

STATE OF MAINE

SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT  
DOCKET NO. CUM-23-83

WAYNE R. JORTNER, et al.

Petitioners-Appellees

v.

SECRETARY OF STATE,

Respondent-Appellant

**MOTION TO INTERVENE OR  
IN THE ALTERNATIVE TO BE  
GRANTED ORAL ARGUMENT  
AS AN AMICUS PARTY**

NOW COMES Maine Affordable Energy Ballot Question Committee (“MAE”) and moves the Court for leave to intervene in this action as a party or, in the alternative, for leave to present oral argument as an amicus party. MAE seeks to express its views on the important issues in this litigation—in support of the Secretary of State’s proposed ballot question wording which the Superior Court erroneously vacated—where MAE previously received no formal or actual notice of the proceedings below and thus received no opportunity to participate in those proceedings.

**BACKGROUND**

MAE is a ballot question committee registered with the Maine Commission on Governmental Ethics and Elections, leading the opposition to the 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 existing investor-owned transmission and distribution utilities including Central Maine Power Company (“CMP”). The Secretary of State (the “Secretary”) found the Initiative valid on November 30, 2022, after determining the proponents of the Initiative submitted sufficient signatures to support it. The Secretary thereafter took appropriate steps to devise the wording of the ballot question for the Initiative, should the Legislature decline to enact it. The Secretary issued draft language on December 21, 2022, and sought comments from interested parties and the public by January 20, 2023. MAE timely submitted comments on the Secretary’s proposed language. On January 30, 2023, the Secretary issued the final ballot question language, having made changes to her original proposal in consideration of the submitted comments.

Unbeknownst to MAE, proponents of the Initiative challenged the Secretary’s decision through a Rule 80C action filed in the Superior Court for Cumberland County on February 9, 2023. No party to those proceedings informed MAE of the litigation or otherwise announced its existence publicly and, in fact, MAE did not learn of the Superior Court’s ultimate decision until it began receiving media inquiries on March 10, 2023, the day after the Superior Court issued it.<sup>1</sup>

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<sup>1</sup> The primary financial contributor to MAE is Avangrid Management Corporation, LLC, an affiliate of the Avangrid entity which owns CMP, the assets of which are a primary target of the Initiative. The undersigned law firm serves as counsel to Avangrid and CMP on a variety of matters and represents to the Court that representatives of Avangrid and CMP first learned of the existence of the Superior Court litigation only on March 10, 2023, the same day MAE learned of it. The

## DISCUSSION

The Court should grant MAE the right to intervene in these proceedings as a party or, in the alternative, permit MAE to present oral argument as an amicus party.

*First*, the statutory scheme governing challenges to the Secretary’s proposed ballot question wording expressly contemplates intervention by interested parties before the Superior Court. *See* 21-A M.R.S. § 905(2) (“Upon 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.”). Had MAE learned of the proceedings below, it would have sought intervention promptly, which request, consistent with precedent in similar cases, the Superior Court almost certainly would have granted in light of MAE’s status as the ballot question committee seeking to defend the assets of CMP from seizure through the Initiative. *See, e.g., Dunn v. Bellows*, No. AP-23-07, slip op. at 1 (Me. Super. Ct., Ken. Cnty., Feb. 24, 2023) (order granting motion to intervene by political committee seeking to affirm Secretary’s decision concerning petition validity); *Reed v. Secretary of State*, No. BCD-AP-20-02, slip op. at 1 (Me. Super. Ct., BCD, Mar. 23, 2020) (same). None of the parties to this action would have suffered any prejudice by MAE intervening in the litigation below—where those proceedings

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undersigned similarly represents to the Court that no attorney of Pierce Atwood knew of the litigation until March 10, 2023. In short, neither MAE nor Avangrid nor CMP, nor their attorneys, knew of the litigation until March 10, 2023—after the Superior Court issued the decision that is the subject of this appeal.

consisted only of briefing over legal issues and no factual disputes—and none will suffer prejudice by the Court allowing MAE to intervene as a party here, where the Court will review the decision of the Secretary directly, with no deference to the Superior Court’s decision. *See Reed v. Sec’y of State*, 2020 ME 57, ¶ 12, 232 A.3d 202 (“When, as here, the Superior Court acts in its intermediate appellate capacity pursuant to Rule 80C, we review directly the Secretary of State’s decision for errors of law, findings not supported by the evidence, or an abuse of discretion.”). In short, there is no difference between MAE having intervened below and MAE intervening here. Accordingly, the Court should allow MAE to intervene as a party, and participate as a party at oral argument, in support of the Secretary’s underlying decision.

*Second*, the Court alternatively should grant MAE the right to participate at oral argument as an amicus party pursuant to Rule 7A(e)(1)(C). As stated, MAE serves as a ballot question committee formed for the purpose of defeating the Initiative and safeguarding the assets of CMP from seizure via the Initiative’s terms. As such, MAE can provide important insight concerning the terms of the Initiative and how it should be presented to voters. MAE’s unique position with respect to the terms of the Initiative, and its inability to participate as a party in the proceedings below, constitute the “extraordinary reasons” supporting MAE’s request to present oral argument as an amicus party under Rule 7A(e)(1)(C). As discussed, MAE likely would have enjoyed party status in the underlying litigation had it learned of those proceedings.

Accordingly, at a minimum and if it does not grant the foregoing motion to intervene, the Court should allow MAE to present oral argument as an amicus party.

### **CONCLUSION**

For the reasons set forth above, the Court should allow MAE to intervene as a party in support of the Secretary's proposed ballot question language or, in the alternative, allow MAE to present oral argument as an amicus party.

DATED: March 14, 2023



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## CERTIFICATE OF SERVICE

I, Nolan L. Reichl, hereby certify that a copy of this document was served upon counsel at the address set forth below by first class mail, postage-prepaid and email on March 14, 2023:

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