



**Bernstein, Shur,
Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774-1200

F (207) 774-1127

Paul McDonald
(207) 228-7260 direct
pmcdonald@bernsteinshur.com

Via Electronic Mail

March 15, 2023

Mathew Pollack, Esquire
Executive Clerk
Maine Supreme Judicial Court
205 Newbury Street
Portland, ME 04101

Re: Wayne R. Jortner v. Secretary of State
Docket No. PORSC-AP-2023-7

Dear Mr. Pollack:

Enclosed for filing in the above-captioned matter, please find a Motion to Intervene or in the Alternative be Granted Oral Argument as Amicus Curiae on behalf of Maine Energy Progress Political Action Committee.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Paul McDonald", written over the closing "Respectfully yours,".

Paul McDonald

PM:js

Enclosure

cc: Paul Suitter, Assistant Attorney General (w/encl.; *via* electronic mail)
Jonathan R. Bolton, Assistant Attorney General (w/encl.; *via* electronic mail)
Sean R. Turley, Esq. (w/encl.; *via* electronic mail)
Peter L. Murray, Esq. (w/encl.; *via* electronic mail)

STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO: PORSC-AP-23-7

WAYNE R. JORTNER, et al.,)	
)	
Petitioners-Appellees,)	
)	
v.)	MOTION TO INTERVENE OR
)	IN THE ALTERNATIVE BE
SECRETARY OF STATE,)	GRANTED ORAL ARGUMENT
)	AS AMICUS CURIAE
)	
Respondent-Appellant.)	

Maine Energy Progress Political Action Committee (“MEP”), by and through its undersigned counsel, hereby moves the Court for leave to intervene in this action as a party. In the alternative, MEP moves for leave to present oral argument as amicus curiae.

PRELIMINARY STATEMENT

MEP is a duly registered political action committee that opposes the ballot initiative entitled “An Act to Create the Pine Tree Power Company, a Nonprofit, Customer-owned Utility” (the “Initiative”). The Initiative, which is the subject of this proceeding, seeks to mandate the seizure of the assets of Maine’s existing investor-owned transmission and distribution utilities. MEP received no notice of the proceedings below challenging the Secretary of State’s proposed ballot question wording, despite MEP’s unquestionable and significant interest in this matter. As an

interested party to this matter, MEP should be entitled to express its positions regarding the Secretary of State's proposed ballot question wording and the error of the court below in vacating such wording. Accordingly, MEP respectfully requests that the Court grant its request to intervene as a party or, in the alternative, to present oral argument as amicus curiae.

BACKGROUND

MEP is a political action committee that operates as a ballot question committee and is registered with the Maine Commission on Governmental Ethics and Election Practices. MEP is funded entirely by ENMAX Corporation, the parent company of Versant Power ("Versant"), a utilities transmission and distribution company serving more than 160,000 Mainers in the northern and eastern parts of the state. If enacted, the Initiative would require the seizure of Versant's assets and sound the death knell for the company as it exists today. As such, MEP has stridently opposed its enactment at every turn.

After finding that the Initiative met the applicable criteria for legislative or voter approval, Maine Secretary of State Shenna Bellows (the "Secretary") undertook the process of developing and proposing the language that will appear on ballots this November if the Legislature declines to enact the Initiative as proposed. The Secretary published draft language on December 20, 2022 and received public comments on the wording through January 20, 2023. MEP submitted comments regarding the Secretary's draft language on January 20, 2023. The Secretary considered the broad range of

comments and revised the language and issued the final ballot question language on January 30, 2023.

Petitioners challenged the Secretary's final language in a Rule 80C appeal, which they filed on February 9, 2023. Neither MEP, Versant, nor ENMAX had any knowledge of Petitioners' 80C appeal until March 10, 2023—the day after the Superior Court issued its decision below.

ARGUMENT

The Court should allow MEP to intervene in these proceedings as a party or, in the alternative, permit MEP to present oral argument as amicus curiae, for the following reasons.

A. MEP Should Be Permitted To Intervene In This Litigation As A Party

21-A M.R.S. § 905(2), which governs review of initiative and referendum petitions, provides in pertinent part that “[u]pon timely application, anyone may intervene in this action when the applicant claims an interest relating to the subject matter of the petitions, unless the applicant's interest is adequately represented by existing parties.”

MEP unquestionably has an interest relating to the subject matter of the Initiative. MEP's primary purpose is to advance the priorities of Versant by fighting the Initiative. For Versant, the outcome of the Initiative—which is inextricably intertwined with the language that appears on ballots this fall—is nothing short of existential. As an interested party, MEP previously submitted comments to the

Secretary's proposed language of the ballot question to clearly articulate and provide public notice of its stake in and position on the issue. Its interest in the actual language of the ballot question continues.

MEP's request to intervene as a party also is timely. This Motion is being filed just three business days after MEP first learned of Petitioners' 80C appeal. Although there is little case law to elucidate the meaning of "timely" as it appears in 21-A M.R.S. § 905(2), its counterpart in the Maine Rules of Civil Procedure is instructive. *See* M.R. Civ. P. 24. This Court has found that, "[i]n the context of a [Rule 24] motion to intervene, the concept of timeliness...is not measured, like a statute of limitations, in terms of specific units of time, but rather derives meaning from assessment of prejudice in the context of the particular litigation." *In re N.W.*, 2013 ME 64, ¶ 11, 70 A.3d 1219 (internal quotations and citation omitted). As such, the Court here should inquire not only into the amount of time MEP has been on notice of the proceedings, but also may properly consider the prejudice to MEP if intervention is not permitted.

Denying MEP's request to intervene would result in undue prejudice on two fronts. First, it would muffle a voice that is necessary to robust and complete litigation in this proceeding. Second—and crucially for purposes of 21-A M.R.S. § 905(2)—MEP's interests cannot adequately be represented by the current parties. Inasmuch as MEP's primary purpose is opposing the Initiative, which if passed would result in forfeiture of Versant's assets, MEP's interests are unique and only properly articulated by its own participation in this matter. Although MEP is supportive of the language of

the Secretary's final ballot question, the interests of MEP and the Secretary are not identical. Aside from being ordered to rewrite the ballot question, the Secretary will suffer no concrete harm if the Superior Court's decision stands. MEP, conversely, has everything to lose if the Initiative is a success—which depends in no small part on the wording of the ballot question. Therefore, the Court should allow MEP to intervene as a party.

B. Alternatively, The Court Should Grant MEP The Right To Participate As Amicus Curiae At Oral Argument

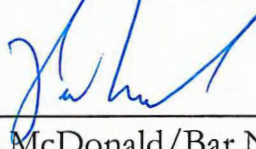
If the Court does not grant MEP's motion to intervene as a party, it should nonetheless allow MEP to participate as amicus curiae at oral argument. Rule 7A(e)(1)(C) states that "[t]he motion of an amicus curiae for leave to participate in the oral argument shall be granted only for extraordinary reasons." MEP should be allowed entrance through the "extraordinary" gateway articulated by this Rule. As discussed *supra*, Versant's existence hinges on the outcome of this Initiative and the subject matter of this litigation. No other party can properly represent its interests. As such, in the absence of granting its motion to intervene as a party, the Court should allow MEP to present oral argument as amicus curiae.

CONCLUSION

For the foregoing reasons, MEP respectfully requests that the Court allow it to intervene as a party in this matter or, in the alternative, allow MEP to present oral argument as amicus curiae.

Dated: March 15, 2023

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Paul McDonald', is written over a horizontal line.

Paul McDonald/Bar No. 8626
Rosalie Wennberg/Bar No. 10316
BERNSTEIN SHUR
100 Middle Street
P.O. Box 9729
Portland, ME 04104
207-774-1200
pmcdonald@bernsteinshur.com
rwennberg@bernsteinshur.com

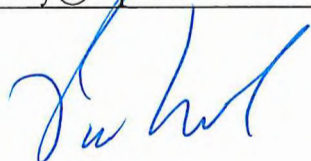
Attorneys for Movant/Proposed
Intervenor Maine Energy Progress
Political Action Committee

CERTIFICATE OF SERVICE

I, Paul McDonald, hereby certify that a copy of this document was served upon counsel at the email addresses set forth below on March 15, 2023:

Paul Sutter, Asst. A.G. Jonathan R. Bolton, Asst. A.G. Maine Attorney General's Office 6 State House Station Augusta, Maine 04333 paul.sutter@maine.gov jonathan.bolton@maine.gov	Sean R. Turley, Esq. Peter L. Murray, Esq. Murray Plumb & Murray 75 Pearl Street Portland, Maine 04101 sturley@mpmlaw.com pmurray@mpmlaw.com
---	--

Dated: March 15, 2023



Paul McDonald/Bar No. 8626
Rosalie Wennberg/Bar No. 10316
BERNSTEIN SHUR
100 Middle Street
P.O. Box 9729
Portland, ME 04104
207-774-1200
pmcdonald@bernsteinsbur.com
rwennberg@bernsteinsbur.com

Attorneys for Movant/Proposed
Intervenor Maine Energy Progress
Political Action Committee