOS Post-Remand Br. 21–22 (describing the “bizarre and unworkable” results of PGS’s “deadline-free approach”); R.033353–55 (similar). What’s more, the term “petition” in § 903-A—as in § 902—refers specifically to the

sheets that circulators submit to town clerks. Consistent with the law, the Secretary’s instructions contemplate these forms being processed *before* municipal clerks review signatures. *See* R.0098 (instructing municipal clerks to “invalidate” signatures by circulators who have not previously submitted an affidavit). Given town registrars’ duty to invalidate signatures from non-compliant circulators, it is not even clear *how* registrars or the Secretary could practically review the validity of a petition sheet submitted to them without first confirming that the circulator has consented to Maine’s jurisdiction. On PGS’s reasoning, non-resident circulators could decline to submit to Maine’s jurisdiction when they submit their affidavits—requiring election officials to reject their petition sheets *en masse*—only to then revive their petition sheets months after the Secretary makes a validity determination by suddenly declaring their submission to Maine’s jurisdiction. Maine law plainly does not contemplate, much less *require*, such an absurd outcome.<sup>1</sup>

PGS responds that § 903-A cannot answer this timing question because it does not refer specifically to out-of-state circulators. *See* PGS Post-Remand Br. 27. 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 . . .”). And it further makes clear that the circulator affidavit is the mechanism Maine law employs for establishing a circulator’s qualification. *See id.* § 903-A(4)(B)–(D). Indeed, PGS fails to explain how else hundreds of circulators engaged in the petition process even *could* indicate their consent to Maine’s

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<sup>1</sup> Section 903-A also supplies the answer to PGS’s half-hearted due process argument, *see* PGS Post-Remand Br. 26–27, which speculates that circulators have no idea when they must submit their affidavits under the Consent Order. They must do so when Maine law clearly directs they must: “at the time the petition is filed.” 21-A M.R.S. § 903-A. Even if § 903-A was not so clear, sheer common sense should tell a circulator that they must submit their affidavit *before* turning in their own work, and at minimum before the Secretary renders her determination of validity on the entire initiative. *See Civ. Serv. Comm’n v. Nat’l Ass’n of Letter Carriers*, 413 U.S. 548, 579 (1973) (explaining due process only requires clarity sufficient for an “ordinary person exercising ordinary common sense” to understand).

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. And Maine law is equally clear that the Secretary can design and issue all relevant forms, including the circulator affidavit. *See* 21-A M.R.S. § 21.

Even setting aside § 903-A and reading the Consent Order in complete isolation, as PGS urges, requires rejecting PGS’s view. To start, 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 9 (quoting *We the People PAC*, 519 F. Supp. 3d at 52–53) (emphasis added). The Consent Order goes on to require non-resident circulators to take various steps “for the duration of the petition drive,” reinforcing that timing point. Consent Order at 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. Section 905 requires the Secretary to make her determination “within 30 business days from the date of filing” in her office, at which point she no longer has any reason to enforce the residency rule at all as to that particular initiative. 21-A M.R.S. § 905. The mere fact that the Consent Order does not spell out in granularity this rather obvious sequencing requirement is no reason to blow a mile-wide hole into the very rule it creates—a requirement to submit to Maine’s jurisdiction in order to preserve “the State’s strong interest in protecting its elections.” *We the People PAC*, 519 F. Supp. 3d at 46. 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, 910 (explaining Maine courts do not “construe statutory language to effect absurd, illogical, or inconsistent results”).<sup>2</sup>

Finally, even if the Consent Order could be contorted to permit belated consent *after* the circulation period in cases of innocent mistake, the Court should not permit such *ex post facto* consent here. As the Secretary found, Cairo gave very specific and consistent testimony that she *knowingly declined to submit to Maine's jurisdiction* while circulating petitions. *See* R.033335 ¶ 97; SOS Post-Remand Br. 23–24. She had questions about submitting to Maine jurisdiction, those questions were not answered, and so she intentionally refrained from checking the box submitting to jurisdiction. *See, e.g.*, R.033405–06; R.033410–11; R.033415–16. The Secretary surely can discount petitions submitted by out-of-state circulators who consciously *refuse* to consent to jurisdiction while operating in Maine. Any other rule would make it all but impossible for Maine to enforce other laws governing circulators. *See, e.g.*, 21-A M.R.S. § 904.

**B. The Secretary of State has the authority—and legal obligation—to comply with federal consent decrees and determinative rulings of federal law.**

Because PGS cannot seriously say these four circulators complied with the Consent Order, it spends most of its brief searching for a way *around* the Consent Order. But that creates a

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<sup>2</sup> The Secretary—as an actual party to the Consent Order and the officer tasked with both carrying out its terms and determining petition validity—should also be entitled to deference in how to construe it. After all, when a law “administered by an agency is ambiguous, a court will uphold the agency’s interpretation if in its field of expertise, as long as the interpretation is reasonable[.]” *Corinth Pellets, LLC v. Arch Specialty Ins. Co.*, 2021 ME 10, ¶ 36, 246 A.3d 586, 596 (quotation omitted).

conundrum for PGS because the Consent Order is also the only reason why these four non-resident circulators—among 120 out-of-state circulators recruited by PGS—could collect signatures in Maine in the first place. Absent the Consent Order, every single one of the more than 41,000 signatures submitted by these non-resident circulators would immediately 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)*. So PGS instead offers a host of contorted reasoning to explain why it is *not* bound by the Maine Constitution on some issues—like the residency rule in Article IV—while the Secretary *is* bound 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 Maine Constitution’s residency rule.

Contortions aside, PGS’s lodestar argument is also wrong for a host of reasons. To start, the Secretary is the state officer the Legislature has charged with regulating circulators. Like *any* state officer, she must carry out her duties in compliance with federal law, including consent decrees—an obligation PGS simply ignores. The Consent Order itself is a binding federal decree that compels the Secretary to act in compliance with its terms, upon pain of contempt. That Consent Order—which has the same effect as a federal final judgment—cannot be modified, set aside, or ignored by a state court. Even if this Court theoretically *could* direct the Secretary to disregard and violate a binding federal judgment, it has no reason to—the Consent Order best preserves the original intent and purpose of the Maine Constitution’s residency rule while ensuring compliance with the First Amendment. For all its paeans to the Maine Constitution, PGS demands the *exact opposite* of what that charter prescribes—total abolition of the residency rule by judicial fiat, with absolutely no corresponding regulation of out-of-state circulators, even one so modest as submitting to Maine’s jurisdiction by checking a clearly-labeled box.

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

While the Maine Constitution sets forth a relatively comprehensive scheme for regulating direct initiatives, it also empowers the Legislature to “enact laws not inconsistent with the Constitution to establish procedures for determination of the validity of written petitions.” Me. Const. art. IV, pt. 3, § 22. The Legislature has done so by charging the Secretary with “review[ing] all petitions” submitted to her and then “determine[ing] the validity of the petition” through a “written decision stating the reasons for the decision.” 21-A M.R.S. § 905(1). Determining the validity of the petition plainly includes assessing the qualifications of circulators because both the Constitution and statutory law prescribe various requirements for circulators. *See, e.g.*, Me. Const. art. IV, pt. 3, § 20; 21-A M.R.S. §§ 902, 903-C, 904. This includes the requirement that they “shall execute an affidavit” swearing to abide by Maine’s circulator rules and that they “file [that] affidavit with the Secretary of State” before their petition sheets are evaluated. 21-A M.R.S. § 903-A(4). The Legislature has further charged the Secretary with designing and issuing all relevant forms that Title 21-A requires, including the circulator affidavit mandated by § 903-A. *See* 21-A M.R.S. § 21.

PGS appears to quarrel with none of this, even as these provisos make clear that the Legislature—pursuant to clear constitutional authority—has charged the Secretary as “the constitutional officer entrusted with administering—and having expertise in—the laws pertaining to the direct initiative process,” *Reed v. Sec’y of State*, 2020 ME 57, ¶ 14, 232 A.3d 202, 209. Indeed, the Law 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, 80 (citing *In re Op. of the Justices*, 116 Me.

557, 580–82, 103 A. 761, 771–72 (1917)) (emphasis added). And many Law Court decisions recognize that this “plenary power” includes the authority to determine whether circulators are legally qualified to operate in Maine and to invalidate petitions submitted by circulators who do not follow the rules. *See, e.g., MTAN*, 2002 ME 64, ¶ 12; *Hart v. Sec’y of State*, 1998 ME 189, ¶ 6, 715 A.2d 165, 167; *Jones v. Sec’y of State*, 2020 ME 113, ¶ 35, 238 A.3d 982, 993; *Knutson v. Dep’t of Sec’y of State*, 2008 ME 124, ¶ 16, 954 A.2d 1054, 1060.

PGS’s actual quarrel appears to be that the Secretary is enforcing 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. But that criticism is a non-sequitur because 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, as the U.S. Supreme Court explained more than a century-and-a-half ago, 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). In keeping with that duty, both the Maine and U.S. Constitutions *expressly* oblige the Secretary to swear an oath to act in accordance with the U.S. Constitution. *See* Me. Const. art IX, § 1; U.S. Const. art. VI.

It is therefore beyond dispute that the Secretary must carry out her supervisory duties over petition circulators in compliance with *both* Maine and federal law. Two federal courts with

jurisdiction over Maine—the First Circuit and a Maine federal district court—have delineated how Maine’s circulator residency rule may lawfully be enforced under the First Amendment. *See We the People PAC*, 40 F.4th at 20; *We the People PAC*, 519 F. Supp. 3d at 53. Those courts both 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* constitutionally enforce the residency rule so long as she does not do so when a non-resident circulator “first submit[s]” to Maine’s jurisdiction. *Id.* Even apart from the ensuing Consent Order, *see supra* § I.B.2, there is nothing remarkable or problematic about the Secretary enforcing the residency rule—a duty she is charged with under Maine law—in a manner consistent with this precedential ruling of the First Circuit in a case to which she herself was a party. PGS’s only answer is to wrongly insist that the Secretary is rigidly bound to enforce her duties as written in the Maine Constitution, blind to these federal holdings and judgments. *See* PGS Post-Remand Br. 20. That is simply wrong. There is no question that “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., Tenn. 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.”). PGS wrongly suggests that the Secretary is bound to either enforce the Maine Constitution as written or not at all. But it is commonplace for state officers to continue enforcing state laws subject to application-specific federal limitations. *See generally Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328–31 (2006) (collecting authority).

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

Even apart from the general obligation to act in compliance with the U.S. Constitution, the Secretary indisputably is bound to adhere to specific federal court orders directed to her in her official capacity. PGS contends the Consent Order cannot “empower the Secretary to violate or circumvent the Maine Constitution.” PGS Post-Remand Br. 20. But nearly every aspect of that assertion is wrong. To start, a federal consent decree is *not* a grant of authority, as PGS misconstrues it, but rather an order that *binds* a party to act a certain way. 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, e.g., Frew v. Hawkins*, 540 U.S. 431, 440 (2004). This includes a state constitution, which cannot trump such a federal decree. Indeed, as Chief Justice Marshall warned two centuries ago, permitting state legislative enactments to “annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments” would render “the [federal] constitution . . . a solemn mockery.” *United States v. Peters*, 9 U.S. (5 Cranch) 115, 136 (1809). The bottom line is that the Secretary *must* act in accordance with the Consent Order, state law notwithstanding.

Shifting tacks, PGS also appears to argue that the Secretary lacked authority to 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* PGS Post-Remand Br. 21–22. 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. *See 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 Supremacy Clause makes federal law paramount over the contrary positions of state officials; 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) ("Under the Supremacy Clause of the United States Constitution, 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, *see* PGS Post-Remand Br. 20—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 (or any other Maine court) to simply look past the Consent Order, such a request must be squarely rejected. While a federal consent decree can be modified or set aside, *see Horne v. Flores*, 557 U.S. 433, 447–48 (2009), it goes without saying that only a *federal* tribunal can modify such 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. Nothing about a consent decree—which has the same effect as a final judgment—changes

that basic precept. See *Del. Valley Citizens' Council for Clean Air v. Pennsylvania*, 755 F.2d 38, 45 (3d Cir. 1985) (explaining in a case involving a consent decree that it is “settled law that a final federal court judgment based on federal law cannot be collaterally attacked by a state court”); *Nat'l R.R. Passenger Corp. v. Pa. Pub. Util. Comm'n*, 342 F.3d 242, 259–60 (3d Cir. 2003) (holding state court may not issue order that nullifies federal consent decree); *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 434 (5th Cir. 2011) (observing that “a state court . . . lack[s] power to vacate [a] federal court’s consent decree”). Accordingly, even though PGS mistakenly believes the federal court could not “authorize the Secretary to impose conditions on out-of-state circulators,” PGS Post-Remand Br. 19, and “that the Consent Order’s conditions on out-of-state circulators [are] *ultra vires*,” *id.* at 22, it can obtain no relief on either misguided theory from any Maine court.

**3. PGS’s desired modification of the Consent Order is nonsensical in any event.**

Finally, setting aside that the Consent Order and the First Circuit’s precedential decision already resolve this issue, it bears emphasis that PGS’s argument is fundamentally illogical. One of two things is true: (1) the Consent Order is valid and binding on the Secretary, in which case non-resident circulators can operate in Maine so long as they properly consent to its jurisdiction; or (2) Judge Woodcock’s actions, including his entry of the Consent Order, are somehow void, and Maine’s longstanding residency rule is in full effect. PGS loses either way. Recognizing that problem, PGS asks this Court to impose the least sensible combination of rules—permitting non-resident circulators in Maine but *without* any jurisdictional obligations. The Court *cannot* afford that remedy for the reasons above, coupled with the fact that “the Law Court has never overruled

*Hart or Jones*,” as PGS admits. PGS Post-Remand Br. 19. But there are also two additional reasons why no court has afforded that relief.

*First*, the First Circuit’s reasoning in *We the People PAC* makes clear that Maine’s residency rule is not wholly invalid, but rather 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 will permit, rather than enjoining it entirely. *See We the People PAC*, 40 F.4th at 20.

*Second*, even if this court were a policymaking body drafting 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, as the Secretary ably explained. *See SOS Post-Remand Br. 17; R.033355*. 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 the Law Court, *see Hart*, 1998 ME 189, ¶ 13. While the Consent Order has obliged Maine to crack open the door to circulators from away, it is clear the best way to preserve Maine’s default constitutional rule is through a limited exception, rather than tossing out the residency rule entirely. *See Ayotte*,

546 U.S. at 329 (explaining federal courts “try not to nullify more of a legislature’s work than is necessary”). 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 readily continue to apply the residency rule to out-of-state circulators who do 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. There is no federal constitutional right to submit a petition signature to an unqualified, non-resident circulator who has refused Maine’s jurisdiction.**

Finally, PGS argues that invalidating petition sheets from non-resident circulators violates the political rights of Maine electors. *See* PGS Post-Remand Br. 24–25, 29–32. Even assuming PGS can assert that theory on behalf of unidentified Maine electors, it cites no authority—state or federal—for the notion that voters have a constitutional right to submit their signatures to unqualified circulators or circulators who violate the law. *See generally id.* Indeed, the most on point federal decision *rejects* that argument. *See Hoffman v. Sec’y of State*, 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). Moreover, as decisions from both the Law Court and First Circuit make clear, Maine is free to enforce reasonable restrictions on circulators without offending either the state or federal constitutions. *See, e.g., We the People PAC*, 40 F.4th at 20–21; *Hart*, 1998 ME 189 ¶ 13; *Jones*, 2020 ME 113, ¶ 17.<sup>3</sup>

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<sup>3</sup> PGS argues that Maine courts should liberally construe the Constitution to facilitate voter participation. *See* PGS Post-Remand Br. 25. But that principle, first articulated in *Allen v. Quinn*, applies only when a constitutional provision is ambiguous. *See* 459 A.2d 1098, 1102–03 (1983).

Finally, there is no need to “resolve[]” supposed ambiguity between the federal and state court decisions on the residency rule. PGS Post-Remand Br. 31. This Court is bound by *Hart*, which PGS agrees has not been overruled. *See id.* at 18. And the mere fact that different courts reached different conclusions about federal law is unremarkable—and certainly not an invitation for this Court to rewrite Law Court or First Circuit precedent that PGS dislikes.

**II. Maine’s commonsense conflict of interest rules for notaries do not violate the First Amendment or constitute viewpoint discrimination.**

The Secretary properly invalidated petitions notarized by De Clercq and Harrington, who—prior to performing these notarial acts for PGS—first circulated petitions on behalf of the Measure. Having done such work for PGS, De Clercq and Harrington were no longer “authorized to administer an oath or affirmation” to PGS’s other circulators under Maine law. *See* 21-A M.R.S. § 903-E(1) (providing that a “notary public or other person authorized by law to administer oaths” is not “authorized to administer an oath or affirmation to the circulator of a petition under section 902” if they have provided non-notarial services to the measure); *see also Reed*, 2020 ME 57, ¶ 19 (affirming Secretary’s invalidation of petition sheets under this provision).

PGS does not dispute that De Clercq and Harrington transgressed a clearly established Maine notary law. Instead, PGS argues that Maine’s commonsense conflict-of-interest rule for notaries constitutes impermissible viewpoint discrimination against circulators, or alternatively that they place an undue burden on their petitioning rights. PGS Post-Remand Br. 31–34 (alleging the law “as written” violates the speech and petitioning rights of circulators under the First Amendment and Article I, Sections 4 and 15 of the Maine Constitution).

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Moreover, that principle existed at the time the Law Court decided *Hart*, which nonetheless confirmed the Secretary’s authority to invalidate petition sheets from unqualified circulators.

This constitutional line of attack is confused from the start because Maine's conflict-of-interest rule for notaries does not regulate speech or petitioning conduct *at all*. There is no question that 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. They appear to have done so without issue, as the Secretary did not invalidate any petition sheets circulated by De Clercq or Harrington.

What PGS's argument actually asserts is a constitutional right to engage in *notarial acts*, regardless of any reasonable state regulation of notaries. But PGS provides no authority for such a freestanding constitutional right. Nor does such a right make sense when it comes to notarial conduct. Notaries public are state-licensed officers who perform a public function. *See, e.g., 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."). Under Maine law they are "commissioned . . . by the Secretary of State," 4 M.R.S. § 1902(7), to perform notarial acts "under the laws of this State," *id.* § 1902(5). Accordingly, licensed notaries in Maine perform a *public* duty pursuant to a comprehensive set of rules and laws they are bound to follow. *See* 4 M.R.S. § 1901, *et seq.*; *see also* PGS Post-Remand Br. 33 (agreeing notaries are "entrusted with a critical public function"). To ensure the integrity of that public function, Maine's 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 already provided other services for—is simply one such conflict rule. *See, e.g., id.* § 1904(3)-(4). These regulations on a notary's performance of their *notarial* work have nothing to do with their speech or petition rights. And in regulating notarial acts, States

plainly have legitimate interest in ensuring that officers engaged in such work are perceived as impartial, disinterested, and trustworthy. *See, e.g., Klem v. Wash. Mut. Bank*, 176 Wash. 2d 771, 793 (2013) (“The proper functioning of the legal system depends 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[.]”).

Further, PGS fails to show that a claimed right to engage in notarial acts amounts to viewpoint discrimination or a burden on constitutional rights. “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 Legal Def. & Educ. Fund*, 473 U.S. 788, 806 (1985). The fact that a law may incidentally burden certain viewpoints does not make it viewpoint discrimination, however. *See, e.g., McGuire*, 386 F.3d at 57–59, 64–65 (explaining that 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). Rather, 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).

PGS offers no authority supporting its novel assertion that a notarial conflict-of-interest law constitutes impermissible viewpoint discrimination. PGS argues that the notary statutes are viewpoint discrimination because they “allow a notary to speak out publicly *against* an initiative

while still lawfully notarizing petitions.” PGS Post-Remand Br. 34. This makes little sense. The conflict rule applies regardless of the subject matter of a given ballot measure. In other words, a notary circulating for an initiative that seeks the *opposite* of the present Measure would be bound by the same notary rule. And Maine’s ballot initiatives in recent years have concerned everything from replacing the Maine flag, to legalizing marijuana, erecting transmission lines, reforming campaign finance laws, and limiting absentee voting. Maine’s notary rule plainly does *not* draw distinctions based on the viewpoint of a given notary who circulates petitions for any of these diverse issues. Instead, it narrowly precludes a person from engaging in very specific and highly regulated conduct—notarizing petitions—if they have certain conflicts of interest, no matter the content of a given petition. 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. *In re Op. of the Justices*, 116 Me. at 569; *Palesky v. Sec’y of State*, 1998 ME 103, ¶ 11, 711 A.2d 129, 133. Here, the petition sheets notarized by De Clercq and Harrington lacked this indispensable accompaniment.

PGS also offers no basis to conclude that this conflict-of-interest law places a substantial burden on core political speech. Again, notaries in Maine are free to *circulate* as many petitions as they wish, to *collect* as many valid signatures as they wish, and to *say* anything they wish any which way about any initiative. Nevertheless, PGS simply assumes without elaborating that “strict scrutiny” applies. PGS Post-Remand Br. 32. That theory runs headlong into the Law Court’s repeated admonition that the level of scrutiny under the Constitution tracks the extent of the burden that a claimant demonstrates. *See, e.g., Jones*, 2020 ME 113, ¶¶ 23–24 (citing *McIntyre v. Ohio*

*Elections Comm'n*, 514 U.S. 334, 345 (1995)). And there simply is no basis for applying strict scrutiny in this context, because the general notary law does not prevent anyone from circulating petitions or speaking out in favor of an initiative. Accordingly, courts have upheld similar requirements for notaries in other States. *See Gathercoal v. Purcell*, 271 Ga. 26, 517 S.E.2d 780 (1999) (upholding invalidation of petition pages notarized by disqualified circulator before *or* after notary circulated petitions under Georgia’s notary conflict-of-interest law); *Citizens Comm. to Recall Rizzo v. Bd. of Elections of City & Cnty. of Phila.*, 470 Pa. 1, 22, 367 A.2d 232, 242 (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. v. White*, 415 U.S. 767, 787 (1974) (upholding enforcement of Texas’ notary requirements for valid circulator petitions against First Amendment challenge); *Miller v. Thurston*, 967 F.3d 727 (8th Cir. 2020) (similar in Arkansas); *Tripp v. Scholz*, 872 F.3d 857 (7th Cir. 2017) (similar in Illinois); *Howlette v. City of Richmond*, 580 F.2d 704 (4th Cir. 1978) (similar in Virginia).

Finally, even if strict scrutiny applies (and it clearly does not), the law plainly serves a compelling state interest in ensuring that notaries are disinterested and impartial administrators of oaths and it is narrowly tailored to further that interest. *See, e.g., Am. Party of Tex.*, 415 U.S. at 787 (holding that Texas’s petition notarization law served a compelling state interest in guarding against fraud during the circulation process); *Reed*, 2020 ME 57, ¶ 21 (similar). PGS again provides the Court with nothing to support its claim that invalidating a petition that lacks the necessary “verification” is an improper remedy. *See* PGS Post-Remand Br. 31. All PGS says is that Maine could take other measures to “monitor potential conflicts of interest without chilling notaries’ speech,” *id.*, without offering a single such “alternative,” a shortcoming that alone dooms their strict scrutiny argument. *Am. Party of Tex.*, 415 U.S. at 787 (noting failure to offer meaningful

alternatives undermined argument that challenged notary law was not appropriately tailored). The argument is illogical in any event, because there is nothing in the statute that stops a notary who wants to circulate a petition from doing so; they simply must refrain from *also* performing what PGS agrees is a “critical public function” for the same campaign. PGS Post-Remand Br. 33. The Law Court therefore had no trouble recently affirming the Secretary’s decision to invalidate petition sheets that failed to comply with the very same notary conflict-of-interest laws at issue here. *Reed*, 2020 ME 57, ¶ 19; *see also Palesky*, 1998 ME 103, ¶ 11. This Court should reject PGS’s invitation to defy that sensible conclusion.

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

The Maine Constitution expressly requires the date for each petition signature to be “written” next to the voter’s signature. *See* 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—makes clear that “[d]itto marks are permitted for residence address and municipality of registration *only*.” 21-A M.R.S. § 354(4) (emphasis added). In view of this clear language, the Secretary has traditionally applied § 354(4) to prohibit the use of ditto marks in other fields, such as the date field. *See* Decision of the Sec’y of State at 23, *In re: Challenges to the Nomination of Slate of Presidential Electors to Support Dr. Cornel West* (Me. Aug. 20, 2024) (“*Cornel West*”).<sup>4</sup> As the *Cornel West* decision explained, 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.”). But the Legislature later added that term to—in the Secretary’s words—“sen[d] a clear message that use of ditto marks is to be strictly

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<sup>4</sup> Available at <https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/FINAL%20-%20West%20Decision.pdf>.

confined to residence information.” *Cornel West*, at 23. And as the Secretary has further explained, this prohibition serves the useful purpose of ensuring that “signers of a petition form circulated over multiple days use the correct date,” which is often critical in determining the signature’s validity. *See* SOS Rule 80C Br. 34. Accordingly, the Secretary’s invalidation of 39 signatures for use of ditto marks in the date field was a straightforwardly correct application of Maine law.

PGS does not dispute this reading of Maine law, nor does it contend that application of this law violates any constitutional right. *See* PGS Post-Remand Br. 35–37. Indeed, PGS’s argument on this score amounts to little more than a dislike of current Maine law. But in that case PGS’s quarrel is with the *Legislature* that enacted § 354. “It 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). This Court, like the Secretary, is “bound by the Legislature’s choice of language.” *Knutson*, 2008 ME 124, ¶ 28.

The one legal argument PGS does appear to venture is the theory that the restriction on ditto marks falls beyond the “self-executing” nature of what it calls the “Initiative Amendments.” *See* PGS Post-Remand Br. 36. But the same provision of the Constitution that PGS cites makes clear that the Initiative Amendments were designed to be “self executing” upon enactment and only “[u]ntil the Legislature shall enact further laws not inconsistent with the Constitution for applying” those amendments. Me. Const. art. IV, pt. 3, § 22. PGS cites no authority to suggest the phrase “self executing” in § 22 prohibits the Legislature from enacting basic regulations to carry out the initiative process; to the contrary, the provision makes clear the Legislature is expressly empowered to do just that so long as it does not conflict with the Constitution. *See id.* And nothing in the Constitution prohibits a prophylactic ban on ditto marks for certain fields. If anything, the

Constitution itself already prohibits the use of ditto marks by requiring the date to be “written” next to the voter’s signature—not merely indicated by ditto marks. *See id.* § 18(2).

**IV. While the Secretary provides ample grounds to affirm the Revised Determination, the Court should revisit certain additional decisions of the Secretary as necessary.**

As noted, the Court can set this case to rest simply by affirming the Secretary on the foregoing issues. *See* Pets.’ Post-Remand Br. 19, 40. Should the Court disagree with any of the Secretary’s determinations, however, Petitioners’ preserved challenges, briefly summarized below, necessarily come back into play. *See* SOS Post-Remand Br. 32. If the Court reaches these additional issues, Petitioners reiterate that many more signatures must be invalidated under Challenges 1, 5, 14, 15, 18, 19, 20, and 21.<sup>5</sup>

**A. The Secretary should be required, if necessary, to further evaluate specific petition sheets from Jean-Baptiste, Jackson, and Turner that bear unmistakable indicia of fraud (Challenge 19).**

Challenge 19 concerns evidence of wrongdoing and likely fraud by three petition circulators—Jean-Baptiste, Jackson, and Turner. Petitioners adduced substantial evidence of wrongdoing by these circulators. Petitioners have already summarized this evidence in painstaking detail—and, as the Secretary’s response reveals, nearly all of it is undisputed. *See* Pets.’ Post-Remand Br. 20–40; *see also* SOS Post-Remand Br. 32–37. That record is sufficient to invalidate petitions circulated by these three circulators given the flagrancy of their conduct. *See* Pets.’ Post-Remand Br. 20. At minimum, if the issue becomes material to the outcome of this case, the Court

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<sup>5</sup> The Secretary briefly argues that the law of the case doctrine prevents this Court from correcting any legal errors in its April 24, 2026 decisions regarding Petitioners’ remaining challenges. SOS Post-Remand Br. 38 (citing *Blance v. Alley*, 404 A.2d 587, 589 (Me. 1979)). The Law Court recently confirmed, however, that Rule 80C(m) allows this Court to correct legal errors as needed post-remand and prior to final judgment. Pets.’ Post-Remand Br. 41 & n.4 (citing authority). Petitioners ask that it do so only if necessary. Petitioners otherwise agree with the Secretary’s recognition that their challenges are “fully preserved for appeal.” SOS Post-Remand Br. 38 (citing Rule 80C(m)).

must order the Secretary's office to review the specific petitions in the record that Petitioners have identified as likely fraudulent.

The reasons the Secretary offers to avoid this conclusion, respectfully, do not quite add up. First, Petitioners' request for further review is not a request for a "massive" new undertaking. Petitioners do not ask the Court to order the Secretary to re-review "thousands" more signatures. SOS Post-Remand Br. 32 & n.4. They narrowly request a review of the most troubling petition pages—which their briefing clearly identifies—where it is impossible to believe the circulator at issue swore an honest oath. *See* Pets.' Post-Remand Br. 20–40. The record in this matter shows that at least some of the petition pages and signatures that have been counted are likely fraudulent. *See id.* And, as explained in Petitioners' opening brief, the Secretary's office does not have discretion to ignore indications of fraud that have been presented to it. *See id.* at 40, 49.

Additionally, the Secretary suggests further review is unwarranted because all three circulators already had many of their signatures invalidated. SOS Post-Remand Br. 35–37. Respectfully, that supports *Petitioners'* argument. While election officials invalidated *most* of the signatures on these tainted petition sheets, the fact that these circulators managed to slip a few past the goalie, so to speak, is precisely why the Secretary should be required to double check the work of local registrars on particularly problematic forms. Indeed, the Secretary agrees that many of these problematic sheets bear "indication of fraud," but does not explain how the remaining *validated* signatures can then be counted. Double checking these ostensibly valid signatures is therefore critical to "the integrity of the initiative and referendum process." *MTAN*, 2002 ME 64, ¶ 13. For these reasons and those that have been detailed previously, it would be an abuse of discretion not to review at least the most obviously suspicious petition pages and signatures

identified by Petitioners, should those signatures become dispositive. *See generally* Pets.’ Post-Remand Br. 20–40.

**B. The Court should, as needed, invalidate signatures collected by petition organizations that indisputably failed to comply with Maine law (Challenge 1).**

The Secretary maintains that Petitioners waived Challenge 1, concerning petition organizations, for not “specifically” stating in their Petition that the “failure to comply with the registration requirements” provided a basis for rejecting the ballot measure. SOS Post-Remand Br. 38–39. This position is contrary to the general pleading requirement in the Maine Rules and the fact that it is undisputed that “much of the information concerning petition registration was unavailable prior to the filing of the record.” *Id.*; *see also* Pets.’ Post-Remand Br. 43–44. Rule 80C petitioners have a right to rely on what the *administrative record*—filed after the petition—reveals when pressing their claims, rather than just the public record at the time suit is filed. *See* 5 M.R.S. § 11007; Me. R. Civ. Proc. 80C(g). Holding otherwise would amount to reversible error. *See Sewall v. Spinney Creek Oyster Co.*, 421 A.2d 36, 38 (Me. 1980) (general pleading requirement applies to Rule 80C actions); *Mutty v. Dep’t of Corr.*, 2017 ME 7, ¶ 13, 153 A.3d 775 (construing 5 M.R.S. § 11002, reversing dismissal based on purported lack of specific allegation); *Thomas v. Thompson*, 653 A.2d 417, 420 (Me. 1995) (enforcing waiver requires prejudice).

Finally, while the Secretary suggests that it might be unfair as a matter of policy to reject the petitions circulated by invalid circulator organizations, SOS Post-Remand Br. 39, the Legislature made the registration provision *mandatory*. That decision is that body’s prerogative. *See* Pets.’ Post-Remand Br. 44. Whether it has been subject to prior judicial review or not, *see* SOS Post-Remand Br. 11, the mandatory language of the statute is straightforward and clearly sets forth what is required of petition organizations. These signatures submitted by unregistered circulator organizations are invalid and should be rejected.

**C. The Court should, as needed, determine that Maine’s notarial conflict of interest rule applies to oaths on circulator affidavits (Challenge 5).**

The Court should also rule for Petitioners on Challenge 5 should it become necessary. Here, the Secretary largely reiterates her position that the notary conflict-of-interest law is best read to disqualify conflicted notaries from notarizing petition sheets only, rather than circulator affidavits. SOS Post-Remand Br. 40–41. The text speaks for itself, however, and Petitioners stand on their prior arguments. *See* Pets.’ Post-Remand Br. 45–47. The Secretary’s suggestion that for “the statute to mean what Gilbert asserts it means, the relevant language would need to be amended to ‘oath or affirmation . . . under Title 21-A, sections 902 or 903-A’” also comes up short. SOS Post-Remand Br. 40–41. That argument continues to ignore that § 903-E prohibits administering an oath “*to the circulator* of a petition under section 902”—language for which the Secretary’s argument simply cannot account. Indeed, the Secretary’s alternative formulation would only make sense if § 903-E prohibited “administering an oath” under either § 903-A or § 902—but it does not. The prohibition is directed towards a person, not a specific category of oath. *See* Pets.’ Post-Remand Br. 46. The signatures at issue in Challenge 5 are therefore invalid for the very same reason the signatures at issue in Challenge 6 are invalid.

**D. The Court should, if necessary, invalidate signatures lacking the date required by the Maine Constitution (Challenges 14 and 15).**

Petitioners are also entitled to judgment on Challenges 14 and 15, which concern signatures that are undisputedly undated or materially misdated. It is undisputed that valid dates are “require[d]” by the Maine Constitution. SOS Post-Remand Br. 42 (citing Me. Const. art. IV, pt. 3, § 18(2)). The Secretary’s only argument is that it seeks to “effectuate[] the purpose of the circulator oath and dating requirements” through its review process. But as already explained, the Maine Constitution does not allow that kind of discretion. *See* Pets.’ Post-Remand Br. 51.

**E. The Court should require the Secretary to confirm the registration status of 59 potentially unregistered registers, if necessary (Challenge 18).**

In Challenge 18, Petitioners simply ask the Court to order the Secretary to review the fact that 59 petition signers do not appear on the State's own public voter registration list. This "evidence" is therefore not merely "private analyses." SOS Post-Remand Br. 43. And the *Cornel West* case cited by the Secretary confirms that at least *some* of these individuals identified by Petitioners are likely unregistered, making a second pass on just 59 voters a simple and straightforward remedy. Indeed, federal precedent from within Maine confirms that unregistered persons often have their signatures mistakenly validated by town registrars. *See On Our Terms '97 PAC v. Sec'y of State*, 101 F. Supp. 2d 19, 24 & n.8 (D. Me. 1999). The Secretary's office cannot within the bounds of its discretion ignore evidence indicating that it has accepted invalid signatures. *See* Pets.' Post-Remand Br. 52 (citing cases). Petitioners therefore maintain that they are entitled to this limited form of requested administrative relief.

**F. The Court should enforce the Maine Constitution's clear address and municipality requirements, as necessary (Challenges 20 and 21).**

Finally, Petitioners demonstrated that the signatures at issue in Challenges 20 and 21 are invalid because they lack mandatory address and municipality information. In arguing otherwise, the Secretary's office again relies only on a policy preference accompanied by a request that the Court defer to the office's "longstanding view," despite the clear and mandatory statutory language enacted by the Legislature. *See* SOS Post-Remand Br. 44; *see also* 21-A M.R.S. § 354(4). The Secretary's policy argument that registrars can identify voters through signatures without the required address and municipality information, *see id.*, overlooks important functions that may be served by *the Legislature's* judgment in enacting the provision. For one, if there are questions about fraud or other problems during the petition process, the requirement ensures that *current* information is provided by voters to enable the registrar or the Secretary to contact any implicated

voter(s). As the Law Court recognized in *Jones*, people move, and a “*person can have only one residence at any given time.*” *Jones*, 2020 ME 113, ¶ 14 (quoting 21-A M.R.S. § 112(2)). For these reasons and those stated previously, *see* Pets.’ Post-Remand Br. 53–54, Petitioners maintain that the signatures in these challenges are invalid as a matter of law.

### CONCLUSION

The Court should affirm the Secretary’s Revised Determination.

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Respectfully submitted,

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