

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-25-284

ALEX TITCOMB ET AL.,

Plaintiffs/Appellants,

v.

SECRETARY OF STATE ET AL.,

Defendants/Appellees.

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

**BRIEF OF AMICUS CURIAE
LEAGUE OF WOMEN VOTERS OF MAINE
IN SUPPORT OF DEFENDANTS/APPELLEES**

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Interest of the Amicus

The League of Women Voters of Maine (LWVME), is a nonpartisan, nonprofit civic organization dedicated to encouraging informed and active participation in government, increasing the understanding of public policy issues, and defending the rights of all eligible Mainers to register and vote. LWVME is the Maine affiliate of the League of Women Voters of the United States, which was founded in 1920 following the ratification of the Nineteenth Amendment to the United States Constitution and now operates through more than 700 local and state Leagues across the country.

LWVME has a long and active history of supporting voting rights. LWVME registers voters, distributes nonpartisan election information, and advocates for policies that ensure every eligible Mainer can cast a ballot that counts – whether in person or by absentee ballot. LWVME's work also includes outreach to historically underrepresented communities, such as minority and indigenous populations, low-income Mainers, rural residents, voters with disabilities, young voters, and new citizens.

Through decades of issue studies, public education, election monitoring, and legislative advocacy, LWVME has developed substantial expertise on topics including voter registration systems, absentee and early voting procedures, ballot access, the referendum process, and the practical effects of election-related laws on real voters. As a result, LWVME is widely considered the leading election practices organization in Maine. LWVME is well positioned to assist the Court by providing context and perspective on ballot question wording, particularly for a measure that concerns election procedures.

LWVME is therefore acutely interested in the proposed legislation presented by the citizen's initiative at issue in this appeal, "An Act to Require an Individual to Present Photographic Identification for the Purpose of Voting" (the "Proposed Legislation"). LWVME and many of its members submitted comments to Secretary of State Shenna Bellows (the "Secretary") regarding the initial wording of the ballot question for the Proposed Legislation. The Secretary cited the comment made by LWVME in her decision letter framing the final version of the ballot question (the "Question"). LWVME remains deeply interested in the wording of the Question to be considered by voters in November 2025.

Statement of Facts and Statement of Issue

The facts concerning the process by which the Secretary arrived at the final wording for Question concerning the Proposed Legislation are not in dispute. LWVME briefly summarizes the relevant aspects of the procedural history.

In February 2025, the Secretary certified that the proponents of the Proposed Legislation, now plaintiffs/appellants in this action, had presented sufficient valid signatures for the Proposed Legislation to continue through the citizens' initiative process. Secretary of State's Determination of Validity (Feb. 19, 2025), Appendix ("App.") at 074-075. The complete text of the Proposed Legislation is set forth in the Appendix (App. 055-065) and posted on the Secretary's website. Me. Dep't of Sec'y of State, *Current Citizen's Initiatives and People's Vetoes* ("Current Initiatives") (last visited on June 26, 2025),

<https://www.maine.gov/sos/elections-voting/peoples-veto-or-citizens-initiative-resources/current-citizen-initiatives-and-peoples-vetoes>.

The Proposed Legislation includes twenty-eight (28) separate provisions that set forth twenty-seven (27) potential changes to Maine law. App. 055-065; see Letter from Secretary of State to Alex Titcomb

regarding Secretary's Determination of Final Wording (May 5, 2025) ("Determination Letter") at 2 (App. 029). In March 2025, the Secretary proposed wording for the ballot question concerning the Proposed Legislation that listed a number of the potential legislative changes. Me. Dep't of Sec'y of State, *Public comment period now open on wording of ballot question* (Mar. 12, 2025), App. 076-077.

During the statutorily mandated period for public comment, the Secretary received 318 comments on her proposed wording. Determination Letter at 1 (App. 028); *see* Agency Record ("R.") in *Titcomb et al. v. Bellows et al.*, AP-25-15 (Cumb. Cnty. Super. Ct., June 13, 2025) at R. 052–388. The "most common critique" offered by commenters urged the Secretary to modify the wording of the question to include reference to additional provisions contained in the Proposed Legislation. Determination Letter at 4 (App. 031). The Secretary adopted the commenters' suggestion only to a limited extent, adding references to potential changes in the Proposed Legislation concerning drop boxes for absentee ballots. *Id.*

Other comments, including the comment from LWVME, suggested a different order for the various elements of the proposed wording of the

question to place earlier the potential changes to absentee voting. The Secretary largely adopted these suggestions. *Id.* at 5 (App. 032).

The plaintiffs/appellants did not submit a comment regarding the Secretary's original draft question. *See generally* R. 052–388.

On May 5, 2025, the Secretary issued the final wording of the Question to appear on the November 2025 ballot, which reads:

“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?”

Determination Letter at 1-2 (App. 028-029). The plaintiff/appellants timely filed a Rule 80C appeal with the Superior Court.

On June 13, 2025, the Superior Court denied the appeal and affirmed the Secretary's determination regarding the final wording of the Question. *Titcomb et al. v. Bellows et al.*, AP-25-15, slip op. at 9. Plaintiffs/appellants sought this Court's review.

The issue on appeal is whether the Secretary's final wording in the Question meets the applicable legal standard, which this Court has held requires that “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." *Jortner v. Sec'y of State*, 2023 ME 25, ¶ 8, 293 A.3d 405 (citing 21-A M.R.S. § 905(2), (3)).

Argument

I. The Court Must Determine Whether the Question is Understandable and Not Misleading.

The process for review and consideration of citizen-initiated legislation is governed by statute. *See generally* 21-A M.R.S. §§ 901–907 (2024). In a challenge to the wording of a ballot question adopted by the Secretary, the Superior Court is charged with determining “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) (2024). Upon further appeal, the Law Court reviews the question drafted by the Secretary under the same standard, without deference to the Superior Court's decision. 21-A M.R.S. § 905(3) (2024); *Jortner*, 2023 ME 25, ¶ 8, 293 A.3d 405. The burden of persuasion on appeal falls upon the

appellant. *Jortner*, 2023 ME 25, ¶8, 293 A.3d 405 (citing *Olson v. Sec’y of State*, 1997 ME 30, ¶ 7, 689 A.2d 605).

This Court has determined that the standard of § 905(2) subsumes the other statutory and constitutional provisions governing citizen-initiated legislation. *Jortner*, 2023 ME 25, ¶ 8 and n.1, 293 A.3d 405. In particular, the standard of review encompasses consideration as to whether the Secretary has “concisely and intelligibly” prepared the ballot question as required under Me. Const. art. IV, pt. 3, § 20, and whether she has “writ[ten] the question in a clear, concise and direct manner that describes the subject matter of the . . . direct initiative as simply as is possible.” *See* 21-A M.R.S. § 906(6)(B) (2024) (brackets and ellipsis added).

Importantly, under the governing standard, the Court considers the question from the vantage of a reasonable voter who “understands the proposed legislation” but is reading the ballot wording for the first time. *Id.* § 905(2); *Jortner*, 2023 ME 25, ¶ 8, 293 A.3d 405. In that regard, voters are presumed to have “discharged their civic duty to educate themselves about the initiative.” *Olson*, 1997 ME 30, ¶ 11, 689 A.2d 605. “In essence, the ballot question must ask a clear question

about whether the voter wishes to approve proposed legislation of which the voter is presumed to be already aware.” *Jortner*, 2023 ME 25, ¶12, 293 A.3d 405 (citation omitted).

Likewise, it is the “reasonable, informed voter” that must not be misled by a deficient question “into voting contrary to the voter's intent” *Jortner*, 2023 ME 25, ¶14, 293 A.3d 405. Even a question that might create a misleading “impression” will pass muster if it will not cause a voter to cast a ballot inconsistent with her intent. *Olson*, 1997 ME 30, ¶ 7, 689 A.2d 605.

II. The Question Drafted by the Secretary Easily Satisfies the Applicable Standards.

A. The Question is Plainly Understandable to a Voter Familiar with the Proposed Legislation.

As an initial matter, the Question prepared by the Secretary readily satisfies the requirement that it be “understandable” to voters who are presumed to have “discharged their civic duty to educate themselves about the initiative.” *Olson*, 1997 ME 30, ¶ 11, 689 A.2d 605. The Question’s opening phrase, “Do you want to change Maine election laws” immediately signals to the educated voter on what initiative they are being asked to cast their vote. The only other

citizens' initiative to be presented on the November 2025 ballot concerns a proposal to allow courts to temporarily prohibit a person from possessing a dangerous weapon in certain circumstances. See Current Initiatives, <https://www.maine.gov/sos/elections-voting/peoples-veto-or-citizens-initiative-resources/current-citizen-initiatives-and-peoples-vetoes>. There is no possibility that a voter aware of the initiatives appearing on the ballot could misunderstand the general subject matter of the Question.

Nor is there any individual clause of the Question describing a specific aspect of the Proposed Legislation that could befuddle the educated voter. Each of the next six clauses in the Question after the opening phrase succinctly addresses a portion of the Proposed Legislation, be it a repeal of an existing provision of Maine law or the adoption of a new requirement. A voter who has exercised her civic duty to make herself aware of the Proposed Legislation's terms will be familiar with all of them. Furthermore, the voter will recognize from the final phrase, "make other changes to our elections," that the Question is not a comprehensive summary of every part of the Proposed Legislation on which she is being asked to cast her vote.

The plaintiffs/appellants have the burden to show that an educated voter aware of the Proposed Legislation could somehow misunderstand from the Question the subject matter of the initiative. *Jortner*, 2023 ME 25, ¶8, 293 A.3d 405. In that regard, it is worth noting that the plaintiffs/appellants submitted no comment to the Secretary asserting that any of the clauses she presented in the original proposal for the question somehow mischaracterized a part of the Proposed Legislation. All of those clauses appear verbatim, but for the addition of a single word, in the final Question that the plaintiffs/appellants now challenge on appeal.

In the proceedings below, the plaintiffs/appellants insisted that the phrase “ongoing absentee voter status” (which the Secretary tweaked in preparing the final Question to include the word “status”) will be confusing to voters because the phrase does not appear in the text of the Proposed Legislation. But that precise term, as the Secretary herself explained in adopting it, appears in a section of the Maine Revised Statutes that the Proposed Legislation seeks to repeal in its entirety. See Proposed Legislation, § 19 (“21-A MRSA §753-A, sub-§8 ... is repealed.”) (ellipsis added) (App. 060). The assumption that a voter

has educated herself about an initiative includes her having made “reference to external sources” that will allow her to readily understand provisions in the Proposed Legislation. *Olson*, 1997 ME 30, ¶ 11, 689 A.2d 605. Reviewing an expressly repealed statutory provision is a basic step in becoming informed about the Proposed Legislation. Voters will not misunderstand the operative phrase drawn from the repealed section, let alone the subject matter of the entire initiative.

Plaintiffs/appellants have also argued below that “vagueness” in the final “catch-all” clause and in the term “certain photo ID” used in the Question will stump an educated voter. Both claims miss the mark. There is no sense in which referencing “other changes” about which the voter is aware, but which are not specifically summarized in the Question, could cause an educated voter to misunderstand the subject matter of the Proposed Legislation. Furthermore, use of the limiting term “certain” is routine, having appeared in six other ballot questions since 1990. *See* Me. State Law & Legis. Reference Libr., *Citizen Initiated Legislation, 1911–Present* (last visited June 26, 2025), <https://www.maine.gov/legis/lawlib/lldl/citizeninitiated/>. The Secretary has properly used “certain” in the Question here because not

all forms of photo ID would be permitted to verify a voter's identity under the Proposed Legislation. Referencing the limitation without a detailed recitation of the permitted forms of ID cannot pose a problem for voter who is aware of the Proposed Legislation's terms.

Finally, the plaintiffs/appellants have argued that voters cannot understand the Question because, at 66 words, it is insufficiently concise. There is no "magic number" of words for ballot questions – and, indeed, the Court has emphasized that whether the Secretary has satisfied her constitutional and statutory charge to prepare a "concise" question is encompassed by the Court's determination as to whether it is understandable to an educated voter. *Jortner*, 2023 ME 25, ¶ 8 and n.1, 293 A.3d 405. The Secretary has reduced the more than 4,500 words of the Proposed Legislation (which also references six sections being repealed, without reproducing them (App. 055-065)) to an easily understandable Question of mere double-digit word length, similar to past citizens' initiative ballot questions. In comparison, the ballot wording for a constitutional amendment proposed in 2023 included 69 words, a referendum proposed in 2000 included 82 words, and a people's

veto measure proposed in 1957 included 115 words.¹ The Question meets every applicable standard of review.

B. The Question Will Not Cause an Informed Voter to Vote Contrary to Her Intent.

The requirement that a ballot question must not mislead the voter into expressing a preference on the initiative that is at odds with her intent is likewise no issue here. The Proposed Legislation includes a variety of changes to Maine election laws which a “reasonable, informed voter” must weigh in order to reach a decision about how to cast her ballot. *Jortner*, 2023 ME 25, ¶14, 293 A.3d 405. The Question’s six descriptive clauses and its final catch-all phrase remind the voter that she is considering a multi-faceted initiative on which she has educated herself to cast a ballot. Nothing in the wording of the Question could cause her to believe that a “Yes” vote or a “No” vote would promote a result opposite of her intent.

¹ The Law and Legislative Reference Library of the State of Maine maintains historical databases of various ballot measures. See Me. State Law & Legis. Reference Libr. Amendments to the Maine Constitution, 1820- (last visited June 26, 2025), <https://www.maine.gov/legis/lawlib/lldl/constitutionalamendments/>; Votes on Maine Referenda Bills, 1910- (last visited June 26, 2025), <https://mainelegislature.org/doc/244>; Votes on People’s Vetoes (last visited June 26, 2025), <https://legislature.maine.gov/lawlibrary/votes-on-peoples-vetoes/9205/>.

Faced with the burden of persuasion, the plaintiffs/appellants cannot demonstrate anything in the Question that could mislead an informed voter who is aware of the Proposed Legislation's terms. The plaintiffs/appellants argued below that the clause "end ongoing absentee voter status for seniors and people with disabilities" both mischaracterizes the initiative's effect on Maine law and implies that the Proposed Legislation targets two vulnerable groups. Each claim is a nonstarter.

First, the Proposed Legislation would, in fact, terminate the currently effective option of ongoing absentee voter status for "a voter who will be at least 65 years of age by the next election or who self-identifies as having a disability." *See* Proposed Legislation, § 19 (proposing to repeal 21-A M.R.S. § 753-A(8) (2024)) (App. 060). An educated voter will be well-aware of that effect – just as she will also be aware that a repeal of that section will also prevent a future expansion of ongoing absentee voter status, which is not yet the law, from ever taking effect. *See* 21-A M.R.S. § 753-A,

<https://www.mainelegislature.org/legis/statutes/21-a/title21-Asec753->

[A.html](#) (last visited June 26, 2025) (detailing statutory text “with varying effective dates”).

Second, the contention that an educated voter might alter her vote on the Proposed Legislation because the Question refers to its impact on seniors and persons with disabilities, rather than all voters, is illogical. If a voter favors eliminating ongoing absentee voter status for everyone, she will not vote against eliminating it for a more limited group of seniors and disabled persons; if she opposes eliminating it for everyone, she will oppose eliminating it for any subset of voters, as well. Either way, her vote is the same. Further, the claim that the Secretary’s wording “gives the impression of targeting the vulnerable” – apart from being irrelevant to an educated voter – falls flat because demonstrating that a ballot question “creates a misleading impression ... is not enough,” when it would not cause a voter to cast a ballot inconsistent with her intent. *Olson*, 1997 ME 30, ¶ 7, 689 A.2d 605 (ellipsis added).

III. Criticism of the Order of Terms in the Question Affects Neither Element of the Court’s Review.

The Constitution and the Legislature have assigned to Maine’s chief election official, the Secretary of State, the drafting of ballot questions for citizens’ initiatives. Faced with a multi-faceted piece of

proposed legislation that alters many distinct elements of Maine law, the Secretary is charged with preparing a question that intelligibly describes its subject matter. Where, as here, the Question is understandable and not misleading to a reasonable and informed voter, no other litmus test applies.

The Secretary decided to list the Proposed Legislation's changes to Maine's absentee voting procedures first in a series of six specific clauses in the Question, and to reference immediately prior to the final, catch-all phrase the proposed requirement that a voter must show certain photo identification in order to vote. In explaining her decision, the Secretary stated that the Proposed Legislation's "changes to absentee voting procedures are more extensive and wide-ranging than its changes to in-person voting procedures [and] should be listed earlier in the question." Determination Letter at 5 (App. 032) (brackets added). The plaintiffs/appellants take a different view, asserting their belief that the new photo ID requirement is the more important part of the Proposed Legislation. Any difference of opinion on the point is immaterial.

An educated Maine voter, aware of the terms of the Proposed Legislation, will have a clear understanding from the Question of the initiative's subject matter on which she will cast her vote. She will likewise understand that her vote is based on how she balances the many different elements of the initiative. Whether she is reminded on the ballot that she is weighing changes A, B, C, and D, or instead that she is weighing changes D, C, B, and A, will not mislead her into voting contrary to the intention she has formed after educating herself about the Proposed Legislation and weighing all of the changes it proposes.

IV. Requiring that the Question Be Dictated by the Ballot Measure's Title Could Cause the Question to Be Misleading.

The plaintiffs/appellants titled the Proposed Legislation, "An Act to Require an Individual to Present Photographic Identification for the Purpose of Voting," but the bill would, in fact, result in many other changes to Maine law, including significant changes regarding absentee voting procedures. The Secretary's Question properly captures the full subject matter of the Proposed Legislation through a series of specific references and a final, catch-all phrase. In contrast, a very limited question, tied only to the title of the measure, would be misleading.

Returning to the above frame of reference, if instead of reminding the voter that she was called upon by the initiative to weigh proposed changes A, B, C, and D, she was instead informed by the ballot question that she was registering her preference only with regard to change A, the voter could be misled into voting contrary to her intention. To illustrate, if the voter, after educating herself on the Proposed Legislation, favors change A, but opposes changes B, C, and D and intends to vote “No” on the measure overall, a ballot question asking only if she favors change A might mislead her into voting “Yes.” The Secretary’s Question thus succeeds in avoiding misleading formulations that omit important parts of the Proposed Legislation.

In addition, including in the Question reference to specific elements of the initiative that do not appear in the title of the Proposed Legislation also avoids investing the Question with value judgments about which the voter will be called upon to make her own assessment. The proponents of the Proposed Legislation may view the new photo ID requirement as the “primary” potential change made by the law, while a reasonable Maine voter might disagree. After all, absentee voting has been used by hundreds of thousands of Maine voters to cast their ballots

– and increasingly so – over the last several general election cycles, including in: 2008 (over 238,000 absentee ballots returned); 2010 (over 133,000); 2012 (over 190,000); 2014 (over 138,000); 2016 (over 258,000); 2018 (over 188,000); 2020 (over 514,000, in the midst of the pandemic); 2022 (over 235,000); and 2024 (over 380,000). *See* Me. Dep’t of Sec’y of State, *Previous Absentee Data*, (last visited June 26, 2025), <https://www.maine.gov/sos/elections-voting/voter-data/previous-absentee-data>. During that same time frame, studies and reporting on actual court cases suggest that the number of Mainers charged with voter fraud that might have been prevented via photographic identification was between two and four people, total, across eight or more election cycles, involving millions of votes cast. *See* Heritage Foundation, *Election Fraud Map, Maine 1982 – 2024* (last visited June 26, 2025) (listing two Maine cases in 2010 and no others), <https://electionfraud.heritage.org/search?state=me>; Judy Harrison, *Orono Woman Charged with Voting Twice in November Election*, Bangor Daily News (Apr. 28, 2021) (reporting that two people were charged with voting twice in the November 2020 election, only one of whom cast a ballot in the name of another person),

<https://www.bangordailynews.com/2021/04/28/bangor/orono-woman-charged-with-voting-twice-in-november-election/>. By including

references in the ballot question to changes contained in Proposed Legislation that are not highlighted in the title assigned to the measure by its proponents, the Secretary has properly captured the full subject matter of the initiative through a ballot question that is both understandable to a reasonable voter and not misleading.

Conclusion

For the forgoing reasons, the Court should deny the appeal and affirm the Secretary's final determination concerning the Question to be presented to voters on the November 2025 ballot.

Dated at Portland, Maine this June 27, 2025.

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Certificate of Service

I, Matthew P. Schaefer, hereby certify that printed copies of this Brief of Amicus Curiae were served upon counsel for the parties by first-class mail, postage prepaid, and were emailed to the addresses below on June 27, 2025:

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