

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. AP-25-15 ✓

ALEX TITCOMB, et al.,)

Petitioners,)

v.)

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

Respondent,)

and)

VICTORIA KORNFIELD, LISA BUCK,
DSCC, DCCC, and the DEMOCRATIC
GOVERNORS ASSOCIATION,)

Intervenor-Defendants.)

DECISION

The matter before the court is Petitioners Alex Titcomb, Heather Sirocki, Kevin Murphy, George Colby, and Randall Adam Greenwood's ("Petitioners") appeal of Respondent Secretary of State Shenna Bellows's (the "Secretary") decision regarding the final wording of the ballot question on the citizen initiative titled "An Act to Require an Individual to Present Photographic Identification for the Purpose of Voting" (the "Initiative"). *See* 21-A M.R.S. § 905(2); M.R. Civ. P. 80C. Intervenor-Defendants Victoria Kornfield, Lisa Buck, DSCC, DCCC and the Democratic Governors Association (the "Intervenors") submitted a brief in support of the Secretary's decision. The court has considered the parties' well-written briefs and the administrative record. For the following reasons, the court denies Petitioners' appeal and affirms the Secretary's decision.

BACKGROUND

On February 13, 2024, Petitioners submitted an application to place the Initiative on the

ballot to the Secretary.¹ (R. 008-011). The Secretary issued the petition for the Initiative on May 16, 2024, after a revision process involving the Secretary, the Officer of the Revisor of Statutes, and Petitioners. (R. 001-038, 039-046.)

The final version of the Initiative proposes changes to twenty-seven provisions of Maine's elections laws. (R. 002; 042-045.) The parties to this appeal identified the most significant proposed changes in the Initiative as follows: (1) in-person voter photo identification requirements; (2) absentee photo identification requirements; (3) eliminating ongoing absentee voter status; (4) prohibiting requests for absentee ballots by third parties or by phone; (5) imposing new restrictions on secured absentee ballot drop boxes; (6) reducing the absentee voting period by two days; (7) banning prepaid postage on absentee ballot return envelopes; (8) amending the circumstances governing when a third-party may help a voter fill out a ballot or deliver the ballot on behalf of the voter; (9) require the Secretary to provide free non-driver identification; and (10) authorize third-party challenges to absentee ballots based on mismatched signatures. (Pet'rs' Br. 5-6; Resp't's Br. 5-7, 11; Intervenor's Br. 2-5; R. 001-007, 042-045.)

On January 6, 2025, Petitioners submitted the petition to the Secretary for validation. (R. 047.) On February 19, 2025, the Secretary determined that the petition contained the required number of valid signatures to appear on the November 2025 ballot. (R. 047-048.)

On March 12, 2025, the Secretary announced a draft ballot question for public comment. (R. 049.) Members of the public submitted 318 comments, some in favor of the proposed wording and some seeking revisions. (R. 001, R. 051-388.) Petitioners did not submit any comments objecting to the drafted question. (Resp't's Br. 10; R. 051-388.)

¹ The initial draft legislation included three proposals related to in-person voter identification requirements. (R. 009-011.) The draft legislation did not include proposed changes to absentee balloting. (R. 009-011, 017.)

On May 5, 2025, the Secretary issued a decision letter that included the final wording of the ballot question, as follows:

Do you want to change Maine election laws to eliminate two days of absentee voting, prohibit requests for absentee ballots by phone or family members, end ongoing absentee voter status for seniors and people with disabilities, ban prepaid postage on absentee ballot return envelopes, limit the number of drop boxes, require voters to show certain photo ID before voting, and make other changes to our elections?

(R. 001-002.) The Secretary's decision letter explained that the final draft describes "some of the more significant changes proposed by the [Initiative] while also making clear that the question's description was not exhaustive." (R. 003.) On May 12, 2025, Petitioners filed this appeal challenging the final wording of the ballot question.

LEGAL STANDARD

The Maine Constitution grants the Maine people the right to legislate by direct initiative. Me. Const. art IV, pt. 3, § 18. The Secretary is charged with drafting the ballot question for an initiative. Me. Const. art. IV, pt. 3, § 20.

Review by the Superior Court of decisions of the Secretary of State regarding the wording of ballot questions is governed by 21-A M.R.S. § 905(2), which provides, in pertinent part:

In reviewing the decision of the Secretary of State, the court shall determine whether the description of the subject matter is understandable to a reasonable voter reading the question for the first time and will not mislead a reasonable voter who understands the proposed legislation into voting contrary to that voter's wishes.

Section 905(2) requires the Superior Court to "independently determine whether the ballot question is understandable and not misleading" based on the record, without deference to the Secretary's decision. *Olson v. Sec'y of State*, 1997 ME 30, ¶ 4, 689 A.2d 605.

The issue to be reviewed is not whether the description of the subject matter is "understandable to a voter who is reading both the question and the legislation for the first time." *Id.* ¶ 11. Rather, the issue is whether voters who understand the initiative, but "who may be reading

the question for the first time in the voting booth, will understand the subject matter and the choice presented.” *Id.* “[T]he question need not provide complete, comprehensive information about the legislation or its effect.” *Jortner v. Sec’y of State*, 2023 ME 25, ¶ 13, 293 A.3d 405.

DISCUSSION

I. Preservation of Objections

The threshold issue raised by the Secretary is whether Petitioners failed to preserve, and thus waived, their objections to the Secretary’s formulation of the question by failing to participate in the public comment period. (Resp’t’s Br. 1, 12-16); *see Antler’s Inn & Rest., LLC v. Dep’t of Pub. Safety*, 2012 ME 143, ¶ 9, 60 A.3d 1248 (explaining arguments not raised before an administrative agency may not be raised for the first time on appeal); *see also New Eng. Whitewater Ctr., Inc. v. Dep’t of Inland Fisheries & Wildlife*, 550 A.2d 56, 59-60 (Me. 1988) (noting that the preservation rule in the administrative context “is premised on the broader doctrine of exhaustion of administrative remedies”). Petitioners argue that (1) the doctrine of exhaustion does not apply in the context of notice and comment proceedings, (2) the appeal involves a pure legal issue exempt from exhaustion rules, (3) the Secretary’s bias excuses application of the waiver requirement, and (4) the Secretary considered the issues raised by this appeal. (Pet’rs’ Reply Br. 3-9.)

The court declines to rule on this issue because regardless of whether Petitioners preserved their objections, the court concludes that the question as formulated by the Secretary is understandable and not misleading, as discussed below.

II. Sufficiency of the Ballot Question

Petitioners argue that the ballot question is not understandable to the average voter, is misleading, and is not a clear, concise, or a direct description of the Initiative’s subject matter.

(Pet'rs' Br. 12-22.)

A. Understandable

Petitioners first argue that the question is not understandable to the average voter because the question uses technical language likely to confuse the voter when reading the question for the first time. (Pet'rs' Br. 15-16.) Petitioners contend that the term "ongoing absentee voter status" in the ballot question is not understandable because it is a term of art and it is not defined or mentioned in the Initiative. (Pet'rs' Br. 15.)

Although the term "ongoing absentee voter status" is not defined in the Initiative itself, this term appears in a statute that the Initiative specifically cites to and seeks to repeal. (R. 033); *see* 21-A M.R.S. § 753(A)(8) (permitting Maine voters to request "ongoing absentee voter status"). The term "ongoing absentee voter status," as used in § 753(A)(8), means that a voter will "automatically receive an absentee ballot for each ensuing [election] and need not submit a separate request for each election." That a voter would be required to consult external sources referenced in an initiative, such as other statutes and statutory definitions, to understand a term used in a ballot question does not render the question "not understandable." *See Olson*, 1997 ME 30, ¶ 11, 689 A.2d 605 ("[T]he term 'Class A crime' is readily understood by reference to external sources because it is defined by statute and would undoubtedly be discussed in the context of political debate on the initiative."). "Ongoing absentee voter status" is not, by contrast, a term with multiple meanings and no single definition or usage in any Maine statute. *See Jortner*, 2023 ME 25, ¶ 27, 293 A.3d 405. Accordingly, the court concludes that the term "ongoing absentee voter status" does not render the question not understandable.

Next, Petitioners argue that the final clause of the ballot question which asks voters whether they want to "make other changes to our elections" is vague. (Pet'rs' Br. 16-17.) No ballot question could practically identify every one of the twenty-seven changes to Maine's election laws proposed

by the Initiative, nor is the Secretary required to formulate a question that does so. *See Jortner*, 2023 ME 25, ¶ 13, 293 A.3d 405. Reasonable voters who understand the Initiative would understand that this language indicates that the ballot question reflects a non-exhaustive list of changes to Maine's election laws proposed by the Initiative. *See Olson*, 1997 ME 30, ¶ 11, 689 A.2d 605.

Finally, Petitioners argue that the use of "certain" in the phrase "certain photo ID" is vague. (Pet'rs' Br. 17.) The Initiative proposes excluding the use of common forms of government issued identification—such as tribal identification and student identification—when registering to vote. (R. 006, 042); *see* 21-A M.R.S. § 112-A(1). The use of the term "certain" accurately and concisely reflects the Initiative's proposal. Once again, the ballot question need not precisely convey every detail of the Initiative. *See Jortner*, 2023 ME 25, ¶ 13, 293 A.3d 405. A reasonable voter who understands the Initiative would understand that "certain" refers to the forms of identification that the Initiative proposes excluding. *Olson*, 1997 ME 30, ¶ 11, 689 A.2d 605.

The court concludes that the ballot question uses understandable language to describe the proposed changes to Maine election laws.

B. Not Misleading

Finally, Petitioners argue that the phrase "end ongoing absentee voter status for seniors and people with disabilities" is misleading because the language does not account for a law that will become effective December 31, 2025, P.L. 2023 ch. 404. (Pet'rs' Br. 12-14; Resp't's Br. 19). Under Maine law in effect as of the November 2025 election, only voters over the age of 65 and voters who self-identify as having a disability have ongoing absentee voter status. 21-A M.R.S. § 753-A(8). Effective December 31, 2025, P.L. 2023, ch. 404 will expand ongoing absentee voter status to all Maine voters. The Secretary argues that the ballot question accurately describes who will

lose their status under the laws in effect as of the November 2025 election if the Initiative is approved. (Resp't's Br. 19); *see* 21-A M.R.S. § 753-A(8).

The *Olson* Court held that a question is misleading for purposes of § 905(2) review if "the question will mislead reasonable voters, who understand the proposed legislation, into voting contrary to their wishes." 1997 ME 30, ¶ 7, 689 A.2d 605. Language that creates a misleading impression about the proposed legislation does not necessarily render the ballot question "misleading." *Id.* ¶¶ 7, 9.

When Mainers go to the polls in November 2025, the only individuals with "ongoing absentee voter status" will be seniors and people with disabilities. 21-A M.R.S. § 753-A(8). If the Initiative is approved, seniors and people with disabilities will have their status eliminated. The phrase "end ongoing absentee voter status for seniors and people with disabilities" is in fact an accurate representation of the content and effect of the Initiative. (R. 002, 043.) The ballot question therefore does not create a risk that voters will be led to vote contrary to their true intentions. *See Olson*, 1997 ME 30, ¶ 7, 689 A.2d 605.

CONCLUSION

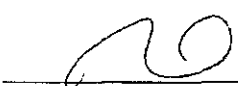
For the reasons above, the Court concludes that the ballot question meets the standard of 21-A M.R.S. § 905(2).

The entry is

Petitioners' Appeal is DENIED. The Secretary's decision regarding the final wording of the ballot question is AFFIRMED.

Date:

6/13/25


John O'Neil, Jr.
Justice, Superior Court

Entered on the Docket: 6/13/25