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June 8, 2026

BY HAND-DELIVERY
Jennifer Cyr, Clerk
Cumberland County Superior Court
205 Newbury Street
Portland, ME 04101

Re: *Jane Gilbert, et al., v. Shenna Bellows, Maine Secretary of State*
Docket No. PORSC-AP-2026-10

Dear Ms. Cyr:

Pursuant to the Court's Order of May 29, 2026, enclosed for filing please find the Secretary of State's Post-Remand Rule 80C Brief, which was also submitted to the Court by email on June 5, 2026.

Thank you for your attention and assistance in this matter.

Sincerely,

/s/ Jonathan R. Bolton
JONATHAN R. BOLTON
Assistant Attorney General
Maine Bar No. 4597

JRB/lsf
Enclosure
cc by email: All Counsel of Record

STATE OF MAINE
CUMBERLAND, SS

SUPERIOR COURT
DOCKET NO. PORSC-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.

SECRETARY OF STATE'S POST-REMAND RULE 80C BRIEF

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Preliminary Statement

During the remand ordered by this Court, the agency held a two-day evidentiary hearing, received extensive written arguments from both parties, conducted an investigation of one circulator's petitions, and, finally, issued a lengthy recommended decision that, after an opportunity for objections, was adopted in full by the Secretary of State ("Secretary"). During that process, the challengers ("Gilbert") established that two petition circulators engaged in repeated misconduct on Election Day by leaving their petition forms unattended, requiring invalidation of their signatures collected that day. Moreover, based on Gilbert's evidentiary showing, the Presiding Officer directed an investigation into the petition forms of a third circulator, resulting in a determination that none of the 61 signatures on that circulator's petition forms matched the signatures on file for those voters. As a result of these determinations, the number of valid signatures went from just above the constitutional threshold to just below it, and the petition is now 532 signatures short of what is necessary for placement on the November 2026 ballot.

Both parties now make a multitude of arguments attacking the Secretary's determinations on remand, while Gilbert also asks this Court to reconsider all of its rulings against her in the initial appeal. The Court should reject all of these arguments and instead affirm the Secretary's revised determination of validity as written.

The intervenor ballot question committee (the "Committee") does not challenge the Secretary's findings of circulator misconduct on remand and the resulting invalidation of signatures. Instead, it focuses on challenging the propriety of a federal injunction allowing the Secretary to continue to enforce Maine's ban on out-of-state circulators to the extent those circulators fail to consent to Maine's jurisdiction. The federal injunction at issue does not,

contrary to the Committee's arguments, give the Secretary new "ultra vires" powers that conflict with the Maine Constitution. Rather, it simply allows the Secretary to apply an existing constitutional ban on out-of-state circulators against the one category of such circulators who, according to the federal court, are not protected by the First Amendment: those who fail or refuse to consent to Maine's jurisdiction. Moreover, the Secretary may properly require that consent to jurisdiction be made by the time petition forms are submitted and before the constitutional deadline for the filing of a complete petition has passed, which undisputedly did not occur here. The Committee's various other constitutional challenges to the Secretary's actions, among other things, fail to apply the appropriate level of scrutiny, fail to give appropriate weight to the government's compelling interests in policing the integrity of the initiative process, and overstate the burdens placed on petition circulators and signers.

Meanwhile, Gilbert seeks to compel the Secretary (if the Court rules in such a way as to make it outcome-determinative) to conduct a *second* remand proceeding to conduct onerous additional investigations of three circulators. But, as the Secretary determined on remand, Gilbert failed to develop sufficiently persuasive evidence of circulator fraud to warrant such further investigation. Moreover, the Court has already made clear that whether the Secretary orders such additional investigations is entrusted to her considerable, if not complete, discretion. Given the inconclusive evidence of fraud presented on remand, it was not an abuse of that discretion to decline to order the Elections Division to conduct a massive investigation of more than a thousand signatures already certified as authentic by municipal officials.

Finally, particularly given the short timetable for the Court's ruling, it should decline Gilbert's request to revisit each of its rulings against Gilbert's many challenges. Those rulings are law of the case, and the Court is under no obligation to revisit them. What is more, the

Court's initial rulings, which gave appropriate deference to the Secretary's longstanding practices for reviewing petition signatures, were correct on the merits and should not be disturbed.

The Court should affirm the Secretary's revised determination of validity in its entirety.

Background

Initial Appeal

This action is a challenge to the Secretary of State's decision, dated March 17, 2026, to validate a direct initiative petition to enact legislation entitled "An Act to Designate School Sports Participation and Facilities by Sex" (the "Initiative"). Gilbert filed this action on March 27, 2026, under 21-A M.R.S. § 905 and M.R. Civ. P. 80C, asserting 21 numbered challenges to the Secretary's decision. The Committee was granted intervenor status.

The initial action was briefed and decided pursuant to the expedited schedule set forth in 21-A M.R.S.A. § 905(2). The Secretary opposed many of Gilbert's challenges but conceded that she should have invalidated additional signatures pursuant to some of the challenges, specifically Challenges 3, 6, 9, 12, 13, 14, 15, 16, and 17. She also conceded that remand would be appropriate on Challenges 2 and 19 if those challenges appeared to be outcome-determinative. The Secretary calculated that her position in the initial proceeding would result in the petition having at least 68,019 signatures, which was above the constitutional threshold by 337 signatures. Sec'y Rule 80C Br. at 34.

The Court issued its decision and order on April 24, 2026. The Court affirmed the Secretary's determination except in the cases in which the Secretary had conceded agency error or argued that remand for further fact-finding was appropriate. The Court thus remanded the case to the Secretary for further proceedings consistent with its Order, "which may include

correcting the concessions identified herein, taking new evidence, and developing further findings of fact as necessary." D&O at 17. The Court directed the Secretary to issue a new Determination of Validity within 30 days. *Id.* at 18.

Adjudicatory Hearing

On April 24, 2026, the same day the Court issued its Decision and Order, counsel for the Secretary notified Gilbert and the Committee that an evidentiary hearing would be held on May 12, 2026, to hear evidence on the matters remanded to the Secretary. R 033744. The formal Amended Notice of Hearing, issued April 28, 2026, listed four topics on which evidence and argument would be heard:

- Whether the circulators described in Gilbert's Challenge No. 2 engaged in conduct contrary to their circulator's oath and, if so, the effect of such failure on the validity of signatures collected;
- Whether the 31 individual signatures identified as "suspicious" in Gilbert's Challenge Table 19a should be invalidated;
- Whether the two circulators identified in Gilbert's Challenge 19 engaged in misconduct implicating the validity of signatures that they collected and, if so, the effect of such misconduct on the validity of signatures collected;
- Whether the Secretary should, consistent with the Court's legal rulings, correct any of the concessions contained in her Rule 80C brief, including but not limited to whether the Secretary should or should not accept corrected forms from circulators regarding their consent to personal jurisdiction in Maine after the petition's filing (pursuant to Challenge 3) and whether specific signatures identified in Challenges 12, 14, 15, and 16 should be treated as valid or invalid..

R033364.

The adjudicatory hearing was held on May 12 and 13, 2026. Chief Deputy Secretary of State Katherine McBrien served as hearing officer. The parties presented evidence and testimony on the following topics:

Circulation of Petitions at Mount Ararat High School in Topsham on Election Day.

Gilbert presented evidence, including photographs, video, and three eyewitnesses, demonstrating

that the sole circulator working at Mount Ararat High School on Election Day had left his petitions unattended on a table next to the exit to the voting area two times during the day and, on both occasions, voters signed the petitions while they were unattended. *See* R 033323–033326.

Circulation of Petitions at Thornton Academy in Saco on Election Day. Gilbert presented evidence, including photographs, video, and two eyewitnesses, demonstrating that a circulator at Thornton Academy on Election Day left blank petition forms unattended on two occasions and that, in both instances, people signed the petition forms while they were unattended. Moreover, the circulator's testimony that she sequestered and destroyed a petition form containing unwitnessed signatures was contradicted by photographic evidence showing that one of the petition forms with unwitnessed signatures was a visual match for one submitted by that circulator to the Secretary of State for validation. R 033327–033330.

Circulation of Petitions in Auburn on December 7, 2026. Gilbert presented a single witness who testified that she witnessed a circulator at an outdoor event in Auburn hand petition forms to people waiting in line, who then passed those petition forms to others waiting in line, while the circulator stood approximately 15 feet away with his back turned or operating his phone. There was no corroborating photographic or video evidence. R 033330–033331.

Alleged Fraud by Circulator Rokelle Harris. Gilbert presented the testimony of the Oxford Town Clerk that she identified suspicious signatures on petition forms circulated by Rokelle Harris. She testified that she followed up with two voters whose names appeared on the petition forms, who confirmed to her that they did not sign the petitions. Gilbert further presented the testimony of a voter from Hiram whose name appeared on one of Ms. Harris's

petition forms, who testified she had never heard of the petition and did not sign it. R 033331–033332.

Alleged Fraud by Circulators Fritz Jean-Baptiste and Kendrick Jackson. Gilbert cross-examined two circulators about discrepancies contained on some of their petition forms, including duplicate signatures, signatures that did not match voter signatures on file, and instances in which purported voters misspelled their names, addresses, or municipalities. R 033332–033334.

Failure of Cairo to consent to Maine's jurisdiction. The Committee presented testimony by Cairo (full name), who had failed to check the box on her circulator affidavit consenting to the jurisdiction of the State of Maine. Cairo testified that she did not check the box because she was concerned that doing so might require a court appearance during midterm season and that she therefore wished to get a better understanding of the requirement before agreeing to it. The Committee entered into evidence an executed affidavit by Cairo, dated May 6, 2026, consenting to Maine's jurisdiction. The Committee did not present any testimony or corrected affidavits from the other three circulators who failed to consent to Maine's jurisdiction, Kewechi Chukwuma, Albert, Jordan, and Hakeem Ummsalaama. *See* R 033335–033336.

Post-Hearing Process

The parties were asked to file post-hearing briefs no later than May 15, 2026. In the meantime, the Presiding Officer asked Elections Division staff to compare signatures on the Hiram and Oxford petition forms submitted by Circulator Harris to the signatures on those voters' voter registration applications. After staff determined that all signatures on those forms should have been invalidated for ANO—meaning that the voter's signature on the petition did not match the signature on the registration application—the Presiding Officer asked Elections

Division staff to expand their review to all 61 signatures gathered by Circulator Harris. Elections Division staff determined that 100% of those signatures should have been invalidated for ANO as they did not match the signature of the voter. R 033346–033347. For their review, staff used scans of the voter registration applications contained in the State's central voter registration system (CVR) or, if no scan was available in CVR, by asking the relevant municipal clerks to transmit scanned versions of the original card. R 033347.

On May 21, 2026, the Presiding Officer issued her recommended decision. The recommended decision contained 101 proposed findings of fact, followed by legal analysis that included recommendations for resolving Challenges 2 and 19, and recommendations concerning the parties' arguments that the Secretary should revisit certain of her concessions in Superior Court, either to expand or reverse them. Briefly, the recommended decision contained the following legal conclusions:

Mt. Ararat Circulator (Challenge 2). The Presiding Officer's proposed findings of fact established that the circulator, Elias Vasquez, left his petition forms unattended on two occasions, that voters signed the petition forms during each occasion, and that, as a result, Circulator Vasquez could not have reasonably believed that his oath to have witnessed each signature was true and accurate on at least those petition forms he left unattended. However, the evidence did not establish which of the circulator's 10 petition forms from that day contained the unauthorized signatures. Relying on the Law Court's decision in *Maine Taxpayer Action Network v. Secretary of State*, 2002 ME 64, 795 A.2d 75 ["*MTAN*"], the Presiding Officer recommended that all of Circulator Vasquez's petition forms from Election Day be invalidated on grounds that the signatures on those petitions forms were untrustworthy as a result of multiple instances of misconduct occurring on that day. R 033336–033340.

Thornton Academy Circulator (Challenge 2). The Presiding Officer's proposed findings of fact similarly established that the circulator here, Susan Mays, left petition forms unattended on multiple occasions on Election Day, resulting in many unwitnessed signatures on multiple petition forms. The Presiding Officer recommended invalidating all of Circulator Mays's petition forms from that day under the same analysis she applied to Circulator Vasquez's petition forms. R 033340–033343.

Auburn Circulator (Challenge 2). The Presiding Officer concluded that the evidence concerning the Auburn circulator who allegedly failed to witness signatures of signers standing in line at an outdoor event in Auburn, was insufficient to establish that the circulator violated his circulator's oath in a manner sufficient to call into question the trustworthiness of signatures on all of that circulator's petition forms. R 033343–033346.

Circulator Jean-Baptiste's testimony that he witnessed "most" signatures. (Challenge 2) The Presiding Officer concluded that Circulator Jean-Baptiste's statement in his testimony that he did his best to witness "most" signatures was, without more evidence to consider, insufficient to warrant invalidation of all 77 of the circulator's submitted petition forms. R 033345–033346.

Petitions circulated by Rokelle Harris (Challenge 19). The Presiding Officer recommended that, based on the Elections Division review, all 61 signatures collected by Rokelle Harris should be invalidated for ANO. The Presiding Officer noted that it was unnecessary to resolve whether Circulator Harris committed fraud, which the Committee argued required clear and convincing evidence, in light of the Election Division's conclusion that each of her collected signatures was not that of the voter and could thus be invalidated on that basis alone. R 033346–033347.

Petitions circulated by Jean-Baptiste, Jackson, and Turner (Challenge 19). The Presiding Officer recommended that no petition forms circulated by Jean-Baptiste, Jackson, or Turner be invalidated for fraud. The Presiding Officer noted that, in contrast to Gilbert's case against Harris's signatures, Gilbert's case in favor of invalidation of the other circulators' petition forms was based entirely on a paper review of the circulators' submissions and inconclusive cross-examinations of two of the three circulators (Tuner was not called as a witness by either side). While the Presiding Officer agreed that some petition forms contained concerning discrepancies, she concluded that the evidence was inadequate to establish fraud by any of the circulators. R 033347–033349.

Revisiting Challenge 14. The Presiding Officer considered an argument by Gilbert that the Secretary should expand her concession that some signatures challenged in Challenge 14 were invalid to cover an additional 152 signatures. Challenge 14 challenged signatures on grounds that they were dated after the circulator's oath. The Secretary contested Challenge 14 to the extent the dates on the challenged signatures were obvious typographical errors. The Presiding Officer, after directing the Elections Division to review these 152 signatures, concluded that 6 additional signatures should be invalidated because it was not obvious that the dates were typographical errors. R 033350

Revisiting Challenges 1, 5, 15, 18, 20, and 21. Gilbert argued that the Presiding Officer should revisit these challenges even though the Court affirmed the Secretary's position that those challenges lacked merit. The Presiding Officer recommended concluding that these challenges were outside the scope of the remand and, in any event, should not be revisited. R 033351.

Failure to consent to the jurisdiction of Maine (Challenge 3). The Presiding Officer considered whether she should accept Cairo's late-filed circulator affidavit consenting to the

jurisdiction of Maine. She also considered whether she should excuse the failure of three other circulators to consent to the jurisdiction of Maine. The Presiding Officer concluded that the statutory deadline for submitting a circulator affidavit is mandatory and that the consent to jurisdiction is an important part of the affidavit, thus warranting invalidation of signatures collected by circulators who fail to consent to jurisdiction by the statutory deadline. The Presiding Officer further recommended rejection of the Committee's arguments that invalidation of signatures on this ground violated the Maine Constitution and is "ultra vires," concluding that the requirement to consent to jurisdiction merely narrows the scope of the Constitution's prohibition on out-of-state circulators rather than creating an entirely new requirement. R 033355.

Notarization by circulators (Challenge 6). The Presiding Officer also considered the Committee's argument that Maine laws prohibiting notaries from administering the circulator's oath if they have previously provided services to the campaign are unconstitutional. The Presiding Officer concluded that these laws are narrowly tailored to a compelling governmental interest in discouraging fraudulent notarizations and therefore recommended that the challenge be rejected, to the extent it was appropriate for the agency to consider such a constitutional challenge. R 033356.

Use of ditto marks (Challenge 17). Finally, the Presiding Officer considered the Committee's argument that the Secretary should not have conceded the invalidity of signatures due to the use of ditto marks in the dates. The Presiding Officer concluded that invalidation in these circumstances, while in some tension with the Secretary's general treatment of dates, was expressly required by statute, *see* 21-A M.R.S.A. §§ 354(4), 902, and therefore should not be changed. R 033356–033357.

After issuance of the recommended decision, the parties were afforded an opportunity to file objections to the recommendations under 5 M.R.S.A. § 9062(4). R 033359. Both sides filed objections. The Secretary then issued her Final Decision, adopting in full the recommended decision of the Presiding Officer. R 033315. In addition, the Secretary issued a Revised Determination of Validity, dated May 26, 2026, which added the newly invalidated signatures to the prior invalidations. R 033316–033317. The Revised Determination of Validity concluded that the petition was 532 signatures short of the required number of 67,682. R 033317.

Argument

I. Legal Standard

This action is an appeal of final agency action subject to Rule 80C of the Maine Rules of Civil Procedure. *See* 21-A M.R.S.A. § 905(2); M.R. Civ. P. 80C(a). Judicial review under Rule 80C is "deferential and limited." *Friends of Lincoln Lakes v. Bd. of Env't Prot.*, 2010 ME 18, ¶ 12, 989 A.2d 1128. The Court's task is to review the agency's decision for "errors of law, abuse of discretion, or findings of fact not supported by the record." *Id.* (quoting *Save Our Sebasticook, Inc. v. Bd. of Envtl. Prot.*, 2007 ME 102, ¶ 13, 928 A.2d 736); *see also* 5 M.R.S.A. § 11007(4)(C) (setting forth limited bases for reversing final agency action). In making this determination, the "court may not substitute its judgment for that of the agency on questions of fact." *Id.* § 11007(3). The party seeking to vacate the agency decision bears the burden of persuasion. *Town of Jay v. Androscoggin Energy, LLC*, 2003 ME 64, ¶ 10, 822 A.2d 1114.

Furthermore, "[t]he Secretary of State is the constitutional officer entrusted with administering—and having expertise in—the laws pertaining to the direct initiative process" *Caiazzo v. Sec'y of State*, 2021 ME 42, ¶ 17, 256 A.3d 260. Therefore, if there is "any ambiguity" in a statute regulating the direct initiative process, the Court should "defer to the Secretary of State's reasonable interpretation of the statute." *Id.*

II. The Court should reject the Committee's challenges to the decision on remand.

A. The Secretary properly declined to revisit her concession that signatures gathered by circulators who failed to consent to Maine's jurisdiction should be invalidated.

The Committee devotes much of its argument to challenging the Secretary's decision not to count signatures collected by out-of-state circulators who failed to consent to the jurisdiction of Maine for purposes of any investigation or prosecution of misconduct. In the first round of briefing before this Court, after Gilbert argued in Challenge 3 that the Secretary should not have counted these signatures, the Secretary conceded agency error and agreed the signatures—1,520 in total (*see* R 034073)—should not have been counted. Citing *Knutson v. Dep't of Sec'y of State*, 2008 ME 124, ¶ 20 n.7, 954 A.2d 1054, the Court accepted the Secretary's concession under its "deferential and limited review of the Secretary's determination" and directed the Secretary on remand to "act in compliance with her concessions and invalidate the challenged signatures." D&O at 11. On remand, the Secretary did so, rejecting the same arguments that the Committee raises here. This Court should reject these arguments as well.

1. *The out-of-state circulator requirements do not violate the Maine Constitution.*

The Committee's first argument is that requiring out-of-state circulators to consent to Maine's jurisdiction is inconsistent with the Maine Constitution. Comm. Br. at 20. The Committee argues that the relevant restriction on circulators in article IV, part 3, § 20 of the Maine Constitution is a blanket ban on non-residents circulating petitions and that, therefore, the Secretary's imposition of conditions on non-residents circulating petitions is the wielding of a power "denied" by the Maine Constitution. Comm. Br. at 21. Though the Committee acknowledges that the Secretary is authorized to impose these requirements on out-of-state circulators by a consent judgment issued by the United States District Court for the District of

Maine, the Committee argues that this aspect of the consent judgment was "ultra vires," on a theory that it gave the Secretary powers that are, allegedly, affirmatively denied to her by the Maine Constitution.

The Committee's argument is remarkable in its implications. It would suggest that, short of going through the difficult process of amending the Constitution, the Secretary is powerless to regulate out-of-state circulators. She could not require them to consent to Maine's jurisdiction. She could not even require them to keep their contact information updated in case they need to be contacted. The practical consequence would likely be even more of the sort of troubling issues that the Secretary found on remand—including an out-of-state circulator who turned in 14 petition forms that were found to consist *entirely* of forged signatures, *see* R 033332. This consequence would adhere despite the fact that the Framers were so concerned about the possibility of untraceable misconduct by circulators that they chose to ban out-of-state circulators altogether. Indeed, even after the federal court enjoined § 20's blanket ban, a proposed constitutional amendment to remove that provision from the Constitution failed overwhelmingly at the polls, confirming voters' widespread concern that out-of-state circulators created risks to the integrity of the direct initiative process.[1]

The Court should not go down this dangerous road. It would be one thing if the federal court had issued a consent judgment that enjoined the Secretary from prohibiting out-of-state circulators but affirmatively authorized her to impose new, unrelated requirements on all circulators. But that is not what it did. Rather, based on its recognition that requiring circulators to consent to a state's jurisdiction is (unlike a blanket ban on out-of-state circulators) a

[1] *See* BallotPedia, "Maine Question 7, Remove Residency Requirement for Initiative Petition Circulators Amendment (2023)," at https://ballotpedia.org/Maine_Question_7,_Remove_Residency_Requirement_for_Initiative_Petition_Circulators_Amendment_(2023).

requirement narrowly tailored to furthering "the State's strong interest in protecting its elections," *see We the People PAC v. Bellows*, 519 F. Supp. 3d 13, 46 (D. Me. 2021), *aff'd*, 40 F.4th 1 (1st Cir. 2022), the federal court simply tailored the scope of its injunction to those out-of-state circulators whose conduct can be properly regulated by the State: those who fail or refuse to consent to Maine's jurisdiction.

Thus, contrary to the Committee's argument, when the Secretary invalidates the signatures of out-of-state circulators who fail to consent to Maine's jurisdiction, the Secretary is not imposing some new extra-constitutional requirement on those circulators. All she is doing is applying the Maine Constitution's existing ban on out-of-state circulators to the one subcategory of those circulators whom the federal court's injunction still permits her to regulate: those who fail or refuse to consent to Maine's jurisdiction. What is more, the condition imposed on those circulators—to consent to Maine's jurisdiction and to keep their contact information updated, among other things—is in direct furtherance of the goals of § 20's ban on out-of-state circulators. In effect, it places out-of-state circulators on close to the same footing as in-state circulators in terms of Maine's ability to police their compliance with Maine's substantive circulator laws. In no sense is the Secretary exercising a power "denied" to her by the Maine Constitution; to the contrary, she is carrying out the Framers purposes to the greatest extent permissible under the First Amendment, as interpreted by the U.S. District Court for the District of Maine and the First Circuit.

The Committee apparently could not find a single case holding that an injunction like the one contained in the *We the People* consent judgment is "ultra vires." Comm. Br. at 20–24. Instead, it asserts that *Minnesota v. National Tea Company*, 309 U.S. 551 (1940), supports its position. *Id.* at 22. But while that decision's dicta that federal courts should leave state courts

free "in interpreting their state constitutions," is laudable, *id.* at 557, *National Tea Company* in no way holds that injunctions like the one issued by the federal court in *We the People* are improper. Rather, *National Tea Company* made its observation in the context of deciding whether it had jurisdiction over an appeal from the Minnesota Supreme Court where there was ambiguity in the decision about whether the court had applied state or federal law to reach its decision. *Id.* at 555. Its decision to remand the decision to allow the state court to clarify its reasoning, *see id.* at 557, says nothing about the propriety of a federal court order allowing partial enforcement of a state constitutional provision where full enforcement would violate the U.S. Constitution.

Rather, the consent judgment is an example of a federal court following the Supreme Court's preference that "when confronting a constitutional flaw in a statute, we try to limit the solution to the problem," including by "enjoin[ing] only the unconstitutional applications of a statute while leaving other applications in force." *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328 (2006). Instead of completely eviscerating § 20's ban on out-of-state circulators, creating the very risks to the integrity of the petitioning process that § 20 was designed to avoid, the federal court issued a tailored injunction that left the Secretary free to enforce § 20 against those out-of-state circulators who fail or refuse to consent to Maine jurisdiction. Far from an example of federal judicial overreach, as suggested by the Committee, the consent judgment is an example of narrowly tailoring an injunction to proscribe the ability of a state official to enforce state law only to the extent it would actually violate federal law. Since applying the out-of-state circulator ban to nonconsenting circulators is entirely consistent with the First Amendment, it was proper for the federal court to limit its order in such a way.

Finally, the Committee argues that the federal court's order would "render longstanding rules of constitutional construction elastic and wholly unreliable." Comm. Br. at 23. But, again, all the consent judgment does is restrict the Secretary's ability to enforce the ban on out-of-state circulators to the specific subset of such circulators who the state can properly ban under the First Amendment. No "construction" of the Maine Constitution is required.

> 2. *Invalidating the signatures on the nonconsenting circulators' petition forms does not violate signers' right to petition the government and the Committee in any event lacks standing to assert signers' constitutional rights.*

The Committee briefly asserts that invalidation of the signatures on the nonconsenting circulators' petition forms violates the constitutional rights of the signers, specifically their constitutional right to petition the government for the redress of grievances. The Committee, a registered ballot question committee that organized the petition effort, *see* Comm. Mot. to Intervene at 2; 21-A M.R.S.A. § 1052(2-A), did not (and, as a non-human entity, could not) sign the petition. Moreover, the Committee does not explain how it might have standing to assert the constitutional rights of individual petition signers. *See generally Common Cause v. State*, 455 A.2d 1, 7 (Me. 1983) (holding that a party may not assert constitutional claims on behalf of third parties unless an exception applies). The Court should thus disregard this argument for lack of standing.

In any event, the argument lacks merit. The Secretary has long invalidated all signatures on petitions that were circulated in violation of the residency requirement in article IV, part 3, § 20 of the Maine Constitution. And the Law Court has twice affirmed that invalidation of signatures for violation of § 20 was consistent with the First Amendment. *Hart v. Sec'y of State*, 1998 ME 189, ¶ 13, 715 A.2d 165; *Jones v. Sec'y of State*, 2020 ME 113, ¶ 23, 238 A.3d 982. While the federal injunction obviously precludes the Secretary from invalidating signatures for out-of-state circulators who agree to the conditions on the circulator affidavit, it does not

preclude the Secretary from continuing to follow her usual practice of invalidation with regard to out-of-state circulators who fail to consent to Maine's jurisdiction.

Nor does it matter that the Committee asserts the right to petition the government rather than the rights of freedom of speech and association specifically considered in *Hart* and *Jones*. As the Supreme Court has observed, "[a]lthough the right to petition and the right to free speech are separate guarantees, they are related and generally subject to the same constitutional analysis." *Wayte v. United States*, 470 U.S. 598, 611 n.11 (1985). The Committee does not suggest an analysis different from the one applied in *Hart* and *Jones* should apply as a result of its invocation of the right to petition.

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

The Committee also argued on remand that even if the other three circulators' petition forms were invalid for failure to consent to Maine's jurisdiction, Cairo's petition forms should not have been invalidated because she ultimately filed a corrected circulator affidavit, dated May 6, 2026, as part of the remand proceedings. The Secretary rejected this corrected application as untimely given the statutory requirement that the circulator affidavit be filed "with the Secretary of State at the time the petition is filed." 21-A M.R.S.A. § 903-A(4). Here, the petition was filed on February 2, 2026, and Cairo's corrected affidavit was not executed until May 6, 2026.

The Committee objects to the Secretary's reliance on the deadline in § 903-A, arguing that the statute does not specifically "refer to out-of-state circulators *at all*." Comm. Br. at 27. But that absence is irrelevant. The statute requires the circulator affidavit to be filed by that deadline and further includes the requirement (now enjoined except for nonconsenting circulators) that the circular be a resident of the State and a registered voter in the State. The circulator affidavit is thus the logical place to implement the requirement that the circulator consent to jurisdiction in order to avoid the ban on out-of-state circulators. The Secretary had

authority to do so under her general power to "establish the form and content of all forms . . . required by or necessary to the efficient operation of this Title." 21-A M.R.S.A. § 21.

Moreover, even assuming arguendo that these statutes cannot be read to expressly require consent to be received by the Secretary by the filing of the petition, the statutory and constitutional framework necessarily requires consent no later than the constitutional deadline for filing the petition. The Justices have recognized in the context of the People's Veto that petitioners should not be allowed to correct deficiencies in their submission after the expiration of the constitutional deadline for filing the petition. *In re Opinion of the Justices*, 114 Me. 557, 95 A. 869, 876 (1915) ("Neither certificates nor jurats can be corrected after the expiration of 90 days from the recess of the Legislature. We think no amendments of any kind are permissible after the time fixed in the Constitution has expired."). The same should be true of the direct initiative process, which likewise requires petitioners to meet hard deadlines keyed to the convening of the Legislature in order to qualify the initiative for placement on the ballot that year.[2] *See* Me. Const. art. IV, pt. 3, § 18(1). If petitioners could submit defective or incomplete petitions at the deadline, and then cure those defects once the deadline passed, those constitutional deadlines would become effectively meaningless. Thus, just as the Committee on remand could not properly have circulators retake circulator oaths that were improperly executed or taken before conflicted notaries, or have voters re-sign petitions forms where they were found to have committed invalidating errors, the Committee similarly cannot cure fatal problems with

[2] Here, the Committee filed the petition with the Secretary on February 2, 2026, which was the deadline for the legislation to appear on the 2026 ballot. Thus, the entirety of the Secretary's review under 21-A M.R.S.A. § 905(1) as well as the proceedings on remand took place after the constitutional deadline.

their circulator affidavits by correcting them only after the constitutional deadline for submission.

The Committee's argument that out-of-state circulators can wait to consent to the jurisdiction after the petition is filed would also greatly undermine the State's ability to enforce its petition circulation laws. If out-of-state circulators need not consent to the jurisdiction when the petition is filed, they could adopt a "wait-and-see" approach, only submitting to Maine's jurisdiction if the Secretary's review caught that they failed to do so and, further, that the signature margin was close enough that their signatures might make a difference. In the meantime, the Secretary's ability to investigate petition irregularities during the crucial 30-day window when she must make her determination of validity under 21-A M.R.S.A. § 905(1) would be severely hampered. As the Secretary's decision observed, this 30-day period is "the most crucial part of the petition review process." R 033353.

Indeed, it is worth considering the bizarre and unworkable nature of the process that would follow from the Committee's position that a circulator could wait until judicial review of the petition was underway to consent to Maine's jurisdiction. Under such a process, the Secretary, during the initial 30-day review process, would invalidate the circulator's signatures for failure to consent to the jurisdiction. During this time, the Secretary might be unable to further investigate any irregularities on this circulator's petitions due to their lack of consent to Maine's jurisdiction. If the petition were determined valid without the circulator's signatures, the circulator need not ever consent to Maine's jurisdiction. If, on the other hand, the petition were determined invalid, the circulator could simply revive the validity of their invalid signatures during the resulting judicial review process by filing a belated consent to jurisdiction. The signatures would become valid again, even though the Secretary never had a full opportunity to

investigate them during her 30-day review window. Such a byzantine process would deeply compromise the Secretary's ability to police the initiative process.

Indeed, the events in this action provide a perfect example of the problem with the Committee's deadline-free approach. Even after the Secretary determined that petition forms collected by nonconsenting circulators should be invalidated and indicated in a footnote to her Superior Court brief that she was willing to consider whether the problem could be cured on a remand, only one of the four nonconsenting circulators submitted a corrected affidavit submitting to Maine's jurisdiction. The other three circulators—presumably armed with the knowledge that the signatures they collected were not needed to reverse the Secretary's revised determination of validity—still to this day have not consented to the jurisdiction of Maine and presumably never will. As a result, these circulators have successfully made it more difficult for Maine to investigate them for potential circulator crimes under 21-A M.R.S.A. § 904 should any incriminating evidence someday come to light. To protect its compelling interest in policing the integrity of the direct initiative process, Maine must be permitted to require out-of-state circulators to submit to Maine's jurisdiction *before* they are able to game out the consequences to the petition effort of refusing to do so.

The Committee makes much of a purported discrepancy between the initial preliminary injunction decision in *We the People v. Bellows*, which enjoined enforcement of § 20 against circulators who "first" submit to Maine's jurisdiction before commencing circulation, and the consent judgment, which enjoined enforcement of § 20 against circulators who submit to Maine's jurisdiction without specifically requiring them to "first" submit to the jurisdiction. Comm. Br. at 26. To the extent this slight change in wording reflects any intentionality at all, it is fully explained by the Secretary's determination that the proper place for the consent to

jurisdiction is the circulator affidavit, which is filed at the end of the circulation process rather than the beginning. *See* 21-A M.R.S.A. § 903-A(4). It is thus true that circulators need not "first" submit to Maine's jurisdiction; they merely need to do so by the time the petition is filed so that the Secretary can fully investigate any irregularities during her 30-day window to determine validity. The Secretary's decision not to allow Cairo to cure her failure to submit to Maine's jurisdiction long after the petition was submitted, the constitutional deadline for ballot access had passed, the statutory deadline for submitting circulator affidavits had passed, and the Secretary had already completed her 30-day review of petition validity was entirely consistent with the consent judgment.

Finally, the Committee's suggestion that the Secretary's refusal to consider Cairo's amended affidavit on remand months after the relevant deadline had passed somehow violated the Committee's due process rights due to lack of notice about how the consent requirement would be enforced, Comm. Br. at 26–27, should be rejected. The circulator affidavit states that circulators "must" indicate that they are either residents or consent to Maine jurisdiction. Moreover, it requires the circulator to swear that "I understand that this Affidavit must be filed with the Secretary of State at the time the signed petitions are filed." R 0026. No reasonable person reading the form affidavit would be under the misimpression that submitting a fully completed affidavit by the time petitions were submitted was optional.

4. *The Secretary did not err in invalidating Circulator Cairo's petitions.*

The Committee also argues that the Secretary should not have invalidated the signatures circulated by Cairo even if the Secretary properly determined that Cairo's affidavit was untimely. But failure to file a valid circulator affidavit has long been grounds to invalidate the circulator's signatures. *See* R 0098 (instructing staff to invalidate for AFF if the circulator fails to submit an affidavit). Prior to *We the People*, the failure to file an affidavit was treated as a failure to

confirm that the circulator was in fact a Maine resident eligible to circulate petitions. Invalidating Cairo's signatures based on her affidavit's failure to consent to the jurisdiction of Maine—which is necessary to exempt her from the residency requirement—is no different than invalidating a circulator's signature when there is no affidavit filed at all.

Also, although invalidation would be warranted either way, the Secretary's findings of fact show that invalidation of Cairo's signatures was especially warranted. Cairo testified that her initial failure to check the box was not inadvertent but based on a concern that she might be required to appear in court during midterm season. R 033335. Because she was never able to get clarity on the implications of her consent, she submitted the affidavit with the box unchecked. As the Secretary concluded, Cairo's failure to check the box was not "an inadvertent failure to express her agreement to the terms of the affidavit, but a substantive lack of agreement to those terms." R 033353. Under these circumstances, there is even greater reason to be concerned that the failure to consent could have interfered with the Secretary's or law enforcement's ability to investigate Cairo if the timing of the investigation had interfered with her schedule.

5. *The Committee's argument that the invalidation of Cairo's signatures is unconstitutional should be rejected.*

The Committee's contention that the invalidation of Cairo's signatures is unconstitutional, Comm. Br. at 29, should also be rejected. First, as pointed out above, the Committee has not made any showing that it has third-party standing to raise the constitutional rights of voters signing the petition. But, even assuming arguendo it does have standing, requiring out-of-state petition circulators to consent to a state's jurisdiction has been recognized by the courts as a narrowly tailored means of furthering "the State's strong interest in protecting its elections." *We the People PAC v. Bellows*, 519 F. Supp. 3d 13, 46 (D. Me. 2021), *aff'd*, 40

F.4th 1 (1st Cir. 2022); *accord Nader v. Brewer*, 531 F.3d 1028, 1037 (9th Cir. 2008) ("Federal courts have generally looked with favor on requiring petition circulators to agree to submit to jurisdiction for purposes of subpoena enforcement, and the courts have viewed such a system to be a more narrowly tailored means than a residency requirement to achieve the same result.").

As noted above, the Law Court has held on two occasions that invalidation of all of a circulator's signatures was permissible where the circulator did not comply with § 20's residency requirements. *Hart v. Sec'y of State*, 1998 ME 189, ¶ 13, 715 A.2d 165; *Jones v. Sec'y of State*, 2020 ME 113, ¶ 23, 238 A.3d 982. Invalidation of Cairo's signatures here is legally indistinguishable—the Secretary's authority to do so is based on the same residency requirement in article IV, part 3, § 20 that formed the basis for invalidation in *Hart* and *Jones*. Cairo's failure to consent to Maine's jurisdiction by the time the petition was submitted and before the constitutional and statutory deadlines passed rendered her the type of non-resident circulator against whom § 20 may still properly be enforced under the consent judgment. Invalidation of her signatures is thus constitutional under the holdings of those cases.

B. The Court should not rule on the constitutionality of a hypothetical version of the Maine Constitution's residency and registration requirements that is not currently in force.

The Committee, relying on the decisions of the U.S. District Court and the First Circuit in *We the People v. Bellows* asks this Court to "find that the residency and voter registration requirements [in the Maine Constitution] violate the First Amendment." Comm. Br. at 31. The Court should decline this puzzling invitation to decide a purely hypothetical question.

By order of a federal court, the Secretary is permanently enjoined from enforcing the residency and voter registration requirements against any out-of-state circulator who consents to Maine's jurisdiction. There is no live controversy about whether the original scope of the constitutional prohibition—as opposed to the narrowed scope set forth in the consent judgment—

violates the First Amendment, as the Secretary is barred from enforcing that original scope and the Committee makes no allegation she is violating the injunction. This Court should limit itself to "questions of live controversy, and not hypothetical, abstract, or moot questions." *Jipson v. Liberty Mut. Fire Ins. Co.*, 2007 ME 10, ¶ 5, 912 A.2d 1250 (quoting *Sevigny v. Home Builders Ass'n of Maine, Inc.*, 429 A.2d 197, 201 (Me. 1981)). The only live constitutional question before this Court is whether application of the registration and residency requirements *as narrowed by the federal injunction* is consistent with the First Amendment.

In any event, if the Court were to consider the constitutionality of the enjoined aspects of § 20—and there is no reason for it to do so—it could only conclude that these requirements are consistent with the First Amendment. While it is true that the Secretary is subject to a federal injunction preventing her from enforcing § 20 in many of its applications, those decisions do not bind this Court. Rather, the only decisions binding on this Court are those of the Law Court and the U.S. Supreme Court. *See Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 57 (1997) ("a lower federal-court judgment is not binding on state courts"). In this case, the U.S. Supreme Court has not addressed the issue and the Law Court's decisions in *Hart*, 1998 ME 189, ¶ 13, 715 A.2d 165, and *Jones*, 2020 ME 113, ¶ 23, 238 A.3d 982, indicate that § 20's residency and registration requirements are constitutional. Thus, if this Court were to reach this entirely hypothetical question, it would have to follow *Hart* and *Jones*. Of course, since the Secretary—the only official who can enforce the registration and residency requirements—will remain bound by the permanent injunction either way, any such ruling would be an entirely academic exercise.

C. The statutory ban on conflicted notaries notarizing circulator oaths is constitutional.

The Committee next argues that Maine statutes prohibiting notaries public from notarizing circulator oaths after they have provided services to the campaign, *see* 21-A M.R.S.A. § 903-E; 4 M.R.S.A. § 1904(5), are unconstitutional burdens on the First Amendment rights of petition signers. On remand, in compliance with her concessions to this Court, the Secretary invalidated 224 signatures on this ground. R 034073. The Court should reject the Committee's constitutional claim.

While the Committee argues for application of strict scrutiny to the notarization requirements, the Law Court has recognized that, because petition circulation laws are a species of law governing the "mechanics of the electoral process," strict scrutiny does not automatically apply. *Jones v. Sec'y of State*, 2020 ME 113, ¶¶ 22–23, 238 A.3d 982 (quoting McIntyre, 514 U.S. at 345). Rather, even though petition circulation involves "core political speech," substantial regulation of elections is necessary "if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Id.* ¶ 20.

Thus, rather than automatically applying strict scrutiny, the constitutionality of petition circulating laws must be evaluated under the flexible *Anderson-Burdick* balancing test. Under that test, the Court must weigh the "character and magnitude" of the burden on the circulators' associational rights against the asserted interests of the state justifying the regulation of petition circulation. *Jones*, 2020 ME 113, ¶¶ 23–24, 238 A.3d 982. Strict scrutiny applies only if the regulation imposes a "severe restriction" on First Amendment rights. In that case, the state must show that the law is narrowly tailored to serve a compelling governmental interest. In contrast, "when a state election law provision imposes only reasonable, nondiscriminatory restrictions on First Amendment rights, the State's important regulatory interests are generally sufficient to

justify the restrictions." *Id.* ¶ 24 (cleaned up); *accord All. for Retired Americans v. Sec'y of State*, 2020 ME 123, ¶ 15, 240 A.3d 45. Moreover, "states are accorded considerable leeway in the regulation of the initiative process in order to promote their legitimate state purposes." *Jones* ¶ 24.

Under this flexible standard, Maine's notary conflict of interest requirements easily passes muster. According to the Secretary's Notary Handbook, there are approximately 29,000 notaries public commissioned in Maine.[3] That is in addition to thousands of licensed attorneys who may also properly perform notarial acts. 4 M.R.S.A. § 1910(1)(C). To avoid running afoul of the conflict-of-interest statutes, all that petition circulators need to do is procure services of any of these thousands of notarial officers who have not previously provided services to that particular campaign. That is a negligible burden for any organized campaign effort.

The Committee's argument to the contrary focuses not on the minimal burden of locating a non-conflicted notary to sign petitions, but on the consequences that ensue if the campaign ignores or flouts the law. The Court should reject this focus on the consequences of noncompliance as opposed to the minimal burden of compliance. But even assuming that burden can be properly measured based on the consequences of flouting the law as opposed to the difficulty of complying with the law, the burden is still minimal. Specifically, the consequences of having a conflicted notary notarize a circulator oath are narrowly tailored to the harm that results from that violation: invalidation of those petition forms that are rendered untrustworthy by the lack of a properly administered circulator oath by an impartial official. No additional signatures are invalidated beyond those affected by the faulty oath. Such a targeted remedy

[3] Available at https://legislature.maine.gov/testimony/resources/JUD20220316@OPLA132921209305078421.pdf

cannot be understood as a severe, let alone "extreme," Comm. Br. at 29, burden on First Amendment rights.

Given that the burden on First Amendment rights imposed by the notary conflict-of-interest statutes is far from "severe," those laws easily satisfy the remaining requirements that the restrictions be "reasonable" and "non-discriminatory." *Jones*, 2020 ME 113, ¶ 24, 238 A.3d 982. Notaries who have provided services for the initiative campaign have a conflict of interest that calls into question their impartiality in administering the circulator's oath. The Law Court has recognized that "the circulator's oath is critical to the validation of a petition." *MTAN*, 2002 ME 64, ¶¶ 8, 13, 795 A.2d 75. And in *Reed v. Sec'y of State*, 2020 ME 57, ¶ 17, 232 A.3d 202, the Law Court has further recognized the reasonableness of the notary conflict-of-interest statutes, observing that invalidation of signatures on petition forms notarized in violation of the statute "rationally advances the legislative purpose of discouraging fraudulent notarizations by prohibiting the use of notaries who have a demonstrable conflict of interest at the time of their notarial acts in connection with the campaign." *Id.* at ¶ 12. Moreover, the requirement is nondiscriminatory, applying equally to all notaries and all direct initiative and People's Veto campaigns.

In an attempt to avoid this relevant caselaw, the Committee attempts to draw analogies to dissimilar areas of law. It points to Supreme Court caselaw striking down campaign finance laws limiting the amount of money that a person can spend to influence elections. Comm. Br. at 33. But as *Jones* explains, those laws are not subject to the *Anderson-Burdick* balancing test, since they regulate "pure speech" rather than the "mechanics of the electoral process." *Jones*, 2020 ME 113, ¶ 21, 238 A.3d 982. When laws regulate "pure speech," governments do not

receive the same "considerable leeway" in enacting such laws that they receive when they enact laws governing the petitioning process. *Id.* ¶ 24.

Nor should the Court accept the Committee's argument that notaries public should simply be trusted to do the right thing, due to their interest in "upholding their reputations for competence and integrity, and in avoiding potential discipline by the Secretary." Comm. Br. at 33. While one certainly hopes that commissioned notaries will not engage in unethical conduct even when adverse consequences are unlikely, the Secretary and Maine voters are not required by the First Amendment to bank on notaries' good faith. The Supreme Court has recognized that while the notary's role is important, it is ultimately a "clerical and ministerial" role, unlike that of a police officer or policymaker. *Bernal v. Fainter*, 467 U.S. 216, 225 (1984). Maine law may properly impose prophylactic regulation on notaries reasonably calculated to deter and prevent fraudulent circulator oaths.

Finally, the Committee's theory that the conflict-of-interest statutes constitute "viewpoint discrimination" should be rejected. *See* Comm. Br. at 34. Notary publics are commissioned public officers. *See* 66 C.J.S. Notaries § 1. It is no more "viewpoint discrimination" to prevent notaries public from administering oaths to validate signatures for a campaign for which they previously worked than it is to bar legislators from voting on legislation in cases in which they have a financial interest, *see* 1 M.R.S.A. § 1014, or judges from presiding over cases in which they previously acted as an advocate. Moreover, the conflict-of-interest laws do not apply based on whether a notary "speak[s] out" in favor of an initiative, Comm. Br. at 34, but rather based on the notary's *conduct*—whether the notary is "providing any other services" to the campaign that would create a conflict of interest that could call into question the integrity of the circulator's oath. Notaries wishing to provide notarial services for a campaign remain free to speak out

about the initiative in any manner they choose, so long as they refrain from providing services to the campaign.

In any event, even if First Amendment scrutiny applies, the conflict-of-interest laws would satisfy any applicable level of scrutiny. Maine has a compelling interest in policing the integrity of the circulator's oath and requiring non-conflicted notaries to administer that oath is a narrowly tailored, least restrictive means of furthering that compelling interest.

D. The Court should again affirm the Secretary's decision to invalidate signatures based on the use of ditto marks in the date field

Finally, the Committee takes issue with the Secretary's invalidation, in conformity with her concession to this Court, of 39 signatures based on the voter's use of ditto marks in the date field. Although the Court accepted these concessions in its Decision and Order, *see* D&O at 11, the Committee nevertheless sought to persuade the Secretary to retract this concession on remand.

In her decision, the Secretary readily admits that invalidation for use of ditto marks is in some tension with her approach to other date issues in the petitions. But that tension is because the Legislature has precluded any other approach: 21-A M.R.S.A. § 902 expressly requires that initiative petitions be signed "in the same manner as are [candidate petitions] under section 354, subsections 3 and 4." And that candidate petition provision, in turn, forbids the use of ditto marks for anything other than residence address and municipality. *See* 21-A M.R.S.A. § 354(4).

While the Committee accuses the Secretary of inconsistency, it offers no plausible contrary interpretation of the statutory text on which the Secretary relies. And while it cites general principles that the Legislature cannot abridge the people's right to legislate through the initiative process, it seems to stop short of arguing that 21-A M.R.S.A. § 902 is unconstitutional. This is perhaps unsurprising given the Constitution's delegation to the Legislature of the power

to "enact further laws not inconsistent with the Constitution for applying the . . . direct initiative" and to "establish procedures for determination of the validity of written petitions." Me. Const. art. IV, pt. 3, § 22. Section 902's incorporation of § 354(4)'s ditto-mark prohibition is a straightforward exercise of this constitutionally delegated power. Moreover, as the Secretary observed in her decision, prohibiting ditto marks in the date is a reasonable means to ensure that voters stop to consider the date, rather than applying the next in a series of ditto marks that may or may not reflect the current date.

III. Gilbert's challenges to the decision on remand are without merit.

Although Gilbert prevailed on remand, she nonetheless takes issue with the Secretary's decision not to invalidate any additional signatures by circulators Fritz Jean-Baptiste, Kendrick Jackson, and Adam Turner. Notably, Gilbert concedes (and the Secretary agrees) that the Court need not reach these issues if it otherwise agrees with the Secretary's analysis on remand. Gilbert Br. at 20. Gilbert also properly and correctly recognizes the "herculean efforts on an expedited timeframe" already undertaken by the Elections Division in this case, Gilbert Br. at 21, completed in the weeks leading up to Maine's statewide primary election on June 9, 2026. Gilbert nevertheless argues that the Court should, if necessary, remand this case back to the Secretary *again* so that the Elections Division can review thousands more signatures based on discrepancies Gilbert has identified on a handful of the many petition forms submitted by each of these three circulators. Should the Court reach these issues, it should reject Gilbert's position.[4]

[4] Indeed, it is unclear how the Elections Division could even accomplish such a massive review in anything resembling a timely manner. The Elections Division has only 13 employees, all of whom will be more than fully occupied with the administration of the June 9, 2026 statewide primary election and any resulting ranked-choice tabulations and recounts, which will most likely span at least the remainder of June.

A. The Secretary was not required to direct Elections Division staff to review all of Circulator Jean-Baptiste's 765 validated signatures for fraud.

According to the Secretary's findings, Circulator Jean-Baptiste circulated 77 petition forms containing 765 validated signatures and 156 invalidated signatures. R 033332. Of these, 324 signatures were collected on Election Day, all of which were found valid. R 033333. In contrast, Circulator Jean-Baptiste's post-election-day petition forms contained relatively high rates of signatures that were invalidated by either the municipal registrar or the Elections Division, for issues that included ANO and DUP. *Id.* "ANO" means that the municipal registrar, after comparing the signature on a petition from with the voter's signature on their voter registration application (which are maintained by municipal registrars), has determined that the signatures do not match. "DUP" means that the Elections Division has determined that the same name already appears elsewhere in the petition, either on the same form or a different form.

Gilbert pointed out some of these issues in arguing for a remand to consider this issue in her initial Rule 80C brief. *See* Gilbert 80C Br. at 28–29. But, unlike her presentation on remand relating to Circulator Rokelle Harris, in which she presented testimony of multiple live witnesses confirming that signatures on the petition were not those of voters, Gilbert's remand presentation on Circulator Jean-Baptiste was limited to an inconclusive cross-examination of Mr. Jean-Baptiste and pointing out in her post-hearing brief instances on some of the circulator's petition forms in which duplicate signatures appeared to be made by different hands, voter names or addresses were misspelled, and similar discrepancies.

The Secretary agreed that Gilbert's review of the petitions "uncovered some troubling entries" and that certain aspects of the circulators' testimony "called into question their credibility." R 33348. However, the Secretary ultimately declined to order an Elections

Division review of the petition forms of circulators other than Rokelle Harris. The Secretary reasoned:

> Ultimately, while Gilbert's paper review of the petitions suggests that some signatures on these two circulators' petitions were not made by the named voter, I conclude that the evidence did not rise to the level of proving that either circulator engaged in forgery or other fraudulent conduct. Neither circulator asked petition signers for identification, nor were they required to do so. The alleged forgeries identified by Gilbert are not—or at least not obviously—written by the same hand. Notably, with the exception of Jackson's Waterville petition form, even those petition forms submitted by these circulators with unusually high invalidation rates were found to contain mostly valid signatures. It is thus unclear without more evidence how any scheme by the circulators to forge signatures on the petitions would have worked in practice.

Id.

Given these issues with Gilbert's showing, tasking the Elections Division with the painstaking task of reviewing Circulator Jean-Baptiste's 765 additional signatures for ANO was not required. As the Court has already held, "the petition validation procedures as outlined by the Maine Constitution and Title 21-A place the responsibility for verifying whether petition signers are registered voters with municipal registrars, rather than the Secretary." D&O at 16. The review of signatures for ANO is a key part of this municipal review process. While the Secretary may, in her discretion, conduct additional review when she deems it warranted, the Court has already held that she "cannot commit reversible error in a petition validation decision by rel[]ying on municipal certification decisions." D&O at 16; *see also Johnson v. Dunlap*, Docket No. AP-09-56, slip op. at 7 n.5 (Ken. Cty. Super. Ct. Dec. 23, 2009) (recognizing both the Secretary's "power to review individual signatures for duplicates, forgery, and other issues" and that her decision to instead rely on certifications of municipal registrars "is not error.") (attached as Exhibit A to the Secretary's original Rule 80C brief).

That the Secretary's decision whether to order additional review of the municipal certification process is entirely discretionary should end the matter. But, even if it does not, that decision was sound and not an abuse of discretion. In all but one of the examples of suspicious duplicate signatures cited by Gilbert, *see* Gilbert Br. at 23–24, the Elections Division had already invalidated one of the signatures for DUP. What is more, the very fact that Circulator Jean-Baptiste's petitions contain a higher-than-average number of invalidations demonstrate that state and local officials conducted an appropriately rigorous review of those petitions the first time around. Particularly with regard to the petition forms that already contain invalidations for ANO, it can be fairly assumed that the municipal registrars performed their duty to compare petition signatures against those on the voters' registration applications and confirmed that the non-ANO signatures on the form matched those on the voter registration applications. *See, e.g.*, Gilbert Br. at 27 (reproducing petition form). There was no need to require Elections Division staff to re-review those petition forms.

In declining to order additional investigation by the Elections Division, the Secretary also properly considered the inconclusive nature of the evidence presented by Gilbert. Unlike with Circulator Harris, Gilbert did not subpoena municipal clerks to testify about the thoroughness of their review or voters to testify that they did not in fact sign the petitions. Moreover, while time on remand was short for all involved, there was nothing to stop Gilbert from undertaking the signature comparison that she now demands of the Elections Division. While the scans of voter registration applications contained in CVR are confidential, *see* 21-A M.R.S.A. § 196-A(1), any member of the public may visit the municipal registrar and inspect and copy the original voter registration forms. *See* 21-A M.R.S.A. § 22(5) ("Voter signatures on voter registration applications and associated records in a printed hard-copy format are public records in

accordance with subsection 1 and Title 1, section 408-A."). The petitions at issue here involved a small number of towns (primarily Lewiston), such that review would not have required CVR access as a practical matter. Yet Gilbert did not present any evidence from these public records to demonstrate that municipal registrars missed a significant number of signatures that should have been invalidated for ANO.

In short, the Court should rule that the Secretary's decision not to order a re-review of municipal certification decisions for Circulator Jean-Baptiste's petition forms was entirely discretionary and was, in any event, not an abuse of discretion in light of the limited evidence of fraud presented on remand.[5]

B. The Secretary was not required to direct Elections Division staff to review all of Circulator Jackson's 955 validated signatures for fraud.

Gilbert's argument that the Secretary should be forced to conduct additional investigation of Circulator Kendrick Jackson is nearly the same as her arguments regarding Circulator Jean-Baptiste. *See* Gilbert Br. at 28–38. Like Circulator Jean-Baptiste, Circulator Jackson collected petitions with almost entirely valid signatures on Election Day, but then submitted post–Election Day petition forms with a relatively high number of invalidations, including for ANO and DUP. *See* R 33333–34. He ultimately submitted 955 validated signatures and 162 invalidated signatures. R 033333.

As with Jean-Baptiste, Gilbert points to discrepancies visible on the petition forms themselves suggesting that some signatures were forged as well as Jackson's at times less-than-credible testimony. But also as with Jean-Baptiste, she presented no witnesses on remand, other

[5] Should the Court disagree, it should at least limit the scope of any such investigation to the post-Election Day petitions containing unusual numbers of invalidations. Even Gilbert does not appear to contend that the many signatures Jean-Baptiste collected on Election Day were the result of fraud. *See* Gilbert Br. at 22.

than an inconclusive cross-examination of the circulator, and did not conduct any comparison between the petition signatures and the voter registration applications, despite the availability to her of those applications. Thus, further investigation by the Elections Division was not required for the same reasons it was not required with regard to Circulator Jean-Baptiste. As argued above, the Secretary has sole discretion in whether to order such an investigation, or instead rely on the review by municipal registrars, and, in any event, did not abuse that discretion by declining to order such an investigation based on Gilbert's inconclusive showing on remand.

C. The Secretary was not required to direct Elections Division staff to review all of Circulator Adam Turner's 539 validated signatures.

In her post-hearing brief Gilbert pressed the Secretary to also invalidate additional signatures collected by Adam Turner based on suspected fraud, even though Gilbert's original Challenge 19 contained no mention of Circulator Turner. Gilbert 80C Brief at 28–29. Unlike Jean-Baptiste and Jackson's petition forms, the invalid signatures on Turner's forms were overwhelmingly for NR—not registered. R 033334–35. The Secretary concluded that "[w]hile such invalidations might theoretically be an indication of fraud, they may also simply reflect circulation of petitions in settings in which a large number of non-voters are likely to be present." R 033349.

Gilbert suggests that "improbably high" number of invalidations for NR "suggest[s] Turner obtained [those signatories'] information from another source without verifying their registration status." Gilbert Br. at 38. That is one possible explanation. But Gilbert did not present evidence that would move the needle from "possible" to "probable." Most notably, not one of the signers invalidated for NR appeared at the hearing to testify that they did not in fact sign the petition. Moreover, while Gilbert points to some suspicious signatures in her brief, Gilbert Br. at 38–39, those signatures were mostly invalidated. In short, without more evidence,

the Secretary did not abuse her discretion by declining to order an Elections Division review of Circulator Turner's 539 validated signatures.

IV. The Court should not revisit its prior rulings in this case.

Despite the expedited timeframe in which the Court intends to decide this case, and despite the fact that Gilbert's initial arguments rejected by this Court in Decision and Order are already fully preserved for appeal, *see* M.R. Civ. P. 80C(m), Gilbert nevertheless asks this Court to reconsider essentially the entirety of its original Decision and Order to the extent it ruled against Gilbert's legal positions. The Court should decline this invitation. Instead, the Court should follow the doctrine of law of the case and decline to reopen the legal rulings it has already made and that established the proper scope of the remand proceedings just concluded. *See generally Blance v. Alley*, 404 A.2d 587, 589 (Me. 1979).

To the extent the Court wishes to consider Gilbert's requests for reconsideration of the rulings in its Decision and Order, the Secretary opposes reconsideration for all the reasons set forth in her initial Rule 80C brief, which she incorporates by reference herein, as well as the reasons set forth below.

A. The Court properly rejected Challenge 1.

The Court should not reconsider either of the alternative bases on which it rejected Gilbert's Challenge 1. The Maine Administrative Procedure Act expressly requires that a petition for review state the "grounds upon which relief is sought." 5 M.R.S.A. § 11002. While Gilbert argues that her petition for review mentioned the petition organization registration requirements, Gilbert Br. at 42, it does so in the context of reciting a list of all of the requirements that apply to petition circulators. Pet. ¶ 27. Nowhere does the petition for review allege that the petition is invalid due specifically to a failure to comply with the registration

requirements. As the Court correctly found, such an omission is not "merely a technicality of the pleading." D&O at 10. That is especially true in the highly expedited context of a petition challenge, in which late notice to the other parties of a claim can cause prejudice in light of the breakneck briefing schedule that must necessarily be followed.

The Court should also reject Gilbert's argument that she could not have asserted her registration claim in the petition review because much of the information concerning petition registration was unavailable prior to the filing of the record. While true that the record contains additional materials beyond what was publicly available, the registration information posted online by the Secretary was more than sufficient to allow Gilbert to discern core aspects of Challenge 1, such as whether the registered organizations were registered foreign LLCs within Maine. *See* https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/Petition%20Organization%20Reg%20Apps.pdf.

What is more, the Court should decline to revisit its alternative conclusion that "invalidation of tens of thousands of petition signatures may not be an appropriate remedy in the context of this specific case," where the Elections Division has not provided instruction or notice to petition circulators on the specific requirements cited by Gilbert, such as foreign LLC registration. D&O at 10 n.1. Gilbert's argument is that these areas of noncompliance with petition organization registration requirements compel the Secretary to invalidate over 50,000 otherwise valid signatures. But Gilbert cites no authority for the proposition that the Secretary is *compelled* to invalidate signatures, regardless of circumstances or context, when a law regulating circulation of petitions does not specify that noncompliance requires invalidation of signatures. To the contrary, the Law Court has described the Secretary's authority in permissive rather than mandatory terms: "the Secretary *may* disqualify signatures for a failure to follow the

requirements of the Constitution or its statutory overlay." *MTAN*, 2002 ME 64, ¶ 12, 795 A.2d 75. Particularly given the extenuating facts and circumstances, that the Secretary did not do so here is not reversible error.

B. The Court should reject Gilbert's arguments to revive Challenge 5.

Gilbert asks the Court to reconsider her agreement with the Secretary's reading of 21-A M.R.S.A. § 903-E as barring conflicted notaries from notarizing the circulator's oath on the petition form, but not the circulator affidavit. Gilbert Br. at 46. The Court should decline to do so.

The relevant statute reads "[a] notarial officer may not administer an oath or affirmation to a circulator of a petition for a direct initiative or people's veto referendum under Title 21-A, section 902 if the notarial officer also provides services that are not notarial acts to initiate or promote that direct initiative or people's veto referendum." 4 M.R.S.A. § 1904(5); *see* 21-A M.R.S.A. § 903-E (using materially identical language to impose the same requirement). "Title 21-A, section 902" is entitled "verification and certification" and sets forth the processes by which a petition form must be verified by the circulator and certified by the municipal registrar before it is filed with the Secretary. It does not address circulator affidavits, which are regulated by a different provision, 21-A M.R.S.A. § 903-A, which sets forth regulations governing circulators themselves.

The Secretary's interpretation of these conflict-of-interest provisions is straightforward: a conflicted notary may not administer the "oath or affirmation" that is required "under Title 21-A section 902." That oath is the circulator oath on the petition form, which is the only oath mentioned in § 902. 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.

Gilbert's argument to the contrary is that the statutes "prohibit[] administering an oath to a category of *person*—a circulator—rather than prohibiting administering the oath on a specific *form* or under a specific *provision*." Gilbert Br. at 47. But Gilbert's interpretation would, among other things, violate the rule against surplusage—the canon that "[a]ll words in a statute are to be given meaning, and no words are to be treated as surplusage if they can be reasonably construed." *Waterman v. Wheeler*, 2025 ME 96, ¶ 4, 347 A.3d 1028 (quoting *Cent. Me. Power Co. v. Devereux Marine, Inc.*, 2013 ME 37, ¶ 8, 68 A.3d 1262). If the restriction targets "a category of person" rather than a type of oath, the phrase "under Title 21-A section 902" becomes surplusage. That language could be excised from the statute completely with no change in meaning whatever.

What is more, even putting aside the surplusage problem, Gilbert's interpretation of the statute makes no sense. Circulators are regulated as "a category of person" not by section 902, but by section § 903-A, which is entitled "Circulation." That statute begins with a definition of "circulator" and continues by setting forth various requirements relating to circulators. Section 902, in contrast, is not specific to circulators but describes actions that must be taken with regard to each petition form before it may be submitted to the Secretary, just one of which is the administration of the circulator's oath. Thus, for Gilbert's interpretation of the statute to be correct, it would need to read ". . . under section 903-A," not ". . . under section 902."

In any event, even if the Court concludes that the textual analysis above is not dispositive, it should still defer to the Secretary's reasonable interpretation of the statute. *Caiazzo v. Sec'y of State*, 2021 ME 42, ¶ 17, 256 A.3d 260. Without discounting the importance of the circulator's affidavit, it is certainly reasonable to conclude that the Legislature wished to

impose heightened requirements on the circulator oath, which the Law Court has referred to as "critical to the validation of a petition." *MTAN*, 2002 ME 64, ¶ 13, 795 A.2d 75.

C. The Court should not reconsider its ruling on Challenges 14 and 15, involving incorrect or missing dates.

The Secretary's longstanding approach to missing or incorrect dates on direct initiative petitions is to invalidate the signature only if it cannot be confirmed from context that the signature was made within the required period—i.e., prior to the date of the circulator's oath and within 12 months of the petition filing date. In conducting this analysis, the primary contextual clue is whether there are signatures above and below the signature with the defective date that have dates within the circulation period. Since voters sign the petition forms sequentially, the presence of a valid date above and below the signature confirms the timeliness of the signature beyond reasonable doubt.

Contrary to Gilbert's arguments, the Secretary's approach to dates fully effectuates the purpose of the circulator oath and dating requirements, which are to ensure that (a) the circulator oath applies to all signatures on the petition and (b) signatures were collected within the timeframe specified in the Constitution. *See* Me. Const. art. IV, pt. 3, § 18(2) (requiring signatures to be dated within one year of petition filing). Consistent with these purposes, the Secretary's approach allows for invalidating those signatures actually made outside the permissible period, or where there is genuine doubt as to whether they were made within the permissible period, while also preserving voters' ability to have their voices heard when they make immaterial errors that do not prevent the Secretary from discerning that the signature was timely made.

D. The Court should not reconsider its rejection of Challenge 18.

Gilbert argues that the Secretary is obligated to review the registration status of 59 petition signatories that Gilbert claims were made by unregistered voters. This Court has already confirmed, in accord with the Superior Court decision in *Johnson v. Dunlap*, that the Secretary is under no obligation to review registrars' determination of registration status and cannot commit reversible error by declining to do so. The Court should not revisit its position on this question.

Moreover, even if Gilbert were correct that the Secretary might be required to check registration status of voters if "relevant evidence brought to [the Secretary's] attention during [her] review," Gilbert Br. at 52, no such evidence has been brought to the Secretary's attention here. All Gilbert has provided in these proceedings is a bare list of signatories that Gilbert believes to not be registered based on her analysis of unspecified "publicly available voter lists promulgated by the Secretary." Gilbert Br. at 52; R 033723. Such private analyses of voter lists are typically highly unreliable. In a 2024 candidate challenge, for example, the Secretary was persuaded to review the registration status of 954 signatories that the challengers asserted were unregistered, only to find that only 32 of those voters (i.e. 3%) could not be confirmed as registered voters.[6] In any event, Gilbert's bare list of names is not "prima facie evidence" that the listed persons are unregistered. Gilbert Br. at 52. Thus, even if there were some evidentiary threshold that might trigger an obligation to review names in CVR, Gilbert has not triggered it here.

[6] *See In re: Challenges to the Nomination of Slate of Presidential Electors to Support Dr. Cornel West,* at 32 (Aug. 20, 2024), *available at* https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/FINAL%20-%20West%20Decision.pdf

E. The Court should not reconsider its ruling on Challenges 20 and 21, concerning missing street addresses and municipalities.

Finally, Gilbert argues that the Court should reconsider its decision to defer to the Secretary's longstanding view that the failure of a voter to include a street address or municipality does not require automatic invalidation of the voter's signature. Gilbert Br. at 54. The reason is simple: municipal registrars certify signatures primarily by matching signatures. If the registrar is able to locate the voter's record and match their signature, the lack of an address or municipality has no impact on the integrity of the registrar's determination that the voter is a registered voter in the municipality. Where a voter fails to include this information, they risk invalidation of their signature if the registrar cannot locate their voter registration information but there is no good reason to invalidate their signature if the registrar can certify it without the address information. Moreover, while it is true as Gilbert points out that 21-A M.R.S.A. § 354(4) specifies that the petition signer should include street address and municipality, there is no further provision stating that the invariable penalty for failing to do so must be invalidation of the signature, even if it can be easily certified by the registrar. As already noted, the Law Court has described the Secretary's authority to invalidate signatures in permissive rather than mandatory terms. *MTAN*, 2002 ME 64, ¶ 12, 795 A.2d 75. Invalidating a signature for lack of address information where that information did not in fact prevent a registrar from confirming that the signer was a registered voter would not further the statutory purpose of that provision.

Conclusion

The Court should affirm the Secretary's revised determination of validity.

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