

**STATE OF MAINE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

LAW COURT DOCKET NO. CUM-23-83

WAYNE R. JORTNER, et al.

Appellees

v.

SECRETARY OF STATE

Appellant

ON APPEAL FROM THE CUMBERLAND COUNTY
SUPERIOR COURT

**AMICUS BRIEF OF MAINE ENERGY PROGRESS
POLITICAL ACTION COMMITTEE**

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. MEP's Status

Amicus curiae Maine Energy Progress Political Action Committee (“MEP”) is a political action committee, which is duly registered with the Maine Commission on Governmental Ethics and Election Practices. MEP operates as a ballot question committee and is funded by ENMAX Corporation (“ENMAX”). ENMAX is the parent company of Versant Power (“Versant”), a Maine-based utilities transmission and distribution company, which serves more than 160,000 Mainers in the northern and eastern parts of the state. MEP opposes the citizen initiative that is the subject of this matter (the “Initiative”). Among other things, the Initiative seeks to require the acquisition of Versant’s assets by eminent domain.

B. The Initiative

On August 13, 2021, Petitioner/Appellee Wayne Jortner (“Jortner”), along with five designated voters, filed an application for the Initiative with Respondent/Appellant Secretary of State Shenna Bellows (“Appellant” or the “Secretary”). App. at 38 – 50. The Initiative is entitled “An Act to Create the Pine Tree Power Company, a Nonprofit, Customer-owned Utility.”¹ R. at 19. The language of the Initiative was finalized by the Secretary and accepted by Jortner on

¹ When Petitioner filed his application, the Initiative was entitled “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.” R. at 6. The final title of the Initiative, as it will be presented to legislators and voters, is “An Act to Create the Pine Tree Power Company, a Nonprofit, Customer-owned Utility.” R. at 19.

September 24, 2021. *Id.* at 18 – 37. The Initiative is a dense document comprised of almost 6,900 words; the body of the proposed legislation, not including the Summary, runs for 14 single-spaced pages. R. at 21 – 34.

The Initiative seeks to create an entity to be called Pine Tree Power Company (“PTPC”), which would transmit and distribute electricity to customers across Maine. *Id.* at 23. PTPC is expressly “created as a body corporate and politic.” *Id.* at 24. PTPC would be classified within Title 5, § 12004-G of the Maine Revised Statutes, *id.* at 21, which lists “general government” entities, 5 M.R.S. § 12004-G (1987), and would be classified as a “quasi-municipal” entity for taxing and borrowing purposes, R. at 31 – 32. It would be governed by a board, the majority of which would be elected by voters throughout the state. *Id.* at 24. The candidates for the board would be eligible for funding through the Maine Clean Election Act. 21-A M.R.S. § 1121 (1995); R. at 25. PTPC would have the authority to adopt rules with the force of law pursuant to the Maine Administrative Procedure Act, 5 M.R.S. § 8001 (1999), R. at 30, and be subject to the Freedom of Access Act, 1 M.R.S. § 400 (2011), R. at 32. PTPC would have the authority to acquire the assets of Maine’s existing investor-owned electricity transmission and distribution utilities, including Versant, by “right of eminent domain.” *Id.* at 27 – 30.

The Secretary issued the petition for the Initiative on October 22, 2021. App. at 10 – 18. Pursuant to Article IV, Part 3, Section 18 of the Maine Constitution, the

Initiative’s proponents submitted signatures in support of the Initiative on October 31, 2022. R. at 46 – 47; Me. Const. art. IV, pt. 3, § 18. On November 30, 2022, the Secretary determined that the proponents met the criteria for submission of the Initiative to the Legislature or, if the Legislature declines to enact it, to the voters. *Id.*

C. The Ballot Question

On December 21, 2022, the Secretary issued her proposed language for the ballot question that will appear on the November 7, 2023 general election ballot (the “Ballot Question”). R. at 48. The draft language read:

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?

Id. She also announced that, pursuant to 21-A M.R.S. § 905-A, she would accept public comments on the language of the Ballot Question through January 20, 2023. *Id.*; 21-A M.R.S. § 905-A (2021). The Secretary received nearly 170 comments regarding the language. R. at 50 – 255. Counsel for MEP submitted a comment on January 20. *Id.* at 228 – 31.

Upon consideration of the comments, the Secretary amended the language of the Ballot Question and announced its final wording on January 30, 2023. App. at 19. The Secretary’s final, concise description of the content of the lengthy and detailed Initiative legislation reads 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?

Id.

In a letter to Jortner, the Secretary explained her process of determining the final language of the Ballot Question. App. at 19 – 24. The letter set forth the standards she must meet in producing the final language and addressed the public comments she received. *Id.* at 20. The Secretary described why she found the term “quasi-governmental” to be “the descriptor that will enable voters to best understand the choice presented by the initiative.” *Id.* She explained that PTPC is best described as a quasi-governmental entity because, among other reasons, (i) it would be permitted to borrow funds under provisions applicable to quasi-municipal entities; (ii) a majority of the board would be elected by voters; (iii) it would be subject to the Freedom of Access Act, and; (iv) it would be allowed to adopt policies with the force of law under the Maine Administrative Procedure Act. *Id.*

The Secretary’s letter also explained why the term “consumer owned” does not appear in the final Ballot Question. *Id.* She was particularly concerned that the term would “suggest to voters that consumers would be acquiring shares or some other formal ownership stake in the new entity.” *Id.* Such terminology, she reasoned, has the potential to mislead the electorate. *Id.* The Secretary’s final language reflects what she determined, after careful consideration, to be a clear, concise, direct, and

simple description of the subject matter of the Initiative. *Id.*

D. The Rule 80C Appeal

Petitioners/Appellees Jortner *et al.* (“Appellees”) filed a Petition in the Superior Court for review of the Secretary’s action on February 9, 2023, pursuant to M.R. Civ. P. 80C. Pet. For Superior Ct. Review at 9. In their brief below, Appellees challenged “the Secretary’s use of the term ‘quasi-governmental power company’ in the Ballot Question[.]” Pet’rs Superior Ct. Br. at 1. They requested that the Superior Court vacate and modify the Secretary’s final wording, specifically asking the court to substitute the term “quasi-governmental power company” with “consumer owned transmission and distribution utility.” *Id.* at 2.

In a decision dated March 9, 2023, the Superior Court found that the language of the Ballot Question did not meet the relevant standards set forth in the Maine Constitution, Maine statutes, and case law (the “Decision”). Decision at 1 – 6. The Superior Court declined to modify the language, and instead remanded the matter to the Secretary for revision. *Id.* at 6. Appellant appealed the Decision to the Law Court on March 13, 2023.

STATEMENT OF ISSUE

Whether the Superior Court erred in granting Appellees’ Petition, remanding the matter to the Secretary, and ordering the Secretary to revise the final wording of the Ballot Question for the citizen initiative entitled “An Act to Create the Pine Tree

Power Company, a Nonprofit, Customer-owned Utility”?

SUMMARY OF ARGUMENT

The Court should reverse the Decision of the Superior Court and decline to order the Secretary to revise the final wording of the Ballot Question. The Ballot Question’s description of the subject matter of the Initiative is understandable to the reasonable voter who understands the proposed legislation and it properly advises them of the choice presented by the Initiative. Likewise, use of the phrase “quasi-governmental power company” will not mislead the reasonable voter, who has taken independent steps to understand the proposed legislation, into voting contrary to their wishes. As such, the language of the Ballot Question satisfies the requirements of 21-A M.R.S. § 905(2).

In choosing the language of the Ballot Question, the Secretary appropriately balanced the concerns of both proponents and opponents of the Initiative. The Court should decline to interfere with the Secretary’s chosen language and instead allow the legislative/political process to unfold. To do otherwise would upend standards that have been in place for more than twenty-five years, *see Olson v. Sec’y of State*, 1997 ME 30, 689 A.2d 605 (“*Olson*”), and would invite further litigation concerning a revised Ballot Question, as well as inappropriate challenges to ballot questions in the future, by parties disappointed that the Secretary has rejected their preferred language.

ARGUMENT

A. The Applicable Legal Standards

1. The Secretary's Preparation Of Ballot Question Language

Maine's Constitution charges the Secretary with the obligation to prepare the ballots for citizen initiatives. Me. Const. art. IV, pt. 3, § 20. In determining the language of a ballot question, the Constitution directs the Secretary to "prepare the ballots in such form as to present the question or questions concisely and intelligibly." *Id.* By statute, 21-A M.R.S. § 906(6)(B) (2019), the Secretary is further directed that the question be written "in a clear, concise and direct manner that describes the subject matter of the people's veto or direct initiative as simply as is possible."

2. Review Of The Secretary's Choice Of Ballot Question Language

Challenges to ballot question language selected by the Secretary must be brought pursuant to M.R. Civ. P. 80C. In such proceedings, the Superior Court must independently review the ballot question based on the following standard:

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) (2021) (sometimes "Section 905"). This standard of review applies also to this Court in this appeal. *See id.*, § 905(3) ("The standard of review

[in appeals to the Supreme Judicial Court] must be the same as for the Superior Court.”). Likewise, neither the Superior Court nor this Court is to give deference to the Secretary’s chosen language. *Olson*, 1997 ME 30, ¶ 4, 689 A.2d 605 (“both the Superior Court and we are required to independently determine whether the ballot question is understandable and not misleading.” (citation omitted)).

The requirements of Me. Const. art. IV, pt. 3, § 20 and 21-A M.R.S. § 906(6)(B) that “the question be clear, simple, and intelligible” have been found by this Court to be “subsumed in the standards provided in section 905.” *Olson*, 1997 ME 30, ¶ 6, 689 A.2d 605. Thus, the Court will “independently review whether the description of the subject matter of the ballot question is ‘understandable’ and ‘will not mislead.’” *Id.*; see also *Caiazzo v. Sec’y of State*, 2021 ME 42, ¶ 11, 256 A.3d 260.

Importantly, both prongs of the *Olson* test—understandable and not misleading—are applied in the context of voters who have taken reasonable steps prior to entering the voting booth to educate themselves about and understand the initiative, not voters whose first encounter with the legislation occurs while reading the ballot question at the polls. *Olson*, 1997 ME 30, ¶¶ 9, 11, 689 A.2d 605 (holding that the ballot question was not misleading to “a reasonable voter who understands...the initiative” and was understandable to voters who “have discharged their civic duty to educate themselves about the initiative.”). *Olson* explicitly rejects

the notion that Section 905 requires that the Ballot Question be understandable to a voter who is uneducated about the underlying legislation. *Id.* at ¶ 11. On the contrary, “It is inevitable that ballot questions will reflect the ambiguities, complexities, and omissions in the legislation they describe. Voters are not to rely on the ballot question alone in order to understand the proposal.” *Id.*

The voter subject to this inquiry need not have previously read the precise language of the question as it appears on the ballot. Rather, they need only recognize it as describing the subject matter they took independent steps to understand; *e.g.*, by reviewing the proposed legislation, consulting external resources, and/or engaging in the political process. *Id.* Conspicuously absent from the *Olson* test, and therefore irrelevant to this appeal, is consideration of the mental impressions of the person who casts their vote based on the language of the ballot question alone. Voters who check “yes” or “no” based solely upon their real-time, ballot box reaction to the Ballot Question—or perhaps just one word or phrase of it—are not factored into the analysis under *Olson*.

B. The Superior Court’s Decision Should Be Reversed And The Secretary’s Ballot Question Upheld Because Its Language Is Understandable To And Will Not Mislead A Reasonable Voter

1. The Ballot Question Is Understandable: Voters Who May Be Reading The Question For The First Time In The Voting Booth Will Understand The Subject Matter Of The Initiative And The Choice Presented

Measured against the *Olson* standard, the phrase “quasi-governmental power

company” does not render the Ballot Question impossible or even moderately difficult to understand. “Quasi-governmental power company” is an appropriate description of the to-be-created PTPC, which is the subject matter of the Initiative, and does not confuse the choice presented to reasonable voters.

“Quasi” is not an esoteric term; it is readily understood by the average voter as an adjective connoting a degree of resemblance to an object but not possessing all of its attributes, which is almost always appended to another word in a combining form. A voter conducting a Google™ search would find in the Merriam-Webster Online Dictionary a definition of the adjective “quasi” as “having some resemblance usually by possession of certain attributes” and of the combining form “quasi-” as “in some sense or degree” and “resembling in some degree.” Dictionary Entry for “Quasi,” MERRIAM-WEBSTER DICTIONARY ONLINE, <https://www.merriam-webster.com/dictionary/quasi> (last visited Mar. 23. 2023). Black’s Law Dictionary (11th ed. 2019) similarly defines “quasi” as:

A Latin word frequently used in the civil law, and often prefixed to English words. It is not a very definite word. It marks the resemblance, and supposes a little difference, between two objects, and in legal phraseology the term is used to indicate that one subject resembles another, with which it is compared, in certain characteristics, but that there are also intrinsic and material differences between them. It negatives the idea of identity, but implies a strong superficial analogy, and points out that the conceptions are sufficiently similar for one to be classed as the equal of the other.

Quasi, BLACK'S LAW DICTIONARY (11th ed. 2019).

By combining the terms “quasi” and “governmental” to describe PTPC, the Ballot Question accurately conveys the fact that the entity will have both governmental attributes and attributes of a private company. An *informed* voter's common sense understanding of this fact is further buttressed by the terms of the Initiative itself.

As a threshold matter, that PTPC is to be created by statute, rather than by individual owners, suggests a governmental aspect that is distinguishable from a private entity. App. at 25. The Initiative also expressly provides that members of PTPC's board would be elected by the public, board candidates would be eligible for Clean Election funding, and activities of PTPC would be subject to the Maine Administrative Procedure Act and the Freedom of Access Act. App. at 26 – 27, 32, 34. These, too, are governmental attributes.

Moreover, the Initiative unambiguously and repeatedly refers to PTPC's ability to seize and take over the assets of Maine's existing investor-owned electricity utilities by “right of eminent domain.” App. at 29, 30. The ability to exercise such power is “an inherent attribute of sovereignty.” *Kennebec Water Dist. v. City of Waterville*, 96 Me. 234, 52 A. 774, 777 (1902). The right of eminent domain, although delegable, derives from the state. *Id.* at 777 – 78. It is not intrinsic to a “nonprofit, consumer owned utility,” App. at 36, and it cannot be summoned

independent of the police power of government. PTPC’s right of eminent domain, arguably its singular feature, is undeniably grounded in governmental power.² As such, the term “quasi-governmental” is an appropriate description of PTPC.

Furthermore, the meaning of the phrase “quasi-governmental” can be elucidated upon examination of other Maine statutes—another resource among those *Olson* suggests that informed voters may have consulted in learning about the initiative. 1997 ME 30, ¶ 11, 689 A.2d 605. Appellees are correct that there is no statutory definition of the term “quasi-governmental entity.” Pet’rs Superior Ct. Br. at 10. However, the phrase does appear in a number of “Definitions” sections of Maine statutes, and it is almost invariably described as unmistakably different and separate from “governmental” or “government entity.” *See, e.g.*, 35-A M.R.S. § 3201(9) (1997); 38 M.R.S. § 542(9) (1977); 38 M.R.S. § 562-A(16) (1989). Such a distinction makes clear that, although perhaps related to governmental bodies, quasi-governmental entities are different in kind.

The Initiative describes PTPC as a “quasi-municipal corporation” App. at 33. Maine voters understand that a municipality is a governmental entity. The Ballot Question’s use of the phrase “quasi-governmental...company” instead of “quasi-

² The Legislature has delegated a limited power of eminent domain to existing transmission and distribution utilities in the state. 35-A M.R.S. § 3136 (2007). Unlike the right of eminent domain that would be granted to PTPC, the existing utilities’ right may only be exercised upon approval by the independent Public Utilities Commission. 35-A M.R.S. § 3136(4). PTPC, by contrast, would be able to exercise this power upon approval by a vote of nine of its own board members. App. at 30.

municipal corporation” will not be confusing to the informed voter. Nor will such voters be confused that this description applies to PTPC, which has characteristics of both a private and a governmental entity, *i.e.*, a “quasi-governmental power company.”

The Initiative also depicts PTPC as a “body corporate and politic.” *Id.* at 24. As the Superior Court conceded below, “body corporate and politic” may be a fair synonym for “quasi-governmental.” Decision at 4. However, the Decision reasons that “It is unreasonable to expect an average voter to draw the connection between the use of the phrase ‘body corporate and politic’ in the Legislation and ‘quasi-governmental’ in the Ballot Question and emerge with a clear understanding of the meaning of either phrase.” *Id.* This rationale as a basis to reject the Secretary’s choice of the Ballot Question language is unfaithful to the *Olson* standard.

As *Olson* explains, “It is inevitable that ballot questions will reflect the ambiguities, complexities, and omissions in the legislation they describe.” 1997 ME 30, ¶ 11, 689 A.2d 605. Moreover, *Olson* makes clear that “Voters are not to rely on the ballot question alone in order to understand the proposal.” *Id.* The standard applied by the Superior Court below, whether voters obtain “a clear understanding of the meaning of either phrase,” elides the pertinent questions concerning the “understandable” analysis: Will use of the phrase “quasi-governmental power company” cause an informed voter not to understand the subject of the Initiative and

the choice the Initiative presents? The answer to those questions is no.

The Secretary's role here was to "formulate a ballot question for the sole purpose of assuring clarity in the description of the content of the initiative legislation." *Aboud v. Diamond*, No. CV-93-817, 1993 Me. Super. LEXIS 181, * 7 (Aug. 11, 1993). The Secretary "cannot editorialize," and,

If that legislation contains undefined words or confusing terminology, or if the legislation masks its true purpose, the Secretary of State cannot remedy those deficiencies. Any such deficiencies must be exposed through public debate.

Id.

As *Aboud* makes clear, the Superior Court's concern for the failure of the Initiative to impart a "clear understanding of the meaning of...[the] phrase [body corporate and politic]" or the Ballot Question to do the same for "quasi-governmental," Decision at 4, is beside the point. The extensive public debate concerning the Initiative—that which has already occurred as well as the inevitable debate ramp-up that will occur up through Election Day—will make crystal clear to the reasonably informed voter that the "quasi-governmental power company identified" in the Ballot Question and PTPC, the "body corporate and politic" identified in the Initiative, are one and the same.

Appellees' claim that the Ballot Question would confuse informed voters because it does not use the phrase "consumer owned" in substitution for "quasi-

governmental” is unpersuasive. The Summary of the Initiative makes clear that “This initiated bill creates the Pine Tree Power Company, a privately-operated, nonprofit, *consumer owned* utility...” App. at 36 (emphasis added). The title of the Initiative is “An Act To Create the Pine Tree Power Company, a Nonprofit, Customer-owned Utility.” R. at 19. Reasonable voters “who have discharged their civic duty to educate themselves about the [I]nitiative” and reading the Ballot Question in its entirety, will not be confused as to the subject matter of the Initiative and the choice presented by the Ballot Question simply because PTPC is not described in the Ballot Question as “consumer owned.” *Olson*, 1997 ME 30, at ¶ 11, 689 A.2d 605. The informed voter, even one reading the Ballot Question for the first time in the voting booth, would understand that (i) it pertained to the Initiative, (ii) the “quasi-governmental power company” is PTPC to be created under the Initiative, and (iii) they were being asked to vote for or against the Initiative. Any other conclusions to be drawn in these circumstances would be unreasonable.

Contrary to the *Olson* standard, Appellees’ concerns regarding the Ballot Question appear to center on a different type of voter—one who has not read the underlying legislation or consulted external sources to understand it, but rather arrives at the voting booth and casts their ballot based on their reaction to the language of the Ballot Question alone. Appellees focus their argument on a so-called “average citizen” to whom “more ‘government’ means more taxes,” Pet’rs Superior

Ct. Br. at 16, and voters who will “tag[]” the Initiative “with the adverse connotations of ‘government,’” in reaction to the term “quasi-governmental.” *Id.* at 19.

It is hard to imagine that the “emotional impact” of the phrase “quasi-governmental” would render an *informed* voter helpless to any “deeply emotional aversion” they may have to the “specter of bigger government and increased taxes,” Pet’rs Superior Ct. Reply Br. at 10, especially given Appellees’ claim that the Initiative makes “very clear in several places” that PTPC “will not cost Maine taxpayers a penny.”³ Pet’rs Superior Ct. Br. at 16 – 17. The voters to whom the *Olson* test is to be applied will have no difficulty understanding the term “quasi-governmental” as it appears in the Ballot Question, because they will understand it to be an accurate description of PTPC well before they arrive at the polls on Election Day.

Although not the primary focus of their argument below, Petitioners also take issue with the Secretary’s use of the term “power company” to describe PTPC. Pet’rs Superior Ct. Br. at 15 – 16. They reason: “As is the case with both Central Maine Power Company and Versant Power, PTPC will be a ‘transmission and distribution utility.’ It will not generate any power[.]” *Id.* at 16. Petitioners’ claim that use of this phrase further obscures the understandability of the Ballot Question lacks merit.

³ The public comments, too, are unduly focused on the uninformed voter—one “who may just be learning about this important question,” R. at 195, to whom the term “quasi-governmental” may be “triggering,” *id.* at 110; “loaded,” *id.* at 111; or “scary,” *id.* at 135. The *Olson* test does not concern the uninformed voter.

Indeed, the Initiative seeks to create the Pine Tree *Power Company* and it is titled to convey that very fact: “An Act to Create the Pine Tree *Power Company*, a Nonprofit, Customer-owned Utility” App. at 19 (emphasis added). Use of the term “power company” in the Ballot Question could hardly align more with the stated purpose of the underlying legislation. Moreover, and by Appellees’ own admission, PTPC seeks to replace Central Maine *Power Company* and Versant *Power*. Again, use of the term “power company” in the Ballot Question only makes clearer what the Initiative would accomplish: replacement of Central Maine Power and Versant Power, regardless of their technical classification. The Secretary’s choice of the phrase “power company” to describe PTPC will not cause informed voters to misunderstand the subject matter of the Initiative nor the voting choice being presented to them.

2. The Ballot Question Is Not Misleading: The Language Will Not Cause Reasonable Voters Who Understand The Initiative To Vote Contrary To Their Wishes

Appellees also cannot show that the Ballot Question as written “will mislead reasonable voters, who understand the proposed legislation, into voting contrary to their wishes.” *Olson*, 1997 ME 30, ¶ 7, 689 A.2d 605. The proper focus of this inquiry is the *result* of the allegedly misleading language: Appellees must demonstrate that the wording will lead voters to cast their vote with the belief that their choice has one effect, when in reality it has the opposite. *Id.* Importantly, even

if the Ballot Question language created a “misleading impression,” perhaps one causing the voter to question the eventual impact of the underlying legislation, that would not be enough to meet this prong of the test. *Id.*; *see also Wagner v. Sec’y of State*, 663 A.2d 564, 568 (Me. 1995). Rather, the allegedly misleading language must have the tangible effect of causing miscast ballots.

The Secretary’s Ballot Question is not misleading to the informed voter who understands the proposed legislation, even if they are reading the question itself for the first time at the polls. Although many of the public comments allege that the language is misleading—including several comments that Appellees quote in their brief below—few (if any) claim that the wording will lead voters to vote contrary to their own wishes. *See, e.g.*, R. at 74, Pet’rs Superior Ct. Br. at 19; R. at 143, Pet’rs Superior Ct. Br. at 20; R. at 86, Pet’rs Superior Ct. Br. at 21 – 22. Absent such a showing, the Ballot Question cannot be deemed “misleading” within the teachings of *Olson*. Appellees likewise warn of “misimpressions” the Ballot Question may make. *See, e.g.*, Pet’rs Superior Ct. Br. at 15, 17. A misleading impression, however, is not enough to meet the second prong of the *Olson* test.

Like the parties in *Olson*, Appellees focus much of their attention on just one word of the Ballot Question, debating whether “quasi-governmental” or “consumer owned” is more appropriate to describe the Initiative. Consideration of the Ballot Question as a whole, however, makes apparent that its wording will not cause a

reasonable voter who has educated themselves about the Initiative to vote contrary to their wishes.

The Ballot Question asks whether a voter wants to “*create a new*” company that will “*acquire and operate existing* for-profit electricity” facilities in the state. App. at 19 (emphasis added). Campaigning and political rhetoric notwithstanding, a voter who has even a basic understanding of the Initiative will know that voting “yes” on this question will cast a vote in favor of creating a new company that—regardless of its label as “consumer owned” or “quasi-governmental”—will replace Maine’s existing for-profit utilities. A “no” vote will be a vote against the creation of such an entity. There is nothing in the Ballot Question, when considered in its entirety, that has the potential to cause an informed voter to miscast their vote.⁴

3. The Language Of The Ballot Question Reflects A Measured Middle Ground Resulting From Careful Consideration Of The Initiative

Maine’s citizen initiative process, much like any other political process, is inherently charged. Legislation like that proposed by the Initiative will almost always be polarizing, creating two or more “sides” of the issue. The democratic process works such that no side is likely to be completely satisfied with the final

⁴ This conclusion is underscored upon consideration of the November 2023 ballot as a whole; none of the remaining questions have subject matters that are even remotely similar to that of the Initiative. *See Citizen Initiative Petitions Currently Approved for Circulation*, DEPT. OF SEC’Y OF STATE BUREAU OF CORPS., ELECTIONS & COMMS., <https://www.maine.gov/sos/cec/elec/citizens/index.html> (last visited Mar. 19, 2023). A reasonable, informed voter would not read the other questions that may appear on the ballot and mistakenly believe they are casting a vote about the Initiative.

wording of ballot questions, which necessarily “will reflect the ambiguities, complexities, and omissions in the legislation they describe.” *Olson*, 1997 ME 30, ¶ 11, 689 A.2d 605.

For instance, in its public comment, MEP agreed with the Secretary’s use of the term “quasi-governmental” in her proposed language, but expressed concern that the word “acquire” did not adequately explain that PTPC would take existing utilities’ assets by eminent domain. R. at 229. The Secretary ultimately did not change the word “acquire” or write the Ballot Question to indicate that PTPC would possess the power of eminent domain. Meanwhile, several commenters urged the Secretary to add the term “for-profit” in the question’s description of the existing utilities that would be replaced by PTPC, to make clear that it would not replace other electricity cooperatives in the state. *See, e.g.*, R. at 55, 86, 93. The Secretary’s final language does include this addition. App. at 19.

Thus, the Secretary’s final Ballot Question language reflects a measured compromise that describes the subject of the Initiative, reached only after careful consideration of comments from all “sides” of the issue. Appellees make clear that, had they drafted the Ballot Question, it would read differently. The same would have been true if MEP had written it. But that is precisely why the Maine Constitution delegates the task of producing the ballot question to the Secretary, not an initiative’s proponents or opponents. Her constitutional duty is to write the question concisely

and intelligibly. The Secretary carried out that duty here.

CONCLUSION

By declining to direct the Secretary to revise the Ballot Question, this Court would send the parties, amici curiae, and the people of Maine two clear messages. First: that the Ballot Question is a concise and intelligible description of the underlying legislation that is understandable and not misleading to informed voters. Second: a reaffirmation that, unless opponents of a particular ballot question can meet the high bar established by *Olson*, this Court will not interfere with the Secretary's reasoned choice of ballot question wording.

For all of the foregoing reasons, this Court should reverse the Decision of the Superior Court and decline to order the Secretary to revise the final wording of the Ballot Question for the citizen initiative entitled "An Act to Create the Pine Tree Power Company, a Nonprofit, Customer-Owned Utility."

Dated: March 23, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Paul McDonald, hereby certify that a copy of this document was served upon counsel via first-class mail and at the email addresses set forth below on March 23, 2023:

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