STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-23-83

WAYNE R. JORTNER, et al.,

Petitioners-Appellees

v.

SECRETARY OF STATE

Respondent-Appellant

On Appeal from Cumberland County Superior Court
Docket No.: AP-23-07

BRIEF OF AMICUS CURIAE MAINE AFFORDABLE ENERGY BALLOT QUESTION COMMITTEE IN SUPPORT OF APPELLANT SECRETARY OF STATE

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STATEMENT OF INTEREST OF AMICUS CURIAE

Maine Affordable Energy Ballot Question Committee ("MAE") is a ballot question committee registered with the Maine Commission on Governmental Ethics and Elections, leading the opposition to the citizen's initiative entitled "An Act to Create the Pine Tree Power Company, a Nonprofit, Customer-owned Utility" (the "Initiative"), which, if enacted, would mandate the seizure of the assets of Maine's largest existing investor-owned transmission and distribution utility, Central Maine Power Company ("CMP"). The primary financial contributor to MAE is Avangrid Management Corporation, LLC, an affiliate of the Avangrid entity which owns CMP, the assets of which would be seized in the event the Initiative is enacted and implemented pursuant to its terms. MAE thus has a special and intimate interest in advocating for the Court to affirm the Secretary of State's (the "Secretary's) proffered ballot question language, as a concise, intelligible and simple formulation of the substance of the Initiative well within the bounds of the Secretary's constitutional and statutory authority.

SUMMARY OF ARGUMENT

Reviewed in the context of the Initiative's terms—which spans some 15 pages, containing over 6,500 words addressing complex concepts—the Secretary's phrasing of the ballot question for the Initiative should be upheld. Considering the length and complexity of the Initiative, the Secretary reasonably could have adopted any one of several different formulations of the ballot question to provide voters with an

understandable and non-misleading description of the Initiative's terms. In arriving at the formulation the Secretary deemed appropriate in the exercise of her constitutional authority, the Secretary was not, as Petitioners-Appellees suggest, required to parrot specific language (or buzz words) used in the Initiative, particularly where, as here, the challenged terminology—"a new quasi-governmental power company"—aptly describes the substance of the Initiative.

The Secretary, alone, is vested with the constitutional and statutory authority to undertake the difficult tasking of distilling the subject matter of the sprawling Initiative into a single ballot question, constrained only by the constitutional requirement that the question be written "concisely and intelligibly" and a similar statutory command that the ballot question be written "in a clear, concise and direct manner that describes the subject matter of the . . . direct initiative as simply as is possible." Me. Const. art. IV, pt. 3, § 20; 21-A M.R.S. § 906(6)(B). The Secretary's ballot question meets these requirements. The Secretary's thoughtful use of the phrase "quasi-governmental power company"—the only portion of the Secretary's wording challenged in these proceedings—to describe the utility company that would be formed by the Initiative would not cause a reasonable voter, who is presumed to be familiar with the Initiative, to misunderstand the Initiative's subject matter, nor mislead a reasonable voter "into voting contrary to that voter's wishes." 21-A M.R.S. § 905(2); *see Olson v. Sec'y of State*, 1997 ME 30, ¶¶ 5-6, 689 A.2d 605.

To the contrary, the term "quasi-governmental" very suitably describes the entity to be formed under the Initiative, which itself defines the "company" as "a quasi-municipal corporation" for debt liability purposes, App.33-34 (proposed Title 35-A § 4008(2)), and confers on the Company numerous powers, rights, and duties of a governmental entity. The term "quasi-governmental" is a common descriptor of entities in Maine created by statute that operate independent of governmental funds. Perhaps most notably, one of the State's largest consumer-owned utilities, Kennebunk Light and Power District ("KLPD"), refers to itself as a "quasi-governmental corporation"—a particularly meaningful example for voters educated on the subject matter of the Initiative.

The ballot question drafted by the Secretary should be affirmed.

ARGUMENT

I. The Court should review the Secretary's decision in light of the Secretary's constitutional authority to craft ballot question language and the significant practical challenges presented by this task.

Maine's Constitution vests the Secretary of State with sole authority to craft ballot question language, granting no other department of government, including the legislative or judicial branches, a say over the matter. *See* Me. Const. art. IV, pt. 3, § 20 ("the Secretary of State *shall* prepare the ballots in such form as to present the question or questions concisely and intelligibly" (emphasis added)). While the Court held in *Olson* that certain *statutory* language required the Court to conduct an "independent review" of the Secretary's decision, *Olson*, 1997 ME 30, ¶ 4, 689 A.2d 605, it did so without

discussion of whether Maine's constitutionally-imposed separation of powers doctrine permitted such review. *See* Me. Const. art. III, § 2 ("No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted."); *Bates v. Dep't of Behavioral and Developmental Servs.*, 2004 ME 154, ¶ 84, 863 A.2d 890 ("In interpreting Article III, we have stated: [T]he separation of governmental powers mandated by the Maine Constitution is much more rigorous than the same principle as applied to the federal government." (internal quotation marks omitted)).

Assuming the standard of review identified in *Olson* applies here, however, Petitioners-Appellees' request that the Superior Court not only reverse the Secretary's decision but step into the shoes of the Secretary to *rewrite* the Secretary's ballot language clearly would have breached the guardrails erected by the Maine Constitution's separation of powers doctrine. In that respect, the Superior Court was correct not to accept the Petitioners-Appellees' invitation to wield the Secretary's authority and replace the phrase "quasi-governmental power company" with "consumer-owned transmission and distribution utility."

But the Superior Court's decision to strike down the Secretary's proposed ballot question does not fully satisfy the separation of powers concerns presented by Petitioner-Appellees' challenge. Indeed, the Superior Court's decision merely avoids a sweeping and glaring separation of powers usurpation in favor of a subtle and creeping separation of powers problem, as it invites seriatim challenges to the Secretary's

wording decision wherein Maine's judiciary would be asked to approve or disapprove numerous successive ballot questions for the same initiative. Indeed, in the event the Court affirms the Superior Court's decision and the Secretary proposes a new ballot question, any interested party, including MAE, would be free to challenge the Secretary's new determination, which challenge may trigger the requirement for the Secretary to adopt a third proposed ballot question, and so on. *See* 21-A M.R.S. § 905(2) ("[a]ny voter" may challenge the Secretary's decision on petition validity or ballot question language).

Olson ultimately offers the appropriate pathway out of this problem, which the Superior Court erroneously failed to follow: granting the Secretary a wide berth with respect to applying the "understandable" and "not misleading" standards. *See Olson*, 1997 ME 30, ¶ 7, 689 A.2d 605 ("Merely demonstrating that the question creates a misleading impression about the legislation is not enough."). Unless the Secretary may apply these standards in such a way as to allow for the selection of one reasonable ballot question from among a range of reasonable alternatives, the Secretary's constitutional authority to write the ballot question is reduced to nothing more than the authority to provide the first draft of a tentative proposal, subject to innumerable judicial vetoes arising from challenges brought by an infinite number of successive voters.

The Initiative is more than 6,500 words long. So as to fulfill her duty to present the question "concisely," Me. Const. art. IV, pt. 3, § 20, the Secretary undertook to reduce those thousands of words to a question of 28 words in length, having to choose

from the more than 150,000 words available in the English language. Given these parameters, it is simply not possible for there to exist a single ballot question that can stand above all others and satisfy the concerns and objections of all Maine voters. *Olson* accordingly recognizes that a flexible application of the "understandable" and "not misleading" standards is the only way to balance the Secretary's constitutional authority, the practical challenges inherent in drafting a ballot question, and the need for the Maine courts to impose a check on only egregious failures of the Secretary to craft an appropriate question—a check no Maine court ever has imposed until the Superior Court's erroneous decision below.

Here, the Secretary carefully considered a wide array of comments and proposals presented by Maine voters. She revised her language once in response to those comments. She issued a thorough written decision explaining her ultimate decision, specifically discussing her reasons for using the phrase "quasi-governmental." *See* Appendix ("App.") 19-22. Well within the bounds of what could be described as "understandable" and "not misleading," the Secretary could have chosen from any number of words and phrases, including those proposed by MAE, to assemble a variety of different, but equally reasonable, ballot questions. *See* Administrative Record ("AR") at 236-37. As discussed below, the Secretary's ultimate choice fell well within the range of reasonable outcomes given the substance of the Initiative.

II. The ballot question's reference to a "quasi-governmental power company" is understandable to a reasonable voter.

In assessing the sufficiency of the ballot question, the Court first determines whether it is "understandable" to voters "who may be reading the question for the first time in the voting booth," but who also are "assumed [to] . . . have discharged their civic duty to educate themselves about the initiative" before casting their ballot. *Olson*, 1997 ME 30, ¶¶ 5-6, 689 A.2d 605. The Court does not review the ballot question to determine whether voters would understand the subject matter of the ballot question in a vacuum, but rather, within a context of familiarity with the Initiative. *See id.* If the ballot question's "description of the subject matter" of the initiative "is understandable to a reasonable voter" who is educated about the Initiative, then the Secretary's exercise of her constitutional authority passes muster. 21-A M.R.S. § 905(2).

Voters who have educated themselves about the Initiative will very well understand the subject matter of the ballot question, and not stumble on the phrase "quasi-governmental power company," which (a) aptly describes the proposed utility company that would be formed pursuant to the Initiative and (b) is a common manner of describing entities with both private and governmental features.

A. The phrase "quasi-governmental power company" aptly describes the entity that would be formed under the Initiative.

In crafting a concise and directly-stated ballot question under Me. Const. art. IV, pt. 3, § 20 and 21-A M.R.S. § 906(6), the Secretary appropriately focused on the substance of the Initiative, describing the entity to be created thereunder, Pine Tree

Power Company ("Company"), as "a new quasi-governmental power company." These befitting terms describe the actual nature of the Company, which Petitioners-Appellees seek to downplay in favor of a ballot question placing their spin on the Initiative as creating a "nonprofit, Customer-owned utility." The nature of the Company is not determined by what Petitioners-Appellees' wish to call it, the Secretary was not bound to adopt their chosen language,[1] and the Secretary properly captured the substance of the Company's proposed powers, purposes, and duties in describing it as a "quasi-governmental" entity. *See, e.g., Portland Water Dist. v. Town of Standish*, 2006 ME 104, ¶ 23, 905 A.2d 829 (examining the "qualities that make an entity a governmental entity or political subdivision of the State" and, determining that the Portland Water District has "uniquely governmental functions" of "a governmental entity").

[1] The Secretary was not the first executive branch official to reject the use of loaded words and phrases in the text of a ballot question seeking adoption of the Initiative. Proponents of the Initiative first sought to bring very similar legislation to a public vote through a bill introduced and passed by the 130th Legislature, which legislation, by its terms, required subsequent ratification through a ballot referendum. *See* L.D. 1708 (130th Legis. 2021). Governor Mills vetoed that legislation in part because the legislation's proposed ballot question language, drafted and urged by the proponents of the Initiative, was "not an even-handed treatment of the serious issues [the legislation] presents" and served as "an attempt to put a finger on the scale of the referendum process." *See* Governor Janet T. Mills, Veto Letter for L.D. 1708 at 3 (July 13, 2021), https://www.maine.gov/future/sites/maine.gov.governor.mills/files/inline-files/LD%201708%20Veto%20Letter.pdf (bracketed phrase added) (last visited Mar. 21, 2023). Governor Mills urged the ultimate question put to voters to appear "in a form that is objective and impartial, and not designed to elicit a desired result." *Id.* The instant challenge serves as nothing more than another effort to evade these important values.

A reasonable voter who is educated about the initiative will understand that the Company would, in fact, bear several significant features of a governmental entity, as highlighted below.

1) **Pursuant to the Initiative, the Company is not a legal corporation, but "a body corporate and politic" to be governed in accordance with the proposed statute.**

Although the Initiative uses the term "company," it does not create a legal corporate entity and in no way refers to the formation of a private corporation. Under proposed 35-A M.R.S. § 4002(2), rather: "The company is created as a body corporate and politic" to be governed in accordance with Section 4002, rather than a private entity to be governed under the provisions of Title 13-C. App.26-27 (proposed 35-A M.R.S. § 4002(2)). Section 4002 further provides for, among other things, the governance of the Company by a board, the majority of whose members will be elected in Statewide elections (proposed 35-A M.R.S. § 4002(2)) and the Legislature's future "review [of] the effectiveness of the company governance structure," both of which reflect the entity's quasi-governmental character. App.28 (proposed 35-A M.R.S. § 4002(7)).

2) **Pursuant to the Initiative, the Company will be governed by a Board comprised of a majority of elected officials, who will be subject to laws governing public elections.**

Under proposed Section 4002(2), seven of the Board's 13 members must be elected, with each elected member representing five of the State's 35 Senate districts. Those seven elected members then, in turn, appoint to the Board six members meeting certain statutory criteria. The elected members are subject to the provisions of

Chapter 13 of Title 21-A, which governs campaign reporting and financing in the conduct of government elections. *See* App.27 (proposed 35-A M.R.S. § 4002(D)). These election laws do not apply outside the setting of public elections for public office—and certainly not to the election of officers of private corporations. Elected board members of the Company are also "eligible for funding through the Maine Clean Election Act…." App.27 (proposed 35-A M.R.S. § 4002(2)(C)). Thus, as a matter of law, the Secretary properly characterized the Company as, at least, a "quasi-governmental" body. *N.L.R.B. v. Natural Gas Utility Dist. of Hawkins Cnty.*, 402 U.S. 600, 608 (1971) (rejecting contention "that utility with commissioners appointed by an elected official was a private corporation; observing [i]n such circumstances, that authority to exercise the power of eminent domain weighs in favor of finding an entity to be a political subdivision").

3) Pursuant to the Initiative, the Company is not as a "nonprofit" corporation within Maine law's long-time use of that term.

Despite the title of the Initiative suggesting the Company will be a "nonprofit" corporation, the Initiative contains no language giving rise to a nonprofit corporation, such as would be governed by Title 13-B. As noted, the Company will be a "body corporate and politic," which, as a matter of law, cannot be a "non-profit" corporation. Specifically, the Maine Nonprofit Corporation Act carves out from the definition of non-profit corporations any entity that is, like the Company, a "body politic and corporate." *See* 13-B M.R.S. § 102(4)(C) (definition of nonprofit corporation "shall not

include…[a]n instrumentality, agency, political subdivision or body politic and corporate of the State"). Accordingly, Chapter 260 of the rules of the Secretary of State, implementing the Maine Nonprofit Corporation Act, provides that a "body politic and corporate" cannot be a nonprofit corporation, and further confirms that a "body politic and corporate" exercises the kind of "functions traditionally associated with government activities." 29-250 C.M.R. ch. 260, § 1(A). Thus, under the applicable statutes and rules enforced by the Secretary, the Company cannot be a nonprofit corporation. Had the Secretary blindly adopted the label applied to the Initiative by its proponents, she would have used the term "nonprofit" in a manner contrary to its usage in Maine law, including contrary to rules the Secretary enforces.

4) The Initiative identifies the Company as a "quasi-municipal" entity.

In availing the Company of the traditional governmental power of property takings, the Initiative itself declares and acknowledges that the Company "is a quasi-municipal corporation within the meaning and for the purposes of Title 30-A, section 5701." App.33-34 (proposed Initiative § 4008(2) (emphasis added)). The referenced statute, applicable to municipalities and quasi-municipal corporations, provides that "personal property of the residents and the real estate within the boundaries of a municipality, village corporation or other quasi-municipal corporation may be taken to pay any debt due from the body corporate." 30-A M.R.S. § 5701 (Debt Liability). Thus, any "owner of property taken" by the Company pursuant to 30-A M.R.S. § 5701, in

accordance with Section 4008(2) of the Initiative, "may recover from the municipality or quasi-municipal corporation under Title 14, section 4953[,]" which provides a remedy for the owners of such sold property. Thus, in label, design, and function under the Initiative, the Company would serve as a quasi-governmental body.

5) The Initiative grants the Company rule-making authority—a power reserved to State governmental bodies.

The Company's rule-making authority under Section 4003(10) serves as another hallmark of its governmental power. The Initiative provides: "The company may adopt rules pursuant to Title 5, chapter 375, subchapter 2-A for establishing and administering the company and carrying out its duties. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A." App.32 (proposed 35-A M.R.S. § 4003(10) (emphasis added).) The referenced provisions of the Maine Administrative Procedure Act, which applies to agencies of the State, define "major substantive rules" to include "rules that, in the judgment of the Legislature[,]" either involve "the exercise of significant agency discretion or interpretation in drafting; or . . .are reasonably expected to result" in some manner of "serious burdens on the public or units of local government." 5 M.R.S. § 8071(2). The Maine Administrative Procedures Act defines "agency" to mean "any body of State Government authorized by law to adopt rules, to issue licenses or take final action in adjudicatory proceedings . . ." 5 M.R.S. § 8002(2). Thus, in view of its own rule-making authority, the Company is properly described as a "body of State Government." *Id.*

6) Pursuant to the Initiative, the Company can hold hearings, conduct investigations, acquire property, and enforce State laws.

Likewise, the Initiative provides that the Company will enjoy governmental powers to hold hearings, conduct investigations, acquire property, and enforce State laws, by virtue of its inclusion within the listing of governmental "boards" set forth in 5 M.R.S. § 12004-G (General government). The Initiative proposes that 5 M.R.S. § 12004-G shall be amended to include a new subsection 36, under the field of "Public Utilities," to include "Pine Tree Power Company Board" as a board that, "[i]n addition to the powers to hold hearings, adopt rules and establishes policies and procedures, … may enter into contracts, establish just charges, conduct investigations, acquire property or enforce state laws." *Id.*; *see* App.23 (proposed amendment to 5 M.R.S. § 12004-G). Through the new subsection 36 to 5 M.R.S. § 12004-G, the Company would join a host of State agencies and quasi-independent State entities listed therein (*e.g.*, Board of Agriculture; Maine Motor Vehicle Franchise Board; State Parole Board; Maine Human Rights Commission; Maine Technology Institute; Workers' Compensation Board; etc.). The description of the Company as a quasi-governmental power company is, therefore, fitting.

7) Pursuant to the Initiative, the Company's property is "public property."

In providing that the Company must pay local property taxes "[n]otwithstanding Title 36, chapter 105, subchapter 4," the Initiative acknowledges that the Company's property normally would be "public property" but for the express exclusion set forth

in Section 4008(1) of the Initiative. *See* App.33-34 (proposed 35-A M.R.S. § 4008(1). Title 36, chapter 104, subchapter 4 of the Maine Revised Statutes provides that "public property" as defined therein "is exempt from taxation" and only addresses the (non)taxability of "public property" (not private property or property of nonprofit corporations). 36 M.R.S. § 651. There would be no need to specifically exempt the Company from this tax exemption if Maine law otherwise would not view its property as "public property."

8) Pursuant to the Initiative, the Company will be subject to the Maine Freedom of Access law.

In another clear expression that the Company will operate in the manner of a state agency, the Initiative provides that both its "proceedings" and its "records" will be subject to the Freedom of Access Act, codified at 1 M.R.S. § 400, *et. seq.*, which applies to "public proceedings" and "public records" of nearly-exclusively governmental entities. *See* App.34 (proposed 35-A M.R.S. § 4010). The Freedom of Access Act does not apply to for-profit corporations or nonprofit corporations, and its application to the Company clearly reflects the Company's governmental nature.

***

For the foregoing reasons, a reasonable voter educated about the initiative would understand that the Company will be, in important respects, governmental. The Secretary's description of the Company as a "quasi-governmental power company" will

be within the understanding of the reasonable, educated voter, who will understand that the ballot question, as phrased, pertains to the Initiative at issue.

B. Agencies described as "quasi-governmental" are commonly found across Maine.

Far from unheard of, the term "quasi-governmental" is a common descriptor of entities in Maine created by statute and operating independent of governmental funds, and thus, well within the realm of a reasonable voter's understanding and experience. A prominent example is the Maine Turnpike Authority, which describes itself as "a quasi-state agency created by the Maine Legislature in 1941, to construct, manage, and operate" Maine's toll highways, with tolls collected as the only source of its revenue. *See* Maine Turnpike Authority, About MTA, https://www.maineturnpike.com/About-MTA.aspx (visited Mar. 20, 2023) (emphasis added); *see* 23 M.R.S. § 1963 (Maine Turnpike Authority). The Company would be similar to this "quasi-state agency" in that its operating revenue would not come from the State through appropriations of taxpayer dollars, but would be derived from the revenue generated from utility ratepayers, much like the toll revenue funding the Turnpike Authority. *See* 23 M.R.S. § 1964(6) (defining "operating revenues" as "income of the Maine Turnpike Authority from fees, fares, tolls, rental of concessions and miscellaneous revenue and interest"). Thus, contrary to Petitioners-Appellees' bald assertions, a reasonable voter would understand that a "quasi-governmental" entity need not be funded by the State and need not rely on taxpayer dollars.

While Petitioners-Appellees favor the term "consumer-owned utility," entities of that nature frequently use that term synonymous with "quasi-governmental." Perhaps the most salient example of a quasi-governmental entity is KLPD—a consumer-owned utility that that describes itself in its audited financial statements as "a quasi-governmental corporation which supplies power to various areas in and around the Town of Kennebunk, Maine." *See* Kennebunk Light and Power District, Financial Statements For the Years Ended December 31, 2021 and 2020, Notes to Basic Financial Statements, p. 11 (emphasis added).[2] KLPD is governed by an elected Board of trustees, authorized to engage a general manager to operate the utility, promoting itself as being "accountable only to the residents and the customers its serves." History of KLPD, available at https://klpd.org/index.asp?SEC=5A5E134A-DC02-401D-BDF1-FC292E20B160 (last visited Mar. 20, 2023).

Likewise, Madison Electric Works, another consumer-owned utility, is a department of the Town of Madison and a self-described "publicly owned utility that operates as a quasi-municipal department serving nearly 2,500 customers in Madison,

[2] *See* https://klpd.org/vertical/sites/%7B423355D4-5FDE-44B4-800E-406FA53C5BD4%7D/uploads/KLPD_2021_Financial_Statements.pdf (last visited Mar. 20, 2023). Prior audited financial statements of this consumer owned utility also describe it as a "quasi-governmental corporation." *See, e.g.*, Kennebunk Light and Power District, Financial Statements For the Years Ended December 31, 2020 and 2019, Notes to Basic Financial Statements, p. 10, at https://klpd.org/vertical/sites/%7B423355D4-5FDE-44B4-800E-406FA53C5BD4%7D/uploads/KLPD-2020-fs.pdf (last visited Mar. 20, 2023).

Anson, Starks and Norridgewock." Town of Madison Website, Madison Electric Works (emphasis added).[3] Similarly, another consumer-owned utility, Monhegan Plantation Power District, describes itself as a "'quasi-municipal" utility. *See* Monhegan Plantation Power District, Who We Are, http://www.monheganpower.com/ (last visited Mar. 20, 2023). And Houlton Water Company, another consumer-owned utility, describes itself as both "municipally owned" and "a small community owned provider of electric, water and sewer services" that does not "answer to stockholders" and is governed by an elected board. *See* Houlton Water Company, https://hwco.org/ (last visited Mar. 20, 2023); Houlton Water Company, Our Company, https://hwco.org/company/ (last visited Mar. 20, 2023).

Proponents of the Initiative feature each of the forgoing utilities as examples of utilities structured like the Company on a website promoting the Initiative. *See* Our Power, Frequently Asked Questions, at https://ourpowermaine.org/faq/ (last visited Mar. 20, 2023). Contrary to the Superior Court's ruling, it is not "too large of a leap to expect" an educated voter to understand that the phrase "quasi-governmental power company" would refer to a utility that has features of a government entity, like those to which the Initiative supporters compare the Company. App.8.

"Voters are not to rely on the ballot question alone in order to understand the proposal." *Olson*, 1997 ME 30, ¶¶ 5-6, 689 A.2d 605. Reasonable voters, educated

[3] *See* https://www.madisonmaine.com/index.php/government/public-safety-utilities/106-madison-electric-works (last visited Mar. 20, 2023).

about the Initiative, will not misunderstand the term "quasi-governmental power company" to mean some other sort of entity other than the very one proposed. The Secretary is not required, and cannot possibly, craft the Platonic ideal of a ballot question sufficient to satisfy everyone's specific taste or word choice. The Secretary only need adopt a ballot question that will allow a reasonable voter, educated about the Initiative, to understand its subject matter. The Secretary's chosen ballot question safely clears that standard.

III. The ballot question will not mislead reasonable voters, who are educated about the Initiative, into voting contrary to their wishes.

Just as reasonable voters who are educated about the legislation will understand the subject matter of the Initiative, the Secretary's wording of the question will not mislead such voters into voting against their wishes. *See* 21-A M.R.S. § 905(2). Petitioners-Appellees presume that voters will have no passing idea about the (many) aspects of the Initiative that reflect the Company's governmental qualities. As a matter of law, this perspective is erroneous and, indeed, even a ballot question that "creates a misleading impression" can survive judicial scrutiny. *See Olson*, 1997 ME 30, ¶ 7, 689 A.2d 605.

As shown by the examples of self-funded quasi-governmental entities discussed above, "quasi-governmental" is not synonymous with "funded by the government," nor is it even contrary to "consumer owned." Petitioners-Appellees' alleged concerns that voters will be misled into voting against the Initiative because they will understand

the ballot question to be asking them to create a government-funded power company are wholly unfounded. For the reasons discussed above, reasonable and educated voters will understand that the "quasi-governmental power company" they are being asked to create features both governmental and private aspects, which the Company clearly does. The challenged ballot question wording thus will not mislead voters into voting contrary to their wishes.

Indeed, the tinkering urged by Petitioners-Appellees, and which the Superior Court rightly avoided adopting, may give rise to further challenges to the ballot question as being misleading. By the Initiative's plain terms, the Company will wield many powers traditional reserved to governmental bodies or agencies, and the ballot question should not whitewash this reality in reliance on labels preferred by Petitioners-Appellees rather than the substance of the Initiative.

The Secretary has satisfactorily discharged her duty of drafting a ballot question concerning lengthy and complex legislation that is concise, intelligible, and under the circumstances, stated as simply as possible. *See* Me. Const. art. IV, pt. 3, § 20; 21-A M.R.S. § 906(6)(B). Her formulation of the ballot question accordingly should be upheld.

CONCLUSION

For the reasons discussed above, Amicus Curiae Maine Affordable Energy Ballot Question Committee respectfully requests that the Court reverse the decision of the Superior Court and affirm the Secretary's formulation of the ballot question.

DATED: March 23, 2023

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