STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-23-83

WAYNE R. JORTNER, RICHARD BENNETT, JOHN CLARK, and NICOLE GROHOSKI,

Plaintiffs/Appellees,

v.

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

Defendant/Appellant.

ON APPEAL FROM THE
CUMBERLAND COUNTY SUPERIOR COURT

BRIEF OF APPELLEES

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

This is an appeal by the Maine Secretary of State (the "**Secretary**") from a decision of the Superior Court (Cumberland County, *Kennedy, J.*) in which the Court (a) found that the use of the term "quasi-governmental power company" in the ballot question (the "**Ballot Question**") for the initiated legislation entitled "An Act to Create the Pine Tree Power Company, a Nonprofit, Customer-owned Utility" (the "**Legislation**") would both be unintelligible to reasonable voters reading the ballot question for the first time and would mislead them in the exercise of their franchise, thereby violating 21-A M.R.S. § 905(2) and (b) remanded the matter to the Secretary to rewrite the ballot question.[1] For the reasons set forth below, the Superior Court's decision is correct and should be affirmed by this Court.

For some years now, Maine electricity consumers have been mounting a movement to replace Maine's two large investor-owned electric utilities with a single consumer-owned transmission and distribution utility. Following a gubernatorial veto of legislation passed by the Maine Senate and House of Representatives,[2] six Maine citizens who had been associated with that movement

[1] As will be discussed *infra,* the requirements of 21-A M.R.S. § 906(6)(B) (which instructs the Secretary to draft the Ballot Question in a "clear, concise and direct manner" and "as simply as is possible") and Article IV, Part 3, Section 20 of the Maine Constitution (which commands that ballot questions must present "the question . . . concisely and intelligibly") are subsumed by 21-A M.R.S. § 905(2). *Olson v. Sec'y of State,* 1997 ME 30, ¶ 6, 689 A.2d 605.

[2] L.D. 1708 (130th Legis. 2021).

applied to the Secretary for a citizen initiative to establish the Pine Tree Power Company (the "**Company**") as a consumer-owned transmission and distribution utility that, under certain conditions, could purchase the assets of the current investor-owned utilities and render service to Maine consumers.

On August 13, 2021, Appellees Wayne L. Jortner, Richard A. Bennett, John L. Clark and Nicole Grohoski (collectively "**Appellees**"), along with Ania Wright and William T. Dunn, Jr., filed with the Secretary an application for the adoption by citizen initiative of "An Act to Create the Pine Tree Power Company, a Not-for-Profit Utility to Deliver Lower Rates, Reliability and Local Control for Maine Energy Independence" (the "**Application**"). (Appx. 38–50; *see* 21-A M.R.S. § 901.) Attached to the Application was the initial draft of legislation proposing several amendments to Title 35-A of the Maine Revised Statutes, including the creation of Chapter 40 of that Title. (Appx. 39–50.) The Application described the entity to be created and the process by which it would potentially take over the transmission and distribution service currently being rendered in the State of Maine by Central Maine Power Co. and Versant Power Co. (Appx. 39–50.)

The Legislation defines the Company as a "consumer-owned transmission and distribution utility" by amending the list of defined "consumer-owned transmission and distribution utilities" in 35-A M.R.S. § 3501(1) to include the

Company. (Appx. 23.) That definition is reinforced by the proposed 35-A M.R.S. § 4003(1), which describes the Company as follows:

> The company is a consumer-owned transmission and distribution utility and has all the powers and duties of a transmission and distribution utility under this Title, as affected by the provisions of chapter 35, within the service territories of the investor-owned transmission and distribution facilities whose facilities it acquires under this chapter.

(Appx. 28.)

The following sections of the Legislation make clear that the financial risks and rewards of ownership accrue only to the customers of the new utility, and not to the State or the taxpayer:

- Proposed 35-A M.R.S. § 4004: "Cost of Service Rates. The rates and all other charges of the company must be sufficient to pay in full the cost of service, including the cost of debt and property taxation." (Appx. 33.)

- Proposed 35-A M.R.S. § 4005: "No use of state funds or tax dollars. Debt or liability of the company is not a general obligation or a moral obligation of the State or any agency or instrumentality of the State other than the company, and neither the State nor any agency or instrumentality of the State other than the company guarantees any debt or liability of the company." (Appx. 33.)

- Proposed 35-A M.R.S. § 4006: The company serves a public purpose in the carrying out the provisions of this chapter, but debt or liability of the company is not a general obligation or moral obligation of the State." (Appx. 33.)

Unlike a governmental agency or instrumentality, the Company is funded by consumers (not the government); managed by a board that is, in part, publicly

elected; and operated by a private contractor. Although, as is the case with many of the other existing consumer-owned transmission and distribution utilities in Maine, the board of directors of the Company is to be chosen in part by public election, those directors are not classified as public officials or public employees under the Legislation or any other statute. (Appx. 26 (proposed 35-A M.R.S. § 4002(2)).) Furthermore, even though the partially-elected board directs the Company, a private entity is responsible for its day-to-day operations. (Appx. 28–29 (proposed 35-A M.R.S. § 4003(3)).)

Throughout the Legislation, the company to be formed is consistently referred to as a "consumer-owned transmission and distribution utility" (Appx. 25, 28, 32.) This terminology is repeatedly contrasted with the "investor-owned transmission and distribution" utilities to be replaced by the Company. (Appx. 25, 28–35.)

By letter dated September 24, 2021, the Secretary provided Petitioner Jortner with a copy of the Legislation as revised by the Secretary and the Office of the Revisor of Statutes. (R. 0019–0020; *see* Appx. 23–37.) In drafting the Legislation, the Secretary and Revisor left unchanged the provisions defining the Company as a "consumer-owned transmission and distribution utility" through the amendments to 35-A M.R.S. § 3501(1) (*Compare* Appx. 39 *to* Appx. 23) and

creating 35-A M.R.S. § 4003 (*Compare* Appx. 43 *to* Appx. 28). *See* 21-A M.R.S. § 901(3-A).

The Secretary and Revisor also approved for insertion into the Legislation a "**Summary**," which describes the entity to be formed as:

> [A] privately-operated, nonprofit, *consumer-owned* utility controlled by a board the majority of the members of which are elected. The company's purposes are to provide for its *customer-owners* in this State reliable, affordable electric transmission and distribution services and to help the State meet its climate, energy and connectivity goals in the most rapid and affordable manner possible.

(Appx. 36–37 (emphasis added).)

The petition for the Legislation was issued on October 22, 2021 for circulation to the electorate for signature (the "**Petition**"). *See* 21-A M.R.S. § 903-A. The Petition was headed by the Summary and an "Estimate of Fiscal Impact," both of which describe the Company as a "consumer-owned transition and distribution utility." (Appx. 51.) On October 31, 2022, Petitions with over 80,000 signatures were returned to the Secretary of State. (R. 0046.) The Secretary reviewed the signatures and, on November 30, 2022, determined that 69,735 signatures were valid. (R. 0046–0047.) That number exceeded 63,067, the minimum threshold for a statewide initiative. (R. 0046; *see* Me. Const. art. IV, pt. 3, § 18; 21-A M.R.S. § 905(1).) The Secretary accordingly undertook to draft the Ballot Question. *See* 21-A M.R.S. § 906; *see also* 21-A M.R.S. § 901(4) (instructing that the Secretary must draft ballot questions "in accordance with

Section 906 and rules adopted in accordance with the Maine Administrative Procedures Act").

In drafting the Ballot Question, the Secretary decided to describe the Company as "quasi-governmental"—a new term not appearing in the Legislation, on the Petition, or any of the other documents generated, filed or circulated associated with the Legislation, which consistently used "consumer-owned power company," "consumer-owned utility" or similar terminology to refer to the Company. (Appx. 23–37 (the Legislation); Appx. 51–58 (the Petition); Appx. 36–37 (the Summary).) Specifically, the Secretary proposed the following language:

> Do you want to create a new quasi-governmental owned power company governed by an elected board to acquire and operate existing electricity transmission and distribution facilities in Maine?

(R. 0048.) By press release dated December 21, 2022, the Secretary provided the draft question to the public for comment within a 30-day period commencing on December 22, 2022. (R. 0048–0049.).

The sudden appearance of "quasi-governmental" aroused shock and consternation among those interested in the Legislation. The great bulk of the comments filed by individuals and organizations found the term "quasi-governmental" to be confusing and/or misleading. Commenters considered it to be "vague" (R. 0192 (David Coleman)); "confusing and misleading" (R. 0051 (Ethan Bien)); "designed deliberately to dissuade voters with disinformation about the

proposal" (R. 0057 (Vernon Lickfeld)); "confusing, not what the act proposes, and language not used in Maine law" (R. 0062 (Joseph DeGraff)); "unintentionally confusing" and "perhaps misleading" (R. 0209–0211 (Maine People's Alliance)); "inaccurate and misleading" (R. 0188 (Robert Eaton)); "a vague term that does not really impart useful information to voters" (R. 0189 (Cynthia Robbins)); "confusing and inaccurate" (R. 0197 (Colin Vettier)); likely to "mislead voters" (R. 0196 (Jon Albrecht)); "not reflect[ive] [of] the intention that is being put forth" (R. 0191 (Jordan Chalfont)); "inaccurate and . . . confusing to voters" (R. 0200 (Marianne McHugh-Westfall)); "not accurately reflect[ive] [of] the legislation as printed on the petitions" (R. 0198–0199 (Michael Dunn)); "quite deceptive" (R. 0185 (Susan Lubner)). The foregoing quotations are only a handful of more than one hundred comments that found the term "quasi-governmental" to be unintelligible and likely to mislead. (*See* R. 0050–0255.)

The relatively few comments supporting the use of the term "quasi-governmental power company" came almost entirely from political action arms of CMP and Versant, the two investor-owned utilities that would be replaced by the consumer-owned power company envisioned by the Legislation, and from business and labor organizations allied with the utilities. The submission from CMP's "Maine Affordable Energy Coalition" praised the term "quasi-governmental power

company" as the descriptor for the Company.[3] (R. 0236–0237.) The submission by attorneys for Versant's "Maine Energy Progress" commented favorably on the "accurate description of the new entity as 'quasi-governmental.'"[4] (R. 0172, 0228.)

On January 30, 2023, following the expiration of the comment period, the Secretary issued her decision, which proposed the final wording for the Ballot Question (the "**Decision**"). (Appx. 19–22.) Although the term "owned" was dropped, the rest of the language originally proposed by the Secretary, including the term "quasi-governmental," remained. As a result, the choice posed by the Legislation would be described to voters by the Ballot Question as follows:

> Do you want to create a new quasi-governmental power company governed by an elected board to acquire and operate existing for-profit electricity transmission and distribution facilities in Maine?

(Appx. 19–22.)

[3] The submission by Maine Affordable Energy Coalition miscited *Baker Bus Service v. Keith*, 416 A.2d 727 (Me. 1980) by suggesting it stands for the proposition that "an entity governed by elected officials . . . is in fact a unit of government." (R. 0237.) The issue in *Keith* was whether a school bus company under contract to the City of Augusta should be classified as a "public employer" because of its agency relationship with the city. *Keith*, 416 A.2d at 730–732. The Law Court opinion says nothing about the proposition for which it was cited. *Id.*

[4] Their support for this terminology is understandable given their vested interest in wanting the Legislation to fail. The term "quasi-governmental" resonates with the opponents' ongoing campaigns against the Legislation, which appear to be based on popular distrust of all things "governmental" and voters' fear of creating additional tax-supported governmental entities for which all taxable Mainers will be on the hook. For instance, the Affordable Energy Coalition Website rails against "Government-Controlled Power" that could result in "billions of debt." Maine Affordable Energy Coalition, *Our Coalition*, https://maineaffordableenergy.org/show-your-support/our-coalition/ (last visited March 23, 2023). Likewise, the Maine Energy Progress Website proclaims, "A Government-Controlled Utility Company is a Risk Mainers Can't Afford." Maine Energy Progress, *A Government-Controlled Utility Company is a Risk Mainers Can't Afford,* https://www.maineenergyprogress.com (last visited March 23, 2023).

On February 9, 2023, the Appellees filed a timely Rule 80C appeal of the Decision, asking the Superior Court to (a) rule that the use of the term "quasi-governmental power company" to describe the Company violated 21-A M.R.S. § 905(2) because it is not "understandable to a reasonable voter reading the question for the first time" and will "mislead a reasonable voter who understands the proposed legislation into voting contrary to that voter's wishes" and to (b) modify the Ballot Question by replacing "quasi-governmental power company" with "consumer owned transmission and distribution utility." (Appx. 10–18.)

On March 10, 2023, following briefing by both parties, the Superior Court decided that the use of the term "quasi-governmental" in the Ballot Question is indeed "not understandable language to describe the [Company]" and "creates a risk that voters will be led to vote contrary to their true intention." (Appx. 4–9). The Court reasoned:

> The phrase "quasi-governmental," is not a synonym for "consumer owned." The phrase "quasi-governmental" is not mentioned in the Legislation. Moreover, the Ballot Question at no point refers to consumer ownership – a core feature of the Legislation. A reasonable voter who compared the language of the Ballot Question to the language of the Legislation might be unsure whether the Ballot Question is referring to [Company]. To a voter who did not understand the meaning of "quasi-governmental" it might, in fact, appear to mean the opposite of "consumer-owned." Thus, the question creates a risk that voters will be led to vote contrary to their true intention.

(Appx. 9.) The Superior Court remanded the case to the Secretary "for the purpose of revising the final wording of the ballot question in a manner consistent with this

decision." (Appx. 9.) Rather than comply with the Superior Court's order, the Secretary chose to appeal the Superior Court decision to this Court.

ISSUE PRESENTED FOR REVIEW

This appeal presents a single issue for the Court to address: "Is the term 'quasi-governmental power company' as used to describe the Company in the Ballot Question for the citizen referendum to establish Maine's eleventh 'consumer owned transmission and distribution utility' not understandable to a reasonable voter reading the question for the first time in the voting booth or capable of misleading a reasonable voter who understands the proposed legislation into voting contrary to that voter's wishes?" Appellees respectfully submit that the answer to both halves of this question is "Yes" and that the decision of the Superior Court should be affirmed.

STANDARD OF REVIEW

Section 905(2) of Title 21-A provides for a special standard of review for Rule 80C challenges to initiative or referendum ballot question language as drafted by the Secretary:

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

21-A M.R.S. § 905(2). In *Olson v. Secretary of State*, this Court construed the foregoing language as the single legal standard by which to assess ballot language on appeal, subsuming the Constitutional standard in Article IV, Part 3, Section 20, which requires ballot questions to be presented "concisely and intelligibly," and the standard set forth in 30-A M.R.S. § 906(6), which instructs that the Secretary must draft ballot questions "in a clear, concise and direct manner that describes the subject matter of the . . . direct initiative as simply as is possible." 1997 ME 30, ¶ 6, 689 A.2d 605.

In applying this standard, this Court must "*independently review* whether the description of the subject matter of the ballot question is 'understandable' and

"will not mislead.'" *Id.* (emphasis added). Thus, this Court considers this matter *do novo* without deference to the prior action by the Secretary.[5] *Id.* ¶ 4.

This is not a forgiving standard; nor does it ask the Court to consider whether the Secretary has discretion in drafting ballot questions, properly exercised any such discretion in reaching her decision, and/or abused that discretion.[6] To recognize discretion under this standard would be equivalent to showing deference to the Secretary's actions, which is strictly *verboten* given the Court's obligation to "independently" determine whether the Ballot Question violates 21-A M.R.S. § 905(2). *See Id.* Any notion that the Secretary enjoys latitude in the drafting of ballot questions or that this Court should not trammel the Secretary's discretionary authority would substantially undermine the very rules that govern this appeal.

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[5] This standard of review is an exception to the default rules governing appeals of agency action. Generally, when considering a statute under review pursuant to Rule 80C, the Court must "review the interpretation of a statute directly for errors of law" and "attempt to give effect to legislative intent by examining the plain meaning of the statutory language." *Melanson v. Sec'y of State*, 2004 ME 127, ¶ 8, 861 A.2d 641 (citations omitted). Under Rule 80C, when statutory language is ambiguous, "the agency's reasonable construction" of that language "when the agency is tasked with administering the statute and it falls within the agency's expertise" is owed deference. *Reed v. Sec'y of State*, 2020 ME 57, ¶ 14, 232 A.3d 202. However, as explained by this Court in *Olson,* Section 905(2) modifies the Rule 80C standard and requires the courts to apply the non-deferential standard set forth therein when there is a challenge to the language of a Ballot Question. *Olson,* 1997 ME 30, ¶ 4, 689 A.2d 605.

[6] The question before the Court is not whether the Secretary abused her discretion, which occurs when an agency "exceeded the bounds of the reasonable choices available to it, considering the facts and circumstances of the particular case and the governing law." *Apple Inc. v. State Tax Assessor*, 2021 ME 8, ¶ 40, 254 A.3d 405. Section 905(2) expressly modifies the default standard of review set by Maine Rule of Civil Procedure 80C and 5 M.R.S. § 11007(4)(C) for appeals of agency action. *See Olson,* 1997 ME 30, ¶ 4, 689 A.2d 605 (rejecting the argument that Rule 80C provided the operative standard of review); *see also Caiazzo v. Sec'y of State,* 2021 ME 42, ¶¶ 14–15, 256 A.3d 260 (differentiating between the standard of review under Section 905(2) that applies to an applicant's appeal of ballot question language with the general Rule 80C standard that applies to reviews of final agency action, including other aspects of the conduct of referenda.).

The conclusion that Section 905(2) imposes an exacting—not forgiving—standard of review is reinforced by the statutory scheme of which it is a part. Section 905, with its *de novo* standard of review and its special accelerated procedure before both the Superior Court and now the Law Court, reflects the Legislature's recognition of the critical importance of the referendum process and the vital role played by the wording of ballot questions in providing citizens a fair opportunity to understand the choice before them in the voting booth.[7] This is not the sort of case that can survive judicial scrutiny on the grounds that the Secretary got the wording of a ballot question "pretty close" to correct. Instead, the Court is obligated by Section 905(2) to ensure that, in its independent opinion and without deference to the Secretary, the Ballot Question is both understandable to a reasonable voter encountering it for the first time in the voting booth and that it will not mislead a reasonable voter who understands the Legislation into voting against his or her wishes. *See* 21-A M.R.S. § 905(2).

[7] The Legislature's intent to implement a demanding standard is reinforced by its recent amendments to 21-A M.R.S. § 906, which impose on the Secretary a series of requirements related to the drafting of ballot questions. (These requirements are subsumed by 21-A M.R.S. § 905(2). *Olson v. Sec'y of State,* 1997 ME 30, ¶ 6, 689 A.2d 605.) Specifically, the Legislature inserted the phrase "as simply as is possible" in 21-A M.R.S. § 906(6)(B), thereby instructing the Secretary to maximize the degree to which the electorate will understand the content of the initiated legislation vis-à-vis the language of the ballot question. *See* P.L. 2019, ch. 414.

SUMMARY OF ARGUMENT

The use of the term "quasi-governmental power company" to describe the consumer-owned transmission and distribution utility to be created by the Legislation violates 21-A M.R.S. § 905(2) because it renders the Ballot Question not "understandable" to a reasonable voter reading the question for the first time in the voting booth and will mislead reasonable voters into casting their ballot contrary to their wishes.

"Quasi-governmental" is not understandable because reasonable voters are unlikely to know what that term means, there is no statutory definition of the term upon which voters can rely, the dictionary definition describes the anthesis of the Company, and there is no point of reference for voters to follow in the proposed legislation or elsewhere that would give meaning to this term.

The term is "misleading" because the entity to be formed is not "quasi-governmental" in that it has no governmental functions, no government employees, is not managed by the government, and is not supported by tax dollars. Rather, the Legislation provides expressly that the entity will be one of several "*consumer-owned* transmission and distribution utility" in the State. 35-A M.R.S. § 3201 (emphasis added).

The wording is likely to cause voters to vote contrary to their wishes, because it trades on present day citizens' disillusionment and cynicism about their

"government" and their fear of increased taxes while inaccurately describing the substance of the Legislation and how the Company will operate. The Secretary's use of "quasi-governmental" therefore makes it highly likely that even voters who have familiarized themselves with the Legislation will not vote in accordance with their wishes when reading the Ballot Question for the first time on election day.

ARGUMENT

I. THE TERM "QUASI-GOVERNMENTAL POWER COMPANY" IS NOT "UNDERSTANDABLE TO A REASONABLE VOTER" AND IS LIKELY TO MISLEAD VOTERS INTO VOTING CONTRARY TO THEIR ACTUAL WISHES.

Title 21-A M.R.S. § 905(2) requires the Court to independently certify that ballot language (a) is understandable to reasonable voters reading that language for the first time in the voting booth and (b) will not mislead them in the exercise of their franchise. This standard requires that recondite, vague or undefined terms be avoided. The term "quasi-governmental" is just one of those terms. The problem that citizens will invariably face in the voting booth when confronted with that language is that no one, despite any due diligence, will know what it really means.

Olson is instructive as to whether the use of an esoteric term not defined in the proposed legislation itself or any other statute renders a ballot question violative of 21-A M.R.S. § 905(2). In that case, the Law Court considered whether the use of the terms "putting" and "Class A crime" in a proposed ballot question ran afoul of Section 905(2) on the grounds that those terms would not be understandable to a reasonable voter. *Olson,* 1997 ME 30, ¶¶ 7, 10, 689 A.2d 605. In rejecting those arguments, the Law Court relied on the fact that the concept of "putting" is captured by the dictionary definition of a commonly-understood word, "introduction," which did appear in the ballot question, and the phrase "Class A crime" was clearly defined by statute. *Id.* ¶¶ 7–11 & n.5 (citing *Introduction*,

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1186 (1963); 17-A M.R.S. §§ 1252, 1301 (defining the term "Class A crime.")). The Law Court concluded that neither term was sufficiently incomprehensible or misleading to violate Section 905(2) because voters had available to them the information they needed to educate themselves about the substance of the proposed legislation. *Olson,* 1997 ME 30, ¶¶ 9, 11, 689 A.2d 605.

Here the grounds upon which the Law Court affirmed the Secretary's drafting of the ballot question in *Olson* are entirely absent: (a) there is not a statutory definition—either in the Legislation or elsewhere—of "quasi-governmental" to which a reasonable voter can look for guidance and (b) the readily-available dictionary definition of "quasi-governmental" describes an entity that is the *opposite* of what the Legislation proposes to create.[8]

In *Olson,* this Court noted that although Section 902(2) requires that a ballot question be "understandable to a reasonable voter reading the question for the first time," it does assume that voters will be generally familiar with the subject matter

[8] The *Merriam-Webster Dictionary*, which the Law Court relied on in *Olson,* defines "quasi-governmental" as "supported by the government but managed privately." *Quasi-governmental*," MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/quasi-governmental (last visited March 23, 2023); *see Olson*, 1997 ME 30, ¶ 9, 689 A.2d 605 (citing *Introduction*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1186 (1963)). Since the Company will be financially supported by customers for its electric service—not taxpayers—the use of "quasi-governmental" simply fails the basic test of accurately describing how the Company will in fact be funded if the Legislation is adopted. It also creates a misleading impression as to how the Company is structured. Management of the Company is by a board that is, in part, publicly elected, while day-to-day operations are performed by a private contractor.

of the referendum when they enter the voting booth. *Id.* ¶ 11. The problem here is that reasonable voters do not have available to them any resource upon which they can rely to understand what "quasi-governmental" means, generally, or in the context of the Ballot Question. Thus, the Court cannot presume that if voters discharge their civic duty by reasonably familiarizing themselves with the Legislation, they will understand the choice posed by the Ballot Question and will not be misled into voting against their wishes when they read the Ballot Question for the first time.

The Court must consider this issue through the perspective of a reasonable voter who has exercised her civic duty and generally familiarized herself with the Legislation. *See Id.* ¶ 11. The Legislation itself classifies the Company as a "consumer-owned transmission and distribution utility" and amends 35-A M.R.S. § 3501(1) to include the Company as one of several "consumer-owned transmission and distribution utilit[ies]" that already exist in the State. Based on her review of the text of the Legislation, that voter will potentially understand that she is being asked to decide which of two fundamentally different utility structures she supports: either that electrical transmission and distribution utilities should continue to be, for most part, "investor-owned," or that those utilities should instead become "consumer-owned." However, when entering the voting booth and reading the Ballot Question for the first time, that voter will be confronted with a

term ("quasi-governmental") that does not appear in the Legislation; is not defined in the Legislation *or any other statute*; and that, according to the dictionary, denotes an entity that is publicly-funded and privately-managed, which is the antithesis of the Company. Despite that voter's due diligence in discharging her civic duty and her reasonable familiarity with the text of the Legislation, there is a substantial risk that such a reasonable voter will misapprehend the nature of the decision before her (i.e., she will reasonably believe that she is being asked by the Ballot Question whether to establish a governmentally-funded utility) and will be misled into voting against her wishes. Section 905(2) expressly provides the Court the authority to prevent that eventuality.

A. The lack of a statutory definition for "quasi-governmental" upon which reasonable voters can rely renders it incomprehensible and misleading.

The term "quasi-governmental" has no statutory definition and appears rarely in the Maine Revised Statutes. A word search of the Maine Revised Statutes discloses that the term "quasi-governmental" is found less than a dozen times in the entire body of Maine statutory law. In Title 35-A, which governs Maine's public utilities, the term appears only once, as an example of an "entity" without any further definition.[9] 35-A M.R.S. § 3201(9). This goes also for the other

[9] 35-A M.R.S. § 3201(9). "'Entity' means a person or organization, including but not limited to any political, governmental, quasi-governmental, corporate, business, professional, trade, agricultural, cooperative, for-profit or nonprofit organization."

miscellaneous statutory appearances of "quasi-governmental." In almost every case it appears in a list of organizations to which a particular provision may apply or not apply. For instance, in Title 38-A M.R.S., the title that governs environmental protection, the definition of "Person" reads:

> [A[ny natural person, firm, association, partnership, corporation, trust, the State and any agency of the State, governmental entity, quasi-governmental entity, the United States and any agency of the United States and any other legal entity.

38 M.R.S. § 562-A(16); *see* 5 M.R.S. § 102(7) (excluding a "quasi-governmental entity" from the definition of "Entity"); 33 M.R.S. § 3201(9) (defining "Entity"); 33 M.R.S. § 1551(1-A) (defining "Owner"); 33 M.R.S. § 1581(1) (defining "Holder"); 38 M.R.S. § 424-C(C) (defining "Person").

A voter looking for a definition of "quasi-governmental" in the Maine statutes might stumble on the term "quasi-independent state entity," which may appear at first blush to have something to do with "quasi-governmental." "Quasi-independent state entity" is defined as follows:

> "Quasi-independent state entity" means an organization that has been established by the Legislature as an independent board, commission or agency to *fulfill governmental purposes* and that receives *revenues that are derived, in whole or part, from federal or state taxes or fees*.

5 M.R.S. § 12021(5) (Emphasis added). That definition, like the dictionary definition of "quasi-governmental,"[10] describes an entity that is the exact opposite

[10] *See* footnote 9.

of the Company, which fulfills no governmental purpose and will receive no revenues whatsoever from federal or state taxes or fees. Therefore, even the statutory term *resembling* "quasi-governmental" will likely mislead voters as to the nature of choice before them on election day and cause them to vote contrary to their wishes.[11]

Because the Maine Revised Statutes do not define "quasi-governmental" *anywhere* and the various contexts in which it appears do not impart *any* discernable information about what that term means, the use of that term in the Ballot Question constitutes a clear violation of 21-A M.R.S. § 905(2).

B. "Quasi-governmental" will confuse and mislead reasonable voters because it is a term that is neither commonly used or understood.

A serious drawback to the use of "quasi-governmental" in a ballot question for a public referendum is the general lack of familiarity with this term on the part of the electorate. As one commenter aptly put it, "'quasi-governmental' will be a

[11] The description in a single part of the Legislation of the Company as a "body corporate and politic" similarly fails to inform voters as to the meaning of "quasi-governmental." (*See* Appx. 26 (proposed 35-A M.R.S. § 4002(2); *see also* Appx. 20 (explaining as a grounds for the Decision the Secretary's belief that "quasi-governmental" is used appropriately in the Ballot Question because "the new entity is defined in the Act as a 'body corporate and politic,' a phrase used in the Maine Revised Statutes in establishing other quasi-governmental entities").) As the Superior Court correctly pointed out, "body corporate and politic" is not defined in the Legislation, either, which means the presence of that language in the Legislation does not aid reasonable voters in interpretating the term "quasi-governmental." (*See* Appx. 7.) Furthermore, the Legislation only *discusses* the Company as a "body corporate and politic"; the definition of the Company is provided in the proposed amendment to 35-A M.R.S. § 3501, entitled "Definitions," which lists the Company as one of several "[c]onsumer-owned transmission and distribution" utilities in subsection 1. (*See* Appx. 40.)

head-scratcher." (R. 0090 (Stephen Benson).) Several members of the public echoed this sentiment:

- "I do not believe the average voter understands what "quasi-governmental owned" means. I certainly do not!" (R. 0060 (Ezra Sassaman).)

- "Specifically, the phrase 'quasi-governmental' is not only grammatically suspect but is imprecise and does not reflect the intention of the campaign to mirror more descriptive language already enshrined in Maine law." (R. 0068 (Francis Moulton).)

- "'Quasi-governmental' is not a commonly used term and the use of the word 'quasi' gives the average reader the sense that what is being proposed isn't very defined. It's 'sort of this' and 'sort of that.' 'Consumer-owned' has frequently been used in Maine law and will be readily understood by the average voter." (R. 0142 (Michelle Henkin).)

As Ben Chin of the Maine People's Alliance pointed out to the Secretary in written comments, in assessments such as the Flesch Reading Ease, Gunning Fog Scale Level, Flesch-Kincaid Grade Level and the Dale-Chall Score, the term "quasi-governmental power company" rates as "very difficult" in terms of understandability, usually requiring more than a college education—currently possessed by about one third of Maine voters. (R. 0209.) On the other hand, the notion of a consumer-owned utility to provide electric service is understandable to persons who have completed high school—90% of Maine adults over 25. (R. 0209–0210.)

Use of terminology that is likely to be understood by only a third of the adult population is not "understandable to a reasonable voter reading the question for the first time," 21-A M.R.S. § 905(2), even if they "discharge their civil duty to educate themselves about the initiative," *Olson,* 1997 ME 30, ¶ 11, 689 A.2d 605.

As an exercise, one might try to define "quasi-governmental" in a few words. Does it mean that the entity described resembles the government in terms of its organizational structure*,* such as a tenant's association or club with regulatory powers over members; in terms of direct government ownership*,* such as a state-highway authority; or in terms of public funding, such as a housing authority or state university? Without a codified definition, it is impossible to get one's fingers on what is meant by "quasi-governmental" at all, let alone in the context of a potential purveyor of utility services for Maine consumers. The fact that the investor-owned utilities are actively and falsely trying to scare voters into thinking that their tax dollars are at stake provides the clearest example possible of the mischief the phrase "quasi-governmental" abets and promotes.[12]

Indeed, in the absence of a real definition of the term "quasi-governmental" one could characterize both Central Maine Power Company and Versant Power as "quasi-governmental" in that they are both ultimately owned and controlled by governmental entities. Versant's sole controlling stockholder is the City of

[12] *See* footnote 17 *infra.*

Calgary, Alberta, Canada. (R. 0204–0205 (Toby McGrath); R. 0205 (Senator Richard Bennett and Representative Nathan Carlow).) The largest investor in CMP's parent company is the Middle Eastern nation of Qatar. (R. 0204–0205.) Both CMP and Versant are authorized to use certain powers of the state, such as by exercising eminent domain (35-A M.R.S. § 3136) and maintaining a monopoly (10 M.R.S. § 1102-A, 35-A M.R.S. § 2101). In other words, the "investor-owned" utilities, which are managed privately, far more closely resemble a "quasi-governmental" entity than the entity described by that term in the Ballot Question (i.e., the Company).

1. The absence of a readily-available dictionary definition for "quasi-governmental" that accurately describes the Company renders the use of that term violative of Section 905(2).

As explained in *Olson*, whether the Secretary's use of a particular term satisfies the standard set forth in 21-A M.R.S. 905(2) depends, in part, on if a readily-available dictionary definition of that term accurately captures what is being described in a ballot question. *See* 1997 ME 30, ¶¶ 7, 10, 689 A.2d 605. Thus, when the dictionary definition not only fails to accurately reflect the concept being described in the ballot question but also actively misleads as to what a voter is being asked to decide, then the use of that term violates Section 905(2).

The definition for "quasi-governmental" provided by the online *Merriam-Webster Dictionary*, the print version of which the Court relied on in *Olson*,[13] is something that is "supported by government but managed privately." "Quasi-governmental," https://www.merriam-webster.com/dictionary/quasi-governmental (last visited March 23, 2023).

This definition demonstrates the inappropriateness of the term "quasi-governmental" as applied to the Company. If enacted, the Legislation creates an entity that is *not* financially supported by any government, as the Company will rely 100% on revenues from electric service consumers. The definition further implies that the Company will be "managed privately." That is also off the mark. Although day-to-day operations will be contracted out to a private operator, ultimate management and control of the Company is vested in a publicly-elected board, not some private entity.[14] (Appx. 26 (proposed 35-A M.R.S. § 4002(2); Appx. 28–29 (proposed 35-A M.R.S. § 4003(3).)

These are exactly the kind of misimpressions that the opponents count on to kill the Legislation. It is one thing if the voters, properly informed, decide that they

[13] To determine the meaning of an undefined term, this Court has frequently consulted dictionaries for guidance. *See, e.g., State Tax Assessor v. MCI Commc'ns Servs., Inc*., 2017 ME 119, ¶ 14, 164 A.3d 952; *Friends of Cong. Square Park v. City of Portland*, 2014 ME 63, ¶ 9, 91 A.3d 601.

[14] The definition of a "quasi-governmental agency" in Black's Law Dictionary, cited by Appellant below, is a "government-sponsored enterprise or corporation," which further reinforces the concept that the Company will be funded by the State and taxpayers. "Quasi-Governmental Agency," BLACK'S LAW Dictionary (11th ed. 2019). The Company, however, will have *no* government sponsorship or support, which means that relying on even the technical definition of the term would lead reasonable voters astray.

do not want a consumer-owned transmission and distribution utility. But it is quite another matter for them to be given the false impression that they are being asked to create an entity that would be financially sponsored or run by the government.

2. "Quasi-governmental" gives the misleading impression that the Company will be taxpayer-supported, thereby causing reasonable voters to exercise their franchise contrary to their wishes.

The dictionary definition of "quasi-governmental" as "supported by government" reflects the general understanding of the population that an organization designated as "governmental," regardless of qualifier, is supported by tax revenues. To the majority of the electorate, more "government" means more taxes. Any apparent effort to increase "government" is likely to cause reasonable voters to believe they are supporting an increase in taxes, regardless of the actual language of the legislation they are being asked to adopt.

This is of course not the case with the Company. The Legislation makes this very clear in several places. The Company's sole source of support is revenues from services rendered to consumers; its takeover of the existing investor-owned transmission and distribution assets and its rendering of electrical service as a consumer-owned transmission and distribution utility will not cost Maine taxpayers a penny.[15] (Appx. 33 (proposed 35-A M.R.S. §§ 4005, 4006).) To call

[15] The erroneous notion that the new entity might have a claim on governmental support would be particularly troublesome to voters in the ninety-eight Maine towns and political subdivisions currently

the Company "quasi-governmental" is to misrepresent its character in a vital respect.[16]

The misleading nature of "quasi-governmental" is made plain by the exploitation of the concept by the political action groups sponsored by CMP and Versant Power to link a vote in favor of the referendum with the increased tax burden. The strong association of "government" and "quasi-government" with "taxes" in the mind of most Maine voters is already being misused and falsely exploited by opponents of the Legislation.[17] Under these circumstances the term "quasi-governmental" has no place in a description of a consumer-owned

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served by Maine's ten existing consumer-owned transmission and distribution utilities. They are already supporting customer-owned electric networks and would not want to be taxed to support a governmental enterprise serving other Maine consumers formerly served by the investor-owned utilities.

[16] As the Superior Court explained: "The structure and function of [the Company] are at the core of the [Legislation]. A ballot question which does not use understandable language to describe [the Company], therefore, inadequately describes the subject matter of the [Legislation] and is insufficient under § 905(2) and *Olson*." (Appx. 8.)

[17] For instance, the Website of Maine Energy Progress refers to "A Government-Controlled Utility Company is a Risk Mainers Can't Afford." Maine Energy Progress, *A Government-Controlled Utility Company is a Risk Mainers Can't Afford,* https://www.maineenergyprogress.com (last visited March 23, 2023). While the Website avoids the word "taxes," the clear impression from the references to "Government" and "Mainers" and "afford" in the same sentence is that the burden of this enterprise will be on Maine taxpayers—not the Company's consumer-owners. CMP's political action arm, Maine Affordable Energy, states on its Website that the Company is: "A scheme to seize Maine's electric grid by eminent domain would create a government-controlled utility — and we would all be on the hook for the cost." Maine Affordable Energy Coalition, *Our Coalition*, https://maineaffordableenergy.org/show-your-support/our-coalition/ (last visited March 23, 2023). The juxtaposition of "government-controlled" and "we would all be on the hook" gives the misimpression that the government-controlled entity would be supported like other organs of government by taxes on all of the citizens. The use of these buzzwords is designed to cause Maine voters to stop in their tracks and vote "No" without further investigation into what the Company really is and how it operates.

transmission and distribution utility that will be supported solely by revenues and will have no claim to support by taxes.

3. "Quasi-Governmental" misleads voters into thinking the Company will be run by the government.

Putting the bogeyman of taxes temporarily aside, many citizens in Maine, as elsewhere, regard "government" with a healthy dose of suspicion as adding burden to their lives and restrictions to their freedoms in the form of increased bureaucracy and regulation. This is because much of what state, federal and even municipal government does involves the adoption of various forms of rules and regulations that trammel citizens' ability and right to do what they please in any number of areas of individual and communal activity.

The Company is not at all "governmental" in that sense. It does not have the power to enact rules or regulations that govern the public's conduct. It would have no more power to affect the lives of Maine citizens than the investor-owned utilities that it would replace. Its sole purpose and function is to do well what the current utilities are doing badly—viz., transmit and deliver electric energy that is generated by others efficiently and economically to Maine's electricity consumers.

No employee of the Company will be an employee of any governmental unit or institution. The fact that a slim majority of the members of its Board of Directors are elected by public vote does not give it any powers that can reasonably be termed "governmental." These features of the Company are the

same as apply to many of the other consumer-owned transmissions and distribution utilities in Maine. For instance, the Board of Directors of the Houlton Water Company, which provides electric transmission and distribution service in Houlton and several surrounding communities, is elected by voters of the Town of Houlton. P. & S.L. 1937, ch. 14, § 2. The Board of Trustees of the Kennebunk Light and Power District is elected by the voters of Kennebunk. P. & S.L. 1951, ch. 53, § 9. The three Trustees of the Van Buren Light and Power District, which serves customers in Van Buren and surrounding communities, are elected by the voters of Van Buren, Maine.[18] P. & S.L. 1917, ch. 182, § 6.

The fact that the Legislation uses the term "body corporate and politic" in reference to the Company is not reasonable grounds to classify it as "quasi-governmental," either. That phrase appears in many charters of statutorily-defined consumer-owned utilities. *See, e.g.*; P. & S.L. 1981, ch. 22, § 1 (Casco Bay Island Transit District); P. & S.L. 1951, ch. 33, § 9 (Kennebunk Light and Power District). It imparts no governmental character, but merely refers to the existence of a legal entity.

[18] The comment submitted to the Secretary by amicus Maine Affordable Energy Coalition argued that the fact that Maine voters, rather than just the customers served, elect seven of the Company's thirteen Board members, makes the Company "quasi-governmental." (R. 0237). However, that is also the case with other consumer-owned electric utilities such as the Kennebunk Power and Light District, the Houlton Water Company, and the Van Buren Light and Power District, which, like the Company, are classified by statute as "consumer-owned transmission and distribution" utilities. *See* 35-A M.R.S. § 3501(1).

By the same token, the Company's limited ability to exercise eminent domain-like powers in connection with the initial acquisition of the existing investor-owned transmission and distribution assets does not mean it can be classified as "quasi-governmental." Pursuant to 35-A M.R.S. § 3136, *all* Maine transmission and distribution utilities, both investor-owned and consumer-owned, have the power to "take and hold by right of eminent domain lands and easements necessary for the proper location of its transmission lines," subject to certain conditions, exceptions and approval of the Public Utilities Commission.[19]

Comments submitted to the Secretary on behalf of Amicus Maine Energy Progress alleged that the Company resembles the Maine Turnpike Authority ("**MTA**"), as if any similarity would make the Company "quasi-governmental." (R. 0174, 0230.) While it is debatable whether "quasi-governmental" even fairly describes the MTA, there are significant differences between the two organizations. These include (a) the appointment of all MTA trustees by the Governor; (b) the fact that public highway construction and maintenance is traditionally a governmental, rather than a private, function; and (c) the periodic

[19] It is therefore hypocritical that the Legislation's opponents prey on fears of eminent domain in their advertising. Maine Energy Progress, *A Government-Controlled Utility Company is a Risk Mainers Can't Afford,* https://www.maineenergyprogress.com (last visited March 23, 2023) (warning that the Legislation is a "scheme to seize Maine's electric grid by eminent domain would create a government-controlled utility" and that "we would all be on the hook for the cost").

payment of surplus MTA revenues into the state treasury. *See* 23 M.R.S. § 1965; P. & S.L. 1941, ch. 69.

The Company does not deserve to be tagged with the adverse connotations of "government" existing in the minds of many Maine voters. The term is simply misleading and fundamentally contrary to the purpose and effect of the Legislation. As stated by one commenter, "Quasi-governmental can be a very triggering term for many people." (R. 0110 (Susan Graham).) The Ballot Question serves to reinforce the "misrepresentation based on a fictional advertisement message, which saturated media during [the] signature campaign that the proponents wanted 'government owned' electric utility." (R. 0082 (Randall A. Parr).) In the words of Harlan Baker, a former member of the Public Utilities Commission who served in the Maine Legislature:

> By mischaracterizing the utility as quasi-government, [the Secretary] leaves the door open for the IOUs [investor-owned utilities] to characterize it as government monopoly and use the same tactics that they used in the 1973 public power referendum.

(R. 0095). It is impossible to reasonably conclude that inclusion of "quasi-governmental" in the Ballot Question will not "mislead a reasonable voter."

4. The inaccuracy of "quasi-governmental" is compounded by its emotional impact.

It is important for the Court to recognize that the problem with the term "quasi-governmental" is not just that it is inaccurate and misleading but also that it

is likely to trigger a deeply emotional aversion many voters have to the specter of bigger government and increased taxes. "Quasi-governmental" is not an innocuous term that fails the test set forth in Section 905(2) only on the grounds that it is inaccurate.[20] Rather, it is provocative by definition because it incorrectly describes something that would be funded by taxpayers and involve a government takeover of private industry. That will be the kiss of death for many voters who would otherwise support a consumer-owned utility but will have an instinctive reaction to vote against their wishes because of the appearance of "quasi-governmental" in the Ballot Question. The emotionally-charged nature of "quasi-governmental" and its potential to mislead was pointed out by several commenters:

- "I object to the misleading wording you have proposed for the ballot initiative. It is almost as if CMP wrote it. When you say Pine Tree Power will be 'quasi- governmental' you play into the hands of CMP who is trying to tell the public that PTP will be just another bureaucratic branch of the State government." (R. 0072 (William Dunn).)

- "It is clear that a lot of money and power is being wielded to negatively shape the narrative around this initiative, and it is the responsibility of a healthy democracy to convey this question to voters accurately, rather than yield to the anti-democratic influence

[20] By contrast, there is room to disagree about whether the term "power company," which may imply that the Company would be generating electricity, accurately describes the Company given that it will be a "transmission and distribution utility," limited in function to transmitting and distributing electricity generated by others. The Court's resolution of that dispute would ultimately depend on its consideration of the meaning of those terms—not the emotional impact one is more likely to evoke over the other. But the use of the term "quasi-governmental" in place of "consumer-owned" raises an additional concern for the Court to keep in mind because of how charged that language will be to voters, thereby amplifying that term's ability to confuse and mislead the electorate.

of multi-national corporations by using misleading and unnecessary euphemisms like quasi-governmental." (R. 0184 (Spencer Barton).)

- The inclusion of the phrase "quasi-governmental" seems like an oddly malicious and purposely intimidating and obfuscating decision. Please consider adopting a more neutral and less loaded phrasing of the question as Mainers make themselves heard on this important issue. (R. 0111 (Trip Gander).)

It is telling that the only support in the record for use of the term "quasi-governmental" came from those interests that are opposed to the creation of the Company and are fighting to defeat the Legislation. This is because the term plays on the deep distrust of governmental expansion and control that is at the core of modern political discourse without conveying to the reasonable voter the true nature of the choice the Legislation presents to them: that is, whether to (a) keep the status quo of "investor-owned" electrical utilities or (b) adopt the Legislation and create a "consumer-owned transmission and distribution utility" that will be funded by ratepayers—not taxpayers—and run by an elected board of private citizens—not the State.

Language that is directly at odds with the terminology used in the Legislation and that resonates with the parade of horribles being trotted out by the Legislation's opponents will certainly sow confusion and mislead many voters to vote against their interest when confronted with the Ballot Question for the first time on election day. Petitioners recognize that if "quasi-governmental" was a fair and reasonable label for the Company, its supporters would have to accept that

reality and try to address their concern about it through political messaging prior to people casting their ballots. But that is not the state of affairs. Here, the Secretary has introduced a term foreign to the Legislation that is both inaccurate and redolent with negative connotations likely to confuse and mislead reasonable voters into voting contrary to their wishes.

C. Election day is not the time to introduce a phrase capable of such misunderstanding and misdirection.

Since the submission of the original Application, the entity created by the Legislation has been uniformly identified and described as a "consumer-owned transmission and distribution utility." That phrase appears in the Application (Appx. 38–50); on the face of the Petition, as approved by the Secretary and the Office of the Revisor of Statutes and presented to tens of thousands of prospective voters across the state (Appx. 51–58); in the Summary of the Legislation signed-off on by the Secretary and the Revisor (Appx. 36–37); and in the Legislation itself (Appx. 23–37). At no point prior to the drafting of the Ballot Question has "quasi-governmental" appeared in any of the aforementioned documents. If reasonable voters encounter that term for the first time in the voting booth, they will be caught off guard by "quasi-governmental" and prompted to question whether they *really* understand what they are being asked to decide. That is exactly the outcome Section 905(2) is intended to guard against.

The justification the Secretary provided in her Decision, which is not owed deference, is that "quasi-governmental" better captured several subsidiary aspects of the Legislation, such as that the Company's board is elected, in part, by the public (Appx. 27–28); it has the authority to adopt rules "for establishing and administering the company and carrying out its duties" (Appx. 32); and it would be subject to the Freedom of Access Act (Appx. 34).[21] (Appx. 19–22.) In reaching this conclusion, the Secretary missed the forest for the trees. She is not incorrect that these parts of the Legislation have the trappings of a public entity. However, her own proposed wording captures the most critical of these subsidiary aspects in the very next phrase of the Ballot Question: "governed by an elected board."[22] That language is sufficient to inform voters that the Company is not a *purely* private entity. By myopically focusing on capturing secondary elements of the Legislation, the Secretary's proposed wording confuses and complicates consideration of the more fundamental change the Legislation proposes.

The Secretary's decision to drop "consumer-owned," which *is* defined in the Legislation itself and provides a clear understanding of the Legislation's substance,

[21] The Company will also pay property tax and will be operated by a private contractor. (Appx. 28–29 (proposed 35-A M.R.S. § 4003(3)); Appx. 33 (proposed 35 M.R.S. § 4008).) Neither of those aspects of the Company are at all typical of a governmental entity, further undermining the Secretary's position that the term "quasi-governmental" captures the Company's organization and function.

[22] The Superior Court pointed out the redundancy resulting from using "quasi-governmental" to notify voters that part of the Company's board will be publicly elected and then expressly referencing that fact in the Ballot Question. (Appx. 8 n.3.)

in favor of "quasi-governmental," which *is not* defined in the Legislation (or any other statute) and has a dictionary definition directly contrary to what will occur if the Legislation is enacted, is simply indefensible. The introduction of "quasi-governmental" when voters first read the Ballot Question in the voting booth constitutes a clear violation of 21-A M.R.S. § 905(2) that the Court must remedy. Because the Secretary's use of the term "quasi-governmental" makes the Ballot Question not "understandable to a reasonable voter reading the question for the first time" and is likely to "mislead a reasonable voter who understands the [Legislation] into voting contrary to that voter's wishes," 21-A M.R.S. § 905(2), the Ballot Question violates both of 21-A M.R.S. § 906(6) and Article IV, Part 3, Section 20 of the Maine Constitution. The Superior Court's decision ordering the Secretary of State to revise the final wording of the Ballot Question should therefore be affirmed.

CONCLUSION

For the reasons above stated, Appellees respectfully submit that the Superior Court was clearly correct in ruling that the Secretary's formulation of the Ballot Question referring to a "quasi-governmental power company" violates 21-A M.R.S. § 905(2) because that term renders the Ballot Question insufficiently "understandable to a reasonable voter" and "misleading." Therefore, Appellees request this Court to affirm the Superior Court's decision.

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CERTIFICATE OF SERVICE

I, Sean R. Turley, hereby certify that I have caused two copies of the brief of Plaintiffs/Appellees to be served on Jonathan Bolton and Paul Suitter, Esq., counsel for Defendant/Appellant, by depositing conformed copies thereof in the U.S. Mail, first class and postage prepaid, to the following addresses:

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