

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-25-284

ALEX TITCOMB, et al.,

Appellants,

v.

SECRETARY OF STATE

Appellee

and

VICTORIA KORNFELD, et al.,

Intervenors.

On Appeal from Cumberland Superior Court
Docket No. AP-25-15

**BRIEF OF AMICI CURIAE
PROFESSORS AMY FRIED, DAVID KIMBALL,
CARRIE LeVAN, and DANIEL SMITH**

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Interest of Amici Curiae

Amici are nationally recognized political science professors who teach, research, and publish on Maine politics, voting and elections, and direct democracy issues. Their research has been published in leading scholarly journals and books. Based on this expertise, Amici are well positioned to explain how election rules are likely to affect the ability of Mainers to register and vote.

Amy Fried is Professor Emerita of Political Science and the former John M. Nickerson Professor of Political Science, University of Maine, at which she served as Chair of the Department of Political Science and Associate Dean for Research in the College of Liberal Arts and Sciences. With a primary research emphasis in American political development, Dr. Fried has published four scholarly books and many journal articles and book chapters. Fried's peer-reviewed academic research on Maine politics has been published over a fifteen-year period thus far. Last year Fried co-authored "Maine: Pushed From Away, The Pine Tree State Sways But Does Not Break" in *More Than Blue, More Than Yankee: Complexity and Change in New England Politics* (University of

Massachusetts Press, 2024). Her views do not represent any group with which she is associated.

David C. Kimball is Curators Distinguished Professor and Chair of Political Science at the University of Missouri-St. Louis. Dr. Kimball's research examines election administration, voting behavior, public opinion, and interest groups in the United States. He has co-authored three books and many journal articles and book chapters on American politics, and an article on the implementation of ranked choice voting in Maine. He has appeared as an expert in several court cases related to election administration, voting rights, and redistricting. His views do not represent the University of Missouri-St. Louis.

Carrie LeVan is the Montgoris Family Associate Professor of Government, Colby College. Dr. LeVan's research examines political participation and civic engagement broadly. She has studied ranked choice voting in Maine. In addition, she has explored the impacts of serving as a poll worker on civic attitudes, as well as strategies to recruit new poll workers in the state of Maine. Her forthcoming book, *Neighborhoods that Matter: How Place and People Affect Political*

Participation (New York University Press, 2026) examines how the physical attributes of place affect individual political participation.

Daniel A. Smith is Professor and former Chair of Political Science at the University of Florida. Dr. Smith’s research broadly examines how political institutions affect political behavior across and within the American states. In addition to publishing over 100 peer-reviewed articles and book chapters, he has published two books on the citizen initiative process and an article on absentee mail ballots in Maine. Dr. Smith has served as an expert witness for plaintiffs and defendants in dozens of voting rights and election administration cases and is author of several amici curiae briefs, including the “Brief for Direct Democracy Scholars” mentioned at oral argument in *Doe v. Reed*, 561 U.S. 186 (2010). His views do not represent the University of Florida.

Statement of Facts and Statement of Issues

Amici adopt the statements of Appellee, the Secretary of State (the “Secretary”), as to the relevant facts and the issues on appeal.

Introduction

Since the Civil War, Maine’s Constitution has guaranteed the right of soldiers absent from the state on election day to cast their votes

by mail. *See* Resolves 1864, ch. 344; Me. Const. art II § 4. In recent years, as the Legislature has expanded access, more Mainers have chosen to cast their ballots in advance. In November 2024, forty-five percent of ballots cast in the presidential election were absentee, whether as in-person early votes or as votes-by-mail.

The citizen-initiated legislation at issue in this case (the “Initiative”) would enact significant changes to how voters request and cast both in-person and mail-in absentee ballots. These are not minor changes, as scholarly literature clearly shows that convenience voting rules, like early in-person absentee voting, vote by mail, and permanent absentee ballot voting help increase voter turnout overall by reducing the costs associated with voting, especially among low propensity voters, the elderly, working voters, and rural voters. Rather, these are core elements of the Initiative’s subject matter most likely to impact voters.

The Secretary’s proposed ballot language for the Initiative (the “Question”) clearly and concisely presents this complex subject matter in a manner that is understandable and not misleading to reasonable voters. The Secretary’s Question should be affirmed.

Background

All voters encounter costs to voting. Registering to vote, gathering information and determining how and where and when to vote, traveling to and from a polling station or election office to obtain voting materials or to obtain and cast a ballot, and waiting in line to obtain these materials or vote, all entail costs.¹ With no-excuse absentee balloting and the ability to request and track an absentee ballot online, voting in Maine currently has relatively low costs and a high level of convenience. Many reasonable Maine voters will consider the real “subject matter” of this Initiative to be grounded in the provision or provisions most likely to impact their *personal* cost of voting.

Convenience voting rules, including the laws governing absentee voting, generally serve to decrease the costs associated with voting. In Maine, absentee voting comes in two forms: early in-person voting

¹ See generally Steven J. Rosenstone and Raymond E. Wolfinger, *The effect of registration laws on voter turnout*, Am. Pol. Sci. Rev., Mar. 1978, at 22; Stephen Knack and James White, *Election-day registration and turnout inequality*, Pol. Behav., Mar. 2000, at 29; Stephen Knack, *Election-day Registration: The Second Wave*, Am. Pol. Rsch., Jan. 2001, at 65; Michael C. Herron and Daniel A Smith, *Race, Party, and the Consequences of Restricting Early Voting in Florida in the 2012 General Election*, 67 Pol. Rsch. Q. 646; Stephen Pettigrew, *The downstream consequences of long waits: How lines at the precinct depress future turnout*, 71 Electoral Stud. 102188 (2021); Ethan Kaplan and Haishan Yuan, *Early Voting Laws, Voter Turnout, and Partisan Vote Composition: Evidence from Ohio*, American Econ. J.: Applied Econs., Jan. 2020, at 32.

(“EIP”), and vote by mail (“VBM”). Under current Maine law, EIP voting is referred to as voting “in the presence of the clerk,” located within and generally governed by the same statutes as VBM. 21-A M.R.S. § 753-B(8) (subsection titled “Absentee voting in presence of clerk” within section titled “Procedure for issuing absentee ballot”). In November, 2024, only fifty-five percent of voters cast their ballots in-person on election day, while forty-five percent of Maine voters employed these convenience voting rules to avoid the time cost of voting in person.²

EIP voting allows voters to have the option to vote before the date of the election at different sites, with the presence and length of availability varying by state. Early voting reduces the obstacles of needing to get to the polls on a particular day and time and makes voting more convenient for the voter.³ While evidence about early voting’s impact on overall turnout is mixed, EIP matters especially in

² Adam Bartow, *More Mainers voted this year than ever before*, WTMW (Nov. 27, 2024), <https://www.wmtw.com/article/maine-voter-turnout-record-number-votes/63034322>.

³ See e.g. Michael P. McDonald and Samuel Popkin. *The Myth of the Vanishing Voter*, 95 Am. Pol. Sci. Rev. 963 (2001).

rural states, because rural voters are more likely to vote early.⁴ In addition, EIP alleviates the pressure of Election Day voting, when new voters are more likely to vote.

Like EIP voting, VBM is also associated with somewhat higher overall voter turnout.⁵ VBM is particularly important for working age voters, ages 24-64.⁶ Rules that make it easier to vote by mail, especially no-excuse VBM, have been shown to significantly increase turnout among disabled voters.⁷

Convenience voting rules reduce the costs of voting for eligible registered voters in at least four ways: *First*, whether a voter chooses EIP voting or VBM, Maine's system of absentee voting reduces the **time** one spends waiting in line on Election Day, what Elora Mukherjee

⁴ See Paul Gronke, Eva Galanes-Rosenbaum, and Peter A. Miller, *Early Voting and Turnout*, 40 PS: Pol. Sci. & Pols. 639 (2007)

⁵ Eric J. Oliver, *The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout*, 40 Am. J. Pol. Sci. 498; J. A. Dubin and G. A. Kalsow, *Comparing Absentee and Precinct Voters: A View Over Time*, 18 Pol. Behav. 369 (1996). Michael P. McDonald, Juliana K. Mucci, Enrijeta Shino, and Daniel A. Smith, *Mail Voting and Voter Turnout*, 23 Election L. J. 1 (2024).

⁶ Roger Larocca and John S. Klemanski, *U.S. State Election Reform and Turnout in Presidential Elections*, 11 State Pols. & Pol'y Q. 76 (2011).

⁷ Lisa Schur, Douglas Kruse, and Mason Ameri, *Disability and Voting Accessibility in the 2022 Elections: Supplemental Analysis of Census Voter Turnout Data* (U.S. Election Assistance Comm'n) (2023), at 5-6, at https://www.eac.gov/sites/default/files/2023-07/EAC_2023_Rutgers_Report_Supplement_FINAL.pdf.

refers to as a “time tax.”⁸ *Second*, Maine’s system of absentee voting reduces the **financial** costs placed on voters.⁹ *Third*, Maine’s absentee voting system reduces the **informational** costs of voting by, for instance, relieving voters of the need to learn exactly when and where they will need to show up on Election Day.¹⁰ *Fourth*, Maine’s absentee voting system reduces the **transportation** costs of voters, particularly rural voters, who are typically burdened with longer distances to travel to cast an in-person vote.¹¹

At the Superior Court, the Secretary’s brief identified twenty-five separate changes to Maine election law that would be enacted by the Initiative. (Sec’y’s Super. Ct. Br. at 5-7.) Her Question highlights seven, two of which are combined in a single clause: that it (1) advances the deadline for requesting an absentee ballot from the 5th day prior to the election to the 7th; repeals provisions allowing (2) immediate family

⁸ Elora Mukherjee, *Abolishing the time tax on voting*, 85 Notre Dame L. Rev. 177 (2009).

⁹ See Daniel P. Tokaji and Ruth Colker, *Absentee voting by people with disabilities: Promoting access and integrity*, 38 McGeorge L. Rev. 1015 (2007).

¹⁰ See generally Henry E. Brady and John E. McNulty, *Turning out to Vote: The Costs of Finding and Getting to the Polling Place*, 105 Am. Pol. Sci. Review 1125 (2011).

¹¹ See generally Enrico Cantoni, *A Precinct Too Far: Turnout and Voting Costs*, American Econ. J.: Applied Econs., Jan. 2020, at 61.

members to request an absentee ballot on behalf of a voter, and (3) voters to request an absentee ballot by phone¹²; (4) repeals a provision allowing voters 65-years and older or possessing a disability to register on a permanent absentee ballot (“PAB”) list; (5) affirmatively bans the practice of municipal election officials providing return postage prepaid on absentee ballot envelopes; (6) eliminates the option for municipalities to request permission from the Secretary of State to install multiple ballot drop-boxes; and (7) requires all voters, whether voting absentee or in-person on election day, to show one of three forms of photo identification. (A. 28-29.) Each of these changes would significantly impact the costs associated with voting, and it was appropriate for the Secretary to highlight each in her Question.

Standard of Review

The Secretary of State is entrusted by Maine’s Constitution with the duty to “prepare the ballots” for a vote on citizen initiated legislation, “in such a form as to present the question . . . concisely and intelligibly.” Me. Const. art IV, pt. 3 § 20. In a challenge, the Court is

¹² Despite appearing in two separate sections of the Initiative legislation, the Secretary’s Question combines items 2 and 3 into a single clause. *See* (A. 70, §§16, 17).

charged with a two-part test, reviewing the Secretary’s language to “determine whether the description of the subject matter [1] is 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). Such inquiry “subsume[s]” the Constitutional charge within its standard, because “[i]f a question is understandable and not misleading, it follows that it is not lacking in clarity and is intelligible.” *Olson v. Sec’y of State*, 1997 ME 30, ¶ 6, 689 A.2d 605.

While the Court’s review is “independent,” *id.* ¶ 4, it is nonetheless forgiving—reasonable voters, after all, can be “assumed” to “have discharged their civic duty to educate themselves about the initiative.” *Id.* ¶ 11. The Court’s two-part role is therefore limited: *first*, to verify that the Secretary’s question asks “a clear question about whether the voter wishes to approve proposed legislation of which the voter is presumed to be already aware.” *Jortner v. Sec’y of State*, 2023 ME 25, ¶ 12, 293 A.3d 405. And *second*, to guard against language so confusing that it might “mislead a reasonable, informed voter into voting contrary to the voter’s intent.” *Id.* ¶ 14.

Argument

I. The Secretary has asked a clear question regarding complex subject matter impacting the costs associated with voting.

The Initiative at issue would enact sweeping changes to Maine’s in-person and absentee election laws. As discussed above, the Secretary’s Question highlights a subset of these changes, just seven out of at least twenty-five. At the Superior Court, Appellants nonetheless argued that the Question “is not a concise, clear, or direct description,” (Pet’rs’ Super. Ct. Br. 11), of the Initiative’s subject matter because it highlights “minutiae.” (Pet’rs’ Super. Ct. Br. 11.) Not so. In fact, the very changes that Appellants would see struck are likely to be among the most impactful on the voting process: *first*, moving up the deadline to vote absentee; *second*, ending permanent absentee balloting (“PAB”); *third*, barring absentee ballot requests made over the phone or submitted by family members; and *fourth* banning prepaid postage on absentee ballot return envelopes.

A. The final days of absentee voting are the busiest.

A shorter absentee voting window would add time and information costs for voters, and could bear on existing transportation costs for those with limited mobility. The result could be large. Data

published by the Secretary's office, and compiled and analyzed by Amici, shows that in each of the past three statewide general elections, the final two days of absentee ballot requests have been by far the busiest. In the 2020 election, 76,292 voters requested absentee ballots, including EIP absentee ballots voted in the presence of the clerk, on the final two days, about 9.2% of the total statewide turnout (including absentee and in-person on election day).¹³ In 2022, a bit fewer than 23,500 voters requested ballots during the final two days, amounting to almost 3.5% of the total turnout.¹⁴ And in 2024, just under 43,000 requests were received in the final two days, 5.1% of total turnout.¹⁵

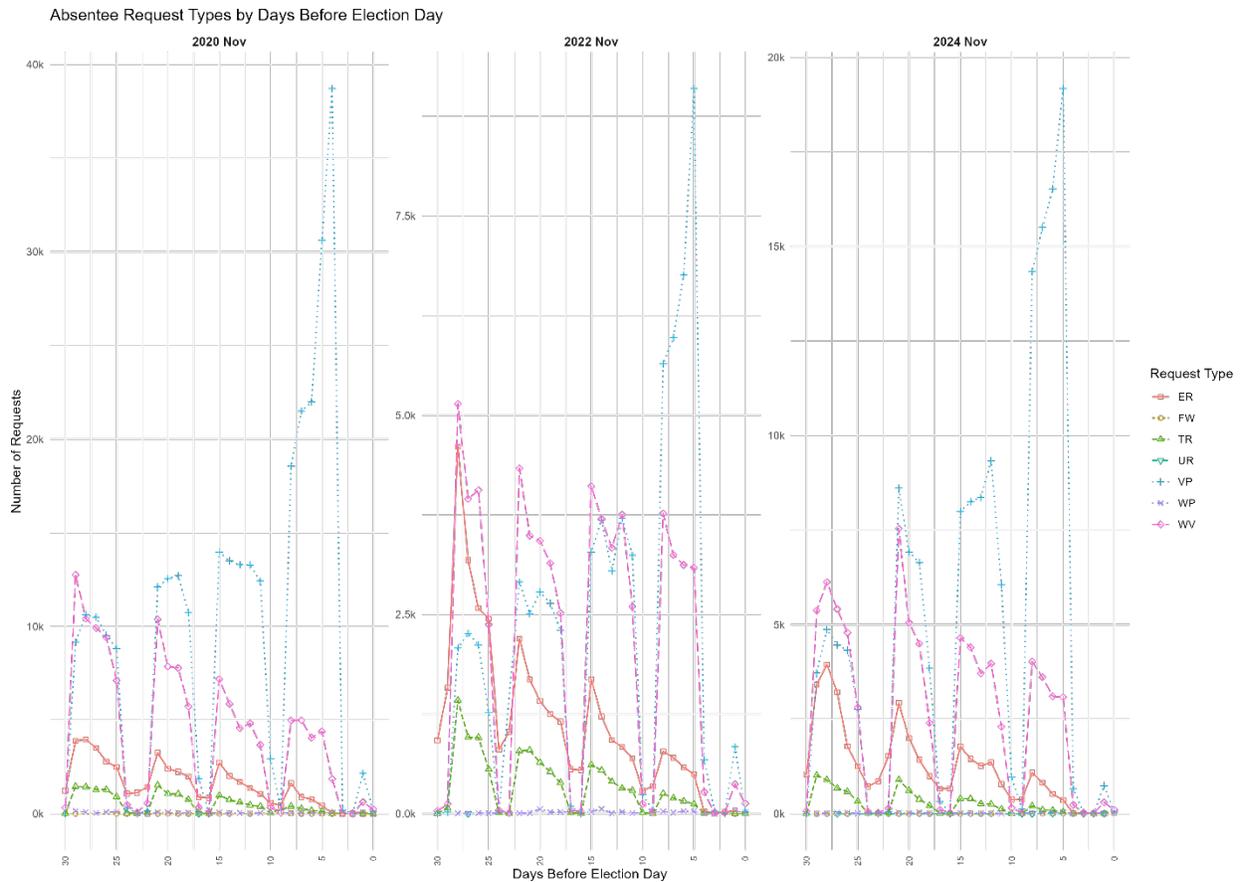
The following chart illustrates just how many requests are received in the final two days. It shows all absentee ballot requests received in the three cycles by request date and request type, electronic

¹³ See Maine Sec'y of State, *November 3, 2020 Statewide Absentee Voter Data File (Text)*, at https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/1120-absentee-voter-file_0.txt. These figures have been compiled by Amici for this brief from the raw data published online by the Secretary of State's office.

¹⁴ See Maine Sec'y of State, *Statewide Absentee Voter Data File (Text) -- November 8, 2022 Election*, at https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/Absentee%20Voter%20File11822_0.txt.

¹⁵ See Maine Sec'y of State, *Statewide Absentee Voter Data File (Text) - November 5, 2024 General/Referendum Election*, at <https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/2024-11-05%20Final%20AB%20Voter%20File.txt>.

(ER), federal write-in ballots (FW), telephone (TR), UOCAVA requests (UR), voted in clerk's presence (VP), written by a 3rd person (WP), and written by the voter or immediate family member (WV). Observe the large spike on the final days of each year's absentee request period.



Any change eliminating two days of absentee voting could impose significant time, information, and transportation costs on each of these voters. A study conducted by Amicus Smith and colleague Michael C. Herron on Maine's experience with VBM showed that a significant percentage of Maine's mailed-in ballots are vulnerable to

disqualification due to even minor postal delays, and a similar vulnerability to mailed-in ballot *requests* would be exacerbated by a two-day adjustment to the receipt deadline.¹⁶ Voters would be forced to change their behavior and shift their voting either to earlier in the absentee request window, or be forced to vote in-person on election day, imposing shared additional time costs for every voter in line. Some number would be unable to cast ballots.

B. Permanent absentee balloting significantly impacts voter turnout.

Permanent absentee balloting (“PAB”)¹⁷ allows a voter to request to receive a ballot by mail from their municipal clerk on an ongoing basis so they do not need to renew the request every election cycle. *See* 21-A M.R.S. § 753-A (subsection titled “Application for ongoing absentee voter status”). Research shows that, not only do PAB laws increase voter turnout, of all the convenience voting rules, they have the largest

¹⁶ *See* Michael C. Herron and Daniel A. Smith. *Postal delivery disruptions and the fragility of voting by mail: Lessons from Maine*. Research & Politics, Jan.–Mar. 2021, at 1, at <https://doi.org/10.1177/2053168020981434>.

¹⁷ At the Superior Court, Appellants decried the term “ongoing absentee voter status” as “technical language” and “a term of art.” (Pet’rs’ Super. Ct. Br. 11.)But this is false. The preferred technical term in scholarly literature is “permanent absentee balloting,” which Amici use here.

effects on voter turnout, especially among low propensity voters.¹⁸ PAB voting is also particularly important for turnout among voters aged 65 and older.¹⁹ Removing the permanent absentee ballot option in Maine would be likely to particularly harm the state’s aging population and for rural voters who have been found to disproportionately use early and absentee voting because they have longer commutes to the polls.²⁰

C. Telephone requests and requests from immediate family members, like prepaid postage, significantly reduce costs.

In Maine’s November, 2024 election, 16,189 requests for absentee ballots were submitted over the phone, making up about 7% of all VBM applications.²¹ In 2020, when a record number of voters chose to vote by mail due to the pandemic, nearly 71,000 applications for Maine

¹⁸ See e.g. Alan S. Gerber, Gregory A. Huber, and Seth J. Hill, *Identifying the Effect of All-Mail Elections on Turnout: Staggered Reform in the Evergreen State*, Pol. Sci. Rsch & Methods, June, 2013, at 91; Larocca and Klemanski, *supra*.

¹⁹ *Id.*

²⁰ See Paul Gronke, Early Voting Reforms and American Elections, 17 Wm. & Mary Bill Rts. J. 423 (2008), <https://scholarship.law.wm.edu/wmborj/vol17/iss2/7>; Gronke, Galanes-Rosenbaum, and Miller, *supra*.

²¹ See Maine Sec’y of State, *Statewide Absentee Voter Data File (Text) - November 5, 2024 General/Referendum Election*, at <https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/2024-11-05%20Final%20AB%20Voter%20File.txt>.

absentee ballots came in over the phone, 9.3% of the VBM total.²² Telephone remains among the easiest methods for requesting an absentee ballot, especially for voters without reliable internet service. The Maine Connectivity Authority estimates that, in 2025, roughly 27,000 homes and businesses in Maine still lack adequate internet service²³—these are often the same rural voters who save the most in time and transportation cost voting by mail rather than traveling to remote polling places. Similarly, barring the submission of requests from immediate family members is a time tax. It doubles time, transportation, and financial costs for married couples and burdens children caring for aging parents.

By the time that the Court issues its opinion in this matter, the cost of a “forever” stamp from the United States Postal Service will

²² See Maine Sec’y of State, *November 3, 2020 Statewide Absentee Voter Data File (Text)*, at https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/1120-absentee-voter-file_0.txt.

²³ *An Act to Increase Storm Preparedness for Maine’s Communities, Homes and Infrastructure: Hearing on L.D. 1 Before the J. Standing Comm. on Hous. and Econ. Dev.*, 132nd Legis. 1 (2025) (testimony of Andrew Butcher, President of the Maine Connectivity Authority), at <https://legislature.maine.gov/backend/app/services/getDocument.aspx?doctype=test&documentId=10032605>.

likely have increased to \$0.78.²⁴ Guidance from Maine election clerks is that two stamps are often necessary on existing return envelopes for absentee ballots²⁵—and the Initiative’s new double envelopes will be larger. (*See* A. 70, § 20.) The cost of stamps on absentee ballot envelopes has been often likened to a poll tax.²⁶ This cost is in addition to the time and transportation costs to travel to a post office to obtain postage, costs more likely to impact younger voters.²⁷

Each of these changes defeats a key purpose of absentee voting: convenience. Barring prepaid envelopes, telephone requests, and immediate family members from requesting ballots for loved ones would create significant new *inconveniences*. That these are surmountable obstacles is of no moment. They are obstacles—real costs—for tens of

²⁴ U.S. Postal Serv., *U.S. Postal Service Recommends New Prices for July* (Apr. 9, 2025), at <https://about.usps.com/newsroom/national-releases/2025/0409-usps-recommends-new-prices-for-july-2025.htm>.

²⁵ *E.g.* Town of Minot, *Elections and Voter Registration*, at <https://minotme.org/index.asp?SEC=8CA67442-D60D-4CCD-B5C0-F0C162FD0658&DE=3DD12AA1-1B1B-4844-AB38-AD2EA80C2324> (“2 stamps should cover the postage”).

²⁶ *E.g.* *An Act to Require Postage Prepaid Envelopes Be Provided for the Return of Absentee Ballots: Hearing on L.D. 1527 Before the J. Standing Comm. on Vets. and Legal Affs.*, 132nd Legis. 1 (2025) (testimony of Sen. Rick Bennett), at <https://legislature.maine.gov/backend/app/services/getDocument.aspx?doctype=test&documentId=190371>; Samuel Ackerman, “*Stamping*” *Out the Postage Poll Tax*, 55 *Colum. J.L. & Soc. Probs.* 329 (2022), at <https://jlsp.law.columbia.edu/wp-content/blogs.dir/213/files/2022/03/Vol55-2-Ackerman.pdf>;

²⁷ *Id.* at 333.

thousands of reasonable Maine voters, who will want to consider those costs when they vote.

II. The description of the subject matter is understandable to a reasonable voter reading the question for the first time.

Each of the provisions mentioned by the Secretary's Question imposes significant cost upon many of the same voters reading the Question, so the Secretary was therefore prudent to include them. Reasonable voters, after all, "are not to rely on the ballot question alone in order to understand the proposal." *Olson*, 1997 ME 30, ¶ 11, 689 A.2d 605. Rather, many reasonable voters who have "discharged their civic duty to educate themselves about the initiative", *id.*, will no doubt come to understand the subject matter through the lens of how it will impact them *as voters*, in the same way that gun owners might come to understand the subject matter of a firearm regulation through the lens of how it impacts them as gun owners, or electricity customers might come to understand public utility legislation through the lens of how it impacts them as consumers. Because the Secretary has used clear, concise language to describe the complex, multifaceted Initiative subject matter in terms easily recognizable to reasonable voters, the Question plainly satisfies section 905(2)'s understandability standard.

III. The Question will not mislead a reasonable voter into voting contrary to the voter's intent.

At the Superior Court, Appellants failed to argue that the Question was so misleading that it would trick a reasonable voter who already “understands the proposed legislation into voting contrary to that voter’s wishes.” 21-A M.R.S. § 905(2). Instead, Appellants invented a standard to claim that the Secretary misrepresented the legal impact by referencing a section of law as it currently exists rather than a pending amendment to that provision that will not take effect until after the election. (Pet’rs’ Super. Ct. Br. at 13-14.) But the Court has repeatedly and expressly held that to be irrelevant. *Olson*, 1997 ME 30, ¶ 7, 689 A.2d 605 (“Merely demonstrating that the question creates a misleading impression about the legislation is not enough.”); *Wagner v. Sec’y of State*, 663 A.2d 564, 568 (Me. 1995) (that the question might “inaccurately suggest” some future effect “is not misleading within the meaning of section 905(2).”); *see also Jortner*, 2023 ME 25, ¶ 28 n.6, 293 A.3d 405 (dictum rejecting the notion that language which “might ‘trigger’ an ‘emotional impact’ among voters” is misleading within the meaning of section 905(2)).

But still, no matter what the test, the Question is not misleading. Even if Appellants' reading of the statute was correct—and it is not—as the Superior Court held, “[t]he phrase ‘end ongoing absentee voter status for seniors and people with disabilities’ is in fact an accurate representation of the content and effect of the Initiative.” (A. 13.) Either way, Appellants' arguments fail.

Conclusion

For the forgoing reasons, the Court should affirm the Secretary's ballot question.

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Certificate of Service

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