STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. CUM-25-284

ALEX TITCOMB, HEATHER SIROCKI, KEVIN MURPHY, GEORGE COLBY, and RANDALL ADAM GREENWOOD,
Petitioners-Appellants,

v.

SHENNA BELLOWS,
in her official capacity as the Maine Secretary of State,
Defendant-Appellees,

and

VICTORIA KORNFIELD, LISA BUCK, DSCC, DCCC, and the DEMOCRATIC GOVERNORS ASSOCIATION,
Intervenor-Defendants-Appellees.

On Appeal from the Cumberland County Superior Court

BRIEF FOR INTERVENOR-APPELLEES VICTORIA KORNFIELD, LISA BUCK, DSCC, DCCC, AND THE DEMOCRATIC GOVERNORS ASSOCIATION

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INTRODUCTION

Maine voters will go to the polls this November to vote on a citizen initiative (the "Initiative") that proposes to overhaul the state's election laws. If approved, the Initiative would impose sweeping changes to both in-person and absentee voting through 28 different sections that amend, repeal, or replace 27 different provisions of Maine's election laws. Among other things, the Initiative would impose a voter ID requirement, curtail the absentee voting window, limit cities and towns to the use of no more than a single ballot drop box, restrict assistance to absentee voters, eliminate ways for voters to request absentee ballots (including by phone), strip seniors and disabled people of "ongoing absentee voter status," and prohibit county clerks from providing prepaid postage for absentee return envelopes.

Petitioners' challenge concerns the Secretary of State's ballot question language summarizing the Initiative's changes for voters. That challenge is governed by 21-A M.R.S. § 905(2), which simply asks whether the Secretary's language is understandable to a reasonable voter and will not mislead a voter who understands the proposed legislation into voting contrary to their wishes. The Superior Court properly found that standard satisfied here. The Secretary solicited public comment and carefully reviewed the Initiative's dozens of statutory revisions before adopting straightforward ballot question language that highlights six of its most consequential

changes while also noting that the Initiative's text proposes several additional changes. The law does not require the Secretary to do anything differently.

Nevertheless, Petitioners—who made no effort to participate in the public comment process—filed this suit challenging the Secretary's language. At bottom, they fault the Secretary for describing the changes to absentee voting too clearly and voter ID provisions too briefly, demanding a shorter question that omits most of the Initiative's extensive effects on absentee voting. But under the Maine Constitution, the Secretary—and not partisan proponents of an initiative—is responsible for crafting ballot question language. *See* Me. Const. art. IV, pt. 3, § 20. Courts may set aside the Secretary's language only in narrow circumstances: (1) where it is not understandable to a reasonable voter who has already carefully reviewed the proposed legislation; or (2) where it is so misleading that it could confuse a reasonable and informed voter into voting against their own preference. *See* 21-A M.R.S. § 905(2). These are high bars and Petitioners do not come close to clearing either of them, as the Superior Court rightly concluded. This Court should affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. The Initiative proposes to make wide-ranging changes to Maine's electoral system, particularly for absentee voters.

The Initiative contains 28 different sections that amend, repeal, or replace 27 different provisions of Maine's election laws. *See* A. 29 (summarizing these changes); *see also* A. 29–31 (identifying at least 14 substantive categories of

changes). Most of these revisions target absentee voting, which has become increasingly popular in Maine. Indeed, 19 sections of the Initiative concern absentee voting, compared to far fewer addressing in-person voting. The most significant categories of proposed changes are outlined below.

In-Person Photo ID Requirement. The Initiative would require all in-person voters to present a specified form of photo ID to cast a ballot. A. 69 (Sec. 1). The Initiative excludes certain IDs—such as student and tribal IDs, *see id.* (Sec. 4)—that Maine currently accepts for same-day voter registration. *See* 21-A M.R.S. § 112-A(1). The Initiative also eliminates the fee for a nondriver ID card for eligible voters who lack a valid Maine driver's license. A. 69 (Sec. 3).[1]

Absentee Photo ID Requirements. The Initiative would impose a similar photo ID requirement on absentee voters, requiring them to submit a driver's license or other ID number, or a photocopy of their photo ID, with their absentee ballot request. A. 70–71 (Secs. 16, 18, 20). Clerks would be expressly prohibited from issuing ballots absent such information. *Id*. These provisions also exclude common forms of government-issued ID, like student IDs and tribal IDs. A. 69 (Sec. 4). Absentee voters would have to provide photo ID a second time when submitting their completed absentee ballot. A. 71–72 (Secs. 21, 22, 27). As with in-person

[1] The Initiative would also make changes to facilitate *challenging* a voter who does not present photo ID, including by requiring election officials to challenge such voters. A. 69 (Secs. 2, 8).

voting, the Initiative would permit third parties to challenge absentee voters on the ground that they did not provide sufficient ID information. *See* A. 69 (Sec. 10).

Elimination of Ongoing Absentee Voter Status. Maine law permits certain voters to request "ongoing absentee voter status," which ensures the voter "automatically receive[s] an absentee ballot for each [election] and need not submit a separate request for each election." 21-A M.R.S. § 753-A(8). Since first going into effect in November 2023, this status has exclusively been available to "voter[s] who will be at least 65 years of age by the next election or who self-identif[y] as having a disability." *Id.* Under recently enacted legislation, "ongoing absentee voter status" will become available to any eligible voters beginning on December 31, 2025. *See* L.D. 1690 (131st Legis. 2023) (codified at P.L. 2023, ch. 404). If enacted, the Initiative would repeal § 753-A(8) entirely, eliminating "ongoing absentee voter status" for current recipients (all of whom are either 65 years or older or have a disability), as well as for all voters who may wish to seek such status once it becomes more broadly available in 2026. A. 71 (Sec. 19).

Absentee Ballot Assistance Restrictions. The Initiative would also restrict how voters can receive assistance when requesting or returning absentee ballots, posing significant burdens for elderly, disabled, and rural Mainers. Current law permits "[a]n immediate family member of a voter [to] make an application or written request for an absentee ballot for the voter." 21-A M.R.S. § 753-A(3). The

Initiative would eliminate that option. A. 70 (Sec. 16). Existing law also allows an "immediate family member" or "a 3rd person designated in a written application or request made by the voter" to accept an absentee ballot and return envelope on a voter's behalf. 21-A M.R.S. § 753-B(1); *see also id.* § 754-A(1)–(2).[2] The Initiative would eliminate that option too, while also revoking the ability to have a designated "3rd person" deliver or return a voter's absentee ballot on their behalf. A. 71 (Secs. 20–24).

Limitations on Secured Drop Boxes. Maine law allows voters to return absentee ballots by depositing them in a "secure, locked collection box" before and on election day. 21-A M.R.S. § 752-B(1)(B). These locked drop boxes are subject to strict security requirements. *See id.* § 752-B(3)–(9). Cities and towns may "seek approval from the Secretary" to install "additional secured drop box[es]" at additional locations subject to these security provisions. *Id.* § 752-B(3). The Initiative would eliminate the option for Maine's cities and towns to request the use of more than one secured drop box, A. 69–71 (Secs. 12, 22), while also imposing new restrictions on drop box placement and access. A. 69–70 (Secs. 12–15).

[2] This right is subject to several restrictions. *See* 21-A M.R.S. § 753-B(2). For example, clerks may not issue absentee ballots to a 3rd person who is a candidate or a candidate's family member. *Id.* § 753-B(2)(A). Similarly, where an absentee ballot is requested by telephone or electronic means, clerks may not issue the ballot to a 3rd person or immediate family member of the voter. *Id.* § 753-B(2)(B).

Additional Restrictions on Absentee Voting. The Initiative would also impose a range of additional restrictions on absentee voting, including by reducing the absentee voting period by two days. *See* A. 70 (Sec. 16).[3] Consistent with its elimination of "ongoing absentee voter status," the Initiative would also require voters to expressly identify the election for which they are requesting an absentee ballot every time they apply. *Id*.

Separately, Maine currently permits voters to "make a telephone application for the voter's own [absentee] ballot," subject to certain restrictions on who can receive and return the ballot on such an applicant's behalf. 21-A M.R.S. § 753-A(4) (setting out rules for telephone applications). The Initiative would entirely eliminate the ability to request a ballot by telephone. A. 70 (Sec. 17).

The Initiative would further forbid election officials from providing prepaid postage on absentee return envelopes, and from preprinting the voter's address on their return envelope. A. 71 (Sec. 20). Maine law currently imposes no restriction on providing postage to voters and *requires* election officials to pre-print the voter's

[3] Current law, with some exceptions, does not permit registrars to issue an absentee ballot to a voter whose request is "received in the municipal office after the 3rd *business* day before election day." 21-A M.R.S. § 753-B(2)(D) (emphasis added). Section 16 of the Initiative would require that an absentee ballot application be delivered to the registrar no later than the close of business on the 7th *calendar* day before election day. A. 70. The practical effect of this change is that voters may not apply for and receive (and thus also cast) an absentee ballot within 5 business days (7 calendar days) before election day—two days fewer than current law allows.

address on the envelope, which helps ensure that voters complete the necessary fields on the envelope. *See* 21-A M.R.S. § 753-B(1).

Finally, the Initiative would authorize third-party challenges to absentee ballots based on alleged signature mismatches, A. 69 (Sec. 9)—an unrecognized basis for challenge under current law, which requires officials to verify signatures but does not permit third-party challenges on that ground, *see* 21-A M.R.S. §§ 756(2), 759(2), 673(1). This change could open the door to mass challenges by partisan actors.[4]

II. The Secretary solicited public comment and adopted language that accurately reflects the Initiative's many proposed changes to election law.

On February 19, 2025, the Secretary certified that the Initiative had achieved enough signatures to appear on the November 2025 ballot. A. 74–75. She drafted the following proposed ballot question language, which she then made available for public comment:

> Do you want to change Maine election laws to require voters to show ID before voting, end ongoing absentee voting for seniors and people with disabilities, ban prepaid postage on absentee ballot return envelopes, prohibit requests for absentee ballots by phone or family members, eliminate two days of absentee voting, and make other changes to our elections?

[4] The remaining changes in the Initiative are largely technical or administrative. *See, e.g.*, A. 69 (Sec. 4, providing definitions for the Initiative); *id.* (Sec. 5, updating challenge language); *id.* (Secs. 6, 7, proposing technical changes to statutory language); A. 72 (Sec. 26, making technical changes); *id.* (Sec. 28, setting effective date).

A. 76. During the comment period, 318 people submitted comments to the Secretary. A. 28. Petitioners were not among them.

In her subsequent May 5, 2025 decision letter, the Secretary noted that "the most common critique" among the public comments was that the proposed language "did not describe all of the Act's provisions." A. 31; *see also*, *e.g.*, A. 80, 83, 85, 87–91, 95–97, 100–03. In other words, many Mainers objected that the proposed ballot question language *understated* the breadth of the Initiative. Others criticized the sequencing of the initial draft, explaining it downplayed the extent of the Initiative's changes to absentee voting. *See* A. 32; *see also*, *e.g.*, A. 92, 99–103. Additional comments highlighted that the Initiative would exclude certain types of government-issued photo ID—including student and tribal IDs—making the proposed language misleading insofar as it suggested that *any* government-issued ID would suffice. *See* A. 32–33; *see also*, *e.g.*, A. 83, 85, 94, 98, 101–02. Notably, only a "handful" of the hundreds of comments suggested shorter versions of the draft, while "[n]o commenters argued that the question should focus solely on the voter ID requirement." A. 30, 34.[5]

[5] Several comments expressed opposition to the Initiative or commented on the "perceived motives" or "predicted impacts" of the Initiative. A. 33–34. However, the Secretary made clear that these comments did not inform how she crafted the ballot question language. A. 32.

The Secretary announced in her decision letter that, in response to the public comments summarized above, she would modestly amend the Initiative's ballot question language to read as follows:

> Do you want to change Maine election laws to eliminate two days of absentee voting, prohibit requests for absentee ballots by phone or family members, end ongoing absentee voter status for seniors and people with disabilities, ban prepaid postage on absentee ballot return envelopes, limit the number of drop boxes, require voters to show certain photo ID before voting, and make other changes to our elections?

A. 28–29. In her letter, the Secretary stressed that the "multifaceted nature" of the Initiative—with at least 14 noteworthy changes to Maine's election laws—made it difficult to balance the need for both accuracy and brevity. *See* A. 29–30. She explained that her final language sought a "middle ground" between providing "a full description of all of the Act's proposed changes" versus "focus[ing] on only one or two aspects of the Act." A. 30.

The Secretary explained that she was "persuaded by the various comments" to "include the [Initiative's] prohibition on multiple drop boxes in a municipality," because it "would be a significant change for voters who live in municipalities with multiple drop boxes." A. 31. With this addition, her final language "specifically describes six changes to the voting process proposed" by the Initiative. *Id*. While the Secretary acknowledged concerns that the language did not explicitly list several other proposed changes, *id.*, she explained that "a full listing" would have been "in tension" with her legal duty to keep the ballot question concise and would have

resulted in an excessively "long ballot question." *Id*. Thus, the final language retained a catchall provision that alerts voters that the Initiative includes additional proposed changes to Maine's elections. *Id*.

The Secretary also explained the revised order of the changes listed in the ballot question. *See* A. 32. In response to widespread concern that the initial draft language did not give sufficient prominence to the Initiative's restrictions on absentee voting, she reordered the ballot question to lead with those changes, while retaining language noting that the Initiative would "require voters to show certain photo ID before voting." A. 29. As the Secretary explained, the Initiative's "changes to absentee voting procedures are more extensive and wide-ranging" than the others. A. 32.

The Secretary explained that she added the term "certain" before "photo ID" to reflect that the Initiative excludes some common forms of government-issued photo ID presently used in Maine elections. *See* A. 32–33. Without that qualifier, the draft language falsely gave the impression that *any* government-issued photo ID would suffice. *See* A. 33. Similarly, she added the term "status" after "ongoing absentee voting" to precisely "mirror[] the statutory language in the provision that would be repealed by the [Initiative]." *Id.* The Secretary did not identify *any* comments complaining about her original draft's use of the term "seniors and people

with disabilities," which accurately describes the voters who have been eligible for such status since it was first enacted. *Id.*

III. Petitioners demand the Secretary rewrite the ballot question to downplay the Initiative's many significant changes to Maine's election laws.

On May 12, 2025, Petitioners filed this suit challenging the Secretary's final ballot question language. Their Petition proposes rewriting the ballot question to predominately highlight the Initiative's voter ID provisions and to largely conceal its proposed alterations to absentee voting. Their proposed language, buried in a footnote at the bottom of their Petition, reads:

> Do you want to require voters to show photo ID before voting in-person or by absentee ballot and limit the number of drop boxes?

See A. 26 (Pet. at 13 n.3). This proposed language omits a host of consequential changes proposed by the Initiative, including (among others) its:

- Elimination of the "ongoing absentee voter status" program for senior and disabled Mainers, along with its forthcoming expansion to all Maine voters;
- Limitations on immediate family members and designated third persons providing assistance to absentee voters to request and return their ballots;
- Imposition of *single* secured drop box limitation on cities and towns;
- Prohibition on requesting absentee ballots by telephone;
- Prohibition on prepaid postage for absentee ballots and prefilling of the voter's address on absentee return envelopes;
- Reduction of the absentee voting period by two days in the week before the election.

See supra at 2–7. Perhaps recognizing that their proposal glosses over most of the Initiative's substance, Petitioners pivoted in their opening brief before the Superior Court and sought only remand to the Secretary to consider revising the language.[6]

On May 20, several Democratic Party committees and individual Maine voters moved to intervene. No party opposed their intervention, and the Superior Court granted it in tandem with its decision on the merits.

IV. The Superior Court concluded the Secretary's ballot question language is understandable and complies with Maine law.

The Superior Court denied the Petition, rejecting each of Petitioners' misguided attacks on the Secretary's language. First, it rejected Petitioners' arguments that the Secretary's language is not understandable because it uses allegedly technical language, namely the term "ongoing absentee voter status." A. 11 (Op. at 5). As the Superior Court explained, that "term appears in a statute that the Initiative specifically cites to and seeks to repeal." *Id.* That statute, in turn, provides voters with a single, clear definition of the term "ongoing absentee voter status," namely that it means a voter with such status will "automatically receive an absentee

[6] Petitioners' arguments fail on the merits and they are not entitled to any kind of relief. Petitioners are correct, however, that remand to the Secretary—not judicially-imposed ballot question language—is the proper form of any relief here. *See, e.g.*, *Jortner v. Sec'y of State*, 2023 ME 25, ¶ 29, 293 A.3d 405, 417; *see also* Me. Const. art. IV, pt. 3, § 20 (assigning the task of drafting the ballot question to the Secretary of State).

ballot for each ensuing [election] and need not submit a separate request for each election." *Id.* (citing 21-A M.R.S. § 753(A)(8)).

Second, the court rejected Petitioners' argument that the ballot question's catchall provision—"make other changes to our elections"—rendered it difficult to understand. A. 11–12 (Op. at 5–6). As it explained, "[n]o ballot question could practically identify every one of the twenty-seven changes to Maine's election laws proposed by the Initiative, nor is the Secretary required to formulate a question that does so." *Id*. Thus, the Secretary sensibly deployed the catchall to inform voters that the question itself "reflects a non-exhaustive list of changes to Maine's election laws proposed by the Initiative." *Id.*

Third, the court concluded that the use of "certain" in the phrase "certain photo ID" is not vague because it "accurately and concisely reflects the Initiative's proposal" to "exclud[e] the use of common forms of government issued identification—such as tribal identification and student identification—when registering to vote." A. 12 (Op. at 6). Thus, a "reasonable voter who understands the Initiative would understand that 'certain' refers to the forms of identification that the Initiative proposes excluding." *Id*.

Finally, the court rejected Petitioners' argument that the phrase "end ongoing absentee voter status for seniors and people with disabilities" is misleading. *Id*. The court recognized the practical reality that, because the only Mainers who presently

enjoy "ongoing absentee voter status" are seniors and people with disabilities, only those voters will have their status eliminated if the Initiative prevails. A. 13 (Op. at 7). Accordingly, the Secretary's ballot text "is in fact an accurate representation of the content and effect of the Initiative." *Id*.[7]

Having concluded that the Secretary's final ballot language "is understandable and not misleading," A. 10 (Op. at 4), the Superior Court denied the Petition and affirmed the Secretary's final language. Petitioners appealed that decision on June 18, 2025.

ISSUES PRESENTED FOR REVIEW

Maine law requires the Secretary to draft ballot question language that is "understandable to a reasonable voter reading the question for the first time and [that] 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). This appeal accordingly presents the following questions:

1. Whether the Secretary's ballot question language is "understandable to a reasonable voter reading the question for the first time."
2. Whether the Secretary's ballot question language will "mislead a reasonable voter who understands the proposed legislation into voting contrary to that voter's wishes."

[7] Separately, the Superior Court acknowledged the Secretary's argument that Petitioners' failure to participate in the public comment period forfeited any later objections to the Secretary's final ballot language. A. 10 (Op. at 4). But the court declined to rule on the issue because, "regardless of whether Petitioners preserved their objections, the court concludes that the question as formulated by the Secretary is understandable and not misleading." *Id.*

The Superior Court correctly answered "yes" to the first question and "no" to the second, concluding the Secretary's language is "understandable and not misleading." A. 10 (Op. at 4). This Court should affirm on both points.

STANDARD OF REVIEW

Petitioners' challenge under § 905(2) requires the Court to determine whether the Secretary's language is "[1] understandable to a *reasonable voter* reading the question for the first time, and [2] 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) (emphases added); *see also id.* § 905(3) (explaining the standard is the "same" in this Court as in the Superior Court).

Under this standard of review, the Court's "task is not to compose the wording of a ballot question de novo" but rather only to ensure the Secretary complied with the statutory requirements in § 905(2). *Jortner*, 2023 ME 25, ¶ 29. Section 905(2) sets a high bar for setting aside the Secretary's adopted language. The Court must assume that "voters have discharged their civic duty to educate themselves about the initiative" and that they will "not . . . rely on the ballot question alone in order to understand the proposal." *Olson v. Sec'y of State*, 1997 ME 30, ¶ 11, 689 A.2d 605, 607; *cf. Payne v. Sec'y of State*, 2020 ME 110, ¶ 18, 237 A.3d 870, 876 (explaining courts should give words the meaning they would convey to an "intelligent, careful voter" (citing *Allen v. Quinn*, 459 A.2d 1098, 1100 (Me. 1983)). While the Court

may assume the voter is reading the *ballot question* for the first time, it must also assume the voter is knowledgeable and "already aware" of the proposed legislation itself. *Jortner*, 2023 ME 25, ¶ 12. The standard further recognizes that it is "inevitable that ballot questions will reflect the ambiguities, complexities, and omissions in the legislation they describe." *Olson*, 1997 ME 30, ¶ 11. Accordingly, "the question need not provide complete, comprehensive information about the legislation or its effect." *Jortner*, 2023 ME 25, ¶ 13.

Contrary to Petitioners' suggestion below, the standard of review does *not* require the Court to separately assess whether the Secretary complied with the requirements of 21-A M.R.S. § 906(6)(B). This Court has repeatedly held that the requirements of § 906(6)(B) "are subsumed [into] the standards provided in section 905." *Olson*, 1997 ME 30, ¶ 6; *see also Jortner*, 2023 ME 25, ¶ 8 & n.1 (holding the standard of review in § 905(2) "continue[s] to subsume" the Court's "review of the Secretary of State's statutory obligations described in section 906(6)(B)").

Finally, as the parties "challenging the Secretary of State's action," Petitioners bear the burden of persuasion on all issues. *Jortner*, 2023 ME 25, ¶ 8 (quoting *Olson*, 1997 ME 30, ¶ 7).

SUMMARY OF THE ARGUMENT

I. The Secretary's ballot question language is "understandable to a reasonable voter" who is familiar with the proposed legislation. 21-A M.R.S.

§ 905(2). Indeed, it is a straightforward list of the Initiative's most noteworthy changes, followed by a catchall that informs voters that there are additional proposals within the Initiative—a practical necessity given its broad scope.

Petitioners' "understandability" arguments each miss their mark. The Secretary's use of the term "ongoing absentee voter status" is drawn verbatim from a statutory provision the Initiative seeks to repeal. That same statute supplies a clear definition for the term, explaining it simply means a voter will automatically receive an absentee ballot for each election they are qualified to vote in. *See* 21-A M.R.S. § 753-A(8). Accordingly, the term is "readily understood . . . because it is defined by [a] statute" directly cited on the face of the Initiative. *Olson*, 1997 ME 30, ¶ 11. This is not a case where voters are confronted with a term that has "multiple meanings" or a definition that cannot be found by reference to the initiative itself. *Jortner*, 2023 ME 25, ¶ 25.

Nor is the Secretary's language vague. The catchall provision fairly and accurately informs voters there are additional changes in the Initiative beyond the six highlighted in the question. That complies with Maine law, which does not require a "complete" or "comprehensive" description of the entire initiative. *Id.* ¶ 13. Similarly, the Secretary's use of the term "certain" in the phrase "certain photo ID" accurately conveys that *some* forms of photo ID would be accepted as voter ID under

the Initiative, while other forms of ID that Maine currently accepts to prove identity would not be. A reasonable and informed voter would readily understand that fact.

II. The ballot question language also "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). Petitioners' narrow argument on this score, restricted below to a single clause of the Secretary's language, takes issue with the phrase "end ongoing absentee voter status *for seniors and people with disabilities*." A. 29 (emphasis added). Petitioners failed to complain about this language when the Secretary first proposed it months ago, but now say it is misleading because "ongoing absentee voter status" is slated to be made available to all voters *in the future*—after Mainers vote on the Initiative. Under existing law, the *only* Mainers who *currently* enjoy this status are either over 65 or have a disability. *See* 21-A M.R.S. § 753-A(8). Accordingly, they are the *only* people at risk of losing this status if the Initiative passes—the Secretary's language accurately captures that fact. Moreover, Petitioners do not—and cannot—explain how this language would mislead a supporter of the Initiative into voting against it. It therefore is not "misleading within the meaning of section 905(2)." *Wagner v. Sec'y of State*, 663 A.2d 564, 568 (Me. 1995).

III. Petitioners' remaining arguments before the Superior Court amounted to little more than a request to line edit the Secretary's text, but the law gives them

no such right. To start, this Court has no obligation to separately analyze Petitioners' arguments that the Secretary's language is sufficiently "clear, concise and direct." 21-A M.R.S. § 906(6)(B). This Court has held the requirements of § 906(6)(B) are "subsume[d]" into the inquiry under Section 905. *Jortner*, 2023 ME 25, ¶ 8 & n.1; *see also Olson*, 1997 ME 30, ¶ 6. Because the Secretary's language readily satisfies § 905, it necessarily satisfies § 906 as well.

Even if the Court was required to conduct separate analysis under § 906, Petitioners' arguments lack merit anyways. To start, there is nothing remarkable about the ballot question's length. In recent years, Mainers have voted on ballot initiatives running 64, 54, and 48 words long—the Secretary's 66-word question is hardly a remarkable outlier. Nor is there any problem with the order in which it lists the changes proposed by the Initiative. While Petitioners may wish to stress aspects of the Initiative for political reasons, nothing in Maine law grants them the right to dictate to the Secretary which part of the Initiative should be described first in the ballot question.

ARGUMENT

Maine law entrusts the drafting of ballot question language to the Secretary of State, *see* Me. Const. art. IV, pt. 3, § 20, and only permits courts to set it aside in narrow circumstances. Petitioners' challenge fails to meet the weighty standard required to obtain the relief they request, which would supplant the Secretary's

constitutional prerogative to draft ballot question language. As the Superior Court properly concluded, the Secretary's final ballot question language readily satisfies both prongs of § 905(2) and Petitioners fail to meet their "burden" to show that "the Secretary of State's action" must be set aside. *Jortner*, 2023 ME 25, ¶ 8.

I. The Secretary's language is understandable to a reasonable voter.

A. The ballot question lists significant proposed changes to Maine election law in a straightforward manner.

To start, the Secretary's language is plainly "understandable" to a reasonable and informed voter. 21-A M.R.S. § 905(2). Indeed, it is little more than a list of changes the Initiative proposes to enact, followed by a catchall provision alerting voters that additional changes can be found in the Initiative itself. A. 28–29. While Petitioners quibble with certain phrasing choices, each change described in the ballot question is readily understandable to voters who have "discharged their civic duty to educate themselves about the initiative," *Olson*, 1997 ME 30, ¶ 11.

The ballot question's final clause—"make other changes to our elections"—simply alerts voters to the fact that the ballot question language is not comprehensive in listing each of the at least *fourteen* noteworthy changes proposed by the Initiative. That is consistent with the Secretary's statutory duty: Ballot question language "need not provide complete, comprehensive information about the legislation or its effect." *Jortner*, 2023 ME 25, ¶ 13 (collecting authority). A voter who has educated themselves about the Initiative will readily understand that this catchall refers to the

additional unlisted changes within the initiative. *See Olson*, 1997 ME 30, ¶ 11; *see also* A. 11–12 (Op. at 5–6) (concluding the same).

B. Petitioners' "understandability" arguments apply the wrong legal standard and are flawed regardless.

In their Petition and brief before the Superior Court, Petitioners framed their argument on the understandability prong by alleging that the Secretary's language will confuse the "average voter." A. 22 (Pet. ¶ 28); *see also id.* at 14–15 (Pet. at 1–2). But there is no "average voter" standard in Maine law—that term appears nowhere in either the Revised Statutes or in Law Court precedent. Instead, the applicable standard focuses on "a reasonable voter who understands the proposed legislation," 21-A M.R.S. § 905(2); *see also Olson*, 1997 ME 30, ¶ 11; *cf. Payne*, 2020 ME 110, ¶ 18 (explaining courts should construe text as an "intelligent, careful voter" would). The Superior Court rightly declined to adopt Petitioners' illusory "average voter" standard and properly framed the standard based on "[r]easonable voters *who understand the Initiative*." A. 12 (Op. at 6).

Even if Petitioners redirect their arguments towards the proper standard on appeal, those arguments still fail on their own terms. Petitioners suggest voters will not understand the term "ongoing absentee voter status" because it is not defined or mentioned in the ballot initiative. *See* A. 22 (Pet. ¶ 28). But this blinkered argument ignores that this term appears verbatim in a statute cited in the Initiative itself. Specifically, the Initiative seeks to repeal 21-A M.R.S. § 753-A(8), which permits

certain Maine voters to request "ongoing absentee voter status"—the exact term used in the ballot question. *See* A. 60 (Sec. 19, proposing to "repeal[]" "21-A MRSA §753-A, sub-§8"). That same statute provides a crystal-clear definition of "ongoing absentee voter status," explaining that it means the voter will "automatically receive an absentee ballot for each ensuing [election] and need not submit a separate request for each election." 21-A M.R.S. § 753-A(8). The Secretary's proposed language simply uses a term that is clearly defined in a statute that the Initiative expressly proposes to repeal. *See* A. 11 (Op. at 5). A reasonably informed voter who reviews the proposed legislation would have no trouble understanding what the term means.

This Court's decision in *Olson* is directly on point. It held that a reasonable and informed voter would understand the term "Class A crime" in a ballot question even though it was not explicitly defined. *See Olson*, 1997 ME 30, ¶¶ 10, 11. Nonetheless, the term could be "readily understood by reference to external sources" and was "defined by statute," *id.* ¶ 11—just like the term "ongoing absentee voter status" is here, *see* 21-A M.R.S. § 753-A(8). Petitioners attempted to evade this straightforward application of *Olson* by arguing that the definition of "ongoing absentee voter status" does not appear in the Initiative itself. *See* A. 22 (Pet. ¶ 28). But they cannot escape that the definition comes from the very statute the Initiative would repeal—not an unrelated statute that has nothing to do with the subject-matter of the ballot question. *See* A. 60. Contrary to Petitioners' claim that voters would

have to review an "an assortment of other statutes" unrelated to the Initiative, A. 22 (Pet. ¶ 28), the Initiative itself points directly to the relevant definition.

Petitioners ignored *Olson* below on this score, instead relying solely upon *Jortner*, which addressed whether the term "quasi-governmental" was likely to confuse reasonable voters. *See Jortner*, 2023 ME 25, ¶¶ 24–28. In *Jortner*, however, the term "quasi-governmental" appeared only in "an assortment of other statutes" that had nothing to do with the subject matter of the proposed ballot initiative. *Id.* ¶ 24. Compounding that problem, the term was "not defined in any of" those statutes and had "multiple meanings" in "common usage." *Id.* ¶¶ 24–25; *see also id.* ¶ 26 (explaining this represented a "marked contrast to the term at issue in *Olson*"). None of that is true here—"ongoing absentee voter status" has a single defined meaning in a statute cited in the Initiative itself. *See* A. 60 (citing 21-A M.R.S. § 753-A(8)); *see also* A. 11 (Op. at 5) (agreeing with this distinction of *Jortner*). Accordingly, there is no risk that "multiple meanings" of the challenged term will create "ambiguity or confusion" for voters, as in *Jortner*, 2023 ME 25, ¶ 27.

Petitioners also contend that certain "vague" language in the Secretary's ballot question language renders it difficult to understand. *See* A. 24 (Pet. ¶ 33). Their chief complaint is that the Secretary's use of the phrase "make other changes to our elections" at the end of the question is confusing. *Id.* at 16. But that catchall is necessitated by the broad scope of the Initiative itself. As the Superior Court

observed, "[n]o ballot question could practically identify every one of the twenty-seven changes to Maine's election laws proposed by the Initiative." A. 11–12 (Op. at 5–6). While Petitioners claimed that a few public commenters complained about this language, they ignored that those same commentors asked for a *longer* ballot question that explicitly described "all of the Act's provisions." A. 31; *see also*, *e.g.*, A. 91, 96, 106, 109–11, 114, 116. That is the opposite of what Petitioners demand. Moreover, the Secretary maintained the catchall in the interest of conciseness—precisely where Petitioners allege she fell short. *See* A. 31 (explaining it would be impractical to list every proposed change in the Initiative). Petitioners seek to have it both ways, faulting the Secretary for using a catchall while simultaneously complaining that her question is too long.

The Secretary reasonably chose to balance the need for a complete and accurate description of the Initiative's most significant changes with the need to be concise. *See* 21-A M.R.S. §§ 905(2), 906(6). The ballot question "need not provide complete, comprehensive information about the legislation or its effect." *Jortner*, 2023 ME 25, ¶ 13; *cf. Wagner*, 663 A.2d at 568. To the contrary, it "is inevitable that" it "will reflect the ambiguities, complexities, and omissions in the legislation they describe." *Olson*, 1997 ME 30, ¶ 11. That is why this Court assumes that voters will "not . . . rely on the ballot question alone" and will familiarize themselves with the underlying legislation. *Id.* The catchall provision places voters on notice that the

Initiative includes additional provisions and the standard of review assumes voters will inform themselves about those provisions. *See id.*; *see also* A. 12 (Op. at 6) (concluding reasonable voters would understand the "ballot question reflects a non-exhaustive list of changes to Maine's election laws proposed by the Initiative").

Petitioners also allege that the term "certain" is vague as used in the phrase "certain photo ID," making the question hard to understand. *See* A. 24 (Pet. ¶ 33). But, again, this language accurately reflects that set forth in the Initiative itself, which excludes several common forms of government-issued ID, including tribal IDs issued by Maine's four federally recognized tribes and student IDs from Maine's public schools and universities. *See* A. 69 (Sec. 4). This represents a significant change to Maine law, as voters presently *can* use these forms of ID when registering to vote in person on election day. *See* 21-A M.R.S. § 112-A(1) (accepting any government-issued photo ID). Many public comments received by the Secretary expressed concern that her original language failed to properly advise voters of this fact. *See, e.g.*, A. 81–83, 85–86, 101, 104. In one of many representative examples, a commenter from Trenton asked that the ballot question "[m]ake it explicit that tribal and student IDs would not be accepted." A. 94.

By adding the term "certain," the Secretary accurately and concisely conveyed that only *some* government-issued IDs will qualify as voter ID if the Initiative is adopted. *See* A. 32–33; *see also* A. 12 (Op. at 6). And her decision not to

exhaustively list every kind of eligible (and ineligible) photo ID was entirely reasonable, both in the pursuit of brevity and because the ballot question need not spell out all the "ambiguities" and "complexities" around the Initiative. *Olson*, 1997 ME 30, ¶ 11; *see also Jortner*, 2023 ME 25, ¶ 13.

II. The Secretary's language will not mislead a reasonable voter who understands the legislation into voting contrary to their own wishes.

Petitioners also cannot satisfy the second prong of § 905(2), which requires them to show that the Secretary's language will "mislead a reasonable voter who understands the proposed legislation into voting contrary to that voter's wishes." 21-A M.R.S. § 905(2); *see also Olson*, 1997 ME 30, ¶ 7. Petitioners must show that the language is *so misleading* that a reasonable voter who has done their homework will somehow be misled into voting against their own position. *See Wagner*, 663 A.2d at 568. "Merely demonstrating that the question creates a misleading impression about the legislation is not enough." *Olson*, 1997 ME 30, ¶ 7.

Petitioners unconvincingly argued below that supporters of the Initiative may be mistakenly tricked into opposing it based on ballot text stating it will "end ongoing absentee voter status *for seniors and people with disabilities*," A. 29 (emphasis added); *see also id.* at 20 (Pet. ¶ 24). But to make this argument Petitioners misconstrue both current Maine law and the actual effects of the Initiative. Ongoing absentee voting status was created by a law enacted by the Legislature in July 2021. *See* L.D. 221 (130th Legis. 2021) (codified at P.L. 2021, ch. 398). As enacted, and

since going into effect in November 2023, the law permits voters "who will be at least 65 years of age by the next election or who self-identif[y] as having a disability" to "apply for status as an ongoing absentee voter." 21-A M.R.S. § 753-A(8). In June 2023, the Legislature passed a bill to expand "ongoing absentee voter status" to all voters. *See* L.D. 1690, § 1 (131st Legis. 2023) (codified at P.L. 2023, ch. 404). But that legislation does not go into effect until December 31, 2025. *Id.* § 2.

Accordingly, when Mainers go to the polls to vote on the Initiative in November 2025 the only voters who will have any right to ongoing absentee status are seniors and people with disabilities. If the Initiative passes, other voters will *never* get that right. Thus, stating that the Initiative will "end ongoing absentee voting for seniors and people with disabilities," is completely accurate. *See also* A. 13 (Op. at 7) (concluding the same). Other voters may also lose the *future* opportunity to request ongoing absentee voter status, but they will not be deprived of any privilege they currently enjoy. The Secretary is not required to exhaustively list out every complexity of the Initiative. *See Olson*, 1997 ME 30, ¶ 11.

Further, Petitioners speculate that some supporters of the Initiative will be misled into voting against it for fear that it is an "attack on the vulnerable." *See* A. 20 (Pet. ¶ 24). But that argument rests on the illogical premise that voters who *support* a measure prohibiting "ongoing absentee voter status" for *everyone* will be misled into opposing it based on ballot language specifically noting the groups on which it

will have the most immediate and acute impact. Further still, the Initiative's proponents *could* have drafted it to merely roll back the planned expansion of "ongoing absentee voter status"—thus *retaining it for seniors and disabled people*—but they chose not to. Given that seniors and disabled voters indisputably *will* have their current right to "ongoing absentee voter status" repealed by the Initiative, Petitioners cannot credibly claim that voters who truly support it will be confused by the Secretary's language into voting against it. The language therefore "is not misleading within the meaning of section 905(2)." *Wagner*, 663 A.2d at 568.

Wagner is on point. There, an initiative proposed to limit protected classifications under Maine law to exclude protection based on sexual orientation. *See id.* at 566 n.3. The Secretary's ballot question language asked if voters favored "limiting protected classifications, in future state and local laws" to certain groups and to otherwise "repeal[] existing laws which expand these classifications." *Id.* Plaintiffs alleged the question was "misleading" by claiming it could govern "future state and local laws" because "its promise of directing future state law cannot be fulfilled." *Id.* at 568. This Court agreed that the initiative could "not bind the hands of future state legislators," *id.* at 568 n.6, but still rejected the challenge to the language. Emphasizing the standard imposed by § 905(2), the Court found it implausible this language would cause any voter to cast a ballot against their own intended position. The same is true here, only more so. The Secretary's language is

not only accurate but, most critically, nothing about it will lead a "voter[s] who enter[s] the voting booth with the intent to vote" one way to "change their minds." *Olson*, 1997 ME 30, ¶ 8.

III. Petitioners' arguments under § 906 are wrong, misstate the law, and amount to a request to impose their own stylistic edits on the Secretary.

Petitioners' remaining arguments arise under 21-A M.R.S. § 906(B) and are also meritless. Once more, Petitioners misstate the legal standard and ultimately demand a right that does not exist—to toss out the Secretary's straightforward and clear language based on their own preferences. The Law Court should reject these arguments.

A. The Court is not required to separately analyze Petitioners' flawed theories under § 906.

To start, Petitioners' remaining arguments are each directed to § 906, which explains that the Secretary's language should be "clear, concise and direct." 21-A M.R.S. § 906(B). But this Court has repeatedly held that the requirements for ballot questions in § 906(B) are "subsumed" into the standard required by § 905. *See Jortner*, 2023 ME 25, ¶ 8 & n.1; *Olson*, 1997 ME 30, ¶ 6. As the Law Court has explained, if "a question is understandable and not misleading"—as § 905(2) requires—"it follows that it is not lacking in clarity and is intelligible." *Olson*, 1997 ME 30, ¶ 6. Accordingly, "the requirements [in Section 906] that the question be clear, simple, and intelligible are subsumed in the standards provided in section

905." *Id.* The Law Court reaffirmed that principle just two years ago in *Jortner*, holding that the standard of review in Section 905(2) "continue[s] to subsume . . . review of the Secretary of State's statutory obligations described in section 906(6)(B) as that statute has been amended." 2023 ME 25, ¶ 8 & n.1 (citing *Olson*, 1997 ME 30, ¶ 6).

Because the Secretary's language complies with § 905(2) for the reasons above, it necessarily satisfies § 906 as well. No further analysis is required.

B. The Secretary's ballot question language is clear, concise, and direct.

Petitioners' arguments on this score are meritless in any event. They make much of the fact that the Secretary's language, at a total of 66 words, is longer than past ballot questions. *See* A. 20 (Pet. ¶ 25). To the extent this is true, it is *barely* so, with the difference amounting to only a couple of words. In recent years, Mainers have voted on ballot questions containing 64, 54, and 48 words. *See* Me. State Legis., *Legislative History Collection: Citizen Initiated Legislation*, *1911-Present,* https://perma.cc/6P9A-XTFM (last visited June 26, 2025).[8] The very first citizen petition presented to Maine voters in 1911 was 55 words long. *See id.* (citing S.D. 75 (1911)). The Secretary's text is plainly no outlier. Nor do Petitioners cite any authority to support their imagined rule that ballot questions can never exceed the

[8] Specifically, L.D. 1661 (2016) was 64 words long; L.D. 1295 (2021), L.D. 1864 (2018), and L.D. 1203 (2011) were each 54 words long; and L.D. 1557 (2016) was 48 words long.

word count of their predecessors—even by *two words*. Maine law imposes no such arbitrary restriction.

Similarly, Petitioners object to the number of clauses—or more accurately, phrases separated by commas—in the Secretary's language. *See* A. 20 (Pet. ¶ 25). But these are simply a result of the Secretary listing the most significant changes the Initiative would impose. There is nothing confusing about such a list nor does Maine law impose any ban on the use of commas in a ballot question. The Initiative itself includes sentences with numerous clauses that run well over 60 words. *E.g.*, A. 71 (Sec. 20, proposing 68-word and 69-word sentences, including one with seven clauses). Petitioners' view that the syntax could be tweaked falls far short of showing the Secretary violated her duty. *See Olson*, 1997 ME 30, ¶ 9.

The Secretary's language also fairly "describes the subject matter of the … direct initiative as simply as is possible." 21-A M.R.S. § 906(6)(B). Petitioners' main quarrel on this score is that the Secretary's language does not list the various changes the initiative would make *in the order* that Petitioners would prefer. *See* A. 21 (Pet. ¶ 26). But that hardly "obscures" the subject-matter of the question, as Petitioners claim, *id.*—putting milk below eggs and bread on a grocery list does not "obscure" the need to buy milk. While Petitioners may wish for the Initiative's voter ID changes to be more prominently featured, but Maine law does not allow them to rewrite the Secretary's text simply because they wish to "stress[]" certain issues for

political reasons. *Id.* at 21. The Secretary's language *expressly* mentions the change Petitioners wish to highlight—they are entitled to no more.

CONCLUSION

For the foregoing reasons, Intervenor-Appellees respectfully ask that the Court affirm the Superior Court's June 13, 2025 decision dismissing the Petition and affirming the Secretary's ballot question language.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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