

STATE OF MAINE

**MAINE SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Cum-25-284**

Alex Titcomb, et al.,

Petitioners/Appellants

v.

Secretary of State,

Respondent/Appellee

**BRIEF OF AMICI CURIAE
DISABILITY RIGHTS MAINE
AND LEGAL SERVICES FOR MAINE ELDERS**

**ON APPEAL from the Cumberland County Superior Court
Docket No. AP-25-15**

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INTERESTS OF AMICI CURIAE

Disability Rights Maine (DRM) is the agency designated by the Governor of Maine to protect and advocate for the rights of individuals with disabilities in the State of Maine, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001-15115, the Protection and Advocacy for Mentally Ill Individuals Act of 1986, 42 U.S.C. §§ 10801-10827, and the Protection and Advocacy of Individual Rights program, 29 U.S.C. § 794e.

DRM's mission is to advance justice and equality by enforcing rights and expanding opportunities for people with disabilities in Maine. Using federal and state funds, DRM provides no-cost advocacy and legal services to people with disabilities who have experienced a violation of their legal or civil rights.

Pursuant to the Help America Vote Act of 2001, DRM, as the designated Protection and Advocacy agency, was awarded federal funds as part of the Protection and Advocacy of Voting Access program, "to ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places." 52 U.S.C. § 21061(a). DRM provides education and technical assistance to people with disabilities in order to ensure the full participation in the electoral process for individuals with disabilities. Many aspects of the citizen initiative, particularly those with respect

to absentee voting and photo IDs, will have significant impacts on voters with disabilities.

Legal Services for Maine Elders (LSE) is a statewide nonprofit that has delivered free, high-quality civil legal assistance to older Mainers since 1974. Its mission is to ensure that older Mainers—particularly those who are economically disadvantaged, isolated, or otherwise vulnerable—can live with safety, dignity, and independence. Part of that mission includes safeguarding their ability to participate in the civic life of their community by advancing and defending policies that mitigate the mobility, health, and logistical challenges that disproportionately affect older citizens exercising their right to vote. LSE has a strong interest both in ensuring that ballot questions are clear, accurate, and neutral, and in the underlying voter protections which would be repealed or modified by the proposal to be voted on in November.

DRM and LSE submit this brief in support of the Secretary of State’s final wording so that voters can fully understand the subject matter and potential impact of the initiative.

STATEMENT OF FACTS

On February 19, 2025, the Secretary of State determined that a petition, entitled “An Act to Require an Individual to Present Photographic Identification for the Purposes of Voting,” (“the Act”) contained a sufficient number of valid

signatures for transmission to the Legislature, pursuant to a provision of the Maine Constitution regarding citizen initiatives. A74-75; Me. Const. art. IV, pt. 3, § 18(2).

The Act contains twenty-eight sections, proposing to make twenty-five substantive changes to Maine's election laws. As the title of the Acts indicates, one proposed change is to require a registered voter to present one of three types of photographic identification at the time of voting. A56. Other provisions have a substantial effect on Maine's absentee voting laws, such as limiting municipalities to one drop box in which absentee ballots can be returned, restricting where drop boxes can be located, repealing a provision that allows an immediate family member to request an absentee ballot on behalf of a voter, shortening the time when an absentee ballot can be requested from no later than three days before an election to no later than seven days before an election, repealing a provision allowing absentee ballots to be requested by telephone, eliminating the ability of a person age 65 or older and people with disabilities to request "ongoing absentee voter status" that allows them to automatically receive absentee ballots without needing to make a new request for each election, prohibiting election officials from prepaying the return postage of absentee ballots, and eliminating the authority of an immediate family member from returning a voter's absentee ballot by mail. A55-65. There were other provisions addressing other aspects of absentee voting

law, as well as procedure for challenging ballots. A55-56. The initiative also proposed to provide for free nondriver photo IDs for voters who did not have driver's licenses. A56.

Because the Legislature did not enact the proposed initiative, the Secretary of State announced on March 12, 2025, a draft ballot question for public comment.

A76. The original question was:

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 ballot voting, and make other changes to our elections?

A76.

Three-hundred eighteen comments were submitted, and, after the comment period closed, the Secretary issued a decision on the final wording on May 5, 2025:

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?

A28-29. The Appellants did not submit a public comment during this process.

The final question as drafted contained most of the provisions outlined in the original question, but added a section explaining that each municipality would be allowed only one drop box, and changed the ordering of the question to outline the

sweeping changes to the absentee voter laws before describing the photo ID requirement.

Appellants petitioned for review in the Superior Court pursuant to Maine Rule of Civil Procedure 80C, arguing that the final question violated Maine law because it is misleading, not understandable, and not a concise, clear, or accurate description of the Act's subject matter. A14-27. The Superior Court affirmed the Secretary's decision, and Appellants timely appealed to this Court. A7-13.

ARGUMENT

Disability Rights Maine and Legal Services for Maine Elders accept and support the arguments presented in the Secretary of State's Rule 80C Brief, including the assertion that Appellants failed to preserve their objections to the question because they did not participate in the public comment process. Sec'y of State's 80C Br. at 12-16. We write separately as amici to highlight the clarity and conciseness of the referendum question as drafted due to its impact and importance with regard to voters with disabilities and voters 65 years of age and older.

The ballot question is not misleading in describing the Act's changes to Maine law given the substantial barriers it will impose on voters with disabilities and voters 65 years of age and older.

Per statute, the Secretary of State must "write the question in a clear, concise and direct manner that describes the subject matter of the people's veto or direct initiative as simply as is possible." 21-A M.R.S. § 906(6)(B). If challenged, the

Superior Court will determine “whether the description of the subject matter is understandable to a reasonable voter reading the question for the first time and will not mislead a reasonable voter who understands the proposed legislation into voting contrary to that voter’s wishes.” 21-A M.R.S. § 905(2). This Court uses the same standard of review as the Superior Court. *Id.* § 905(3); *Jortner v. Secretary of State*, 2023 ME 25, ¶ 8, 293 A.3d 405.

At least one in six people in Maine has a disability. U.S. Census Bureau, “2023: ACS 1-Year Estimates Data Profiles” (using filters for “Maine” and “Disability”), <https://data.census.gov/table?q=DP02&t=Disability&g=040XX00US23> (last accessed June 25, 2025). Data has shown that people with disabilities encounter barriers to accessible voting far more often than people without disabilities. In 2022, people with disabilities reported experiencing difficulties in voting at a rate three times higher than those without disabilities. LISA SCHUR ET AL., DISABILITY AND VOTING ACCESSIBILITY IN THE 2022 ELECTIONS 5 (2023), https://www.eac.gov/sites/default/files/2023-07/EAC_2023_Rutgers_Report_FINAL.pdf (last accessed June 26, 2025). Among those voting by mail-in ballot, the rate of difficulties was twenty times higher. *Id.* at 9. In 2020, about one-fifth of voters with disabilities reported either needing assistance or having some type of difficulty in voting—twice the rate of voters without disabilities. *Id.* at 14.

Advocates for the voting rights of people with disabilities regard access as one of the most important issues in ensuring that people with disabilities have equal opportunities to cast a ballot. Rules that make it more difficult for people with disabilities to vote include reducing the amount of time voters have to request or mail in ballots, restricting the available drop-off locations, stricter voter ID requirements, which limits the types of IDs voters can use when casting a ballot, and restricting who can assist disabled voters. AM. ASS'N OF PEOPLE WITH DISABILITIES' REV UP VOTING CAMPAIGN, REV UP VOTING ISSUES GUIDE 7-8 (2023). The Act proposes to implement almost all of the rules that have been identified as barriers to accessible voting for people with disabilities.

People with disabilities are more likely than those without disabilities to vote absentee. RABIA BELT, *Contemporary Voting Rights Controversies Through the Lens of Disability*, 68 Stanford L. Rev. 1491, 1509 (2016). Forty percent of voters with disabilities vote absentee. *Id.* The changes proposed in the Act with regard to absentee voting are substantial given the very high rate at which people with disabilities utilize absentee voting. The Appellants appear to argue that the referendum question as drafted is misleading because it focuses on the changes to absentee voting, when it should primarily, or perhaps exclusively, focus on the photo ID requirement. Petitioner's 80C Br. at 19 (describing the changes to the absentee voter process as "de minimis," "minor tweaks," and "minutiae."); A26 n.3

(suggesting the ballot question, if Appellant’s modifications are accepted, would read: “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?”). This argument has it backwards and ignores the concerns of the myriad of people who regularly utilize absentee voting. To omit a description of these provisions, which, based on the hundreds of public comments received, are not “minor tweaks,” would be misleading.

The concerns of the older voters represented by amicus LSE parallel those of disabled voters described above. Older voters’ exercise of their franchise may be burdened by the same obstacles. Many of the provisions that would be repealed or modified in the proposed legislation were originally enacted at least in part to make it easier for older voters to participate in elections. Those include relaxed requirements for absentee voting, ongoing voter registration, and utilization of municipal ballot drop boxes. Maine law requiring voter identification upon registration but not upon casting a ballot is also structured at least in part to eliminate an obstacle for many older voters who no longer drive and do not routinely carry a driver’s license. Although hard data on the number of older Mainers utilizing ongoing absentee voting registration since its inception in 2024 is not yet available, there is no doubt that older voters routinely utilize absentee voting at a higher rate than any other demographic. Data published by the U.S.

Vote Foundation shows that across the country, 45.4% of voters who voted by absentee ballot were at least 65 years old—a much higher absentee balloting rate than any other demographic group in their study. U.S. VOTE FOUNDATION, 2024 *Election Day Voter Experience Survey*, tbl. 5 (2025) (“Voters who are 65 or older made up over forty percent of absentee voters, while accounting for only a third of all other voter types, including Non-Voters.”), <https://www.usvotefoundation.org/2024-Post-Election-Day-Survey-Report> (last accessed June 26, 2025).

Appellants argued below that the description of the provision stating the Act will “end ongoing absentee voter status for seniors and people with disabilities” is misleading because, beginning December 31, 2025, ongoing absentee voting will no longer be limited based on age or disability. Petitioner’s 80C Br. at 12-14; 21-A M.R.S. § 753-A(8). The ballot question is an accurate statement of the law, both as it exists now and as it will exist at the time of the November election. It also accurately states the effect the Act will have if implemented. By the time the Act would go into effect if passed—likely a matter of days before the scheduled expansion of eligibility for ongoing absentee voter status—*only* people age 65 and over and people with disabilities will be enrolled and subject to this loss of status.

Additionally, the use of the word “certain” when describing “certain photo ID” required to cast a vote is does not render the phrase misleading, as Appellant claims. In fact, it clarifies the term, considering the Act requires a narrower scope

of photo ID to vote than it does to register to vote, which include student IDs and tribal ID cards. People with disabilities and older voters may experience difficulties in obtaining the specific type of photo IDs required by this Act, even if nondrivers photo ID were offered at no cost. The documents required to acquire the photo ID, such as a birth certificate or passport, can be costly. Transportation can also be a barrier to obtaining such an ID both for older and disabled voters. Moreover, there is uncertainty regarding whether a person subject to adult guardianship may obtain a governmental photo ID if their guardian objects. If a clerk determines they cannot, people under guardianship may be denied their right to vote altogether.¹ The referendum question must include some indication that the photo IDs required to cast a vote have some difference from the permissible photo IDs required for registration, which the use of the qualifying word “certain” indicates.

In downplaying practically every aspect of the Act aside from the photo ID requirement as mere “minor tweaks,” Appellants discount the needs and interests of every person who votes by absentee ballot, a group that includes a very large number of people with disabilities and older voters, who may rely on absentee

¹ Although the Maine Constitution purports to prohibit “persons under guardianship for reasons of mental illness” from voting, this provision has been deemed unconstitutional and is not enforceable. Me. Const. art. II, § 1; *Dow v. Rowe*, 156 F. Supp. 2d 35 (D. Me. 2001). People under adult guardianship retain their right to vote unless removed by the probate court upon certain findings of fact. 18-C M.R.S. § 5-310(2)(A).

voting because it is the only method accessible to them. This is a large swath of voters who must be included in what is considered a “reasonable voter” under this Court’s review. 21-A M.R.S. §§ 905(2) & (3). Were the question proposed by Appellant presented on the November ballot, a person may vote “yes” to require photo ID when voting, only to later discover that their immediate family member can no longer request a ballot on their behalf, or find that they can no longer request an absentee ballot by phone, or, upon attempting to request an absentee ballot, discover that the deadline has passed, or that the photo ID that was sufficient to register to vote is insufficient to cast a vote. Ensuring that the wording of the referendum does not result in a voter inadvertently casting a ballot contrary to their intentions is fundamental to the Court’s consideration. *Jortner*, 2023 ME 25, ¶ 14, 293 A.3d 405 (ballot question must not “mislead a reasonable, informed voter into voting contrary to the voter’s intent”). Not only does the wording of the question drafted by the Secretary of State conform to the law and meet the standard for review by this Court, it would be deficient if it neglected to outline the changes it does.

CONCLUSION

For the forgoing reasons, we respectfully request this Court affirm the Superior Court’s order upholding the ballot question as written by the Secretary of State.

Dated: June 27, 2025

Respectfully submitted,

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