STATE OF MAINE

SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Cum-21-212

CHRISTOPHER J. CAIAZZO
Petitioner-Appellant,

v.

SECRETARY OF STATE
Respondent-Appellee,

and

THOMAS B. SAVIELLO
Intervenor-Appellee.

On Appeal from the Superior Court
Cumberland County

BRIEF OF THE SECRETARY OF STATE

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Introduction

Appellant Christopher J. Caiazzo ("Rep. Caiazzo") asks this Court to require the Secretary of State (the "Secretary"), for the first time in Maine's long history of citizen initiatives, to break a single initiative into multiple ballot questions. He does so based on a statute, 21-A M.R.S. § 906(6)(A) (2021), that by its plain terms directs the Secretary to do nothing more than "advise" the initiative petitioners that the "proper suggested format" of an initiative is one question per issue. Because § 906(6)(A) does not compel the Secretary to break apart citizen initiatives against the wishes of the initiative petitioners, the Secretary's single ballot question should be affirmed.

The Superior Court (*O'Neil, J.*) agreed. It recognized that there is no way to plausibly interpret § 906(6)(A) as a mandatory directive to the Secretary to split up initiatives without reading the term "suggested" out of the statute, violating the fundamental precept that all words of a statute should be given effect. That the legislative history shows that the drafters of § 906(6)(A) consciously rejected using the phrase "proper format" in favor of "proper *suggested* format" only

underlines the drafters' unambiguous intent to make § 906(6)(A) non-mandatory.

Rep. Caiazzo's contrary interpretation of the statute would require the Court to give "suggested" an implausible and unnatural meaning that ultimately still fails to give the term any independent effect. It would further require the Court to interpret the second sentence of § 906(6)(A) such that it effectively negates the first, imposing a mandatory duty on the Secretary split up multi-issue initiatives even as she advises petitioners that the format is merely "suggested." The Superior Court correctly recognized that these two sentences could and should be read instead as a harmonious whole, with the second sentence describing the factors that the petitioners should consider in determining whether to adopt the "suggested" format proposed by the first sentence.

Section 906(6)(A) does not require the Secretary to split multi-issue initiatives into multiple questions. Even if it did, the Secretary's decision not to split the initiative at issue here was not an abuse of her discretion. The Secretary's decision should be affirmed.

Statement of Facts

Constitutional and Statutory Framework for Citizen Initiatives

Under the direct-democracy provisions of the Maine Constitution, "[t]he electors may propose to the Legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment to the State Constitution," by written petition filed with the Secretary of State within certain time periods. Me. Const. art. IV, pt. 3, § 18(1). The petition must contain the signatures of electors equal to 10 percent or more of the total vote for Governor cast in the last gubernatorial election—currently 63,067 signatures. Me. Const. art. IV, pt. 3, § 18(2); Appendix ("App.") 55.

If a petition is submitted with a sufficient number of valid signatures, the initiated bill, resolve, or resolution is submitted to the Legislature for consideration. Me. Const. art. IV, pt. 3, § 18(2). If the measure is not "enacted without change by the Legislature at the session at which it is presented," it must be submitted to the electorate for a referendum vote. *Id.* The Constitution charges the Secretary of State with preparing the ballot for direct initiatives, providing that "until otherwise provided by the Legislature, the Secretary of State

shall prepare the ballots in such form as to present the question or questions concisely and intelligibly." Me. Const. art. IV, pt. 3, § 20.

The Constitution also recognizes the authority of the Legislature to enact laws "for applying the people's veto and direct initiative," so long as they are "not inconsistent with the Constitution." Me. Const. art. IV, pt. 3, § 22. The Legislature has enacted a number of such laws regulating the initiative process in Chapter 11 of Title 21-A. *See* 21-A M.R.S. §§ 901–907 (2021).

Under current law, the Secretary is required to draft a proposed ballot question 10 days after the Legislature adjourns *sine die* after failing to enact without change a direct initiative that has been submitted to it. *Id.* §§ 901(4) & 905-A (2021). The public is then given 30 days to provide comments on "the content and form of proposed questions to be placed on the ballot for any pending initiatives." *Id.* § 905-A (2021). Then, 10 days following the close of the comment period and after review of those comments, the Secretary of State "shall write the ballot question for any pending initiative." *Id.*

Substantive standards for formulating the question are set forth in 21-A M.R.S. § 906(6). In addition to the provision at issue here,

§ 906(6) provides that the Secretary "shall write the question in a clear, concise and direct manner that describes the subject matter of the . . . direct initiative as simply as is possible." *Id.* § 906(6)(B). The Secretary must phrase the question so that an affirmative vote is in favor of the initiative. *Id.* § 906(6)(C). The statute also sets forth drafting standards for competing measures and situations in which there are multiple initiatives on a single topic (neither of which are at issue here). *Id.* § 906(6)(D)–(E).

Relevant Legislative History of Chapter 11

Since the 1970s, the Legislature has frequently amended the various statutes governing the presentation of direct initiatives to the voters.[1]

In 1983, the Legislature enacted LD 1059, "An Act Concerning Explanations for Referenda Questions which Appear on a Ballot." *See* P.L. 1983, ch, 410. That Act contained a provision, later recodified at 21-A M.R.S. § 901(4), requiring that the ballot question drafted by the Secretary of State "shall be conspicuously displayed on the face of the

[1] The Legislature has compiled these various amendments into a legislative history, available at the following address: https://www.maine.gov/legis/lawlib/lldl/statprovcipv/. Most of the bills and laws cited in this section can be viewed there.

petition." *Id.* § 2. Thus, unlike the current system, in which the drafting of the ballot question is among the last steps in the process before the referendum vote, the previous system required the Secretary to draft the ballot question at the outset, before any signature gathering. The previous system ensured that voters would be notified of the wording of the question—including any use of multiple questions—when deciding whether to join the petition.

Then, in 1993, the Legislature enacted LD 1488, "An Act to Clarify the Process for a Direct Initiative of Legislation and to Simplify Questions Presented to the Voters at a Referendum." *See* P.L. 1993, ch. 352, §§ 1–4. The initial version of that bill, in relevant part, repealed a prior version of 21-A M.R.S. § 906 that mandated largely fixed wording of initiative questions[2] and replaced it with the more flexible standards that now appear, in slightly amended form, at 21-A M.R.S. § 906(6)(B)–(E). L.D. 1488, § 3 (116th Legis. 1993). That initial version of LD 1488 also provided that *Legislature*-initiated referenda should be split into multiple questions:

[2] Specifically, under the previous law, the Secretary was required to pose the initiative question as follows: "Do you favor the changes in Maine law concerning (the subject matter of the law) proposed by citizen petition?" P.L. 1987, ch. 119.

> 6-A. Wording of referendum questions enacted by the Legislature. The proper format for a statutory referendum enacted by the Legislature is a separate question for each issue. In determining whether there is more than one issue, each requiring a separate question, considerations include whether;
>
> A. voter would reasonably have different opinions on the different issues.
>
> B. Having more than one question would help voters to better understand the subject matter; and
>
> C. The Legislature determines the questions are severable and can be enacted or rejected separately without negating the intent of the Legislature.

Id. § 4 (codified at 21-A M.R.S. § 906(6-A)).

Subsection 6(A) of § 906—the language at issue here—was added to the original 1993 bill by amendment. Comm. Amend. A to L.D. 1488, No. H-497 (116 Legis. 1993). The amendment largely followed the wording of the provision on splitting issues in Legislature-initiated referenda, with one key difference. Where the provision on Legislature-initiated referenda simply decrees the "proper format" for such questions, the provision governing direct initiatives instead requires that the Secretary "advise petitioners" concerning "the proper *suggested* format" of a separate question for each issue:

> A. The Secretary of State shall *advise petitioners* that the proper *suggested* format for an initiative question is a separate question for each issue. In determining whether there is more than one issue, each requiring a separate question, considerations include whether:
>
> (1) A voter would reasonably have different opinions on the different issues;
>
> (2) Having more than one question would help voters to better understand the subject matter; and
>
> (3) The questions are severable and can be enacted or rejected separately without negating the intent of the petitioners.

P.L. 1993, ch. 352 (emphasis added).

The Secretary has not located any legislative history explaining why the drafters of the amendment chose, when they transplanted the language of subsection 6-A to subsection 6, to change the phrase "proper format" to "proper suggested format." What is clear, however, is that the Legislature at the time understood that any decision made to split an initiative into multiple questions would be made known to voters deciding whether to join the petition, since, at the time, the question or questions had to be "conspicuously" displayed on the petition circulated to voters. P.L. 1983, ch. 410, § 2 (repealed as amended by P.L. 2007, ch. 234, § 2).

The requirement that the ballot question be displayed on the petition remained in effect until 2007. The Legislature then enacted LD 176 (123rd Legis. 2007), which established the current method set forth in 21-A M.R.S. § 905-A of drafting the ballot question after the Legislature adjourns *sine die* without enacting the initiated bill. P.L. 2007, ch. 234, § 6. Under the current system—unlike the prior system of printing the question or questions on the petition—voters asked to sign the petition have no way of knowing if the initiative will be presented to voters on as a single question or a series of questions. *Id.* § 4.

History of Direct Initiative Ballot Questions

Notwithstanding 21-A M.R.S. § 906(6)(A), Maine has no history or tradition of splitting initiated bills into multiple ballot questions. Since the ratification of the direct democracy provisions of the Constitution, 65 direct initiatives have been presented to the voters by ballot question, with 36 postdating the 1993 enactment of the multiple-question provision in 21-A M.R.S. § 906(6)(A). *See* Maine State Legislature, Legislative History Collection, Citizen Initiated Legislation, 1911–Present, at https://www.maine.gov/legis/lawlib/lldl/

citizeninitiated/. None were presented to voters in the form of multiple questions. *Id.*

Moreover, some of the initiated laws since 1993 involved multiple related proposals described in a single question. For example, a 2016 question asked voters both whether to legalize possession of marijuana and allow for its production, distribution, and sale. *See* L.D. 1701 (127th Legis. 2016) (passed by referendum Nov. 8, 2016). A 2011 question asked whether voters wanted to allow slot machines at two different locations at opposite ends of the state. *See* L.D. 1203 (125th Legis. 2011) (rejected by referendum Nov. 8, 2011). And a 2006 question asked whether voters wanted to both cap government spending and require voter approval of tax and fee increases. *See* L.D. 2075 (122nd Legis. 2006) (rejected by referendum Nov. 7, 2006).

History of the Initiative at Issue

The application for the initiative at issue here was submitted to the Secretary on September 16, 2020 by Intervenor Thomas B. Saviello. App. 41. As permitted by 21-A M.R.S. § 901(3-A), the Secretary of State made non-substantive changes to the legislation to conform to legislative drafting standards. App. 45. Mr. Saviello consented to those

changes. App. 49. The Secretary's Office then prepared a petition form to be circulated to voters. App. 50–53.

The petition circulated to voters for signature described a single Act: "An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region." App. 50. The initiated bill has six sections:

- Section 1 amends a provision in Title 12 of the Maine Revised Statutes governing use of public reserved land for utilities and rights of way. It requires that transmission lines and other rights of way using public land be approved by a two-thirds vote of each house of the Legislature, with retroactive effectiveness to September 16, 2014;
- Sections 2 and 3 amend provisions of Title 35-A of the Maine Revised Statutes to remove references to a repealed statute that governed "energy infrastructure corridors";
- Sections 4, 5, and 6 add three subsections to a single section of Title 35-A, entitled "Construction of transmission lines prohibited without prior order of the commission." 35-A M.R.S.A. § 3132 (Westlaw

through ch. 406, 408–425, 427–430 of 2021 1st Special Sess.). That provision currently sets forth the process to seek the approval of the Public Utilities Commission for various types of transmission line projects. *Id.* The initiative would add subsections providing:

> (a) that a type of statutorily defined transmission line known as a "high-impact electric transmission line" may not be constructed without legislative approval, with 2/3 approval of each house required if the project crosses or uses public lands;
>
> (b) that no high-impact transmission line may be constructed in a defined region designated as the "Upper Kennebec Region"; and
>
> (c) that the previous two proposed subsections are retroactive to September 16, 2020.

App. 50–51. Nothing on the face of the petition indicates to potential signatories that, in the event of a referendum on the initiative, voters would be permitted to vote on the legislation in piecemeal fashion. App. 50–53. Nor does the petition indicate which of the six sections of the bill might be the subject of separate ballot questions. *Id.*

The initiative petition was submitted to the Office of the Secretary of State on January 21, 2021. App. 54. On February 22, 2021, as required by 21-A M.R.S. § 905, the Secretary issued a written decision determining the validity of the petition. App. 54–55. The Secretary concluded that 80,506 Maine voters validly signed the petition. App. 55. Because this was more than the 63,067 signatures required, the Secretary concluded that the petition was valid. *Id.* There was no appeal of that decision.

The initiated bill was then presented, as single proposal, to the first regular session of the 130th Legislature. App. 16. The Legislature adjourned *sine die* on March 30, 2021, without having enacted the proposed measure without change. *Id.* The Governor then issued a proclamation requiring that an election be held on November 2, 2021, for a referendum vote on the initiative. *Id.*

The Secretary's Decision

On April 13, 2021, the Secretary announced draft wording of the initiative proposal for public comment—"Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to vote on other such

projects in Maine retroactive to 2014, with a two-thirds vote required if a project uses public lands." App. 57. The public submitted 119 comments on the wording of question. There was a wide variety of comments both for and against the proposed wording. One common critique concerned the draft question's treatment of the retroactivity dates. *See, e.g.,* Agency Record, dated June 8, 2021 ("R") at R043, 183.

The applicant[3] for the initiative, Intervenor Thomas Saviello, was among those who offered comments. He stated:

> As an initial matter, I think the language you have offered is certainly, clear, concise and easy for Maine voters to understand. In short, I think you did an excellent job of summarizing a complex issue for Maine voters.

App. 40. Like several commenters, he suggested a change to the retroactivity language in the question and offered a rephrased version of the Secretary's proposed single question. App. 40–41. Nowhere did he indicate that the proponents of the initiative had any intent or desire to split the vote on the initiative into multiple parts. *Id.*

[3] The term "applicant" is used in this brief to refer to the original proponent of the initiative who files the application with the Secretary to circulate a petition under 21-A M.R.S. § 901. "Petitioners" is generally used to refer to all voters who sign the circulated petition, as well as the applicant.

The vast majority of commenters expressed no concern about presenting the initiative as a single question. For example, another "strong supporter" of NECEC, Clean Energy Matters, submitted a letter noting it was "appropriate" for the ballot question to frame the legislation in a "straightforward and simple manner" and proposed its own single ballot question, which is very close to the language finally adopted by the Secretary. R037–38. Some commenters even suggested that the question should be simplified further. *See, e.g.*, R173, 179.

Rep. Caiazzo was among the few who submitted a letter arguing for the use of multiple questions. App. 58–60. He noted, among other things that he believed "the intent of the initiative is to block the construction of the New England Clean Energy Connect transmission project" and that "each of the proposed law changes [in the initiated bill] is intended to impact the NECEC in a separate way." App. 60. A handful of other commenters suggested the initiative should be split into multiple questions. *See* R054, 069, 113, 169.

On May 24, 2021, following the close of the 30-day comment period, the Secretary announced the final wording of the ballot question:

> Do you want to ban the construction of high-impact electric transmission lines in the Upper Kennebec Region and to require the Legislature to approve all other such projects anywhere in Maine, both retroactively to 2020, and to require the Legislature, retroactively to 2014, to approve by a two-thirds vote such projects using public land?

App. 40. The final question clarified the retroactivity provisions of the initiative, as several commenters suggested, and made other changes addressing issues raised in the comments. This appeal, under 21-A M.R.S. § 905, followed. Rep. Caiazzo makes the sole claim that the Secretary, for the first time in Maine history, should have split the initiative into multiple ballot questions

Procedural History

Following expedited briefing and oral argument, the Superior Court affirmed the Secretary's single ballot question in an order dated July 6, 2021. App. 5.

The Superior Court held that the plain language of 21-A M.R.S. § 906(6)(A) indicated that the Secretary did not have a mandatory duty to split a direct initiative into multiple questions. App. 18. The court based its conclusion on the first sentence of § 906(6)(A), which requires the Secretary to "advise petitioners" that "proper suggested format" was

one question per issue. App. 12. Noting that "suggested" has a "non-mandatory meaning," and, further, that "suggested" modifies "format," the court concluded:

> the most sensible reading of this sentence is that the statute requires the Secretary to notify initiative petitioners that Maine law prefers initiatives presented to the people in a format of one question per issue as defined by the statutory factors, but that this format is merely "suggested," i.e., non-mandatory.

App. 13. The Superior Court went on to reject Rep. Caiazzo's alternative reading of the provision, noting that it would read the term "suggested" out of the statute. *Id.*

The court further rejected Rep. Caiazzo's claim that the second sentence of § 906(6)(A) imposes a mandatory duty on the Secretary by its use of the phrase "each requiring a separate question." *Id.* The court pointed out that it could not "read the second sentence . . . in isolation from the first." *Id.* It thus read the second sentence as a directive to the initiative petitioners to consider the statutory factors "to decide whether their petition requires multiple questions." App. 14.

In addition, the trial court noted that the overall structure of § 906 supported interpreting subsection 6(A) as non-mandatory. It pointed

out that paragraphs B–E of subsection 6, which govern the Secretary's drafting of the ballot question, are all written differently, in mandatory language. App. 14–15. And it contrasted the precatory language in subsection § 906(6)(A) with the mandatory language in § 906(6-A), noting that the Legislature would have "more closely imitated the language in § 906(6-A) had it intended a mandatory requirement. App. 16.

Finally, the court observed that, while it was unnecessary to consider legislative history because the statutory language was unambiguous, such history further confirmed that the Secretary's interpretation was correct. Specifically, it concluded the fact that § 906(6)(A) was an amendment to the bill enacting § 906(6-A) showed that the "the Legislature knew how to direct a government entity to limit ballot questions to one issue per question." App. 18.

This appeal followed.

Statement of the Issues

1. Whether (a) the Superior Court correctly concluded that the plain language of 21-A M.R.S. § 906(6)(A) does not impose a mandatory duty on the Secretary to split an initiative into multiple ballot questions

given its instruction to advise petitioners concerning the "proper suggested format" of one question per issue or, (b) if the statute is ambiguous, whether the Secretary's interpretation of § 906(6)(A) is reasonable and thus entitled to deference.

2. If the Superior Court erred in concluding that 21-A M.R.S. § 906(6)(A) is non-mandatory, whether the Secretary abused her discretion in framing the initiative as a single ballot question.

Summary of the Argument

The Secretary did not err by declining to split the initiative at issue into multiple ballot questions. By its plain and unambiguous language, 21-A M.R.S. § 906(6)(A) is a non-mandatory suggestion to initiative petitioners concerning the proper format of a ballot question. It requires the Secretary to advise initiative petitioners concerning the "proper *suggested* format" of ballot questions and then provides the petitioners with factors to consider in deciding whether to adopt that "suggested" format. It does not compel the Secretary to split initiatives into multiple questions against the petitioners' wishes.

By instead reading § 906(6)(A) as a mandatory ballot-drafting provision, Rep. Caiazzo violates the rule against surplusage by giving

no meaning or effect to the term "suggested." Instead, his reading treats "proper suggested format" as synonymous with "proper format." Such a reading is particularly untenable where the legislative history shows that the Legislature created § 906(6)(A) by taking language from a provision decreeing the "proper format" for Legislature-initiated referenda, 21-A M.R.S. § 906(6-A), and deliberately changing that statutory phrase to "proper *suggested* format."

Further, Rep. Caiazzo's attempt to attribute a different definition to "suggested" than the contextually obvious one ignores that "suggested format"—like "suggested attire" or "suggested reading"—is an idiomatic English phrase that invariably connotes a non-mandatory recommendation. Structural aspects of § 906, analyzed by the Superior Court in its decision, further support the Secretary's interpretation.

The Legislature's decision to make multiple questions non-mandatory reflects its proper concern that requiring petitioners to split initiatives into multiple separate questions would permit enactment of a law that differs substantially from what was intended by the petitioners, thereby skirting too near to the prohibition on legislative interference in people's right to initiate legislation of their choosing.

See McGee v. Sec'y of State, 2006 ME 50, ¶ 21, 896 A.2d 933. Indeed, making the format non-mandatory places citizen legislators on the same footing as the Legislature itself, which remains free to present single-question referenda to voters whenever it deems it appropriate.

That the record here does not show communication between the prior Secretary and the initiative applicant about the ballot format is irrelevant where the applicant has made clear, by his public comment on the draft question and his intervention in this appeal, that he favors a single ballot question. Moreover, the operation of § 906(6)(A) has become problematic as a result of statutory changes in 2007 that moved the drafting of the ballot question from the start of the process to after circulation of the petition. When the Secretary drafted the question here, the initiative had not one "petitioner," but 80,506, all of whom signed a petition to enact a single integrated proposal, with no notice that it might be split up.

Finally, even assuming arguendo that § 906(6)(A) requires the Secretary to split up initiatives under certain circumstances, analysis of the three non-exclusive statutory factors, as well as other relevant

factors, shows that it was not an abuse of discretion for her to decline to do so here.

Argument

I. The Superior Court Correctly Concluded that § 906(6)(A) Does Not Impose a Mandatory Duty on the Secretary

A. Standard of Review

Judicial review of the Secretary's wording of a ballot question is governed by M.R. Civ. P. 80C, as modified by 21-A M.R.S. § 905. 21-A M.R.S. § 905(2) (2021). When the Superior Court acts in its intermediate appellate capacity, as here, this Court "review[s] directly the Secretary of State's decision for errors of law, findings not supported by the evidence, or an abuse of discretion." *Reed v. Sec'y of State*, 2020 ME 57, ¶ 12, 232 A.3d 202. In reviewing the Secretary's interpretation of a statute, the Court should "first effectuate the plain language of the statute." *Knutson v. Dep't of Sec'y of State*, 2008 ME 124, ¶ 9, 954 A.2d 1054. If the language of the statute is ambiguous, the Court should "defer to the Secretary's interpretation if that interpretation is reasonable." *Id.* 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.

B. The Plain Language of § 906(6)(A) Indicates that It Is a Non-Mandatory Suggestion to the Petitioners

The Superior Court correctly held that the plain language of § 906(6)(A) does not impose a mandatory duty on the Secretary to split a ballot question into multiple questions. Rather, when the Legislature transplanted the language of § 906(6-A) to § 906(6)(A), it converted the mandatory language decreeing the "proper format" of a Legislature-initiated referendum into a requirement that the Secretary merely "advise petitioners" concerning the "proper *suggested* format" of a direct initiative. 21-A M.R.S. § 906(6)(A) (emphasis added). Under the plain words of the statute, it is initiative petitioners—not the Secretary of State—who must decide whether to accept the statute's "suggest[ion]" of one question per issue. And it is the initiative petitioners who are directed to consider the three factors set forth in the statute (and any other relevant factors, since the statutory factors are non-exclusive) in the course of making that determination.

This interpretation is the only one that is consistent with the rule against surplusage. That rule requires that "[a]ll words in a statute are to be given meaning, and none are to be treated as surplusage if they can be reasonably construed." *Allied Res., Inc. v. Dep't of Pub. Safety*,

2010 ME 64, ¶ 15, 999 A.2d 940 (quoting *Cobb v. Bd. of Counseling Prof'ls Licensure*, 2006 ME 48, ¶ 11, 896 A.2d 271). Under that rule, "suggested" must, if possible, be given independent meaning within § 906(6)(A). That is especially so when the legislative history shows that "suggested" is no stray term, but reflects a deliberate decision by the drafters to alter the mandatory language appearing in § 906(6-A). In short, "proper *suggested* format" in § 906(6)(A) has to mean something different than "proper format" in § 906(6-A).

The Secretary's interpretation of § 906(6)(A), unlike Rep. Caiazzo's, gives "suggested" independent meaning. The relevant definitions of "suggest" are "to offer for consideration or as a hypothesis" or "to propose as desirable or fitting." *See* Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/suggest. The term thus indicates a proposal that can be accepted or rejected by the recipient. Therefore, when the statute directs the Secretary to "advise petitioners" regarding the "proper suggested format" of one question per issue, the statute is directing the Secretary to convey a non-mandatory suggestion to the petitioner. It cannot be reasonably read as authorizing the Secretary to simply decree to the petitioners that their initiative will be

(or might be) split into multiple questions against their wishes. Had that been the Legislature's intent, there would have been no reason for it to add the term "suggested" to the phrase "proper format."

It is not surprising that the drafters of § 906(6)(A), despite their apparent belief in the wisdom of multi-question initiatives, were reluctant to compel such a format. As this Court has recognized, the people's right "to initiate and seek to enact legislation is an absolute right." *McGee*, 2006 ME 50, ¶ 21, 896 A.2d 933. Thus, while the Legislature is authorized under the Constitution to establish procedures implementing the initiative process, "it cannot do so in any way that is inconsistent with the Constitution or that abridges directly or indirectly the people's right of initiative." *Id.*

Both the Constitution and statute properly give the Secretary, and not the applicant, the authority to write the ballot question for a direct initiative. Me. Const. art. IV, pt. 3, § 20; 21-A M.R.S. § 901(4). That delegation of authority recognizes that formulation of a ballot question describing an initiative (as opposed to formulation of the initiative itself) is generally not a legislative function but an election-administration one, in which the Secretary endeavors to make the

subject matter of the initiative intelligible to voters. *See, e.g.*, 21-A M.R.S. § 906(6)(B) (requiring the question to be clear, concise, and as simple as is possible).

In contrast to crafting a single ballot question, however, splitting an initiative into multiple separate questions does not just serve an explanatory function to voters; it works a substantive change to the initiative. Instead of presenting voters with a single up-or-down vote on the initiated legislation, presenting multiple questions to the voters allows for piecemeal enactment of the initiative. The end result could be an enacted law that differs markedly from the initiative originally submitted by the applicant and circulated to voters.

Such piecemeal enactment could well be contrary to the intent of the initiative's drafter and of the voters who joined the petition by signing it. By making multi-question initiatives only a "suggested" format, the Legislature recognized that a mandatory requirement to split initiatives would have approached the outer limits of its authority under Article IV, part 3, § 22.

Indeed, the Secretary's reading of § 906(6)(A) places citizen petitioners on similar footing as the Legislature itself in controlling

whether a referendum question is split into multiple parts. While § 906(6-A) appears to require the splitting of a Legislature-initiated referendum into one question per issue, that provision cannot bar a future Legislature from dictating that a particular referendum must be presented to voters as a single question, even if it has multiple issues. *See Op. of the Justices*, 673 A.2d 693, 695 (Me. 1996) (opining that the Legislature cannot not bind future legislatures); *Lockman v. Sec'y of State*, 684 A.2d 415, 418 (Me. 1996) (noting that there is no express limitation on the Legislature's authority to formulate ballot questions for statutory referenda). As with citizen initiatives, courts may reject a legislatively drafted question if it is misleading, *Lockman*, 684 A.2d at 419, but undersigned counsel is aware of no authority indicating that a court could override the Legislature's determination that a referendum should be an all-or-nothing proposition (i.e., a single question). By making § 906(6)(A) non-mandatory, the Legislature has merely accorded initiative petitioners the same rights as the Legislature.

In contrast, Rep. Caiazzo's interpretation of § 906(6)(A) would essentially impose an onerous single-object rule on direct initiative petitioners—banning them from presenting a multi-issue initiative to

voters as a single package—while leaving the Legislature free to propose and enact such legislation, and even send it to voters in a single-question referendum. Unlike other states, Maine has no such single-object rule in its constitution, and this Court has twice declined to consider whether such a rule might be implied in the Maine Constitution. *Lockman*, 684 A.2d at 420; *Common Cause v. State*, 455 A.2d 1, 13 (Me. 1983). The Court should decline to interpret § 906(6)(A) in a manner that gives the Legislature greater powers to legislate than Maine citizens. *See Op. of the Justices*, 275 A.2d 800, 803 (Me. 1971) ("by the initiative amendment the people, as sovereign, have retaken unto themselves legislative power and that a particular undertaking by them to exercise that power shall be liberally construed to effectuate the purpose"); *Birks v. Dunlap*, No. BCD-AP-16-04, 2016 WL 1715405, at *7 (Me. B.C.D. Apr. 08, 2016) (holding that legislation concerning direct initiatives "must be interpreted in favor of the people's exercise of the right.") (citing *Allen v. Quinn*, 459 A.2d 1098, 1102 (Me. 1983)).

In addition to the statutory text and constitutional considerations, aspects of § 906's overall structure confirm the Legislature's intent to make § 906(6)(A) non-mandatory. As the Superior Court correctly

noted, the wording of § 906(6)(A) is anomalous compared to subsections B–E of § 906(6). App. 14. In contrast to subsection A, all of those provisions explicitly refer to how the Secretary should draft the ballot question. Only subsection A contains no express directive. Particularly where subsections B through E were enacted simultaneously with subsection A, *see* P.L. 1993, ch. 352, the Legislature's decision not to include any express ballot-drafting instructions in subsection A indicates that it did not expect the provision to apply to the Secretary in the same manner as the others.

Finally, the Superior Court correctly recognized that the Legislature's changes to the wording of § 906(6-A) when it transplanted its language to (6)(A) are crucial in interpreting the latter provision. App. 15. If the Legislature intended to impose upon the Secretary a mandatory duty to split initiatives into multiple questions, regardless of the wishes of the applicant, its alterations of the language in § 906(6-A) are inexplicable. It would have simply copied the relevant language from 6-A into (6)(A), so that (6)(A) read "The proper format for a [direct initiative] is a separate question for each issue." 21-A M.R.S. § 906(6-A). If the Legislature also wished to have the Secretary communicate

that format to the applicant, it could have added an additional sentence so requiring. By changing § 906(6-A)'s straightforward language to a requirement in § 906(6)(A) that the Secretary "advise petitioners" of the "proper suggested format" of the direct initiative, the Legislature sent a clear signal that it was creating a different sort of provision than the mandatory requirement in subsection 6-A.

Rep. Caiazzo argued below that the Secretary's interpretation of § 906(6)(A) is unconstitutional because it cedes control of ballot questions to the petitioners, contrary to Article IV, part 3, § 20, of the Maine Constitution, which requires, "until otherwise provided by the Legislature," that the Secretary "prepare the ballots in such form as to present the question or questions concisely and intelligibly." But if any interpretation of § 906(6)(A) raises constitutional concerns, it is Rep. Caiazzo's, since, as discussed above, it would require the Secretary to intrude on the legislative powers of the citizen legislature.

In any event, the Secretary's interpretation of § 906(6)(A) offers petitioners proposing a multi-issue initiative only the narrowest of choices: to reject the "proper suggested format" of one question per issue in favor of a single question. Nothing in the language of the statute

suggests that the applicant could insist on multiple questions where the Secretary determines they are not permitted (though an applicant could circumvent any such determination by circulating multiple initiatives). Nor does it suggest that an applicant could dictate the number or wording of the questions. Offering applicants such a limited right is not an abdication of the Secretary's constitutional duty to write the ballot question or questions "concisely and intelligibly." The Secretary, under her interpretation, remains responsible for drafting the question or questions, and she would remain responsible for doing so in a concise and intelligible way, regardless of whether the petitioners accept the "suggested" format of one question per issue. As the Superior Court correctly concluded, the Secretary's interpretation thus raises no constitutional issues. App. 16.

C. Rep. Caiazzo's Interpretation of § 906(6)(A) Fails to Give Plausible Meaning to All of its Terms

In his briefing to the Superior Court, Rep. Caiazzo argued that the statute uses "suggested" not to mean "recommended" but, rather, "mention[ed] or impl[ied] as a possibility." Pet.'s Super. Ct. R. Br. at 4 (quoting *Merriam-Webster Dictionary*, at https://www.merriam-webster.com/dictionary/suggest). Using this definition, he reads the

statute as requiring the Secretary to essentially warn the applicant of the possibility that the Secretary may split the initiative into multiple questions when she drafts the ballot question. Under this theory, the first sentence of the statute is meant to give the applicant the option of redrafting the initiative before it is circulated to avoid the mandatory imposition by the Secretary of multiple ballot questions. *Id.*

This interpretation does not withstand scrutiny. "Unless the statute itself discloses a contrary intent, words in a statute must be given their plain, common, and ordinary meaning, such as [people] of common intelligence would usually ascribe to them." *Jackson Brook Inst., Inc. v. Maine Ins. Guar. Ass'n*, 2004 ME 140, ¶ 9, 861 A.2d 652 (quoting *Butterfield v. Norfolk & Dedham Mut. Fire Ins. Co.*, 2004 ME 124, ¶ 4, 860 A.2d 861). The alternative definition of "suggest" cited by Rep. Caiazzo—"to mention or imply as a possibility"—may be one dictionary definition of the word, but it is not the "plain, common, and ordinary meaning" of that word in the syntax used in § 906(6)(A). The phrase "suggested [object]" has a commonly understood meaning in English. If an invitation to a social event includes "suggested attire" or a college syllabus lists "suggested reading," no one would understand

those phrases as mentioning or implying the possibility of a future mandatory dress code or future mandatory readings. Rather, readers of common intelligence would understand "suggested" to mean "recommended but not mandatory." Because § 906(6)(A) uses the same idiomatic phrase, it should be given the same commonly understood meaning. If the Legislature intended "suggested" to have the definition Rep. Caiazzo ascribes to it, it would have phrased the provision differently.[4]

Moreover, even if "suggested" in this context could plausibly be given the unnatural meaning posited by Rep. Caiazzo, his proposed definition still does not address the core problem with his interpretation of § 906(6)(A): it violates the rule against surplusage. If, as Rep. Caiazzo theorizes, the Legislature was attempting to require the Secretary to warn petitioners that she was likely to split their initiative into multiple questions, its decision to add "suggested" to "proper format"—even using Rep. Caiazzo's preferred definition—did nothing to illuminate that purpose. Simply requiring the Secretary to "advise

[4] For example: "If the Secretary preliminarily determines that the considerations in § 906(6)(A)(1)–(3) require multiple questions, it shall be *suggested* to the petitioners that the Secretary may require a separate question for each issue."

petitioners that the proper format for an initiative question is a separate question for each issue" would have conveyed the alleged purpose just as well.

Indeed, another term in the statute already performs the work that Rep. Caiazzo attributes to "suggested": "advise." The requirement that the Secretary "advise petitioners" already conveys that the Secretary is supposed to communicate with petitioners regarding the possible format of the ballot question. Rep. Caiazzo's interpretation of "suggested" would have the statute merely restate that requirement in an oblique way that is inconsistent with ordinary English usage. The Secretary's interpretation, which reads "proper suggested format" to indicate a recommendation made by the statute itself, and "advise" as directing the Secretary to communicate that recommendation to the applicant, gives both statutory terms their natural meanings without repetition.

Rep. Caiazzo also argued that the term "suggested" was inserted into the statutory language to reflect that, at the time the Secretary "advise[s]" the applicant (presumably at the time of the initial application) "the format of the ballot question is not final—it is possible

or, as the statute states, 'suggested.'" Pet.'s Super. Ct. R. Br. at 4. But this interpretation ignores the nature of the directive in the statute. The statute does not direct the Secretary to advise petitioners "*if* the proper suggested format of *their* [or *the*] initiative question" is one question per issue; it requires her to advise petitioners "*that* the proper suggested format of *an* initiative question" is one question per issue. The only plausible reading of the text is that it is the *principle* of one question per issue that is "suggested"; not some hypothetical preliminary determination of the Secretary about the specific initiative at issue.

Rep. Caiazzo's interpretation is also inconsistent with legislative history. While today the Secretary is not permitted to draft the final ballot question until the very end of the initiative process, that was not the case in 1993 when the initiative-splitting provision was enacted. At that time, the ballot question was drafted by the Secretary at the outset of the process—as soon as initiative language was finalized and before it was circulated to voters. P.L. 1983, ch. 410, § 2 (repealed as amended by P.L. 2007, ch. 234, § 2). Given the state of the law in 1993, the Legislature would not have seen any need to expressly acknowledge

in the statute that the views of the Secretary on whether the question should be split were tentative. At that time, there was no months-long wait between approval of the initiative and the drafting of the question. And, crucially, there was no requirement that the Secretary solicit and review public comments before finalizing the question. *See* 21-A M.R.S. § 905-A. The Secretary could have formed a definitive—as opposed to "suggested"—view at the outset on whether the initiative had multiple issues.

Rep. Caiazzo's other main argument below was that his strained interpretation of "suggested" is necessary in order to give meaning to the second sentence of § 906(6)(A). That sentence reads in relevant part: "[i]n determining whether there is more than one issue, each requiring a separate question, considerations include . . . ." 21-A M.R.S. § 906(6)(A). Rep. Caiazzo argues that the term "requiring" shows that the Legislature intended initiative-splitting to be mandatory when the statutory factors are met. In other words, after requiring the Secretary to advise petitioners of the "proper suggested format" of one question per issue, the Legislature went on impose a mandatory duty on the

Secretary to enforce that "suggested" format in the question-drafting phase.

The Superior Court properly rejected this disjointed interpretation. It recognized that the second sentence cannot be read "in isolation from the first." App. 13. Because the first sentence is a command to communicate with petitioners—not a command to write a ballot question—the second sentence elaborates on what the petitioners should be asked to consider, not what the Secretary may impose on petitioners against their will. As the Superior Court put it, "the Secretary must advise initiative petitioners that the proper suggested format for initiative petitioners is to present each issue as a separate question, and *initiative petitioners* should consider the statutory factors to decide whether their petition requires multiple questions." App. 14 (emphasis in original).

The Superior Court's interpretation of the second sentence of § 906(6)(A) is persuasive and should be affirmed. It reads the two sentences as a harmonious whole, with the second sentence elaborating on the directive in the first sentence to "advise petitioners." It gives the second sentence a parallel construction to the same sentence in § 906(6-

A), since in both cases the proponents of the legislation[5] are charged with considering the statutory factors. It takes into account the Legislature's choice to draft the second sentence in the passive voice rather than as a command to the Secretary. And, perhaps most importantly, it avoids any need to either give "suggested" a syntactically implausible meaning or read the second sentence of § 906(6)(A) to negate the first.

Moreover, even assuming *arguendo* that the second sentence is directed at the Secretary, its language indicates a two-step analysis as to whether there should be multiple questions: (a) whether there is more than one issue and (b) whether each issue "requir[es] a separate question." 21-A M.R.S. § 906(6)(A). Otherwise, it would make no sense for the statute to ask whether a voter would reasonably have different opinions "on the different issues" in a given initiative, since all multi-issue initiatives would have to be split. *Id.* § 906(6)(A)(1). Since the three "considerations" offered by the statute are expressly non-exclusive, *see id.* § 906(6)(A) ("considerations include . . ."), other

[5] The Legislature invariably includes the form of the ballot question in any legislation that it determines should be submitted to the voters in a referendum.

considerations by the Secretary would be permitted—including whether the applicant opts to follow the "suggested" format. Thus, the second sentence, even if read as a directive to Secretary, would not require her to split a multi-issue initiative against the wishes of the petitioners.

D. It Is Immaterial Whether the Prior Secretary Advised the Applicant of the Proper Suggested Format Here

Rep. Caiazzo complained below that, in this case, the record does not show any communications by the prior Secretary to the initiative applicant concerning the "proper suggested format" of the initiative. As an initial matter, to the extent this communication should have occurred, its absence is harmless where the applicant, Intervenor Saviello, made clear both in his public comment, App. 62–63, and by his intervention in this action, that he wishes the initiative to be presented as a single question. Under § 906(6)(A), the current Secretary could no more require him to submit to multiple questions now than the previous Secretary could have done so at the outset of the process in September 2020. And, in any event, as argued in Part II below, the three statutory considerations do not support multiple questions in this case.

More broadly, the operation of § 906(6)(A) has become problematic since its 1993 enactment due to the Legislature's decision in 2007 to

move the drafting of the ballot question from the start of the process to the end, and to thus cease printing the wording of the question on the petition form. Prior to 2007, the Secretary could engage in an interactive process with the applicant over the wording of the question, including whether the applicant wished to adopt the "proper suggested format" of one question per issue. The results of that process would be visible to voters considering whether to sign the petition, since the question or questions, by law, had to be printed on the petition in conspicuous fashion. P.L. 1983, ch. 410, § 2. A voter's signature on the petition could thus be taken as his or her assent to a series of issues for referendum instead of one single integrated proposal.

The 2007 legislation moving the timing of the drafting of the ballot questions until after the petition has been circulated made it impossible to inform voters whether they were being asked to support a single proposal or a series of proposals. By requiring the 30-day comment period before the Secretary drafted a final question, the statute effectively forbade the Secretary from determining the question (or questions) until after the petition has been circulated. *See* 21-A M.R.S. § 905-A. As a result, voters deciding whether to join a petition—

thereby becoming "petitioners"—are given no notice that it might later be split into multiple questions.

This post-2007 statutory framework may raise difficult questions in a future case with different facts. But there is no such difficulty here. Because § 906(6)(A), by its plain terms, simply does not authorize the Secretary to split up an initiative against the wishes of the petitioners, her decision to present the initiative as a single question should be affirmed.

II. The Considerations Listed in § 906(6)(A) Do Not Collectively Require the Secretary to Split the Initiative into More Than One Question

Even assuming *arguendo* that § 906(6)(A) mandates the Secretary to split certain initiatives into multiple questions against the wishes of the applicant, and after the petition has circulated to voters as a single proposal, she did not abuse her discretion in declining to do so here.

A. Standard of Review

In a Rule 80C challenge to a decision of the Secretary of State, the Court may review for "findings not supported by the evidence, errors of law, or abuse of discretion." *Knutson*, 2008 ME 124, ¶ 8, 954 A.2d 1054.

B. Reasonable Voters Are Not Likely to Have Different Opinions on the Different Provisions of the Initiated Legislation

The first non-exclusive statutory factor is whether "[a] voter would reasonably have different opinions on the different issues." 21-A M.R.S. § 906(6)(A)(1). Reasonable voters are not likely to have different opinions on different aspects of this initiative, all of which are apparently intended to halt the NECEC project. Indeed, even Rep. Caiazzo himself—who "strongly supports" the project, App. 19—does not suggest that he seeks multiple questions because he personally wishes to vote for only portions of the initiative. Nor did the handful of commenters favoring multiple questions indicate that they would split their vote if offered multiple questions. R054, 069, 113, 169.

If every policy choice in an initiative required a separate ballot question, any initiative with any degree of complexity would need to be broken out into a host of questions. Thus, to give this factor meaning, it is appropriate for the Secretary to consider not just whether it is conceivable that a reasonable voter *could* have different opinions on different aspects of the initiative, but how likely it is that a reasonable voter *would* have such diverging views. Indeed, the statute's use of the

term "would" rather than "could" suggests that something more than a hypothetical possibility of different opinions is required. *See* 21-A M.R.S. § 906(6)(A)(1).

Here, all of the provisions in the initiated legislation relate to the construction of transmission lines and other similar infrastructure projects that raise potential environmental concerns. All propose, in different ways, to increase restrictions in undertaking and maintaining such projects. Both proponents and opponents seem to agree that all of the provisions in the initiative are directed primarily at the NECEC project. R035, 114. Rep. Caiazzo himself made this point, both in the record and in his brief below—describing the various provisions in the initiative as simply different approaches to achieving a single desired result. App. 60; Pet.'s Super. Ct. Br. at 20–21. Under these circumstances, while a reasonable voter could have disparate views on various aspects of the bill, it is likely that few voters would.

C. Multiple Questions Will Not Help Voters Better Understand the Subject Matter

The second factor in § 906(6)(A), whether "[h]aving more than one question would help voters to better understand the subject matter," favors a single question. The Secretary's question clearly identifies the

three aspects of the legislation identified by Rep. Caiazzo: (a) the proposed ban of high-impact transmission lines in the Upper Kennebec Region, (b) the proposed legislative-approval requirements for transmission lines anywhere in the State, and (c) the proposed legislative-approval requirements for projects using public land. It further alerts voters to the retroactive nature of each part of the initiative, a fact that may be material to some voters. Particularly given that "[i]t is assumed that the voters have discharged their civic duty to educate themselves about the initiative," *Olson v. Sec'y of State*, 1997 ME 30, ¶ 11, 689 A.2d 605, multiple questions will not help voters better understand the subject matter.

Indeed, given that both proponents and opponents of the initiative appear to understand it as largely an effort to oppose the NECEC project, separating the initiative into multiple questions could actually harm voters' understanding of the subject matter of the initiative. A single question allows voters to more easily identify and understand that they will be voting on an integrated proposal seeking to halt the NECEC project. Splitting the initiative into multiple questions, all concerning closely related subject matter, could lead to voter confusion

concerning whether they are being asked to consider multiple separate initiatives or even an initiative paired with one or more competing measures from the Legislature.

The likelihood for voter confusion is intensified here, where it would be difficult for voters to discern which of Rep. Caiazzo's proposed three questions correspond to which of the six sections of the initiated bill. Which question, for example, would enact the definitional changes to "High-impact electric transmission line" in section 2? Which would enact the repeal of the statutory cross-reference in section 3? Which would enact the retroactivity provision in section 6? Rep. Caiazzo argues that these orphaned sections are all "closely related" to both his second and third proposed question, so that a "yes" vote on *either* question would enact sections 2, 3 and 6 of the initiative. But, even assuming that § 906(6)(A) permits such overlapping questions, voters are more likely to be confused than edified by such an approach.

Finally, in arguing below that multiple questions would be clarifying, Rep. Caiazzo made various specific criticisms of the Secretary's single question. But these criticisms, even if valid, could be addressed through minor edits to the existing question. For example,

even if Rep. Caiazzo were correct that the phrase "such projects" in the question does not sufficiently account for the "wide range of projects" covered by Section 1 of the bill, *see* Pet.'s Super. Ct. Br. at 17, that alleged concern could be corrected simply by choosing an alternate phrase, such as "such similar projects" or "various projects." Rep. Caiazzo declined to challenge the Secretary's question as misleading or unclear. His minor quibbles about the clarity of the single question do not support a need for multiple questions to better explain the issues to voters.

D. The Question Cannot Be Enacted or Rejected Separately Without Negating the Intent of the Petitioners

That splitting the question would negate the intent of the petitioners is the strongest factor cutting against splitting the initiative into multiple questions.

Because, at the time § 906(6)(A) was enacted, the Secretary drafted the ballot question before circulation of the petition, the only "petitioner" whose intent needed to be considered under subsection 6(A)(3) was that of the applicant. But that is no longer the case. Under the post-2007 system of drafting the ballot question after the petition is

circulated, every voter who signed the petition is a "petitioner"—petitioning the Legislature to enact the initiated legislation in its entirety. Because the ballot question (or set of questions) is no longer printed on the petition, these 80,506 petitioners endorsed the initiative as a single integrated proposal. To split the initiative now, after it has been circulated to voters as a single proposal, would negate the intent of not just the applicant, but the 80,506 Maine voters who signed the petition.

Rep. Caiazzo may argue that interpreting "petitioners" in § 906(6)(A)(3) to include voters signing the petition alters the original meaning of the provision, since the drafters in 1993 would not have expected "petitioners" to encompass petition signatories. But while the *effect* of § 906(6)(A)(3) might now be different than originally intended due to subsequent statutory changes, the meaning of "petitioners" has remained constant. A petitioner is simply a person who is petitioning the Legislature to enact the initiated bill. In addition to the initial applicant, any voter who signs the petition—which expressly asks the Legislature to enact the bill, App. 51—is necessarily a "petitioner." *See also* Me. Const. art. IV, pt. 3, § 20 (referring to petition signatories as

"petitioners"). The term has no other conceivable meaning. When the Legislature changed the timing of the question-drafting process in 2007, it did not change what "petitioner" meant, it simply required the analysis to occur at a time when there were many more petitioners.

In any event, it is also clear that the intent of the initial applicant, Intervenor Thomas Saviello, is also to present the proposal to voters as a single question. Mr. Saviello praised the single ballot question in his public comment to the Secretary and proposed an amendment that retained the single-question format. App. 62. His appearance in this action as an intervenor in support of the question confirms his intent.

Rep. Caiazzo also argued below that the initiative could be split without negating the petitioner's intent because enactment of any one of the three questions he proposes would "ha[ve] the potential" to achieve petitioners' purpose of blocking the NECEC project. Pet.'s Super. Ct. Br. at 21. But if the petitioners' purpose is to halt the NECEC project, and each of the various provisions in the initiative would "have the potential" of doing so, it follows that petitioners' intent would be to present the various provisions to voters as a single package,

thereby maximizing the likelihood that the initiative would halt the NECEC project.[6]

Finally, subsection 6(A)(3) also identifies as a factor whether the initiated bill is "severable." The Secretary does not contest that the three sections of the bill identified by Rep. Caiazzo are likely severable given the strong presumption in Maine law toward severability. *See* 1 M.R.S.A. § 71(8) (Westlaw through ch. 406, 408–425, 427–430 of 2021 1st Special Sess.); *Op. of the Justices*, 2004 ME 54, ¶ 23, 850 A.2d 1145. But this factor should be given little weight. A conclusion that an initiative contained inseverable provisions would almost certainly be dispositive that the initiative must be presented in one question, since it would make no sense to present voters with multiple questions when a "no" vote on any would defeat the entire initiative. A converse conclusion that an initiative is severable, however, is common and unremarkable under Maine law whenever a law has multiple parts.

[6] The extrinsic evidence offered by Rep. Caiazzo in the verified Petition and accepted by the Superior Court does not alter the analysis. That evidence shows statements of a political action committee, "No CMP Corridor," not Intervenor Saviello or the 80,506 voters who signed the petition. And even the PAC described the initiative as a "three part question," App. 24, which is consistent with how the Secretary ultimately composed the ballot question.

E. Multiple Questions Do Not Present the Subject Matter of the Initiative Concisely or "As Simply As Is Possible"

Finally, in conducting the analysis under § 906(6)(A), the Court should consider that § 906(6)(B) expressly requires that the ballot question be "clear, concise, and direct" and, after a recent amendment, *see* P.L. 2019, ch. 414, § 1, must describe the subject matter of the direct initiative "as simply as is possible." A lengthy series of questions, as proposed by Rep. Caiazzo, is neither concise nor the simplest possible way to present the subject matter of the initiative to voters. The Secretary's single question better accounts for the imperative in § 906(6)(B) and, given the non-exclusive nature of the § 906(6)(A) factors, should be considered as part of the § 906(6)(A) analysis.

Conclusion

The Court should affirm the decision of the Superior Court upholding the single ballot question drafted by the Secretary.

Respectfully submitted,

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STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Cum-21-212

CHRISTOPHER J. CAIAZZO

v.

SECRETARY OF STATE, et al.,

CERTIFICATE OF SIGNATURE

I am filing the electronic copy of a brief with this certificate. I will file the paper copies as required by M.R. App. P. 7A(i). I certify that I have prepared (or participated in preparing) the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R. App. P. 7A(f), and conform to the form and formatting requirements of M.R. App. P. 7A(g).

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