

**STATE OF MAINE
CUMBERLAND COUNTY**

**SUPERIOR COURT
DOCKET NO. AP-2026-10**

JANE GILBERT; MARK SAYRE; and
KAITLIN WEBBER,

Petitioners,

v.

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

Respondent.

PETITIONERS' REPLY BRIEF

REC'D CLERK'S OFFICE
APR 22 '26 PM 1:18

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 2

I. The Secretary concedes large numbers of Challenges, requiring the invalidation of thousands of signatures. 2

 A. Challenge 3: Maine’s residency rule, as modified by the Consent Order, is constitutional and must be enforced. 2

 B. Challenge 6: Maine’s conflict of interest laws for notaries must be enforced..... 5

 C. Intervenor does not dispute the other Challenges conceded by the Secretary. 5

II. This Court must invalidate additional signatures on the present Record, which is likely to bring the Ballot Initiative below the required signature threshold. 5

 A. Challenge 1: The petition organizations clearly violated Maine law, requiring either invalidation of their signatures or remand for further investigation. 6

 B. Challenge 5: Maine’s notarial conflict laws apply to circulator affidavits..... 13

 C. Challenge 8: Circulator affidavits without notarization dates must be invalidated..... 16

 D. Challenge 14: The Secretary must invalidate additional signatures that post-date circulator oaths on the petition sheet..... 17

 E. Challenge 15: The Constitution makes written dates a mandatory requirement on petition signatures and those lacking dates must be invalidated..... 18

 F. Challenges 20 & 21: Signatures lacking *any* municipality or “actual” address information must be invalidated as a matter of law..... 19

III. The Court should, as necessary, accept the Secretary’s request for remand on Challenges 2 and 19, as well as on any other appropriate issues..... 21

 A. Challenges 2 & 19: The Court should accept the Secretary’s request for remand on these Challenges, which concern substantial allegations of fraud. 21

 B. Challenge 18: The Secretary must ensure that only registered Maine voters signed the petition..... 23

REC'D CLERK'S OFFICE
APR 22 2019

C. The Court should also remand on Challenges 7 and 11..... 25

CONCLUSION..... 25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Anderson v. Cigna Healthcare of Maine</i> , No. CV-04-685, 2005 WL 3340127 (Me. Super. Oct. 27, 2005)	13
<i>Arsenault v. Sec’y of State</i> , 2006 ME 111, 905 A.2d 285	10
<i>Aydelott v. City of Portland</i> , 2010 ME 25, 990 A.2d 1024	10
<i>Ayotte v. Planned Parenthood of N. New England</i> , 546 U.S. 320 (2006)	3
<i>Bangor Motor Co. v. Chapman</i> , 452 A.2d 389 (Me. 1982)	12
<i>Blue Yonder, LLC v. State Tax Assessor</i> , 2011 ME 49, 17 A.3d 667	10
<i>Carrier v. Sec’y of State</i> , 2012 ME 142, 60 A.3d 1241	15
<i>City of Seabrook, Tex. v. EPA</i> , 659 F.2d 1349 (5th Cir. 1981)	12
<i>Covanta Maine, LLC v. Pub. Utilities Comm’n</i> , 2012 ME 74, 44 A.3d 960	10
<i>D.C. v. John R. Thompson Co.</i> , 346 U.S. 100 (1953)	7
<i>E. Maine Conservation Initiative v. Bd. of Env’t Prot.</i> , 2025 ME 35, 334 A.3d 706	21
<i>Fla. Bar v. Went For It, Inc.</i> , 515 U.S. 618 (1995)	5
<i>Hart v. Sec’y of State</i> , 1998 ME 189, 715 A.2d 165	3, 4
<i>Holland v. Sebunya</i> , 2000 ME 160, 759 A.2d 205	5

<i>In re McLay</i> , 133 Me. 175, 175 A. 348 (1934).....	10
<i>In re Opinion of the Justs.</i> , 114 Me. 557, 95 A. 869 (1915).....	19
<i>In re Opinion of the Justs.</i> , 116 Me. 557, 103 A. 761 (1917).....	17, 24
<i>Keene Corp. v. United States</i> , 508 U.S. 200 (1993).....	10
<i>Kelly v. State of Washington ex rel. Foss Co.</i> , 302 U.S. 1 (1937).....	7
<i>Knutson v. Dep't of Sec'y of State</i> , 2008 ME 124, 954 A.2d 1054.....	<i>passim</i>
<i>Lewis v. Webb</i> , 3 Me. 326 (1825).....	20
<i>McGee v. Sec'y of State</i> , 2006 ME 50, 896 A.2d 933.....	19, 20, 21
<i>Me. Taxpayers Action Network v. Sec'y of State</i> , 2002 ME 64, 795 A.2d 75.....	22, 24
<i>Me. Taxpayers Action Network v. Gwadosky</i> , No. AP-02-005, 2002 WL 747912 (Me. Super. Mar. 19, 2002).....	24
<i>Morris v. Trivisono</i> , 509 F.2d 1358 (1st Cir. 1975).....	4
<i>Musk v. Nelson</i> , 647 A.2d 1198 (Me. 1994).....	16
<i>New England Whitewater Ctr., Inc. v. Dep't of Inland Fisheries & Wildlife</i> , 550 A.2d 56 (Me. 1988).....	11
<i>Pool v. City of Houston</i> , 978 F.3d 307 (5th Cir. 2020)	3
<i>Reed v. Sec'y of State</i> , 2020 ME 57, 232 A.3d 202.....	5, 15, 23
<i>Seymour v. Seymour</i> , 2021 ME 60, 263 A.3d 1079.....	7

<i>State v. Bishop</i> , 392 A.2d 20 (Me. 1978).....	18
<i>State v. Dubois Livestock, Inc.</i> , 2017 ME 223, 174 A.3d 308.....	15
<i>United States v. Council of Keokuk</i> , 73 U.S. 514 (1867).....	4
<i>We the People PAC v. Bellows</i> , 40 F.4th 1 (1st Cir. 2022).....	3, 4
<i>We the People PAC v. Bellows</i> , 519 F. Supp. 3d 13 (D. Me. 2021)	3, 4
<i>York Hosp. v. Dep't of Hum. Servs.</i> , 2005 ME 41, 869 A.2d 729.....	11, 12

Statutes

21-A M.R.S. § 354.....	19, 20, 21
21-A M.R.S. § 356.....	10
21-A M.R.S. § 7.....	<i>passim</i>
21-A M.R.S. § 902.....	19
21-A M.R.S. § 903-A.....	4, 15, 16, 17
21-A M.R.S. § 903-C.....	<i>passim</i>
21-A M.R.S. § 905.....	10, 11, 12, 23
21-A M.R.S.A. § 903-E.....	<i>passim</i>
4 M.R.S. § 1916.....	17
4 M.R.S. § 1927.....	17
4 M.R.S.A. § 1904.....	5
5 M.R.S. § 11005.....	13
5 M.R.S. § 11007.....	12
Me. Const. art. IV, pt. 3, § 18.....	18

Me. Const. art. IV, pt. 3, § 20 16, 18, 23
R.S. ch. 40, §§ 24–32 (1916) 17

Rules

Me. R. Civ. P. 15..... 13
Me. R. Civ. P. 80C(a) 13

INTRODUCTION

The Secretary's response confirms much of what Petitioners' brief already made clear: the Ballot Initiative's signature-gathering process was plagued by widespread misconduct and legal non-compliance that calls into serious question whether it lawfully exceeded the required signature threshold. The Secretary agrees that about three thousand additional signatures must be invalidated. This concession alone leaves the Ballot Initiative with a razor-thin margin of only a few hundred signatures above the required 68,019 valid signature threshold. And the Secretary agrees that remand is likely necessary on at least two additional challenges—concerning falsely sworn circulator oaths (Challenge 2) and fraudulent signatures (Challenge 19)—that concern thousands of additional signatures.

But the Court can resolve this matter without remand. Even accepting just a handful of Petitioners' challenges—the merits of which are apparent on the existing record—would push the Ballot Initiative below the required threshold. Several of these challenges involve the straightforward application of Maine's petition laws, which are resisted largely on either policy grounds or based on enforcement choices by past holders of the Secretary's office. Yet, the Law Court has made clear in this context that “the Secretary's *policy* decision” cannot overcome “the Legislature's choice of language.” *Knutson v. Dep't of Sec'y of State*, 2008 ME 124, ¶¶ 27–28, 954 A.2d 1054. Because the Legislature's “plain language . . . must be effectuated,” *id.* ¶ 27, the Court must also grant Petitioners' challenges where the petition organizations indisputably failed to comply with Maine law; where circulator-notaries ignored Maine's sensible conflict laws; and where signatories failed to complete *mandatory* fields on the petition forms.

The putative Intervenor also effectively concedes the bulk of Petitioners' argument, only bothering to address a handful of Challenges. Most notably, it argues that several of Maine's petition laws would be unconstitutional if applied here. Those arguments fail. The laws targeted

by Intervenor for constitutional attack have repeatedly been applied in recent years by the Law Court and, in some instances, upheld by higher courts as applied to circumstances like these.

In short, the Ballot Initiative's qualification presently hangs by a thread. The Court should proceed to adjudicate the remaining challenges in dispute. If resolution of those challenges invalidates more than 363 additional signatures—which, by Petitioners' count, is the Ballot Initiative's current margin given the Secretary's concessions—the Court should declare the Ballot Initiative void and order it removed from the ballot. Alternatively, if the Ballot Initiative's precariously narrow margin remains close to the threshold or unclear, the Court should remand for further investigation on several Challenges, and a redetermination of the Ballot Initiative's valid signature count, as the Secretary agrees is "warranted." SOS Br. 35.

ARGUMENT

I. The Secretary concedes large numbers of Challenges, requiring the invalidation of thousands of signatures.

The Secretary concedes Challenges 3, 6, 13, and 17 in full and Challenges 9, 12, 14, 15, and 16 at least in part. *See* SOS Br. 25–34; *see also* Challenge Summary Tbl. Based upon Petitioners' review, these concessions require invalidating 2,989 additional unique signatures, leaving the ballot Initiative just 362 signatures above the required threshold of 67,682 signatures. Intervenor ignores most of these Challenges (and thus also concedes them), but disputes Challenges 3 and 6. Its arguments fail for the reasons below.

A. Challenge 3: Maine's residency rule, as modified by the Consent Order, is constitutional and must be enforced.

The Secretary agrees that signatures from four non-resident circulators must be invalidated because they did not consent to Maine's jurisdiction prior to submitting their petitions. *See* SOS Br. 31 (citing Me. Const. art. IV, pt. 3, § 20). Intervenor does not dispute that these circulators failed to properly consent to Maine's jurisdiction, or that invalidation is the usual remedy for such

errors. It contends instead that Maine’s residency rule is unconstitutional as applied. *See* Intervenor Br. 16–17. That argument goes nowhere. To start, the Law Court itself has already upheld Maine’s residency requirement as constitutional, even absent modification by the Consent Order. *See Hart v. Sec’y of State*, 1998 ME 189, ¶ 13, 715 A.2d 165. And the First Circuit, in partially concluding otherwise, nonetheless *affirmed* Judge Woodcock’s preliminary injunction order, which enjoined Maine’s residency rule only “as applied to out-of-state circulators *who first submit to the jurisdiction of the state of Maine* for any investigation and/or prosecution of alleged violations of Maine’s election code[.]” *We the People PAC v. Bellows*, 40 F.4th 1, 9 (1st Cir. 2022) (quoting *We the People PAC v. Bellows*, 519 F. Supp. 3d 13, 53 (D. Me. 2021)) (emphasis added). In other words, both the Law Court and First Circuit have already rejected Intervenor’s argument.

Intervenor appears to contend that, once Maine’s residency rule was deemed unconstitutional in part, it lost any force of law entirely. *See* Intervenor Br. 16. That view is baseless. “Courts hold laws unenforceable; they do not erase them.” *Pool v. City of Houston*, 978 F.3d 307, 309 (5th Cir. 2020). And “when confronting a constitutional flaw in a statute, [courts] try to limit the solution to the problem.” *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328–29 (2006). Accordingly, courts typically “enjoin only the unconstitutional applications of a statute while leaving other applications in force.” *Id.* at 329. In other words, Maine’s residency requirement continues to apply with full force up to the point at which it is enjoined—no more, no less. *Id.* Here, the First Circuit held Maine’s residency rule unconstitutional only as applied to out-of-state circulators who “first submit” to Maine’s jurisdiction. *We the People PAC*, 40 F.4th at 9. That holding has no effect on circulators beyond the protective scope of the injunction, including the four circulators at issue in Challenge 3, who did *not* “first submit” to

Maine's jurisdiction. *Id.*¹

Nor can offending circulators cure their error by simply claiming to submit to jurisdiction *after the fact*. *Contra* Intervenor Br. 17. This follows from the clear language of Judge Woodcock's ruling, which enjoins § 903-A only as to circulators who "*first* submit to the jurisdiction of the state of Maine." *We the People PAC*, 519 F. Supp. 3d at 53 (emphasis added). That is to say, non-resident circulators must (a) first submit to jurisdiction in Maine to (b) then be authorized to submit their petitions. Indeed, per the plain text of § 903-A, a circulator must submit an affidavit that confirms either their residency *or* consents to jurisdiction "at the time the petition is filed." 21-A M.R.S. § 903-A(4). No provision is made for tardy affidavits or for amending deficient affidavits after-the-fact. The residency rule itself applies "at the time [the individual is] circulating the petition," *id.*, emphasizing that the circulator's compliance must occur *prior* to the Secretary's validation process. Finally, common sense prohibits Intervenor's consent-if-caught argument. As the Law Court has explained, the residency rule ensures that Maine has "jurisdiction over the circulators . . . if there is a question as to the validity of the signatures collected." *Hart*, 1998 ME 189, ¶ 13, 715 A.2d 165. That purpose is undermined if a ballot initiative's proponents can thumb their nose at this legal obligation and then—only if and when a dispute arises—strategically pick and choose which circulators to have retroactively submit to Maine's jurisdiction. Thus, as *Hart* makes clear, the purpose of the residency rule is to ensure jurisdiction exists *before* a dispute arises and thus is firmly established by the time the Secretary validates the petition. *See id.*; *see also* 21-A M.R.S. § 903-A(4). Intervenor offers no persuasive reason to reject Challenge 3.

¹ Even if Intervenor's attacks on the consent order had merit, it is doubtful this Court could afford it relief; state courts lack authority to enjoin or invalidate the orders of federal courts. *See, e.g., United States v. Council of Keokuk*, 73 U.S. 514, 517 (1867); *Morris v. Travisono*, 509 F.2d 1358, 1361 (1st Cir. 1975).

B. Challenge 6: Maine’s conflict of interest laws for notaries must be enforced.

The Secretary further concedes that circulators cannot circulate petition sheets and then later *notarize* petition sheets for other circulators. *See* SOS Br. 32 (citing 21-A M.R.S.A. § 903-E; 4 M.R.S.A. § 1904(5)). Intervenor does not dispute that circulators De Clercq and Harrington violated the relevant statutes but argues only that these laws violate the First Amendment as applied. *See* Intervenor Br. 13–14. That argument is dubious, not least of all given that the Law Court readily enforced these statutes just a few years ago in *Reed v. Sec’y of State*, 2020 ME 57, ¶ 16, 232 A.3d 202. Moreover, Maine’s notarial conflict laws do not burden speech in any way. Rather, § 903-E and § 1904(5) regulate De Clercq’s and Harrington’s professional conduct as notaries—not their speech as citizens. Both circulators were free to circulate as many petitions as they wished. It is not even De Clercq’s and Harrington’s petition sheets that Petitioners seek to invalidate, but those they *notarized* for others. *See* Pet. ¶¶ 89–90; Tbl. 6. The Supreme Court has repeatedly recognized that “States have a compelling interest in the practice of professions within their boundaries,” *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 625 (1995), and Intervenor cites no authority holding sensible notarial rules like these violate the First Amendment.

C. Intervenor does not dispute the other Challenges conceded by the Secretary.

The Secretary further concedes Challenges 13 and 17 entirely, and Challenges 9, 12, 14, 15, and 16 in part. Intervenor does not appear to contest any of these Challenges and therefore concedes them as well. *See Holland v. Sebunya*, 2000 ME 160, ¶ 9 n.6, 759 A.2d 205.

II. This Court must invalidate additional signatures on the present Record, which is likely to bring the Ballot Initiative below the required signature threshold.

Petitioners’ remaining Challenges require invalidating additional signatures beyond those conceded by the Secretary and Intervenor. These Challenges can be resolved based solely on the present Record and, once resolved, will bring the Ballot Initiative below the legal signature

threshold. If, after reviewing these additional challenges, the Court determines the Ballot Initiative has fallen below the legal signature threshold, it should declare as much and order the Ballot Initiative removed. Alternatively, if the Court determines that it cannot conclude on the present record that the Ballot Initiative has fallen below the threshold, it should adopt the Secretary's recommendation for remand on several issues, including those identified below. *See infra* § III.²

A. Challenge 1: The petition organizations clearly violated Maine law, requiring either invalidation of their signatures or remand for further investigation.

As Petitioners explained, the petition organizations behind the Ballot Initiative violated Maine law by (1) failing to register to transact business in Maine; (2) failing to properly disclose how their circulators were compensated; and (3) at least in the case of “1st Amendment Pros LLC,” relying upon a likely fictitious business address. *See* Pet. Br. 13–16. The Secretary and Intervenor barely dispute the merits of these points, relying instead on flawed waiver arguments.

1. There is essentially no dispute that the petition organizations violated 21-A M.R.S. § 903-C in multiple respects.

The Secretary *agrees* that “§ 903-C appears to require foreign petition organizations” to register in Maine and does not dispute that 1st Amendment Pros, Canyon State Marketing, and Morning in America II failed to do so. SOS Br. 10. And she acknowledges that, at least in future cases, invalidating signatures collected by organizations that fail to comply with this requirement “might be” an appropriate remedy. *Id.* at 11. Her chief argument as to why that remedy should not inure here is because the Secretary's office has not historically enforced this requirement. *Id.*

The Court must reject that argument. Past practices inherited by the Secretary offer no *legal* excuse for the non-resident petition organizations. Section 903-C is very clear: petition organizations “*shall* register . . . in accordance with this section” must “meet[] any *other*

² Petitioners withdraw Challenges 4 and 10 in view of the responses offered by the Secretary and Intervenor.

requirement to transact business in this State.” 21-A M.R.S. § 903-C(1) (emphasis added). The Legislature’s command that petition organizations “shall” perform these registration tasks makes clear it is a “mandatory” requirement that must be obeyed. *See* 21-A M.R.S. § 7. The fact that past Secretaries of State did not vigorously enforce this mandatory requirement does not diminish its force. *See, e.g., D.C. v. John R. Thompson Co.*, 346 U.S. 100, 113–14 (1953) (“The failure of the executive branch to enforce a law does not result in its modification or repeal.” (collecting authority)); *Kelly v. State of Washington ex rel. Foss Co.*, 302 U.S. 1, 143 (1937) (explaining a “state law [that] remained unenforced for a long period of time . . . did not become inoperative for that reason”). The Law Court has made clear that courts “are bound by the Legislature’s choice of language.” *Knutson*, 2008 ME 124, ¶ 28, 954 A.2d 1054. After all, “it is the Legislature that weighs the competing considerations and sets the policy,” not the Secretary’s office or the courts. *Id.* ¶ 27. And there is particularly good reason to enforce the Legislature’s judgment here given that at least one petition organization—1st Amendment Pros—is registered to do business at a notorious front for fraudulent enterprises. Pet. Br. 3–6. This Court is duty-bound to enforce § 903-C as written by the Legislature—not as previously enforced by past Secretaries.

The Secretary also briefly contends that there is a lack of record evidence that these three foreign LLCs are in fact “out of compliance with Maine corporation law.” SOS Br. 10. But this information is publicly available; the absence of these entities from the Corporate Search database maintained by the Secretary’s office shows these entities are *not* registered to transact business in Maine—a fact neither the Secretary nor Intervenor even dispute. The Court can take notice of that absence. *See Seymour v. Seymour*, 2021 ME 60, ¶ 12, 263 A.3d 1079 (“Courts routinely take judicial notice of information on official government websites[.]” (collecting authority)). The fact

that state election officials failed to query this information during the validation process is a straightforward admission of error. SOS Br. 11–12.

The Secretary also does not dispute that the four petition organizations failed to “include a statement indicating the method by which the individuals hired to assist in circulating petitions are being compensated.” 21-A M.R.S. § 903-C. This too is a *mandatory* requirement—the “registration form *must*” include the aforesaid statement, *id.*, and within Title 21-A “must” is used “in a mandatory sense to impose an obligation to act in the manner specified[.]” 21-A M.R.S. § 7. The Secretary notes that there is a stray document in the record indicating all circulators were paid by the signature (R.51), but does not explain how this satisfies § 903-C. It does not. To start, this document does not even purport to be from a petition organization. *See* Pet. Br. 14. The Court should not simply *assume* this puzzling document is accurate and from an individual authorized to speak on behalf of each petition organization—nothing in the record establishes as much. Second, this odd third-party statement is plainly not on “[t]he registration form,” as it “must” be by law. 21-A M.R.S. § 903-C. This is not a *de minimis* error: Maine law requires disclosure of these registration forms on the Secretary’s website to facilitate public inspection. *See id.* Because none of the petition organizations obeyed this requirement, their publicly posted registration forms failed to disclose any manner of compensation—the peculiar document allegedly signed by Mr. Streiff was never even publicly disclosed. *See* Pet. Br. 15 & n.12. Tellingly, Intervenor simply ignores this issue entirely and offers no argument that the petition organizations complied with § 903-C in this regard—because they plainly did not. The remedy for this barely disputed violation is clear: “the law requires the invalidation of the petition upon demonstration of noncompliance, regardless of scienter.” *Knutson*, 2008 ME 124, ¶ 124, 954 A.2d 1054.

The 53,424 signatures on petitions circulated by these petition organizations should be invalidated. *See* Tbl. 1.

2. Petitioners did not waive this argument, which was not even apparent until the Secretary produced the record after the Petition was filed.

In view of these clearcut violations, the Secretary leans hard on waiver arguments as a reason to avoid enforcing the plain and mandatory terms of § 903-C, arguing Petitioners should have presented this issue to the Secretary prior to her determination. *See* SOS Br. 8–10. But the violations at issue in Challenge 1 involve information uniquely within the possession of the Secretary and were not even apparent until the Record was produced, which: (1) made clear that no petition organization ever provided a statement indicating how it paid circulators; and (2) disclosed additional, previously undisclosed petition organizations. There is also no dispute that many of the materials since disclosed in the Record were not publicly posted pursuant to § 903-C, including the existence of a previously undisclosed petition organization (Canyon State Marketing) and the stray document purporting to show how paid circulators were compensated. *See* SOS Br. 9, 12; *see also* R.30–41, 46–51 (first disclosing materials previously subject to public disclosure under § 903-C). Further still, Petitioners—and other members of the public—had no way of knowing how many signatures each petition organization was responsible for collecting until *after* the Secretary’s determination. There is no reason Petitioners should have simply divined the existence of additional materials pertaining to these entities, or known how many signatures they were responsible for collecting, prior to the completion of the Secretary’s validation process.

No authority suggests Petitioners had any duty to raise these matters prior to her Determination of Validity. Section 905 permits any voter to “appeal the decision of the Secretary of State” to the Superior Court and imposes no administrative exhaustion requirement. *See* 21-A M.R.S. § 905(2). Section 905 does not even contemplate proceedings before the Secretary at the

validation stage—it says only that the Secretary “shall determine the validity of the petition and issue a written decision stating the reasons for the decision within 30 business days.” *Id.* § 905(1). It does not require the Secretary to produce the public record before making her determination and does not provide for any hearing or public comment process.

That stands in stark contrast with § 356(2), where the Legislature chose to *expressly* provide for a challenge process before the Secretary in disputes over petition sheets for candidate nominations. *See* 21-A M.R.S. § 356(2). Legislatures act “intentionally and purposely” when they “include[] particular language in one section of a statute but omit[] it in another.” *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993). The Legislature’s creation of a comprehensive hearing scheme before the Secretary in one part of Title 21-A—but not the one at issue here—reflects “an intentional distinction.” *Aydelott v. City of Portland*, 2010 ME 25, ¶ 12, 990 A.2d 1024 (collecting authority). Simply put, “[i]f the Legislature had intended [for hearings and evidence submission before the Secretary], it knew how to say so directly as it did in [21-A M.R.S. § 356(2)].” *Arsenault v. Sec’y of State*, 2006 ME 111, ¶ 17, 905 A.2d 285. The Court cannot impose an exhaustion requirement where the Legislature chose not to do so: “Because the Legislature did not include this type of requirement, it [would be] an error of law . . . to graft this added requirement onto the Maine statute.” *Covanta Maine, LLC v. Pub. Utilities Comm’n*, 2012 ME 74, ¶ 16, 44 A.3d 960; *see also Blue Yonder, LLC v. State Tax Assessor*, 2011 ME 49, ¶ 10, 17 A.3d 667 (“We will not read additional language into a statute.”); *In re McLay*, 133 Me. 175, 175, 175 A. 348, 349 (1934) (“The duty of the court is to apply the language which the Legislature has used, not to modify it.”).

The one case relied upon by the Secretary does not change matters. *See New England Whitewater Ctr., Inc. v. Dep’t of Inland Fisheries & Wildlife*, 550 A.2d 56 (Me. 1988). That case concerned applications by whitewater rafting outfitters for a limited number of licenses to operate

upon Maine's rivers. *See id.* at 57. The relevant agency held a "public hearing" where it "received completed applications from the outfitters," and at which it "invited the outfitters present at the hearing to submit additional comments," which several did. *Id.* at 58. Dissatisfied outfitters sued, but the Law Court found many of their arguments waived for failure to raise before the agency. *Id.* at 59. As it explained, the plaintiffs "were able to comment on the process at the hearing and submit written comments to the Department after the hearing." *Id.* None of that is true here. The Secretary did not hold a public hearing on the sufficiency of the Ballot Initiative's signatures, nor did she solicit written comments on them. Nor was there any reason for her to do so, given that § 905(1) does not contemplate any hearing or notice-and-comment period for ballot initiative petitions.³

Even so, the Secretary cites *Whitewater* for the proposition that the "lack of [a] formal adjudicatory hearing" does not excuse an (apparently unwritten) exhaustion requirement. SOS Br. 7 (emphasis added). But this argument places load-bearing weight on the term "formal." Tellingly, no party can cite *any* decision imposing an exhaustion requirement on petitioners in circumstances, like this one, where the relevant agency held no hearing *at all*—formal or otherwise. Indeed, despite a substantial volume of case law under § 905 itself, no Maine court has suggested such a requirement exists. Imposing such a rule would itself likely violate due process, demanding that Petitioners comply with an unwritten exhaustion requirement rather than the plain text of § 905. Courts do not demand such "psychic" ability by petitioners challenging agency action, *City of*

³ For similar reasons, the Law Court's "observ[ation]" that Rule 80C(e) is generally "not available" for evidence that "should have been presented to the agency," SOS Br. 7 (citing *York Hosp. v. Dep't of Hum. Servs.*, 2005 ME 41, 869 A.2d 729), is not relevant. *York*, like *Whitewater*, featured a "public hearing" held by the agency, *id.* ¶ 6, as well as a comment period during which the petitioner was able to submit lengthy written filings to the agency. *See* 2005 ME 41 ¶¶ 3–8, 869 A.2d 729. In the present context, the Law Court has routinely blessed motions to supplement, correct, or otherwise modify records in § 905 challenges where evidence supporting a challenge emerges over the course of the proceeding. Pet. ¶ 8 n.2 (collecting cases); *see also* Pet. Mot. to Supp. at 1–3.

Seabrook, Tex. v. EPA, 659 F.2d 1349, 1361 (5th Cir. 1981), and there is no basis to impose an exhaustion requirement of which Petitioners could not possibly have had notice.

Finally, equally without merit is any suggestion that Challenge 1 is waived due to a failure to disclose it in the Petition. As explained, the full set of facts pertaining to these petition organizations were not disclosed until the Record was produced in this case—in part because the petition organizations’ failure to comply with § 903-C meant certain materials were not properly disclosed to the public. Even so, Petitioners expressly noted the obligation of petition organizations to properly register in their Petition (*see* Pet. ¶ 27) and repeatedly noted that the full administrative record would likely reveal additional, previously undiscoverable errors. Pet. ¶¶ 4, 8 & n.2, 41, 78, 111. That is exactly what happened. Moreover, given that record facts are often uniquely within an agency’s possession, Rule 80C contemplates review based upon the “whole record”—not merely what is known to Petitioners at the time they raise their challenge. 5 M.R.S. § 11007(4)(C)(5). And while the Secretary cites *York Hospital*, that case requires *rejecting* the waiver argument here. There, the Law Court *reversed* the Superior Court’s waiver finding precisely because the Department had not yet provided the “pertinent information” for the petitioner to advance the assertedly waived challenge. 2005 ME 41, ¶¶ 20–23, 869 A.2d 729.

In any event, the Law Court has also made clear that a “party should not be precluded by the technicalities of pleading from presenting his claim or defense on its merits unless the pleadings have misled the opposing party to his prejudice.” *Bangor Motor Co. v. Chapman*, 452 A.2d 389, 392 (Me. 1982) (quoting 1 Field, McKusick & Wroth, *Maine Civil Practice* § 15.1 at 301–02 (2d ed. 1970)). The Secretary does not (and could not) claim any conceivable prejudice here given that the Secretary is the gatekeeper of the administrative record, and neither Rule 80C nor the Maine Administrative Procedure Act even obliges her to respond directly to the Petition itself. 5 M.R.S.

§ 11005 (“No responsive pleading need be filed unless required by order of the reviewing court”); Me. R. Civ. P. 80C(a) (similar). Indeed, under the applicable rules, the Secretary was only obliged to respond to arguments raised in Petitioners’ opening brief; as her response indicates, she had ample opportunity to do so and suffered no prejudice as a result. *See generally* SOS Br. 7–37.⁴ Accordingly, it would be improper for this Court to find the matter waived, particularly given that the Secretary all but concedes that it is meritorious, at least in part. *See* SOS Br. 10–11.

B. Challenge 5: Maine’s notarial conflict laws apply to circulator affidavits.

Challenge 5 concerns circulator affidavits that must be invalidated because they were notarized by circulators De Clercq and Harrington, who previously “[p]rovid[ed] services other than notarial acts” to the Ballot Initiative by circulating petitions. 21-A M.R.S. § 903-E. Accordingly, they were “not authorized to administer an oath or affirmation to the circulator of a petition under section 902.” *Id.*; *see also* 4 M.R.S. § 1904(5) (same); Pet. Br. 21.

The Secretary concedes these two circulators were not authorized to notarize *petition sheets*, *see supra* § I.B (Challenge 6), but claims a different rule applies for circulator affidavits, SOS Br. 14–15. The Secretary draws this distinction based on language in § 903-E disqualifying “an oath or affirmation to the circulator of a petition *under section 902.*” *Id.* at 15 (quoting 21-A M.R.S. § 903-E) (emphasis added). According to her, this language only “prohibits administration of an oath ‘under section 902,’” meaning “the circulator oath on the petition form.” *Id.*

But this argument misunderstands the statutory syntax and in doing so draws an arbitrary distinction between petition sheets and circulator affidavits. The relevant language is as follows: “A notary public or other person authorized by law to administer oaths or affirmations generally

⁴ If the Court concludes otherwise, Petitioners should be granted leave to amend or their Petition as necessary. *See* Me. R. Civ. P. 15; *see also Anderson v. Cigna Healthcare of Maine*, No. CV-04-685, 2005 WL 3340127, at *2 (Me. Super. Oct. 27, 2005) (explaining that Maine courts are “liberal” in granting leave to amend and that technical pleading issues should not be a basis for avoiding resolution on the merits).

is not authorized to administer an oath or affirmation *to the circulator* of a petition under section 902” if they previously provided nonnotarial services to the campaign. 21-A M.R.S. § 903-E (emphasis added). This text makes clear that “the circulator” is the object “to” whom a disqualified notary “is not authorized” to administer an oath—not “*on a petition sheet*” or for “*an oath under § 902,*” but specifically “to the circulator.” The phrase “of a petition under section 902” modifies the term “circulator” but is not itself the object of any verb. *Id.* In other words, this language makes clear the prohibition applies to administering an oath or affirmation to *a category of person*—“the circulator of a petition under section 902”—rather than a category of document or oath. Put another way, § 903-E answers *to whom* a disqualified notary is barred from administering an oath. Properly understood, § 903-E prohibits a disqualified notary from administering oaths to a *circulator* engaged in the § 902 process, regardless of the specific oath at issue.

The Secretary’s contrary reading erases the phrase “to the circulator” from the statute. If the Legislature meant only to prohibit administering a specific category of oath—such as the oath “under section 902,” as the Secretary says (SOS Br. 15)—it would have modified § 903-E to read:

“A notary public or other person authorized by law to administer oaths or affirmations generally is not authorized to administer an oath or affirmation [~~to the circulator of a petition~~] under section 902[.]”

21-A M.R.S. § 903-E (modification added). Similarly, if the Legislature desired the prohibition to be targeted towards a *kind of document*—rather than a category of *person*—it would have written:

“A notary public or other person authorized by law to administer oaths or affirmations generally is not authorized to administer an oath or affirmation [~~to the circulator~~] [on] a petition under section 902[.]”

Id. (modifications added). The Legislature adopted neither of these alternative formulations. Instead, it intentionally added the phrase “to the circulator.” The Secretary’s reading fails to give any meaning to this phrase and the Court cannot credit a statutory reading that fails to give “all of its words meaning.” *Carrier v. Sec’y of State*, 2012 ME 142, ¶ 12, 60 A.3d 1241; *see also State v.*

Dubois Livestock, Inc., 2017 ME 223, ¶ 6, 174 A.3d 308 (Maine courts “reject interpretations that render some language mere surplusage”).

Even on the Secretary’s own terms, a circulator who executes an affidavit under § 903-A(4) remains a “circulator of a petition under section 902.” 21-A M.R.S. § 903-E. Section 903-A(4) does not create a separate species of circulator; it imposes an additional obligation on the same § 902 circulator, who must swear in that affidavit that she “compl[ie]d with the provisions of section 902.” 21-A M.R.S. § 903-A. Section 903-A itself repeatedly refers to the “circulator of a petition” or the “circulator of the petition,” confirming that the Legislature used this phrasing throughout Title 21-A to refer to a category of *person* engaged in the § 902 petition circulating process. 21-A M.R.S. § 903-A. And it further reflects the same syntactical formulation as § 903-E, where “circulator” is used as a noun and “of a petition” specifies the kind of circulator at issue. The phrase “of a petition under section 902” in § 903-E is thus satisfied by the circulator’s status as someone engaged in the § 902 process, whatever document the conflicted notary is asked to notarize on the circulator’s behalf and in connection with the campaign.

The Law Court’s decision in *Reed* casts further doubt on the Secretary’s proposed distinction. *Reed* embraced the reading put forward by the Secretary in that case because it “rationally advance[d] 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.” *Reed*, 2020 ME 57, ¶ 21, 232 A.3d 202 (emphasis in original). *Reed* did not distinguish between which “notarial acts” were being made so long as they were “in connection with the campaign.” *Id.* The Secretary’s interpretation here does the opposite, *permitting* “the use of notaries who have a demonstrable conflict of interest *at the time of their notarial acts* in connection with the campaign,” *id.* so long as they are notarizing circulator

affidavits, rather than petition sheets. In other words, the Secretary's reading permits *the same notary with the same conflict* to validly notarize one document (affidavits) but not another (petition sheets) in connection with the *same campaign*. As the Secretary acknowledges, that distinction makes no sense. *See* SOS Br. 15 (recognizing a "strong policy argument" against this reading).

Finally, the Secretary's reading chafes against other provisions of law. For example, the Constitution defines "circulator" as "*a person* who solicits signatures for written petitions." Me. Const. art. IV, pt. 3, § 20 (emphasis added). The Legislature was presumably aware of this definition when it used the term "circulator" in § 903-E, meaning it intended for that statute's prohibition to apply to a category of *person*, rather than a category of *document* or *oath*. *See Musk v. Nelson*, 647 A.2d 1198, 1202 (Me. 1994) ("The Legislature is presumed to be aware of the state of the law and decisions of this Court when it passes an act."). Simply put, the Legislature knows the consequence of using the term "circulator" in statutory text and that consequence cannot be erased based on policy preferences.⁵

The Court should invalidate 164 signatures based on Challenge 5. *See* Tbl 5.

C. Challenge 8: Circulator affidavits without notarization dates must be invalidated.

The Secretary concedes that a circulator affidavit without a notarization date on the jurat suffers from a "defective notarial certificate[]." SOS Br. 18. But the Secretary asks that this Court look past this defective certificate as a "de minimis error." *Id.* at 17. It should not. Section 903-A requires that every circulator "shall execute an affidavit." 21-A M.R.S. 903-A(4). As explained, that phrase means the circulator must effectively swear the affidavit before a notarial officer. *See* Pet. Br. 22. In turn, for a notarial act to be effective under Maine law the "certificate *must*: . . . [b]e

⁵ Intervenor's argument as to Challenge 5 fails for the same reasons as to Challenge 6. *See supra* § I.B.

signed *and dated* by the notarial officer . . .” 4 M.R.S. § 1916(1)(B) (emphases added)). And, as repeatedly noted, the Legislature use of the term “must” conveys a mandatory requirement.

The Secretary’s primary response is that she has the discretion under 4 M.R.S. § 1927 to look past omission of this mandatory date. In fact, that law says the opposite. Section 1927 serves as a general savings clause for technically deficient notarial acts. But the provision then carves out Title 21-A by specifying it “does not limit the authority of the Secretary of State to reject candidate or initiative or referendum petitions under Title 21-A on the basis of improper notarizations.” 4 M.R.S. § 1927. Nothing in that text says the Secretary’s authority is *discretionary*, particularly where the applicable portions of Title 21-A are *mandatory* like § 903-A. *Cf.* 21-A M.R.S. § 7 (explaining provisions in Title 21-A that use the terms “must” and “shall” are “mandatory”). If anything, this exclusion from § 1927 makes clear the Legislature meant to exempt Title 21-A specifically from its protective scope.

The Secretary’s reliance on the Law Court’s *Opinion of the Justices* from 1917 is also unavailing. *See* SOS Br. 17. These mandatory notarial requirements did not exist at that time of that opinion; instead, notaries at that time were governed by a law that simply stated they were authorized to “do all acts that justices of the peace are or may be authorized to do,” and included no date requirement whatsoever, 116 Me. 557, 103 A. 761, 774 (1917) (quoting Me. Rev. Stat. ch. 40 § 26 (1916)); Me. Rev. Stat. ch. 40, §§ 24–32 (1916). The Secretary’s authority does not extend to excusing violations of the mandatory laws that govern notaries in the petition process today.

Accordingly, an additional 1,214 signatures must be invalidated. *See* Tbl. 8.

D. Challenge 14: The Secretary must invalidate additional signatures that post-date circulator oaths on the petition sheet.

The Secretary initially invalidated roughly 500 signatures because they were made *after* the relevant circulator swore their oath on the petition sheet. *See* R.01. Petitioners identified an

additional 373 signatures that they contended should be invalidated on the same basis. *See* Pet. Br. 25; *see also* Tbl. 14. The Secretary now agrees that 46 of these challenged signatures must be invalidated but argues against invalidating the remainder. *See* SOS Br. 28–30.

On further review, Petitioners agree with the Secretary in part, but contend that an additional 152 signatures still require invalidation, as set forth in Supplemental Table 14 to this reply. These 152 signatures reflect instances where a signatory indisputably wrote a date *after* the date of the circulator’s oath on the petition sheet. *See id.* While the Secretary contends the Secretary’s office can discern that these as-written dates are typos, there is insufficient basis for that assumption. In contrast, for example, to instances where written dates are *impossible*—such as before the petition existed or a date in the future—the dates in Supplemental Table 14 *do* fall within the circulation period (roughly November 2025 to February 2026), but *after* the relevant circulator oath date. Simply put, these dates fail to provide assurance that the signer in fact did so before the circulator swore their oath. *See* Me. Const. art. IV, pt. 3, § 20. And there is no reason to simply assume that the signer made a typo over the date actually written on the petition form. These additional signatures therefore must be invalidated as well. *See* Pet. Br. 25.

E. Challenge 15: The Constitution makes written dates a mandatory requirement on petition signatures and those lacking dates must be invalidated.

The Constitution is clear: when a registered voter signs a petition sheet, “[t]he date each signature was made *shall be written* next to the signature on the petition.” Me. Const. art. IV, pt. 3, § 18 (emphasis added). This mandatory command leaves no discretion for enforcement on the Secretary’s part. *See State v. Bishop*, 392 A.2d 20, 22 (Me. 1978) (“The use of the word ‘shall’ makes compliance mandatory.”); *In re Opinion of the Justs.*, 114 Me. 557, 95 A. 869, 873 (1915) (“The provision of the Constitution is explicit and mandatory.”). Accordingly, where a petition

signature contains no date “written next to the signature on the petition,” the signature is constitutionally deficient and invalid, no matter the Secretary’s policy preferences.

The Secretary has conceded a few signatures on this basis but largely argues for the Challenge’s rejection where the Secretary’s office contends it can still determine that the signature was timely made. SOS Br. 30–31. But the Constitution does not grant this leeway. The Law Court has made clear that “the Secretary’s *policy* decision,” even if intended to “to save petitions in certain circumstances,” cannot trump clear constitutional or statutory language. *Knutson*, 2008 ME 124, ¶ 27, 954 A.2d 1054. The “plain language” of the Constitution “must be effectuated.” *Id.* The Legislature has reinforced the point through its own rules of construction in Title 21-A: “When used in this Title, the words ‘shall’ and ‘must’ are used in a mandatory sense to impose an obligation to act in the manner specified by the context.” 21-A M.R.S. § 7. Accordingly, in the petition context, Maine law “gives the Secretary no discretion or authority to accept” invalid petitions, “no matter how substantially they may comply with other statutory or constitutional requirements.” *McGee v. Sec’y of State*, 2006 ME 50, ¶ 16, 896 A.2d 933. Here, the Constitution “plainly compels a decision contrary to that of the Secretary of State, and the petitions at issue are void.” *Knutson*, 2008 ME 124, ¶ 28, 954 A.2d 1054.

The Secretary conceded to 3 signatures in this category; the remaining 44 signatures must also be invalidated. *See* Tbl. 15.

F. Challenges 20 & 21: Signatures lacking *any* municipality or “actual” address information must be invalidated as a matter of law.

Section 902 states that direct initiative petitions “*must* be signed in the same manner as are nonparty nomination petitions under [21-A M.R.S. § 354(3) & (4)].” 21-A M.R.S. § 902. Section 354, in turn, says that “[t]he voter or the circulator of the petition *must write or print the voter’s residence address and municipality of registration.*” 21-A M.R.S. § 354(4) (emphasis added).

This language is unambiguous: petition signatories (1) “must”; (2) “write or print”; (3) both their “residence address and municipality of registration.” *Id.* As explained, when a signatory omits either field entirely—or places a P.O. Box in lieu of a “residence address”—they fail to meet this requirement. *See* Pet. Br. 29–30. The Court is “bound by the Legislature’s choice of language,” which could not be more straightforward. *Knutson*, 2008 ME 124, ¶ 28, 954 A.2d 1054.

There clear language cannot be gainsaid. The Secretary explains that her office’s “longstanding interpretation of § 354(4)” is that compliance with the provision’s plain terms is not required, so long as municipal registrars believe they “have enough information to confirm the signatory is a registered voter.” SOS Br. 23–24. But this argument, on its face, is again “the Secretary’s *policy* decision.” *Knutson*, 2008 ME 124, ¶ 27, 954 A.2d 1054 (rejecting such argumentation). Even if it “may not be unreasonable” as a matter of *policy*, “it is the Legislature that weighs the competing considerations and sets the policy.” *Id.* And ultimately, the “plain language of the statute must be effectuated.” *Id.*; *see Lewis v. Webb*, 3 Me. 326, 333 (1825) (“It is the province of the legislature to make and establish laws; and it is the province and duty of Judges to expound and apply them.”).

While the language above is clear enough on its face, the Legislature chose to remove any doubt. It enacted a rule of construction for Title 21-A stating: “When used in this Title [21-A], the words ‘shall’ and ‘must’ are used in a mandatory sense to impose an obligation to act or refrain from acting in the manner specified by the context.” 21-A M.R.S. § 7. As the Law Court has explained, this means the term “must” in Title 21-A “is mandatory in meaning” and petitions that fail to comply with such a mandatory requirement are invalid “no matter how substantially they may comply with other statutory or constitutional requirements.” *McGee*, 2006 ME 50, ¶ 16, 896 A.2d 933. Title 21-A “gives the Secretary no discretion or authority” to act otherwise. *Id.*

The Court also cannot defer to the historical interpretation relied upon by past Secretaries. Maine courts only consider granting deference to an agency's interpretation when "the statute's language is ambiguous." *E. Maine Conservation Initiative v. Bd. of Env't Prot.*, 2025 ME 35, ¶ 22, 334 A.3d 706. The Secretary does not claim that § 354(4) is ambiguous. Because no ambiguity exists, the Court has no basis to consider any alternative construction. *See id.* (explaining courts only proceed to second step "[i]f the statute's language is ambiguous" (emphasis added)). Even if it did, the Secretary's alternative construction is not "reasonable" because it contravenes the Legislature's text. *Id.*; *accord Knutson*, 2008 ME 124, ¶¶ 26–28, 954 A.2d 1054.

The Court must instead enforce the law as written. The 207 unique signatures at issue in Challenges 20 and 21 must be invalidated.

III. The Court should, as necessary, accept the Secretary's request for remand on Challenges 2 and 19, as well as on any other appropriate issues.

If the Court cannot discern whether the Ballot Initiative remains above the legal threshold after resolving the issues above, it should adopt the Secretary's recommendation to remand. *See* SOS Br. 39. The Secretary agrees remand is appropriate if any outstanding challenges are "potentially outcome-determinative," SOS Br. 39. Even before factoring in Petitioners' outstanding Challenges in § II above, the Secretary conceded that the Ballot Initiative only remains a few hundred signatures above the threshold. SOS Br. 34. Challenges 2 and 19 *alone* implicate several thousand unique signatures, and therefore may be outcome-determinative. Accordingly, the Secretary's condition for accepting remand is readily satisfied.

A. Challenges 2 & 19: The Court should accept the Secretary's request for remand on these Challenges, which concern substantial allegations of fraud.

Petitioners have come forth with irrefutable evidence showing that multiple circulators swore false oaths on their petition sheets. Pet. Br. 17–18. The Secretary appears to agree both that some number of "petition forms containing the unwitnessed signatures [should] be properly

invalidated,” and that further investigation is “warranted.” SOS Br. 35–36. Accordingly, she supports remand on this Challenge so long as there is a basis to believe it could be determinative. *See id.* at 37. Given that the circulators in question submitted over 1,300 validated signatures, *see* Tbl. 2, there is little doubt Challenge 2 “is potentially outcome-determinative.” SOS Br. 37. For the same reason, remand is warranted on Challenge 19, which concerns evidence of obviously fraudulent signatures on the Ballot Initiative’s petition sheets. *See* Pet. Br. 27–29; Tbl 19. In particular, Petitioners identified two circulators—responsible for 1,700 signatures in total—who appeared to have engaged in fraudulent practices that the Secretary agrees are “cause for more concern.” SOS Br. 38; *see also* Pet. Br. 29. Their misconduct is also likely determinative and therefore worthy of remand.

Failing to remand on these issues would call into question “the integrity of the initiative and referendum process.” *Me. Taxpayer Action Network v. Sec’y of State (“MTAN”)*, 2002 ME 64, ¶ 13, 795 A.2d 75. Petitioners have identified essentially undisputed circulator misconduct “of constitutional import,” which the Law Court has previously held to be “fatal to an entire petition.” *Id.* (citing *Palesky v. Sec’y of State*, 1998 ME 103, ¶¶ 10–11, 711 A.2d 129); *see also* *Knutson*, 2008 ME 124, ¶ 24, 954 A.2d 1054 (explaining “the law requires the invalidation of the petition upon demonstration of noncompliance”). Mainers are entitled to know whether the Ballot Initiative only qualified for the November ballot due to such wrongdoing and the law itself requires invalidating any fraudulent or constitutionally defective petition sheets.

Intervenor nonetheless contends the Court should simply blind itself to these misdeeds, contending the Secretary must have determined they were not worthy of investigation. *See* Intervenor Br. 2–3. But the Secretary’s brief dispels that notion, confirming that the additional evidence presented by Petitioners has more firmly established the need for investigation. *See* SOS

Br. 38. Intervenor’s assertion that Petitioners should have submitted this evidence earlier fails for the reasons described as to Challenge 1. *See supra* § II.A.2.⁶ Finally, Intervenor’s remaining arguments about the weight of Petitioners’ evidence—which are better adjudicated on remand—do little to rebut the sworn testimony, backed by video and photographic evidence, submitted by Petitioners. *See* Pet. Br. Ex. A–J.

B. Challenge 18: The Secretary must ensure that only registered Maine voters signed the petition.

The Constitution requires direct initiative signatories to be registered voters. *See* Me. Const. art. IV, pt. 3, § 20. Petitioners presented *prima facie* evidence—based on a public voter registration file produced by the Secretary—to conclude that a number of validated signatures came from unregistered individuals. *See* Tbl. 18. In view of the Secretary’s concessions—which place the Ballot Initiative just barely above the necessary signature threshold—it is possible (indeed, probable) that the Ballot Measure’s current margin above the legal threshold is due to signatures from people who are not even registered to vote in Maine. On remand, the Secretary should be required to further investigate this Challenge. *See* Pet. Br. 26-27.

The Secretary resists such a remand by arguing that it chiefly falls to municipal registrars to determine if a signatory is registered to vote. *See* SOS Br. 20–23. Petitioners do not dispute that municipal registrars hold this duty in the first instance. However, the Secretary must “review all petitions filed” in support of a direct initiative to “determine the validity of the petition.” 21-A M.R.S. § 905. In other words, the “Secretary of State is required to conduct an *independent review of all direct initiative petitions* to determine the validity of the petitions.” *Me. Taxpayers Action*

⁶ Intervenor’s reliance on *Reed* proves the point. *See* Intervenor Br. 3. There, an organization raised challenges with the Secretary via letter prior to her determination, but the Secretary declined to consider them. *See Reed*, 2020 ME 57, ¶¶ 6–7, 232 A.3d 202. Accordingly, the Court remanded to the Secretary to consider these allegations. *Id.* ¶ 8. That is precisely what should occur here, as the Secretary recognizes.

Network v. Gwadosky, No. AP-02-005, 2002 WL 747912, at *2 (Me. Super. Mar. 19, 2002) (emphasis added). This includes “the authority to determine whether *any petition* filed in support of a citizens initiative is valid.” *MTAN*, 2002 ME 64, ¶ 12, 795 A.2d 75. Indeed, more than a century ago, the Law Court “answer[ed] in the affirmative” as to whether the Executive Branch could “compare the names appearing on the petitions, although certified by the town clerk . . . with the actual voting lists of the towns, and refuse to count such name as do not appear on such lists.” *In re Opinion of the Justs.*, 116 Me. 557, 103 A. at 772. Accordingly, there is no question the Secretary has authority to review petition forms to ensure signatories are registered voters.

Petitioners do not contend the Secretary is obliged to perform that task as a matter of course for every direct initiative. Here, however, substantial evidence indicates that (1) a significant number of signatories are not valid voters; (2) the Ballot Initiative’s signature gathering process was tainted by widespread circulator misconduct and other irregularities; and (3) the presence of non-registered voters on the petition sheets is likely to prove determinative. In those narrow circumstances—where the Secretary has already indicated she is not opposed to remand, SOS Br. 38—prudence and commonsense support requiring the Secretary to ensure that only registered voters signed the petition.⁷

Petitioners further agree that this should not require the Secretary or Elections Division staff to re-review all 80,000 signatures to ensure they come from registered voters. *See* SOS Br. 22–23. Instead, the Secretary should be obliged to: (1) review the 59 signatures identified in Table 18; and (2) any additional signatures for which Petitioners present *prima facie* evidence on remand,

⁷ The Secretary’s reliance on the Superior Court’s nonbinding decision in *Johnson v. Dunlap* is misplaced. Unlike the petitioners in *Johnson*, Petitioners do not contend the Secretary is under an independent duty to double-check the registrars’ work in the first instance. Rather, they urge only that the Secretary be ordered to undertake this review where, as here, *prima facie* evidence suggests the registrars erred and such error is likely determinative. *Cf.* SOS Br. 38 (agreeing remand proper on potentially determinative issues).

based on review of Maine’s public voter registration file. Based on the rate at which Petitioners have thus far identified potentially non-registered signatories, that latter number is unlikely to exceed 500 names—potentially determinative for the Petition, but not an unreasonable number for election officials to review under these circumstances.

C. The Court should also remand on Challenges 7 and 11.

The Secretary disputes whether Challenge 7 establishes *prima facie* evidence of circulator wrongdoing but acknowledges the prospect of remand on this issue. SOS Br. 16–17. Because the Secretary agrees that remand is likely appropriate on other matters, *see* SOS Br. 34–39, the Court should include Challenge 7 on remand so the Secretary can take appropriate investigatory steps.

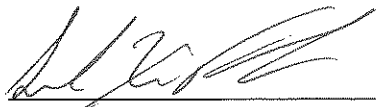
As to Challenge 11, the Secretary also agrees “that the commission-number field serves an important purpose on the circulator affidavit,” SOS Br. 19, but recognizes that a particular out-of-state notary from Massachusetts failed to complete it, *id.* According to the Secretary, it would be simple and straightforward to confirm with the Massachusetts Secretary of State that this notary has an active commission there. *See id.* at 20. Accordingly, because remand is appropriate on other matters, the Court should include Challenge 11 on remand so the Secretary can confirm that this notary has an active commission and in fact notarized the relevant petition sheets.

CONCLUSION

The Court should grant Petitioners’ challenges as set forth above and, as appropriate, either declare that the Ballot Initiative failed to submit a sufficient number of valid signatures to qualify for the November ballot or remand to the Secretary for a re-determination in view of new evidence on, at minimum Challenges 2 and 19, as well as any other Challenges suitable for remand, including Challenges 7, 11, and 18.

Dated: April 22, 2026

Respectfully submitted,


SAMUEL X. FRANK
BAR No. 10302

For James G. Monteleone, Bar No. 5827

BERNSTEIN SHUR

100 Middle Street/ PO Box 9729

Portland, ME 04104-5029

(207) 774-1200

jmonteleone@bernsteinshur.com

/s/ Ben Stafford

Ben Stafford*

Tyler L. Bishop*

ELIAS LAW GROUP LLP

1700 Seventh Avenue, Suite 2100

Seattle, Washington 98101

Telephone: (202) 985-0628

bstafford@elias.law

tbishop@elias.law

Christopher D. Dodge*

Marcos Mocine-McQueen*

Mark R. Haidar*

ELIAS LAW GROUP LLP

250 Massachusetts Ave NW, Suite 400

Washington, D.C. 20001

Telephone: (202) 968-4490

cdodge@elias.law

mmcqueen@elias.law

mhaidar@elias.law

Counsel for Petitioners

** Pro Hac Vice Application Pending*

**Supplemental Challenge Table 14: Voter Signed After Circulator
Oath Date**

Supplemental Challenge 14 Table: Voter Signed After Circulator Oath Date

Total Signatures: 152

<u>Petition Number ("petnum")</u>	<u>Signature line</u>	<u>PDF Batch</u>	<u>PDF Page</u>
150	6	Box 1 Folder 3 134_150	68
150	7	Box 1 Folder 3 134_150	68
150	8	Box 1 Folder 3 134_150	68
150	9	Box 1 Folder 3 134_150	68
224	9	Box 1 Folder 5 219_234	44
225	9	Box 1 Folder 5 219_234	40
282	2	Box 1 Folder 6 273_287	24
336	18	Box 1 Folder 7 333_350	60
344	1	Box 1 Folder 7 333_350	28
344	2	Box 1 Folder 7 333_350	28
416	43	Box 2 Folder 1 416_450	139
419	31	Box 2 Folder 1 416_450	127
430	62	Box 2 Folder 1 416_450	83
634	65	Box 2 Folder 5 625_650	67
716	37	Box 2 Folder 7 713_724	35
719	5	Box 2 Folder 7 713_724	24
800	38	Box 2 Folder 8 764_800	51
803	13	Box 3 Folder 1 801_850	9
918	2	Box 3 Folder 3 901_950	132
1024	29	Box 3 Folder 5 1001_1050	107
1040	12	Box 3 Folder 5 1001_1050	44
1078	30	Box 3 Folder 6 1051_1079	7

<u>Petition Number ("petnum")</u>	<u>Signature line</u>	<u>PDF Batch</u>	<u>PDF Page</u>
1180	46	Box 3 Folder 8 1171_1200	83
1248	39	Box 4 Folder 1 1201_1250	188
1526	40	Box 4 Folder 7 1501_1550	102
1553	40	Box 4 Folder 8 1551_1600	10
1673	20	Box 5 Folder 2 1651_1700	89
1673	21	Box 5 Folder 2 1651_1700	89
1673	22	Box 5 Folder 2 1651_1700	89
1792	1	Box 5 Folder 4 1751_1800	161
1834	61	Box 5 Folder 5 1801_1850	134
1837	63	Box 5 Folder 5 1801_1850	146
1839	23	Box 5 Folder 5 1801_1850	153
2093	2	Box 6 Folder 2 2051_2100	167
2106	34	Box 6 Folder 3 2101_2150	22
2117	22	Box 6 Folder 3 2101_2150	65
2120	14	Box 6 Folder 3 2101_2150	77
2182	37	Box 6 Folder 4 2151_2200	126
2241	2	Box 6 Folder 5 2201_2250	157
2245	23	Box 6 Folder 5 2201_2250	171
2253	8	Box 6 Folder 6 2251_2300	9
2378	27	Box 6 Folder 8 2351_2400	110
2437	47	Box 7 Folder 1 2401_2450	144
2598	57	Box 7 Folder 4 2551_2600	188
2613	42	Box 7 Folder 5 2601_2650	50
2615	19	Box 7 Folder 5 2601_2650	57
2615	32	Box 7 Folder 5 2601_2650	58

<u>Petition Number ("petnum")</u>	<u>Signature line</u>	<u>PDF Batch</u>	<u>PDF Page</u>
2618	11	Box 7 Folder 5 2601_2650	67
2620	9	Box 7 Folder 5 2601_2650	75
2643	41	Box 7 Folder 5 2601_2650	168
2916	43	Box 8 Folder 3 2901_2950	62
2926	26	Box 8 Folder 3 2901_2950	102
2937	13	Box 8 Folder 3 2901_2950	145
3012	61	Box 8 Folder 5 3001_3050	46
3125	19	Box 8 Folder 7 3101_3150	97
3125	20	Box 8 Folder 7 3101_3150	97
3125	21	Box 8 Folder 7 3101_3150	97
3126	59	Box 8 Folder 7 3101_3150	102
3127	37	Box 8 Folder 7 3101_3150	106
3204	11	Box 9 Folder 1 3201_3250	13
3204	34	Box 9 Folder 1 3201_3250	14
3204	35	Box 9 Folder 1 3201_3250	14
3214	12	Box 9 Folder 1 3201_3250	53
3386	22	Box 9 Folder 4 3351_3400	144
3386	23	Box 9 Folder 4 3351_3400	144
3389	8	Box 9 Folder 4 3351_3400	156
3567	19	Box 9 Folder 8 3551_3600	65
3668	48	Box 10 Folder 2 3666_3689	87
3768	31	Box 10 Folder 4 3751_3769	7
3849	24	Box 10 Folder 5 3801_3850	8
3854	42	Box 10 Folder 6 3851_3900	187
3856	60	Box 10 Folder 6 3851_3900	179

<u>Petition Number ("petnum")</u>	<u>Signature line</u>	<u>PDF Batch</u>	<u>PDF Page</u>
3922	11	Box 10 Folder 7 3901_3950	116
3926	24	Box 10 Folder 7 3901_3950	100
3932	39	Box 10 Folder 7 3901_3950	75
3932	40	Box 10 Folder 7 3901_3950	75
3932	57	Box 10 Folder 7 3901_3950	75
4155	12	Box 11 Folder 4 4151_4200	184
4347	4	Box 11 Folder 7 4301_4350	16
4448	59	Box 12 Folder 1 4401_4450	11
4448	60	Box 12 Folder 1 4401_4450	11
4576	25	Box 12 Folder 4 4551_4600	100
4662	39	Box 12 Folder 6 4651_4678	67
4668	7	Box 12 Folder 6 4651_4678	44
4668	8	Box 12 Folder 6 4651_4678	44
4738	2	Box 12 Folder 7 4701_4750	52
4754	21	Box 12 Folder 8 4751_4788	140
4848	26	Box 13 Folder 1 4801_4850	190
4849	18	Box 13 Folder 1 4801_4850	197
4851	29	Box 13 Folder 2 4851_4900	2
4857	59	Box 13 Folder 2 4851_4900	26
4861	46	Box 13 Folder 2 4851_4900	42
5027	3	Box 13 Folder 5 5001_5050	105
5072	62	Box 13 Folder 6 5051_5100	86
5072	63	Box 13 Folder 6 5051_5100	86
5072	64	Box 13 Folder 6 5051_5100	86
5241	2	Box 14 Folder 1 5201_5250	161

<u>Petition Number ("petnum")</u>	<u>Signature line</u>	<u>PDF Batch</u>	<u>PDF Page</u>
5247	20	Box 14 Folder 1 5201_5250	185
5426	35	Box 14 Folder 5 5401_5450	102
5430	35	Box 14 Folder 5 5401_5450	118
5430	36	Box 14 Folder 5 5401_5450	118
5533	47	Box 14 Folder 7 5501_5550	128
5649	12	Box 15 Folder 1 5601_5650	185
5649	13	Box 15 Folder 1 5601_5650	185
5752	8	Box 15 Folder 4 5751_5800	5
5752	9	Box 15 Folder 4 5751_5800	5
5897	64	Box 15 Folder 6 5851_5900	186
5937	40	Box 15 Folder 7 5901_5950	146
5943	19	Box 15 Folder 7 5901_5950	169
5990	38	Box 15 Folder 8 5951_6000	119
5993	23	Box 15 Folder 8 5951_6000	108
6147	27	Box 16 Folder 3 6101_6150	14
6147	28	Box 16 Folder 3 6101_6150	14
6147	29	Box 16 Folder 3 6101_6150	14
6150	47	Box 16 Folder 3 6101_6150	2
6151	26	Box 16 Folder 4 6151_6200	2
6151	27	Box 16 Folder 4 6151_6200	2
6151	28	Box 16 Folder 4 6151_6200	2
6157	62	Box 16 Folder 4 6151_6200	26
6159	15	Box 16 Folder 4 6151_6200	33
6159	16	Box 16 Folder 4 6151_6200	33
6159	17	Box 16 Folder 4 6151_6200	33

<u>Petition Number (“petnum”)</u>	<u>Signature line</u>	<u>PDF Batch</u>	<u>PDF Page</u>
6209	16	Box 16 Folder 5 6201_6250	29
6262	9	Box 16 Folder 6 6251_6300	45
6265	16	Box 16 Folder 6 6251_6300	57
6402	3	Box 17 Folder 1 6401_6450	5
6614	6	Box 17 Folder 5 6601_6650	53
6615	27	Box 17 Folder 5 6601_6650	58
6708	1	Box 17 Folder 7 6701_6750	29
6754	35	Box 17 Folder 8 6751_6800	14
6811	15	Box 18 Folder 1 6801_6850	41
6861	25	Box 18 Folder 2 6851_6900	41
6864	52	Box 18 Folder 2 6851_6900	54
6865	1	Box 18 Folder 2 6851_6900	57
6865	2	Box 18 Folder 2 6851_6900	57
6959	52	Box 18 Folder 4 6951_7000	34
7066	48	Box 18 Folder 6 7051_7100	62
7066	49	Box 18 Folder 6 7051_7100	62
7234	17	Box 19 Folder 1 7201_7250	133
7234	55	Box 19 Folder 1 7201_7250	134
7467	32	Box 19 Folder 6 7451_7500	66
7553	4	Box 19 Folder 8 7551_7600	9
7685	24	Box 20 Folder 2 7651_7700	137
7810	55	Box 20 Folder 5 7801_7850	37
7810	56	Box 20 Folder 5 7801_7850	37
7838	30	Box 20 Folder 5 7801_7850	146
7838	47	Box 20 Folder 5 7801_7850	146

<u>Petition Number ("petnum")</u>	<u>Signature line</u>	<u>PDF Batch</u>	<u>PDF Page</u>
7839	11	Box 20 Folder 5 7801_7850	149
7841	5	Box 20 Folder 5 7801_7850	157
7841	6	Box 20 Folder 5 7801_7850	157
7841	7	Box 20 Folder 5 7801_7850	157
7866	4	Box 20 Folder 6 7851_7900	61