STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
DOCKET NO. AP-26-10

JANE GILBERT, MARK SAYRE, and KAITLIN WEBBER,

Petitioners,

v.

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

Respondent,

PROTECT GIRLS' SPORTS IN MAINE, a registered Ballot Question Committee,

Proposed Intervenor.

PROPOSED INTERVENOR'S RESPONSE TO PETITIONERS' BRIEF PURSUANT TO RULE 80C AND OPPOSITION TO PETITIONERS' MOTION TO SUPPLEMENT THE RECORD

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

NOW COMES, Proposed Intervenor, Protect Girls Sports in Maine Ballot Question Committee ("PGS") by and through its attorneys, Timothy C. Woodcock, Esq. and Janna Gau, Esq., and file its brief in response to the brief of Petitioners, Jane Gilbert, Mark Sayre, and Kaitlin Webber (collectively "Petitioners"), and its Opposition to Petitioners' Motion to Supplement the Record as follows:

I. PROCEDURAL POSTURE

On March 17, 2026, the Secretary of State certified her Determination that enough valid signatures had been timely submitted to place a citizen initiative entitled, "An Act to Designate School Sports Participation and Facilities by Sex ("Ballot Initiative") on the November 3, 2026 Ballot. In particular, the Secretary determined that 71,033 signatures were valid, which exceeded the required threshold of 67,682. *Complaint*, Ex. A, ¶ 3. On March 27, Petitioners filed their Complaint pursuant to Rule 80C and 21-A M.R.S. §905 challenging the Secretary's Determination.

On April 1, 2026, proposed Intervenor, Protect Girls Sports in Maine, Ballot Question Committee ("PGS") moved to intervene. The Secretary took no position on PGS's motion; Petitioners advised that they did not object.[1] On April 6, the Secretary filed the record on its Determination.[2] On April 8, Petitioners moved to supplement the record. On April 10, pursuant to an agreed-upon briefing schedule, Petitioners filed their merits brief. PGS now files its combined merits brief and Opposition to Petitioners' Motion to Supplement.

II. OPPOSITION TO MOTION TO SUPPLEMENT

Petitioners have moved to supplement the record by adding 10 affidavits from individuals who purportedly witnessed alleged shortcomings in the conduct of certain Circulators. Pet. Mot., Exs. A-J. Petitioners' Motion should be denied because Petitioners failed to offer any explanation

[1] Proposed Intervenor's Motion to Intervene is still pending with this Court.
[2] The Secretary later reissued a Bates Stamp version of the record which is the operative record.

for not having submitted these affidavits to the Secretary before she issued her March 17 Determination. Beyond that, the affidavits themselves are either demonstrably selective, painting a distorted picture of the Circulator in question or are so poorly supported as to be wholly incompetent or irrelevant and, therefore, not "material."[3]

A. Standard of Review Under Administrative Procedures Act

As Petitioners acknowledge, in this appeal, the admission of non-record evidence is governed by 5 M.R.S. § 11006(1)(B). Pet. Mot. at 4. Section 11006(1)(B) provides that a Court may allow a supplementation of the record where "the evidence is material to the issues presented...and could not have been presented or was erroneously disallowed in proceedings before the agency." *Id.*

1. Petitioners' Affidavits could have been Submitted before the Secretary Issued her Determination

Petitioners' Exhibits A through J are affidavits from individuals who claim to have witnessed petition circulators failing to fulfill their duties. Most of the affiants allege instances in which the circulators failed to witness each signature. Pet. Mot., Exs. A-E, G-J. One affiant alleged that the circulator failed to fully display the initiative summary for the voters to review. *Id.*, Ex. F.

The Record reflects that several of these affiants submitted written complaints to the Secretary before the Secretary issued the March 17 Determination. *See* R0055 (Complaint of Mary Henderson); R0056-0063 (Complaint of Cynthia Grimm); R0075-0077 (Complaint of Mike Hein); R0061 (reference to Complaint of Amy Stubbs). By not invalidating the petitions submitted by the circulators after having been directed to their petitions, it is apparent that the Secretary evaluated and ruled out these accusations as grounds to invalidate the circulators' petitions.

[3] If the Court grants Petitioners' motion in whole or in part, PGS reserves the right to supplement the record with evidence disputing the representations set forth in Exhibit A-J and placing each set of allegations in its complete and appropriate context.

Moreover, nothing prevented the complainants from submitting affidavits in support of their accusations ***before*** the Secretary issued her Determination.

When reviewing a determination on a direct-action petition made by the Secretary of State, the Court's review is "deferential and limited." *Watts v. Bd. of Envtl. Prot.*, 2014 ME 91, ¶ 5, 97 A.3d 115. Further, under a Rule 80C review, this Court only reviews adjudicatory decisions "for abuse of discretion, errors of law, or findings not supported by the substantial evidence in the record." *Wyman v. Town of Phippsburg*, 2009 ME 77, If 8, 976 A.2d 985. The Court should "not vacate an agency's decision unless it: violates the Constitution or statutes; exceeds the agency's authority; is procedurally unlawful; is arbitrary or capricious; constitutes an abuse of discretion; is affected by bias or an error of law; or is unsupported by the evidence in the record." *Kroeger v. Dep't of Envtl. Prot.*, 2005 ME 50, ¶ 7, 870 A.2d 566.

Petitioners post-Determination submission of affidavits contrasts with the course followed by the petition challengers in *Reed v. Secretary of State*, 2020 ME 57, 232 A.3d 202. There, the challengers submitted materials questioning the validity of petitions before the Secretary issued his decision. *Id.* at ¶¶ 6-7. Indeed, the challengers' submissions were so voluminous that the Secretary candidly acknowledged that he could not complete his review before the deadline for issuing his Determination arrived. *Id.* at ¶ 7. Under these circumstances, the Court remanded the matter to the Secretary to complete his review. *Id.* at ¶¶ 8-9.

Petitioners have not met Section 11006(1)(B)'s demanding requirement that the evidence they now seek to submit "**could not** have been presented" to the Secretary in the pre-Determination period. 5 M.R.S § 11006(1)(B). For this reason and for the reasons set forth below, Petitioners' Motion to Supplement the Record should be denied.

2. Several of the Affidavits Fail Basic Standards for Evidentiary Competence and Relevance

Aside from their tardy submission, a close review of the proffered affidavits reveals that, in several instances, they lack the detail necessary for the grave step of excluding any petitions. Most of the affidavits accuse the circulators of failing to witness all the signatures they gathered, by the same token, they tacitly acknowledge that the circulators witnessed many signatures. Despite their claimed focus on the circulators, they do not provide any information that would allow the Secretary to identify **which** petitions may bear unwitnessed signatures.[4] In several instances, this should not have been difficult.

The affiants need only to have identified a **single** voter who signed a petition while the circulator was allegedly absent. Then that petition could have been identified. At no point does it appear that they identified or even attempted to identify such a voter-signatory. It appears that, instead, they avoided doing so in the hopes they could persuade the Secretary to invalidate the signatures of each challenged circulator *en masse*, thus invalidating **all** those circulators' petitions and depriving all voters who signed those circulators' petitions, even those who signed petitions that the affiants could not contest, of their constitutional right to support the placement of the Ballot Initiative on the ballot. For example:

Exhibits A-C: Circulator Elias Vasquez is the subject of Exhibits A-C. He collected signatures for the Ballot Initiative at Mount Ararat High School on Election Day, November 4, 2025. Ex. A, ¶ 3, Ex. B, ¶ 3, Ex. C, ¶ 3. The affiants assert that Mr. Vasquez left his petitions unattended for extended periods of time, the photographs and video-recordings are not only

[4] As noted above, Intervenor denies that the circulators failed to witness all the signatures on the petitions they signed under oath. In the event that the Court either allows Petitioners to supplement the record or remands this matter to the Secretary for further consideration of the allegations in the newly submitted affidavits, Intervenors would reserve the right to supplement the record to place the circumstances referred to in Affidavits included in Exhibits A-J in more complete and appropriate context.

extremely abbreviated, they narrowly depict the petition table and omit the surrounding area. *Id.* The same selectivity afflicts the allegations and supporting materials in Exhibits D and E.[5]

Exhibit F: Exhibit F concerns Circulator Hope Angel. According to the affiant, Ms. Angel failed to display the Ballot Initiative summary to petition signers and "around 200 individuals signed the Petition without unfolding the Petition." Ex. F, ¶¶ 6-7. The affiant also alleges that Ms. Angel left her table "multiple times, leaving the petitions face up on the table." *Id.* at ¶ 8.

In the last paragraph of Exhibit F, just above the oath, the affiant becomes more circumspect about Ms. Angel's failure to display the summary asserting that, "[b]y routinely folding the petition, the PGSM Circulator **appeared** not to provide voters with [the] opportunity [to review the summary]. *Id.* at ¶ 9 (emphasis supplied). Yet, the affidavit shows that there is no reason why the affiant should have to equivocate on this point. The affiant asserts to have engaged in conversation with Ms. Angel and obtained some personal information about her. *Id.* at ¶ 5. There appears to be no reason why the affiant could not have obtained a clear view of the allegedly folded petition and confirmed how Ms. Angel displayed it. In short, assuming for the sake of argument that Ms. Angel's alleged failure to fully display the Ballot Initiative summary would be a sufficient reason to invalidate the signatures she gathered—which Intervenor denies—the affiant has failed to provide a sufficient basis to conclude that the affiant **actually** witnessed such conduct.

Beyond this, the affiant's assertion that Ms. Angel left the petition table "multiple times, leaving Petition sheets face up on the table" is so general as to lack any reliability. For example,

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[5] Intervenors deny that Circulators' Elias Vasquez (Exhibits A-C—Mount Ararat) and Susan Mays (Exhibit D-E--Thornton Academy) failed to witness all the signatures on the petitions that were submitted to the Secretary of State. If the Court allows Petitioners to supplement the record before this Court or remands the matter to the Secretary of State for further review, Intervenor reserves the right to submit evidence in response to the affiants' allegations.

the affiant does not assert that, during Ms. Angel's alleged "multiple" absences, anyone signed the petitions she was circulating. *Id.* at ¶ 8; *id, passim.*[6]

Exhibits G-H: Exhibits G and H concern the signing of petitions at a December 9, 2025 meeting of the Board of Regional School Unit 24 ("RUS24"). In Exhibit G, the affiant asserts that a woman whom the affiant does not identify, was circulating petitions. Ex. G, ¶ 4. The affiant was able to observe persons signing the petitions, though it is not clear that those petitions belonged to the female circulator she encountered. Ex. G, ¶ 6; *id., passim.* The affiant does not assert that the female circulator left the meeting, and does not explain why, if the affiant could witness persons signing the petition, the female circulator could not also witness the same persons signing the petitions. *Id., passim.*

Further obscuring this matter, is Exhibit H. There, the affiant asserts that Carrie Sandstrom Faulkingham attended the RSU24 meeting and circulated petitions. Ex. H, ¶ 5.[7] However, Carrie Sandstrom Faulkingham did not submit any petitions, so Petitioners' claim fails. Therefore, both separately and together, Exhibits G and H fail to adduce sufficient evidence to either supplement the record regarding the RSU24 meeting or to warrant a remand to the Secretary on this point.

Exhibit I: Exhibit I concerns a circulator who sought to gather signatures on January 15, 2026, at the Augusta Bureau of Motor Vehicles ("BMV"). Ex. I, ¶¶ 3-4. It appears that the affiant had about ten minutes to view the unidentified circulator before going inside the BMV. *Id.* ¶¶ 3, 6. Shortly after the affiant emerged from BMV, a BMV official informed the circulator he could

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[6] Intervenors deny that Circulator Angel failed to display the Ballot Initiative summary to voters or that she failed to witness all the signatures of those who signed her petitions. If the Court allows Petitioners to supplement the record before this Court or remands the matter to the Secretary of State for further review, Intervenor reserves the right to submit evidence in response to the affiant's allegations.

[7] It is not at all clear that the affiant in Exhibit G and the affiant and Exhibit H are both referring to the same female circulator. Cf., Ex. G, ¶ 4; Ex. H, ¶ 5.

not collect signatures outside the BMV and the circulator left. *Id.* ¶¶ 11-12; *see also* R0075-R0077 (Complaint of Mike Hein).

Although the affiant asserts that the circulator left his petitions unattended, the affiant's own photographs do not support this contention. One photograph shows the circulator displaying petitions to potential signatories. Ex. I, Attachment 1. Two others show the table without the circulator present (*Id.*, Attachments 2-3) but a fourth photograph shows that the circulator has stepped away from the table to approach potential signatories, clearly holding petitions. *Id.* Attachment 4. More significantly, the affiant does **not** specifically assert that persons signed any petitions outside of the circulator's presence. *Id, passim.*

Beyond that, as the affiant makes clear, in addition to circulating petitions for the Ballot Initiative, the circulator was also circulating petitions for gubernatorial candidate Jim Libby. *Id.* at ¶ 5. Finally, the affiant has not identified the circulator. *Id., passim.* In sum, Exhibit I contains vague, nonspecific allegations which do not warrant either supplementing the record before this Court or remanding to the Secretary to evaluate the affiant's allegations.

Exhibit J: Exhibit J concerns the circulation of petitions at the Auburn Christmas parade on December 7, 2025, by Adam Turner. Ex. J. The affiant asserts that, although Mr. Turner was always present while voters were signing his petitions, he did not always watch them do so. Ex. J, ¶¶ 7-13. The affiant supported her allegations with two photographs of Mr. Turner, *Id.* at Attachments 1-2; *see also* R0056-0063 (Complaint of Cynthia Grimm). These photographs are notable for two points: First, no one is anywhere near Mr. Turner; second, as he looks at his phone, he is clearly **holding** his petitions. On the strength of these flimsy assertions, Petitioners seek to invalidate **all** of Mr. Turner's petitions, thus frustrating the express wishes of all those voters who signed his petitions to place the Ballot Initiative before Maine voters for their consideration as

Electors. Exhibit J does not provide a sufficient basis for this Court to reopen the record or to remand to the Secretary for further consideration.[8]

For the foregoing reasons, Intervenors respectfully ask this Court to deny Petitioners' Motion to Supplement the record before this Court with the addition of Exhibits A-J with their attachments or to remand to the Secretary for further consideration of the allegations they advance.[9]

III. THE SECRETARY'S MARCH 17 DETERMINATION WAS VALID AND SHOULD BE SUSTAINED.

A. Standard of Review for Secretary's Determination

The standard of review of the Secretary's March 17, 2026 Determination is well-settled. The Court's review of the Secretary's determination is "deferential and limited." *Birks v. Dunlap*, BCD-AP-16-04 ¶ 6 (Me. Bus. & Cons. Ct April 8, 2016), citing *Watts v. Bd. of Envtl. Prot.*, 2014 ME 91, ¶ 5, 97 A.3d 115. The Court reviews the Secretary's decisions "for abuse of discretion, errors of law, or findings not supported by evidence." *Palesky v. Sec'y of State*, 1998 ME 103, ¶ 9, 711 A.2d 129. A party seeking to vacate the Secretary's decision bears the burden of persuasion. *Richard v. Sec'y of State*, 2018 ME 122, ¶ 21, 192 A.3d 611; *Birks*, BCD-AP-16-04 ¶ 6, citing *Town of Jay v. Androscoggin Energy*, LLC, 2003 ME 64, ¶ 10, 822 A.2d. 1114.

Statutes regulating the constitutionally recognized right of the people to conduct a citizen initiative are interpreted in favor of the exercise of that right and consistent with the constitution. *Allen v. Quinn*, 459 A.2d 1098, 1102-03 (Me. 1983); *Rideout*, 2000 ME 198, ¶ 14, 761 A.2d 291

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[8] Intervenors deny that Circulator Turner failed to witness all the signatures of those who signed his petitions. If the Court allows Petitioners to supplement the record before this Court or remands the matter to the Secretary of State for further review, Intervenor reserves the right to submit evidence in response to the affiant's allegations.

[9] Intervenor does not oppose the Secretary's review of readily ascertainable errors such as a voter signature dated after the date on which a circulator completed the circulator's oath before a notary public.

(citing *Irish v. Gimbel*, 1997 ME 50, ¶ 13, 691 A.2d 664). Further, a citizen initiative referendum implicates core political speech, and any regulation thereof is subject to exacting scrutiny and must be narrowly tailored to serve a compelling state interest. *Wyman v. Sec'y of State*, 625 A.2d 307, 311, citing *Meyer v. Grant*, 486 U.S. 414, 420, 425 (1988).

Moreover, the burden is on the Petitioners to demonstrate that the Secretary's findings are not supported by any competent evidence. *Seider v. Bd. of Examiners*, 2000 ME 206, ¶ 9, 192 A.3d 611. In addition, it must be stressed that the here, where the Secretary's Determination as to the sufficiency of petitions supporting a citizen's initiative is at issue, applicable standard of review for the Secretary's decision more particular. 21-A M.R.S. § 905.

This standard is more deferential to the Secretary than the standard set forth in the Administrative Procedures Act ("APA") and, therefore, Section 905 controls. See, *McElroy v. State Employees Appeals Bd.*, 427 A.2d 958, 961 (Me. 1981).

Prior to the 1975 amendments to the Maine Constitution, almost all aspects of this process were unreviewable by the courts on appeal. Other branches of government could, and did, ask for advisory opinions from the Justices under Me. Const. Art. VI, § 3. The Legislature, through its Judiciary Committee, would issue validity determinations for initiative petitions; and the Governor.

The Constitution and statute establish the standard of judicial review. Me. Const. Art. IV, Pt. 3rd, § 22; 21-A M.R.S. § 905. The Constitution provides that the "direct initiative … shall be governed by the provisions of this Constitution and of the general law, supplemented by such reasonable action as may be necessary to render the preceding sections self executing." Me. Const. Art IV, Pt. 3rd § 22. "The Legislature may enact laws not inconsistent with the Constitution to establish procedures for determination of the validity of written petitions." *Id.* (emphasis added). "Such laws shall include provision for judicial review of any determination, to be

completed within 100 days from the date of filing of a written petition in the office of the Secretary of State. *Id.* Consistent with these provisions, and the Constitutional history, 21-A M.R.S. § 905 constrains this Court's standard of review in several ways: "the standard of review shall be the same" in both the Law Court and the Superior Court, *id.* at § 905(3); judicial review is limited to "questions of law," *id.*; "the Secretary of State shall determine the validity of the petition," *id.* at § 905(1); and "[t]his action must be conducted in accordance with the Maine Rules of Civil Procedure, Rule 80C, except as modified by this section," *id.* at. § 905(2). The Law Court has said that courts must review "the decision of the Secretary of State directly, reviewing for abuse of discretion, errors of law, or findings not supported by evidence." *Maine Taxpayers Action Network v Sec'y of State*, 2002 ME 64, ¶ 7, 795 A.2d 79, 78 (quoting, *Palesky v. Sec'y of State*, 1998 ME 103, ¶ 9, 711 A.2d 132).

B. Maine Citizens Have The Absolute Right To Directly Legislate, And Any Restrictions On That Right Are Subject To Strict Scrutiny

Maine citizens have had the constitutional right to legislate through direct initiatives such as the Resolve for more than 100 years. *Birks v Dunlap*, 2016 WL 1715405, at *5. The Law Court has repeatedly "stressed the importance of this Constitutional power reserved to the people, declaring it to be an 'absolute right.'" *Id.* (quoting *McGee*, 2006 ME 50, ¶ 21) (emphasis added). Recognizing the significance of this "absolute right," the Law Court has held that Section 18 of the Maine Constitution "'must be liberally construed to facilitate, rather than to handicap, the people's exercise of their sovereign power to legislate.'" *McGee*, 2006 ME 50, ¶ 21 (quoting Allen, 459 A.2d at 1102-1103). Courts apply strict scrutiny when reviewing statutes that regulate the ballot initiative process to ensure they do not unduly burden this absolute right. *Birks*, 2016 WL 1715405, at *6. "'Strict scrutiny requires that the State's action be narrowly tailored to serve a compelling state interest.'" *Id.* (quoting *Rideout v. Riendeau*, 2000 ME 198, ¶ 19).

Here, the requirement that a notary refrain from initiating or promoting an initiative is not narrowly tailored. Instead, it "is vague, subjective, and unduly burdens [the] unique and fundamental right to directly legislate." *Id.* at 9 (finding unconstitutional a requirement that a notary's signature on a petition exactly match his or her commission signature). Maine has a compelling interest in ensuring the integrity of its ballot initiative process, but it is unclear how these statutes further that goal, particularly given their chilling effect on the right to directly legislate and on freedom of speech. Moreover, the statutes are not narrowly tailored to that interest.

C. New Notary Provisions Are Not "Procedures" But Are Impermissible Substantive Requirements Not Found In The Constitution.

"The Legislature may enact laws not inconsistent with the Constitution to establish procedures for determination of the validity of written petitions." Me. Const. Art. IV, Pt. 3rd § 22 (emphasis added). The Constitution nowhere authorizes additional substantive requirements.

The constitutional history shows that substantive requirements must occur by constitutional amendment. Prior to Amendment CXXVII to the Maine Constitution, the Judiciary Committee issued a report stating that "[t]he committee considered more than twenty proposals to change the initiative and referendum process ...." 1974 Report of Jud. Comm. at 11. The "first suggestion was that ... the basic principles of the initiative and referendum should be stated in the Constitution, but that the mechanics of the process should be in the statutes so that changes and improvements could be made more easily, by the Legislature." *Id.* at 11-12. The Committee generally agreed with this concept, but concluded "that the most important mechanical aspect of the process should be kept in the Constitution so that the people's rights could not be abridged by hasty or ill-considered action of the Legislature in amending the process." *Id.* Accordingly, certain substantive requirements were proposed as amendments to the Constitution, Art. IV., Pt. 3, § 20, *id.* at 19, and enacted as part of Amendment CXXVII. *See* Con. Res. 1975, ch. 2, § 20 (effective

Nov. 24, 1975). One such new substantive requirement was that "the oath of the circulator must be sworn to in the presence of a person authorized by law to administer oaths." *Id.*

In contrast, the Committee specifically rejected proposal number 11 that "[t]he whole notary public and justice of the peace system should be reformed." 1974 Report of Jud. Comm. at 20. More specifically proposal 11 regarding notaries recommended that "[t]he appointment process should be tightened. Many are appointed solely to work in campaigns. There should be more attention paid to their qualifications." *Id.* In rejecting these recommendations, the Committee stated that "such changes were beyond the scope of th[e] study" and "at least some of the alleged problems do not appear to exist." *Id.* Accordingly, no additional amendments regarding notaries were recommended or made to the Maine Constitution. *See id.* at App. A; Con. Res. 1975, ch. 2.

Then, in 2006, Amendment CLXXI was adopted. *See* Con. Res. 2005, c. 2 (effective Nov. 27, 2006). That amendment added the new substantive requirement that "[s]ignatures on petitions not submitted to the appropriate local or state officials by [the statutory] deadlines may not be certified." *Id.* § 20. This demonstrates that the imposition of additional requirements to invalidate signatures must be made by Constitutional amendment, not by statute. This constitutional history makes clear that substantive requirements must be found in the Constitution, not imposed by a statute. As the Justices recently reasoned, a statute must be held unconstitutional where one outcome would occur under the self-executing provision in the Constitution, yet a different outcome would result by statute. *Opinion of the Justices*, 2017 ME 100, ¶ 66-68, 162 A.3d 188. Similar reasoning led the *McGee* Court to find that substantive requirements could not be added to the initiative process by statute. *McGee*, 2006 ME 50, ¶¶ 22-35.

Circulators may not be required to find and swear before notaries who promise to abridge their First Amendment rights for the entire campaign period where the Constitution does not so

require. The direct legislation provisions of the Constitution are self-executing. The Resolve would be sent to the people, "according to the Maine Constitution as it currently exists," but a different result would occur "[a]ccording to the [statute]" if the statutory notary provisions were used to invalidate further signatures. *Opinion of the Justices*, 2017 ME at ¶ 66. The statutes must yield to "the Maine Constitution as it currently exists." *Id.* The legislature cannot add a prohibition on non-notarial acts during the campaign. The Court must either affirm the Secretary on narrower grounds or hold the new notary provisions are unconstitutional on their face.

D. Notary Provisions Are Unconstitutional Because They Limit Speech And Are Not Narrowly Tailored To Any Permissible Governmental Purpose

Petitioners challenge petitions notarized by Robert DeClerqc and Patick Harrington after they, themselves, circulated petitions in violation of the ban imposed by 21-A M.R.S. 903-E. But these notary provisions impose unconstitutional restrictions on notaries' First Amendment rights.

The United States Supreme Court and the Law Court have both held that petition circulation is "core political speech." *See Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 186 (1999) (quoting *Meyer v. Grant,* 486 U.S. 414, 422 (1988)); *Me. Taxpayers Action Network*, 2002 ME at ¶ 8. In this context, First Amendment protection is "at its zenith." *Id.* Although states may protect the integrity of the ballot initiative process, they must also "guard against undue hindrances to political conversations and the exchange of ideas." *Id.* at 192. Where a "law would burden an absolute right, such as the right to initiative … strict scrutiny requires that the State's action be narrowly tailored to serve a compelling state interest.'" *Birks,* 2016 WL 1715405 at *6 (citing and quoting *Rideout*, 2000 ME 198, ¶ 19).

The new notary provisions are not narrowly tailored to the State's interest in the integrity of the ballot initiative process and impermissibly violate notaries' "right to participate in the public debate through political expression and political association." *McCutcheon v. Fed. Election*

Comm'n, 572 U.S. 185, 203 (2014).

Notaries are licensed professionals regulated by the Secretary, who are entrusted with a critical public function, and who have their own reputations to protect. In an analogous context, the Supreme Court held that it was "not prepared to assume that a professional circulator—whose qualifications for similar future assignments may well depend on a reputation for competence and integrity—is any more likely to accept false signatures than a volunteer who is motivated entirely by an interest in having the proposition placed on the ballot." *Buckley*, 525 U.S. at 204 (quoting *Meyer*, 486 U.S. at 426). The same is true for notaries, who are interested in upholding their reputations for competence and integrity, and in avoiding potential discipline by the Secretary. Notaries who initiate or promote a petition are thus no more likely than other notaries to accept false signatures or to otherwise undermine the integrity of the process. The Legislature and the Secretary can monitor potential conflicts of interest without chilling notaries' speech. In the analogous campaign finance context, the Supreme Court has held that "[a]ny regulation must instead target what [it has] called "quid pro quo" corruption or its appearance." *McCutcheon*, 572 U.S. at 192. In *McCutcheon*, the Court held that aggregate limits on the amount of money a person can spend on an election were unconstitutional and impermissibly chilled speech, *id.* at 194, noting the availability of less restrictive options, such as "[d]isclosure requirements," which "burden speech, but—unlike the aggregate limits—[] do not impose a ceiling on speech." *Id.* at 223. So too here. Maine has notarial and circulator disclosure requirements that enable it to investigate notarial issues, without removing a privilege of a notary's profession (the ability to administer oaths to petition gatherers) for exercising core political speech.

E. Notary Statutes Constitute Unconstitutional Viewpoint Discrimination

As written, the new notary statutes also constitute impermissible viewpoint discrimination.

The statutes allow a notary to speak out publicly *against* an initiative while still lawfully notarizing petitions. Restricting notaries' speech in this way is impermissible because, "[i]n the realm of private speech or expression, government regulation may not favor one speaker over another." *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995). If the notary provisions were truly meant to ensure that political viewpoints do undermine faith in notarial services, then the statute must be viewpoint neutral. *See, e.g., R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 391 (1992).

For these foregoing reasons, Intervenor contends that the Section 903-E's ban on notaries circulating petitions and later notarizing the petitions circulated by others violates the Maine Constitution and both the Free Speech, Freedom of Assembly, and Right to Petition provisions of First Amendment to the United States Constitution[10] as well and Article I, Section 4 of the Maine Constitution.

IV. PETITIONERS' OTHER CHALLENGES SHOULD BE REJECTED.

A. "Cairo" is full legal name of Circulator Cairo

Petitioners challenge petitions circulated by the Circulator who identified herself only as "Cairo." Petitioners contend that her petitions must be invalidated because she did not list her full name. Attached hereto is an affidavit executed by Cairo in which she explains that "Cairo" is her full legal name. *See* Exhibit 1 attached hereto. Petitioners' contention on this point lacks any merit and should be altogether rejected.

B. Failure to Check Box Submitting to the Jurisdiction of the State of Maine

Petitioners further seek to invalidate petitions submitted by four circulators who failed to check the box for out-of-state circulators indicating they were willing to submit to the jurisdiction

[10] The Supreme Court has recognized these First Amendment rights as "cognate" to one another. *Thomas v. Collins*, 323 U.S.516, 530 (1945), citing, *De Jong v. Oregon*, 299 U.S. 353, 364 (1937)

of the State of Maine with respect to their circulator duties. Pet. Br. at 9-10. This requirement is neither imposed by the Maine Constitution nor is it imposed by statutory law. Rather, it arises out of litigation challenging Maine's constitutional requirements limiting petition circulators to Maine residents. See, *We the People v. Bellows*, 40 F. 4th 1, 26; 519 F.Supp.3d 13, 20 (D. Me. 2021). This litigation resulted in a Consent Order wherein the State was enjoined from enforcing the Maine's constitutional and statutory residency and registered voter requirements for petition circulators. *We the People v. Bellows*, Case No. 1:20-cv-498, ECF 88, ¶¶ 2-3. (Exhibit 2).

1. The Consent Decree's Requirement is Invalid

The First Circuit court has indicated that Maine's circulator requirements are likely unconstitutional. *We the People PAC v. Bellows*, 40 F.4th 1, 14 (1st Cir. 2022) (concluding "the District Court was right to rule that the plaintiffs have met their burden to show that they are likely to succeed in showing that the residency requirement does violate the First Amendment").

That litigation resulted in a consent decree, permanently enjoining the law's enforcement *in part* (specifically, preventing its enforcement against circulators who "agree to submit to the personal jurisdiction of Maine [etc.]".see, Exhibit 2 (Consent Decree). But in point of fact, if the law itself is unconstitutional (which it is), then a judicial order modifying the scope of the law is not the proper avenue for remedy.

The reason for this can be found in what the Supreme Court has said regarding the scope of judicial rulings over unconstitutional laws. In *United States v. Reese*, 92 U.S. 214, 221 (1876) the Supreme Court articulated: "It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully be detained and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government."

Thus, the law can only be corrected--and a new law requiring submission to the jurisdiction of the state of Maine enacted--via an amendment to the Maine Constitution. It cannot be fixed by judicial fiat.

2. Assuming that the Consent Decree's Jurisdiction Provision is Valid, it does not Prohibit post-Circulation Submission to Maine's Jurisdiction

In particular, notwithstanding the residency requirements of the Maine Constitution, the Consent Order provides that out of state circulators may circulate petitions in Maine provided that, *inter alia,* they "agree to submit to the personal jurisdiction of Maine for purposes of any investigation or prosecution of any alleged violation of Maine law with respect to initiative or people's veto petitions. *Id.* at ¶ 2. First, as is apparent, this requirement is not contained in a legislative or constitutional act. Second, it was plainly intended to address circumstances in which an out-of-state circulator might significantly neglect his or her duties or engage in outright misconduct and then seek to evade accountability by leaving the state and contesting Maine's jurisdiction to proceed further. The clear object of the Consent Order, then, is to establish a means by which the State might hold such circulators accountable.

This being the objective, notably, the Consent Order does not impose any limitations on **when** a circulator must signify that circulator's consent to Maine's jurisdiction. Understandably, the Secretary has devised forms which ask the circulators to make that representation before beginning to gather signatures. However, the real question, if their conduct is called into question, is: will the circulators submit to Maine's jurisdiction? If, following the Secretary's Determination, it appears that an out of state circulator has failed to check the jurisdiction box, that omission may be cured by the circulator's affirmation that the circulator is willing to submit to Maine's jurisdiction.

Cairo was among the out of state circulators whom Petitioners have identified as having failed to check the jurisdiction box. Attached hereto is Cairo's affidavit, under oath, stating that her failure to check the jurisdiction box was inadvertent and that she was at all times willing and, at present, is willing to submit to the jurisdiction of the State of Maine with respect to her circulator duties. With Cairo willing to submit to Maine's jurisdiction, the purposes of the Consent Order and the jurisdiction box have been met.

This Court or the Secretary should accept Cairo's sworn representation and, if this Court or the Secretary so determine, avail themselves of Cairo's consent and conduct any additional investigation they decide may be warranted. Intervenor notes that this approach would be consistent with the principles undergirding the initiative process that it "must be liberally construed to facilitate, rather than handicap, the people's exercise of their sovereign power to legislate." *McGee v. Secretary of State*, 2006, ME 50, ¶ 21, 896 A.2d 933.

Petitioners "remedy", however, would be to invalidate the signatures of all those voters who, in good faith, signed Cairo's petitions signaling their desire that the Electors of Maine should have the opportunity to vote on the Ballot Initiative.[11] Petitioners' argument that the petition circulator organizations are not registered with the Secretary of State is a non-starter. Pet. Br. at 2-6. Title 21-A Section 903-C(1) sets forth the requirements for organizations hired to circulate petitions in the State of Maine. Section 903-C(1), specifically provides that a petition organization... "shall register with the Secretary of State ***on a form prescribed by the Secretary of State***." Emphasis supplied. In addition, the Secretary provides resources to Electors seeking to gather signatures for the purposes of an initiative petition. R0018-0025. Here, PGS and the petition

[11] Intervenors are in the process of contacting the three other circulators who failed to check the jurisdiction box. In the event that this Court remands this matter to the Secretary, Intervenors ask for the opportunity for the other circulators to address their omission as Cairo has done by affirming their willingness to submit to the State of Maine's jurisdiction.

circulator organizations completed all of the necessary forms under the statutory requirement. R0028-0051.

Petitioners' arguments lack any legal basis, and in fact, appear only to be unsubstantiated smear campaign based upon the fact that certain organizations are domesticated in the state of Wyoming. In addition, Petitioners' claim that Mainely Strategies is not registered to do business in Maine is absolutely ridiculous given the fact that Mainely Strategies is a DBA of Phil Henricks. R0036. Notably, although Petitioners spend several pages asserting unsubstantiated and unadjudicated allegations against the circulator organizations, Petitioners fail to correlate these allegations with any violation of Maine statutory or constitutional law. Instead, Petitioners rely on the false premise that these organizations need to be registered to do business in the state of Maine separately from their registration as petition circulator organization for a ballot initiative.

For the reasons set forth herein, Proposed Intervenor requests this Court affirm the Determination of the Secretary of State, or remand to address the narrow issues described herein.

Date: April 17, 2026

Respectfully submitted,

Timothy C. Woodcock, Bar #1663
Janna L. Gau, Bar #6043
KATAHDIN LAW
175 Exchange Street, Suite 260 (04401)
Post Office Box 895
Bangor, ME 04402-0895
(207) 401-5454
twoodcock@katahdin-law.com
jgau@katahdin-law.com

Attorneys for Protect Girls' Sports in Maine, a Registered Ballot Question Committee

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2026, I caused the foregoing document to be served upon all counsel of record via electronic mail and First Class Mail

Timothy C. Woodcock

STATE OF ARIZONA)
California)
COUNTY OF San Diego)ss.

AFFIDAVIT OF CAIRO

I, Cairo, being of sound mind and over the age of 18 years, do swear or affirm that the following facts are true and correct:

1. My full legal name is Cairo. A true copy of my current Passport is attached hereto as Exhibit 1.

2. I was hired by Maine Strategies to circulate petitions for the Protect Girls Sports in Maine ballot initiative.

3. When I completed my Circulator's Affidavit, I failed to check the box submitting to the jurisdiction of the State of Maine with respect to my circulator duties. That was entirely inadvertent on my part. Throughout my time as a Circulator, I was willing to submit to the jurisdiction of the State of Maine regarding my circulator duties on behalf of the Protect Girls Sports in Maine ballot initiative and I remain willing to subject myself to the jurisdiction of the State of Maine.

4. In particular, I hereby confirm that I agree to the following:

- I agree to submit myself to the jurisdiction of the State of Maine for any investigation or prosecution of any alleged violation of Maine law with respect to my conduct as a Circulator of Petitions for the Protect Girls Sports in Maine initiative.
- I provided my contact information with my Circulator Affidavit. That information has not changed. I agree to provide updated contact information to the Secretary of State if my contact information does change.

EXHIBIT
tabbies
1

- I agree to respond to information requests from the Maine Secretary of State's office through the review of those signatures by the Secretary of State's office or by any court of the State of Maine.

AFFIANT FURTHER SAYETH NOT.

Dated this 14th day of April, 2026.

CAIRO

Personally appeared before me the above-named, Cairo, and swore or affirmed that the representations set forth above are based on her personal knowledge and are true.

Subscribed and sworn before me on this 14 day of April, 2026.

(SEAL)

Notary Public

My Commission Expires: 08-17-2028

RAGAD SULTAN
Notary Public - California
San Diego County
Commission # 2497781
My Comm. Expires Aug 17, 2028

IF YOUR PASSPORT EXPIRES WITHIN SIX MONTHS OF YOUR DATE OF DEPARTURE, YOU MAY BE DENIED ENTRY INTO SOME COUNTRIES.

Endorsements / Mentions Spéciales / Anotaciones

CAIRO

SIGNATURE OF BEARER / SIGNATURE DU TITULAIRE / FIRMA DEL TITULAR

PASSPORT
PASSEPORT / PASAPORTE

THE UNITED STATES OF AMERICA

Type/Type/Tipo: P

Code/Code/Código: USA

Passport No./No. du Passeport/No. de Pasaporte:

Surname/Nom/Apellidos
CAIRO

Given names/Prénoms/Nombres

Nationality/Nationalité/Nacionalidad
UNITED STATES OF AMERICA

Date of birth/Date de naissance/Fecha de nacimiento
01 SEP 1972

Sex/Sexe/Sexo
F

Place of birth/Lieu de naissance/Lugar de nacimiento
CALIFORNIA U.S.A.

Date of issue/Date de délivrance/Fecha de expedición
26 MAR 2025

Date of expiration/Date d'expiration/Fecha de caducidad
25 MAR 2035

Authority/Autorité/Autoridad
UNITED STATES DEPARTMENT OF STATE

01.09.72

P<USACAIRO<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

WE THE PEOPLE PAC; State Representative BILLY BOB FAULKINGHAM; LIBERTY INITIATIVE FUND; and NICHOLAS KOWALSKI, Plaintiffs v. SHENNA BELLOWS, in her official capacity as Secretary of State for the State of Maine, JULIE FLYNN, in her official capacity as the Deputy Secretary of State of Maine for the Bureau of Corporations, Elections and Commissioners, Defendants.	)	Civil No. 1:20-cv-00489-JAW

CONSENT ORDER AND JUDGMENT

For the reasons stated in the order granting Plaintiffs' Motion for Preliminary Injunction (ECF No. 46), and the decision of the United States Court of Appeals for the First Circuit affirming that order, and the parties having agreed, it is HEREBY ADJUDGED that:

1. Judgment shall enter for Plaintiffs We the People PAC, Billy Bob Faulkingham, Liberty Initiative Fund, and Nicholas Kowalski, and against Defendants Shenna Bellows, in her official capacity as Secretary of State for the State of Maine, and Julie Flynn, in her official capacity as Deputy Secretary of State of Maine for the Bureau of Corporations, Elections, and Commissioners, on Counts I-IV of Plaintiffs' Complaint.
2. Defendants are permanently enjoined from enforcing 21-A M.R.S. § 903-A and Me. Const., art. IV, pt. 3, § 20, to the extent they require that initiative or people's veto petitions only be circulated by Maine residents, against circulators who (a) agree to

submit to the personal jurisdiction of Maine for purposes of any investigation or prosecution of any alleged violation of Maine law with respect to initiative or people's veto petitions; (b) maintain up-to-date contact information with the Maine Secretary of State's office, by whatever means identified by the Secretary of State's office, for the duration of any petition drive for which they circulation petitions, which drive includes the collection of signatures and review of those signatures by the Secretary of State's office; and (c) are responsive to requests for information from the Secretary of State's office for the duration of the petition drive, as defined above.

3. Defendants are permanently enjoined from enforcing 21-A M.R.S. § 903-A and Me. Const., art. IV, pt. 3, § 20, to the extent they require that initiative or people's veto petitions only be circulated by registered voters of Maine.
4. Defendants shall pay Plaintiffs the sum of $92,189.32 in attorneys' fees and costs, in accordance with 42 U.S.C. §§ 1983 and 1988(b), by December 31, 2023. The Court finds that the amount of fees requested is reasonable.
5. Should Defendants fail to pay the aforementioned fees and costs by December 31, 2023, post-judgment interest shall be owed from the date of this Order.
6. At Plaintiffs' request, and pursuant to an agreement of the parties, Counts V-IX of Plaintiffs' Complaint are dismissed with prejudice.
7. To the extent Plaintiffs' complaint seeks further relief beyond the relief ordered above, such relief is denied.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 9th day of February, 2023