No. 21-1149

***In The***
***UNITED STATES COURT OF APPEALS***
***For The First Circuit***

WE THE PEOPLE PAC; BILLY BOB FAULKINGHAM, State Representative; LIBERTY INITIATIVE FUND; NICHOLAS KOWALSKI,

Plaintiffs – Appellees,

v.

SHEENA BELLOWS, in her official capacity as the Secretary of State of Maine; JULIE FLYNN, in her official capacity as the Deputy Secretary of State of Maine for the Bureau of Corporations, Elections and Commissions,

Defendants – Appellants

On Appeal from the United States District Court for the District of Maine
John A. Woodcock, Jr., Presiding
(District of Maine Case No. 1:20-cv-00489-JAW)

# Brief of Appellees

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## JURISDICTIONAL STATEMENT

Appellees accept Appellants' jurisdictional statement set forth in their opening brief.

## COUNTER STATEMENT OF THE ISSUES

1. Whether the district court correctly applied the United States Supreme Court's decision in *Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182 (1999) holding Maine's voter registration requirement for initiative and referendum petition circulators unconstitutional under the First and Fourteenth Amendments to the United States Constitution.

2. Whether the district court correctly applied the *Buckley* Court's analysis that under the First Amendment state-imposed restrictions reducing the pool of available petition circulators is subject to strict scrutiny analysis to Maine's blanket ban on out-of-state petition circulators.

3. Whether the district court was correct that Appellees are likely to succeed on the merits of their claims that Maine's voter registration and residency requirement for initiative and referendum petition circulators severely impair rights guaranteed to them under the First and Fourteenth Amendment and which are not

narrowly tailored to advance a compelling governmental interest sufficient to survive strict scrutiny analysis.

**COUNTER STATEMENT OF THE CASE**

Appellees filed the instant action in the United States District Court for the District of Maine on December 31, 2020 – more than a year before the deadline to file petitions containing the required number of valid signatures to place their proposed initiatives on the 2022 general election ballot – to enjoin the voter registration and state residency requirements of Section 21-A M.R.S. § 903-A. The challenged statute prevents Appellees from using unregistered Maine residents, registered Maine voters who are not registered at their current address and out-of-state professional circulators to freely advocate both Appellees' message of political change and collect valid signatures necessary to secure access for their initiative questions for the 2022 general election ballot. Opinion at p. 10; ADD010. Appellees correctly allege that the voter registration and state residency requirements imposed by the challenged statute reduce the pool of available circulators causing severe impairment to First Amendment speech triggering strict scrutiny analysis under the Supreme Court's decision in *Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182 (1999). Under strict scrutiny analysis, Appellees correctly argue that the challenged voter registration requirement is not narrowly tailored to advance a compelling state interest because Maine can more

narrowly protect its interests by requiring unregistered voter eligible residents to submit their name and current address in order to circulate initiative and referendum petitions in Maine. Furthermore, the state residency requirement for initiative and referendum petition circulators is not narrowly tailored to advance a compelling governmental interest because the state can more narrowly require out-of-state petition circulators to submit to the jurisdiction of the state of Maine for any investigation, prosecution and/or service of process related to any petition filed by them in Maine as a condition precedent to being able to freely circulate initiative and referendum petitions in Maine.

Since 2019, Appellees have been executing a plan to place two initiative issues on the 2022 Maine general election ballot. Currently, Maine requires a sponsor of an initiative and referendum petition to collect and timely file 63,067 valid signatures of registered Maine voters to secure access to Maine's 2022 general election ballot.

In 2019, Appellees qualified to collect signatures to place a citizen only voting initiative on the 2022 general election ballot limiting the franchise to citizens of Maine and of the United States. On May 25, 2021, Appellees filed the required document with the Maine Secretary of State to qualify their new voter identification initiative to permit them to collect signatures to place a voter identification question on the 2022 general election ballot requiring registered

voters to present valid identification before casting a ballot in Maine elections and providing free identifications to permit all registered voters to comply with the proposed voter identification requirement.

Appellees attempted, even though they were not required as a condition precedent to filing this action, to successfully comply with the challenged restrictions during their petition drive to place their citizen only voter initiative on the 2022 general election ballot. Appellees attempted to recruit volunteer petition circulators who are Maine residents and contracted to use the very few professional petition circulators who reside in the state of Maine. On Election Day 2019, Appellees began recruiting Maine resident voters to collect the required number of signatures for their first planned initiative, the citizen only voter initiative. Opinion at p. 17; ADD017. Appellees hired Curtis Ayotte to mobilize, organize and manage the volunteers recruited by Appellees for their first initiative. Opinion at p. 17; ADD017. Appellees and Appellees' representatives met with every Republican Party county committee in the state of Maine to publicize the issues they sought to advance through their initiative and, as a result, were able to recruit fifty volunteer petition circulators. Opinion at p. 17; ADD017. In addition to the volunteer effort, Appellees hired a Maine petition circulation company, 4DC Augusta, LC, to manage paid Maine residents to collect petition signatures for the citizen only voter initiative.

4DC Augusta LC's paid Maine petition circulators failed to produce a single petition signature and the 50 volunteer petition circulators only produced 2,000 petition signatures. Opinion at p. 17; ADD017. The lack of signature production in 2019 using only Maine residents caused Appellees to suspend the initiative petition drive on October 16, 2019 and return all funds to donors and reevaluate the best method to collect the required 63,067 valid signatures of registered Maine voters. Opinion at pp. 17-18; ADD017-18. After Appellees' failure to be able to collect large numbers of valid signatures using only Maine residents, Appellees made the determination that they needed to hire better and more experienced professional petition circulators who were not residents of the state of Maine. Opinion at p. 18; ADD018.

In October 2020, Appellees restarted their petition drive to collect signatures to secure ballot access for their citizen only voting initiative employing Ballot Access LLC and Maine resident James Tracey to advertise on Craigslist and Facebook and print and distribute flyers in Portland, Lewiston and Auburn to recruit, once again, paid Maine petition circulators in a further effort to comply with the challenged statute. Opinion at p. 18; ADD018. And, again, Appellees sought to recruit more volunteer Maine resident petition circulators in an effort to continue to attempt to both comply with the challenged statute and collect the 63,067 valid signatures of Maine registered voters to secure access to the 2022

general election by advertising on Appellees' We the People PAC's Facebook page and a second round of meetings with every Republican Party county committee in Maine requesting they help recruit volunteers to assist in collecting signatures for the citizen only voter initiative. Opinion at p. 19; ADD019. Through these renewed efforts in late 2020 to comply with the challenged statutory restrictions on the use of petition circulators, Appellees were able to recruit 42 paid and 24 volunteer Maine resident petition circulators who collected 12,000 signatures by the end of Election Day 2020. Opinion at p. 19; ADD019. Thereafter, from Election Day 2020 and December 31, 2020 Appellees began to contract with 7 out-of-state professional petition circulators and continued to use 2 paid and 12 volunteer Maine resident circulators, collecting a total of 25,000 by the end of the 2020. Opinion at p. 19; ADD019. From January 1, 2021, Appellees recruited 49 out-of-state petition circulators (working with Maine registered voters who would watch the collection effort so that they could witness the petition signatures collected by the out-of-state circulators – a costly work-around that still limits the times and places that out-of-state petition circulators can collect signatures) and 6 Maine resident professional petition circulators and 12 volunteer Maine resident circulators to collect signatures for Appellees. Opinion at pp. 19-20; ADD019-20. By January 25, 2021, Appellees were able to collect 38,000 signatures. 90% of the 38,000 signatures collected by Appellees by January 25, 2021 were collected by

the 49 out-of-state professional petition circulators, while only 3,800 signatures were collected by the 6 Maine resident professional petition circulators, 24 volunteer and 42 paid Maine resident circulators. Opinion at p. 24; ADD024. In other words, 72 Maine circulators collected 3,800 signatures while the 49 out-of-state professional circulators collected 34,200 signatures providing conclusive evidence of the severe impairment to First Amendment speech caused by the ban on out-of-state professional petition circulators. Opinion at p. 24; ADD024.

The collection of petition signatures is a difficult endeavor. Former Maine Secretary of State Matthew Dunlap admitted that collecting petition signatures using volunteer petition circulators is difficult. Opinion at p. 23; ADD023. In an interview with the Sportsman's Alliance of Maine (SAM), which aired on January 8, 2021, Mr. Dunlap stated it is "very difficult to get volunteer to really engage with people and get them to sign petitions." Opinion at pp. 23-24; ADD023-24. Mr. Dunlap further explained that "It's not normal, socially it's not normal to walk up to a perfect stranger and say, 'excuse me are you a registered voter, would you like to sign this petition,'" and so "it takes…a particular type of personality to be able to do this." Opinion at p. 24; ADD024. Mr. Dunlap continued to explain that "It is this difficulty that drives groups to hire out-of-state professional circulators to gather signatures." Opinion at p. 24; ADD024. Mr. Dunlap's admissions buttress Appellees' first-hand experience that out-of-state professional petition circulators

are more skilled and better able to collect the large number of petition signatures necessary to secure ballot access for their initiative petition drives than Maine residents.

While the Court's preliminary injunction, issued on February 16, 2021, came too late to push Appellees' citizen-only voter initiative petition drive over the top to secure ballot access, the ability to hire out-of-state petition circulators free from the need to have them work with Maine registered voters to witness the circulator affidavit will permit Appellees the ability, from the very outset, to use out-of-state professional petition circulators to circulate their new initiative to place a voter identification requirement on Maine's 2022 general election ballot. Appellees filed the necessary documents to qualify their new voter identification initiative with the Maine Secretary of State on May 25, 2022. Appellees have until January 31, 2022 to file 63,067 valid signatures of Maine registered voters to secure ballot access for Maine's 2022 general election ballot.

**SUMMARY OF THE ARGUMENT**

The Order of the court below preliminarily enjoining enforcement of Maine's voter registration and state residency requirement should be affirmed because Appellees are likely to succeed on the merits of their claims. Adjudication of Appellees' challenge to Maine's voter registration requirement for initiative and referendum petition circulators is controlled by the United States Supreme Court's

decision in *Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182 (1999), which held state mandated voter registration requirements for initiative and referendum petition circulators imposed a severe burden on core political speech afforded the highest protection under the First Amendment because such restrictions decrease the pool of available petition circulators available to engage in interactive communicative speech concerning political change. As a severe impairment to speech, voter registration requirements are subject to strict scrutiny review. The *Buckley* court then held that a voter registration requirement was not narrowly tailored to advance the state's interest in policing the petition process because the state can more narrowly require unregistered petition circulators to provide their name and address when they file initiative or referendum petitions with the state.

Similarly, Appellees are likely to succeed on the merits of their claim that the challenged state residency requirement, in an even more dramatic manner, reduces the pool of available petition circulators causing severe impairment to political speech protected under the First Amendment triggering strict scrutiny analysis. The challenged state residency requirement for initiative and referendum petition circulators in Maine is also not narrowly tailored to advance the state's interest in policing the petition process because Maine can more narrowly require out-of-state petition circulators to submit to the jurisdiction of Maine for the

purpose of any post-filing investigation, prosecution and/or service of process related to any initiative or referendum petition filed by an out-of-state petition circulator in Maine.

While the record created below clearly demonstrates the severe harm caused to Appellees by the challenged voter registration and state residency requirements – and that the United States Supreme Court was correct that any restriction which reduces the pool of available petition circulators imposes a severe impairment on protected First Amendment speech – the injury to Appellees' First Amendment rights is not being able to use the petition circulators of their choice. It does not require the extensive factual record established in the court below in order for this Court to affirm the lower court's preliminary determination that the challenged voter registration and state residency requirements severely impair rights under the First Amendment. The sheer math, and the fact of the reduction of available petition circulators is evident on the face of the challenged statutes, is sufficient to trigger analysis under *Buckley*. All other harms and difficulties flow from the facial reduction of the pool of available petition circulators when a state excludes unregistered voters and out-of-state petition circulators. It does not matter for purposes of this appeal how many initiative and referendum petitions have been able to qualify for Maine's ballot under the challenged restrictions. It does not matter if Appellees could have qualified if they did something different to better

cope with the challenged restrictions. So long as a restriction reduces the pool of available circulators, such as the challenged voter registration and state residency requirement for initiative and referendum petition circulators do in Maine, strict scrutiny applies and the injury is metastasized.

Furthermore, Appellees' future harm is not speculative because they have filed the necessary documents with Maine's Secretary of State to qualify a new initiative petition for circulation. Appellees must collect and timely file 63,067 valid signatures of Maine registered voters on or before January 31, 2022 in order to qualify for Maine's 2022 general election ballot. And again, the injury to Appellees' First Amendment rights moving toward the January 31, 2022 filing deadline is the reduction of the pool of available petition circulators, including the exclusion of the best professional petition circulators in the nation who are not residents of the state of Maine, directly caused by the challenged voter registration and state residency requirement should the preliminary injunction below be reversed.

Lastly, the lower court did not abuse its discretion when it extended the date for Appellees to file identical sworn answers to Appellants' interrogatories which could not be procured sooner as a direct consequence of the then still raging pre-vaccination environment of the COVID-19 pandemic. Accordingly, the preliminary injunction issued by the lower court in this action should be affirmed.

## ARGUMENT

### I. The Lower Court Correctly Held Appellees Are Likely to Succeed on the Merits of their Claim Challenging Maine's Voter Registration Requirement for Initiative and Referendum Petition Circulators.

#### A. Adjudication of Appellees' Challenge to Maine's Voter Registration Requirement for Initiative and Referendum Petition Circulators is Controlled by *Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182 (1999).

Appellants are faced with an impossible legal task. With respect to Appellees' challenge to Maine's voter registration requirement imposed on initiative and referendum petition circulators, Appellants must convince this Court to ignore binding precedent of the United States Supreme Court in *Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182 (1999) ruling voter registration requirements imposed on initiative and referendum petition circulators unconstitutional. Instead, Appellants argue that this Court must redo the analysis already completed by the Supreme Court in *Buckley* by employing a new analysis under *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992) (commonly referred to as the *Anderson-Burdick* test) in the hopes that this Court arrives at a different result from the binding precedent of *Buckley*.

The Supreme Court announced the *Anderson-Burdick* test to assist lower courts to determine if a ballot access restriction imposed a severe burden on First Amendment speech, triggering strict scrutiny analysis or a lesser burden on speech

triggering a balancing test approach. The *Anderson-Burdick* test is contraindicated in this action because the United States Supreme Court has already established in *Buckley* that voter registration requirements mandated on initiative and referendum petition circulators impose severe burdens on First Amendment speech, triggering strict scrutiny and, further, than a state can more narrowly protect its interests in policing the petition process by requiring a petition circulator to provide an affidavit (or some other document promulgated by the state) establishing the petition circulator's name and current address. Accordingly, blanket bans on unregistered petition circulators impose a severe burden on core political speech, triggering strict scrutiny analysis which is not narrowly tailored to advance the state's compelling interest. Therefore, Maine's voter registration requirement to circulate initiative and referendum petitions is unconstitutional and Appellees are certain, not just likely, to succeed on the merits of their claim challenging Maine's voter registration requirement to circulate initiative and referendum petitions.

At bottom, Appellants ask this Court to overturn *Buckley* in the First Circuit, which can only be properly argued to the United States Supreme Court.

### B. Development of Supreme Court Precedent that Voter Registration Requirements Imposed on Initiative and Referendum Petition Circulators is Unconstitutional.

In 1988, the United States Supreme Court held in *Meyer v. Grant*, 486 U.S. 414 (1988), that a ban on paying petition circulators was unconstitutional reasoning that the circulation of a ballot access petition like a referendum petition involves interactive communication between the circulator and the potential signer which the Court described as "core political speech" meriting the highest protections under the First Amendments such that any restriction which decreased the pool of available circulators was subject to struct scrutiny analysis. The Court in *Meyer* explained:

> We fully agree with the Court of Appeals' conclusion that this case involves a limitation on political expression subject to exacting scrutiny. The First Amendment provides that Congress "shall make no law…abridging the freedom of speech, or of the press; or the right of people to peaceably assemble, and to petition the Government for a redress of grievances." The Fourteenth Amendment makes that prohibition applicable to the State….
>
> The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change. Although a petition circulator may not have to persuade potential signatories that a particular proposal should prevail to capture their signatures, he or she will at least have to persuade them that the matter is one deserving of the public scrutiny and debate that would attend its consideration by the whole electorate. This will in almost every case involve an explanation of the nature of the proposal any why its advocates support it. Thus, the circulation of a petition involves the type of interactive communication concerning political change this is appropriately described as "core political speech."

> The refusal to permit appellees to pay petition circulators restricts political expression in two ways. First, it limits the number of voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion....
>
> That appellees remain free to employ other means to disseminate their ideas does not take their speech through petition circulators outside the bounds of First Amendment protections....That [the statute] leaves open "more burdensome" avenues of communication, does not relieve its burden on First Amendment expression. The First Amendment protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.

*Meyer*, 486 U.S. at 420-24 (internal citations omitted).

Following its analysis in *Meyer*, the Supreme Court in *Buckley* upheld the Tenth Circuit Court of Appeals' decision holding the requirement in Colorado that petition circulators be registered voters unconstitutional as the requirement reduced the number of persons available to carry the message advanced by the petition sponsors and reduced the number of hours that could be worked and limited the number of persons the circulators could reach without impelling cause. *Buckley*, 525 U.S. 193-197. In *Buckley*, the Court approved the Tenth Circuit's analysis that:

> The Tenth Circuit reasoned that the registration requirement placed on Colorado's voter-eligible population produces a speech diminution of the very kind produced by the ban on paid circulators at issue in *Meyer*. We agree. The requirement that circulators be not merely voter eligible, but registered voters, it is scarcely debatable given the uncontested numbers decrease the pool of potential circulators as certainly as that

> pool is decreased by the prohibition of payment to circulators. Both provisions 'limi[t] the number of voices who will convey[the initiative proponents'] message' and, consequently, cut down "the size of the audience [proponents] can reach.' *Meyer*, 486 U.S. at 422, 423; *see Bernbeck v. Moore*, 126 F.3d 1114, 1116 (8th Cir. 1997) (quoting *Meyer*); *see also Meyer*, 486 U.S. at 423 (stating, further, that the challenged restriction reduced the chances that initiative proponents would gather signatures sufficient in number to qualify for the ballot, and thus limited proponents' 'ability to make the matter the focus of statewide discussion').
>
> Colorado acknowledges that the registration requirement limits speech, but not severely, the State asserts, because 'it is exceptionally easy to register to vote.' The ease with which qualified voters may register to vote, however, does not lift the burden on speech at petition circulation time. Of course there are individuals who fail to register out of ignorance or apathy. But there are also individuals for whom, as the trial record shows, the choice not to register implicates political thought and expression....
>
> The State's dominant justification appears to be its strong interest in policing lawbreakers among circulators. Colorado seeks to ensure that circulators will be amenable to the Secretary of State's subpoena power, which in these matters does not extend beyond the State's borders. The interest in reaching law violators, however, is served by the requirement, upheld below, that each circulator submit an affidavit setting out, among several particulars, the 'address at which he or she resides, including the street name and number, the city or town, [and] the county.' The address attestation, we note, has an immediacy, and corresponding reliability, that a voter's registration may lack. The attestation is made at the time a petition section is submitted; a voter's registration may lack that currency.

*Buckley*. 525 U.S. at 194-96. The instant action is a near replicant of the Colorado litigation resolved by the Tenth Circuit and the United States Supreme Court striking down the voter registration requirement for petition circulators. As the Court noted in *Buckley*, Maine cannot justify the restriction by conditioning

petition circulation on the ease of voter registration because the mere status of not registering to vote is, itself, potentially laden with speech. *See*, *Buckley*, 525 U.S. at 195-96. Maine cannot condition the right to engage in the core political speech of circulating ballot access petitions by forcing unregistered voter to abandon their decision to remain unregistered voters.

Further, as in Colorado, MRS Title 21-A, Chapter 11, Section 902 requires that circulators of initiative and referendum petitions must personally appear before a notary public or other person authorized by law to administer oaths or affirmations to sign the petition and verify by oath or affirmation that the circulator personally witnessed all of the signatures to the petition and that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be. Maine, could easily, and more narrowly than a blanket ban on unregistered voters, require petition circulators to provide their current address, as is required in Colorado, as a narrower means, recognized by the United States Supreme Court, to protect the state's legitimate interest in serving process for any post-filing investigation. Such an address attestation would provide a more immediate "currency" than a potentially stale voter registration record. Accordingly, the challenged voter registration requirement for petition circulators imposes a severe burden on the exercise of core political speech subject to strict scrutiny analysis. Because Maine can more narrowly advance its interest

by requiring circulators to provide their current address to Appellants, the challenged voter registration requirement for initiative and referendum petition circulators fails the required level of judicial review and is facially unconstitutional. Therefore, Plaintiffs will likely succeed on the merits of their claim against the voter registration requirement for initiative and referendum petition circulators.

The Supreme Court's precedent in *Buckley* is so clearly directly on-point, the factual record required by the court below to secure the requested preliminary injunction was unnecessary and superfluous. Once sufficient facts were established to demonstrate that Plaintiffs-Appellees had standing to maintain their challenge to Maine's voter registration requirement for initiative and referendum petition circulators, no further factual development was necessary to secure the requested injunctive relief.

Appellants argue that the voter registration ban struck down in *Buckley* is the product of the degree of the number of unregistered voters in Colorado and that since Maine has a higher proportion of registered voters, *Buckley* does not control. Appellants' Br. at pp. 20-21. Appellants make the leap that the "degree of the impact" analysis permits the exclusion of a minimum of 3% of Maine's entire population for exercising "core political speech" under the First Amendment. The "degree of the impact" here, and what is clear from *Buckley*, is that there is a total

ban and inability to collect signatures by anyone who is unregistered – the "degree of impact" for these individuals is total. Similarly, the "degree of the impact" on Appellees is total with respect to the inability to use any unregistered voter to circulate initiative and referendum petitions in Maine. In fact, none of the cases cited by Appellants in support of their "degree of impact" analysis implicate the exclusion of an entire class of individuals from either the petition or electoral process. For instance, the registration and training requirements upheld by the United States District Court for the Western District of Pennsylvania in *Project Vote v. Kelly*, 805 F. Supp. 2d 152, 173, 178 (W.D. Pa. 2011) permitted rules that required petition circulators to register with authorities (not register to vote) and receive training, as such that challenged statute was upheld precisely because it did not exclude any class of individual from circulating petitions and did not reduce the pool of available petition circulators in violation of *Buckley*. In fact, the same court later issued a preliminary injunction against state statutes requiring petition circulators to be residents and registered voters of the Commonwealth of Pennsylvania in order to circulate initiative petitions seeking to amend municipal home rule charters. *OpenPittsburg.Org v. Wolosik*, 2:16-cv-1075 2016 WL 7985286 (W.D. Pa. Aug. 9, 2016).

In Maine, the potential reduction of available circulators is potentially even larger than the number excluded in Colorado under *Buckley*. In Maine, only

registered voters who continue to reside at the same address as recorded on their voter registration record are eligible to circulate initiative and referendum petition in Maine. Appellants admit that they have no way to quantify how large of a population in addition to the 3% of the entire Maine population excluded from circulating initiative and referendum petitions based on their change of address. Accordingly, Appellants entire argument lacks any evidentiary basis, even if relevant under the Court's analysis in *Buckley*.

The Supreme Court in *Buckley* never exempted a smaller reduction of the pool of available petition circulators from strict scrutiny analysis than what was evident in Colorado. And furthermore, as applied to the state residency requirement, the numeric degree of the reduction in the size of the pool of available petition circulators is nearly total, excluding almost 328,000,000 United States citizens from being able to exercise

## II. The Lower Court Correctly Held Appellees Are Likely to Succeed on the Merits of their Claim Challenging Maine's Blanket State Residency Requirement for Initiative and Referendum Petition Circulators.

Using the same analysis employed by the United States Supreme Court in *Meyer* and *Buckley*, state residency requirements for petition circulators have been held unconstitutional by every Court of Appeals to consider the issue where out-of-state petition circulators can be required to submit to the jurisdiction of the subject state for purposes of the state's subpoena power for any post-filing investigation

and/or prosecutions. The state residency requirement challenged by Appellees, by sheer force of the number of excluded individuals who reside outside Maine, drastically limit the pool of circulators available to carry Appellees' message for political change to the voters of Maine. This reduction in the number of available petition circulators, just as the voter registration requirement reviewed by the Supreme Court in *Buckley* – and even more so, imposes a severe burden on core political speech triggered strict scrutiny analysis. Further, federal courts have developed a consensus that the rational employed by the United States Supreme Court in *Buckley* is properly extended to the adjudication of state residency requirements for petition circulators of ballot access petitions and that a state can more narrowly protect its interest in policing against petition fraud by requiring out-of-state circulators submit to the state's jurisdiction for the purpose of any post-filing investigation, prosecution and/or service of process related to any ballot access petition filed by the out-of-state circulator.

Beyond the sheer numbers, the reality is that professional circulators engage in the circulation of petitions on a nationwide basis. Very often, the best petition circulators are not residents of the State of Maine, and certainly, no one state can claim to be the resident state of a majority of the best petition circulators in the United States. Accordingly, any state ban on out-of-state petition circulators

severely impairs the First Amendment right of petition proponents to field the best army of professional petition circulators possible.

The United States Court of Appeals for the Fourth Circuit, perhaps articulated the current state of the law on the unconstitutionality of out-of-state circulator bans best:

> As the law has developed following the Supreme Court's decisions in *Meyer* and *Buckley*, a consensus has emerged that petitioning restrictions like the one at issue here are subject to strict scrutiny analysis. *See*, *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008) (applying strict scrutiny to overturn Oklahoma prohibition on nonresident circulators of initiative petitions); *Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008) (declaring unconstitutional, as failing strict scrutiny, Ohio ban on nonresidents circulating nominating petitions); *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008) (invalidating, pursuant to strict scrutiny analysis, Arizona deadline and residency provisions relating to nominating petitions and circulator-witnesses). The Ninth Circuit in *Brewer* recited the general rule that "the severity of the burden the election law imposes on the plaintiff's rights dictates the level of scrutiny applied by the court." *Brewer*, 531 F.3d at 1034 (citing *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).... The triumvirate of 2008 decisions in *Savage*, *Blackwell*, and *Brewer* demonstrate a general agreement among our sister circuits that residency restrictions bearing on petition circulators and witnesses burden First Amendment rights in a sufficiently severe fashion to merit the closest examination....
> [....]
> The more substantial question, and the crux of this appeal, is whether the Commonwealth's enactment banning all nonresidents from witnessing nominating petitions – a measure we presume to be effective in combatting fraud – is, notwithstanding its efficacy, insufficiently tailored to constitutionally justify the burden it inflicts on the free exercise of First Amendment rights. *See*, *Krislov v. Rednour*, 226 F.3d 851, 863 (7th Cir. 2000) ("[W]e must take into account...other, less restrictive means [the state] could reasonably employ[, though it] need not use the least restrictive means available, as long as its present method does not burden more speech than is necessary to serve

> compelling interests." (citations omitted). The Board insists that the integrity of the petitioning process depends on 'state election official's access to the one person who can attest to the authenticity of potentially thousands of signatures," access made more difficult, perhaps, if the witness resides beyond the subpoena power of the state.
>
> The plaintiffs counter that the Commonwealth could compel nonresidents, as a condition of witnessing signatures on nominating petitions, to enter into a binding legal agreement with the Commonwealth to comply with any civil or criminal subpoena that may issue. Indeed, "[f]ederal courts have generally looked with favor on requiring petition circulators to agree to submit to jurisdiction for purposes of subpoena enforcement, and the courts have viewed such a system to be a more narrowly tailored means than a residency requirement to achieve the same result." *Brewer*, 531 F.3d at 1037 (citing inter alia, *Chandler v. City of Arvada*, 292 F.3d 1236, 1242-44 (10th Cir. 2002); *Krislov*, 226 F.3d at 866 n.7. More recently, in *Savage*, the Tenth Circuit reiterated that "requiring non-residents to sign agreements providing their contact information and swearing to return in the event of a protest is a more narrowly tailored option." 550 F.3d at 1030.
>
> According to the Board, ostensible consent to the extraterritorial reach of the Commonwealth's subpoena power does not guarantee the requisite access, because nonresident witnesses must yet be located and retrieved, perhaps by extradition or rendition. There are few guarantees in life, however, and it is hardly an iron-clad proposition that a similarly situated resident witness will be amenable to service and comply with a lawfully issued subpoena.

*Libertarian Party of Virginia v. Judd*, 718 F.3d 308, 316-18(4th Cir. 2013).

Following the Fourth Circuit's opinion in *Libertarian Party of Virginia* detailing the broad consensus that has developed among federal courts holding that strict scrutiny applies to bans on out of state circulators and that the blanket ban is not narrowly tailored to advance a state's legitimate interests when states can more

narrowly simply require out-of-state petition circulators to submit to the jurisdiction of the state, other courts have followed the federal consensus. In *Green Party of Pennsylvania v. Aichele*, 89 F.Supp. 3d. 723 (E.D. Pa 2015) Judge Dalzell preliminarily enjoined enforcement of the ban on out-of-state circulators for third party candidate nominating petition based on the Fourth Circuit's analysis that out-of-state circulator bans impose a severe burden to First Amendment speech triggering strict scrutiny analysis and holding that a blanket out of state ban on out-of-state circulators was not narrowly tailored to advance the state's important interests when the state court could more narrowly require out-of-state circulators to accept the state's jurisdiction for any post-filing process. *Green Party of Pennsylvania*, 89 F.Supp. 3d. at 739-40. Thereafter, Judge Dalzell ordered the out-of-state ban unconstitutional and permanently enjoining the Pennsylvania circulator ban. Judge Dalzell found the out-of-state circulator ban "sharply limits the reach of the Green Party plaintiffs' message" and "the Green Party plaintiffs have, like their Virginia colleagues, offered to subject out-of-state circulators to the jurisdiction of Pennsylvania courts 'for the express purpose of any investigative and/or judicial procedure with respect to any alleged violation(s) of Pennsylvania election law.'" *Id.* at 742.

In *Libertarian Party of Connecticut v. Merrill*, 2016 WL 10405920 (D. Conn., Jan. 26, 2016) Judge Hall held Connecticut's out-of-state circulator ban for

third party candidate nominating petitions unconstitutional, finding the out-of-state circulator ban to severely impair the First Amendment rights of petition circulators, that strict scrutiny applied, and that the ban was not narrowly tailored to protect the state's important interests. *Libertarian Party of Connecticut* at *5-8. Shortly thereafter, Judge Hall issued a temporary restraining order against Connecticut's out-of-state circulator ban for circulators of major party nominating petitions. *Wilmoth v. Merrill*, 2016 WL 829866 (D. Conn. Mar. 1, 2016). Following the district court's temporary restraining order, the State of Connecticut settled the action agreeing to permanently refrain from enforcing Connecticut's out-of-state circulator ban for circulators of major party candidate nominating petitions.[1] Also in 2016, in *OpenPittsburgh,Org v. Wolosik*, 2016 WL 7985286 (W.D. Pa. Aug. 9, 2016) the United States District Court for the Western District of Pennsylvania, issued a preliminary injunction against Pennsylvania's out-of-state ban on circulators of referendum petitions to amend Home Rule Charters that govern certain Pennsylvania municipalities. Judge Hornak found the out-of-state circulator ban imposed a severe restriction on protected First Amendment speech, strict scrutiny applied, and the ban was not narrowly tailored to advance the Commonwealth's interest when out-of-state circulators could more narrowly

[1] Plaintiffs' counsel in this action was counsel for the Plaintiff in *Wilmoth v. Merrill* and has first hand knowledge of the settlement terms in that action.

submit to the jurisdiction of the Commonwealth rather than the unconstitutional blanket ban on out-of-state circulators. *Id.* at *1-3.

The Third Circuit finally had occasion to review out-of-state circulator bans in 2018, when it reversed a New Jersey district court grant of a motion to dismiss challenging New Jersey's out-of-state circulator ban for circulators of major party candidate nominating petitions. The Third Circuit held that out-of-state circulator bans severely impair First Amendment speech which triggered strict scrutiny analysis. *Wilmoth v. Secretary of State of New Jersey*, 731 Fed. Appx 97, 101-105 (3rd Cir., Apr. 19, 2018). In its unpublished opinion, the Third Circuit panel explained that: "Our *Anderson-Burdick* inquiry in the instant case is quite straightforward. Since the turn of the century, 'a consensus has emerged' that laws imposing residency restrictions upon circulators of nomination petitions "are subject to strict scrutiny analysis." *Id.* citing *Libertarian Party of Virginia v. Judd*, 718 F.3d 308, 316-17 (4th Cir, 2013); *Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023, 1030-31 (10th Cir. 2008); *Nader v. Blackwell*, 545 F.3d 459, 475-76 (6th Cir. 2008); *Nader v. Brewer*, 531 F.3d 1028, 1038 (9th Cir. 2008) *see also Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614, 616-17 (8th Cir. 2001) (applying strict scrutiny review to North Dakota's proscription against nonresident initiative-petition circulators, but concluding that the State had satisfied its burden of proving the law was narrowly tailored to advance North Dakota's compelling interest in

preventing fraud).[2] *Wilmoth*, 731 Fed. Appx at 102. Again, in Pennsylvania, Judge Kane of the United States District Court for the Middle District of Pennsylvania, held that Pennsylvania's ban on out-of-state circulators for major party candidate nomination petitions was unconstitutional as applied to out-of-state party members willing to submit to the jurisdiction of the Commonwealth. *See Benezet Consulting, LLC v. Boockvar*, 433 F.Supp. 3d 670 (M.D. Pa. 2020).

Certainly, *Buckley* did not have the occasion to consider the constitutionality of state residency requirements for initiative and petition circulators, but the analysis of *Buckley* has been properly applied by the vast majority of courts who have considered the issue. The lower court's preliminary injunction analysis is consistent with the proper extension of the Supreme Court's analysis in *Buckley* to different fact patterns. The lower court's analysis in this action is very similar to the Maine district court's decision holding a ban on compensation to petition circulators based on the number of signatures collected unconstitutional in *On Our Terms '97 PAC v. Secretary of State of Maine*, 101 F.Supp. 2d 19 (D. Me. 1999). In *On Our Terms '97 PAC* the court conducted the proper analysis in holding Maine's ban on the

[2] *Initiative & Referendum Inst. v. Jaeger*, was the first case seeking to extend the legal analysis of *Meyer* and *Buckley* to out-of-state circulator bans and the courts in *Jaeger* were presented with a fact pattern different from the case at bar. In *Jaeger*, (unlike this action and every action that followed *Jaeger*) the plaintiffs did not provide evidence that the out-of-state circulators were willing to submit to the jurisdiction of North Dakota for any post-filing judicial process. Accordingly, the *Jaeger* courts never considered that North Dakota's legitimate interests could be more narrowly protected by requiring non-resident circulators to submit to the state's jurisdiction with respect to any petitions filed by them in North Dakota.

payment to circulators of initiative and referendum petitions compensation based on the number of signatures collected unconstitutional. In *On Our Terms '97*, the relevant findings of fact established by the Court found that: (1) the pay-per-signature ban imposed uncertain costs and budget uncertainty on the initiative process decreasing the confidence that the signature collection effort would succeed (*Id.* at 23); (2) initiative petitions had qualified for the ballot under the pay-per-signature ban (*Id.* at 24); (3) collecting signatures for an initiative petition at the polls on Election Day makes it possible to conduct a successful petition drive relying entirely on volunteer circulators (*Id.* at 24); (4) the verification process does not permit adequate time to check for petition fraud (*Id.* at 24); (5) The Secretary of State argued the pay-per-signature ban was necessary to protect against petition signature fraud (*Id.* at 25); (6) no evidence of petition fraud in Maine was provided by the Secretary of State (*Id.* at 25); (7) there are disincentives for backers of initiatives to tolerate the commission of fraud (*Id.* at 25). Despite evidence the pay-per-signature ban did not have the effect of halting initiative petitions and that proponents can qualify an initiative petition using just volunteer circulators, the Court in *On Our Terms '97*, held that:

> I am nonetheless persuaded that the Statute severely burdened the plaintiffs' attempts to mount the Pledge Drive, USTL and OOT, like the plaintiffs in *Meyer*, had begun the process of collecting signatures when they made a judgment call, informed by personal experience with that process, that the state regulation in question posed a significant problem for their initiative campaign. The *Meyer* plaintiffs, judged that

they would need the assistance of paid personnel to obtain the required number of signatures within the allotted time. *Meyer*, 486 U.S. at 417. USTL and OOT judged that the ban on payment per signature would undermine estimates on costs and time frames, threatening the success of the entire Pledge Drive effort. There was no need in either case for the plaintiffs to press their campaigns to completion to demonstrate the burdensome effect of the applicable state regulations.

During the Pledge Drive campaign OOT encountered difficulty recruiting and keeping circulators when offering to pay on an hourly basis. OOT and USTL had reason to believe, based on the personal experience of Jacob and Waters, that to the extent they were able to attract circulators to undertake this inherently stressful work, those workers would be less productive than if paid per signature. Finally, the Statute as worded left doubts in Michael's mind that he could ameliorate its effects by setting minimum standards or rewarding for productivity without subjecting himself to criminal prosecution.

For these reasons the Statute "limit[ed] the number of voices who [would] convey [plaintiffs'] message[,]…limit[ed] the size of the audience they [could] reach" and made it "less likely that [plaintiffs would] garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion." *Id.* at 422-23.

The statute, like the Colorado payment ban, did not completely stifle initiative and referendum activity in Maine, leaving open the possibility of conducting successful signature-gathering campaigns either via volunteers or employing "more burdensome" forms of paying professional circulators. *See id* at 424. That these avenues remained open does not alter the finding that the Statute heavily burdened protected speech.

…

In light of the foregoing, I conclude and declare that under controlling United States Supreme Court precedent the Statute as applied to USTL, OOT and others similarly situated violates the First Amendment. So ordered.

*On Our Terms '97* 101 F.Supp. 2d at 25-26.

Just as *On Our Terms '97* was instructed by the Supreme Court's decision in *Meyer*, this action is properly instructed by the Supreme Court decision in *Buckley*. The findings by the lower court in this action, establishes the same record, the same difficulties, the same impairments in costs and uncertainty, the same threat that the challenged restrictions make it less likely that Appellees' initiative petition will succeed to qualify for the ballot and the same reduction in the pool of available circulators that plaintiffs in *On Our Terms '97* established in the Maine district court proceedings. While *Meyer* did not address the constitutionality of pay-per-signature bans, the analysis employed by the Supreme Court in *Meyer* that bans on compensation reduced the pool of available circulators was a severe impairment to protected speech triggering strict scrutiny analysis was properly extended by the Maine district court to the pay-per-signature ban at issue in *On Our Terms '97*, just as the lower court in this action properly extended the analysis of *Buckley* to Maine's state residency requirement.

With respect to the ability to police petition circulators, the Fourth Circuit's observation in *Judd* on potential resident noncompliance with a subpoena as juxtaposed to a nonresident circulator applies with even equal force in Maine, as there is no requirement in Maine for resident circulators to provide an updated address as a condition to circulating initiative and referendum petitions in Maine.

In fact, Appellee Kowalski's willingness to submit to the jurisdiction of the state of Maine to circulate initiative and referendum petitions provides a greater ability to locate the nonresident circulator over a resident circulator. There is also no requirement for resident circulators to inform Appellants of any change in their address after a petition is filed. As a result, state residency is no guarantee that a Maine resident can be located for the purpose of a subpoena demonstrating that a residency requirement is a far more inferior protection of the state's interest to police petition fraud than a nonresident providing a current address as part of submitting to the jurisdiction of Maine for purpose of any post-filing service of process, investigation and/or prosecution.

Furthermore, there is currently no recorded instant where a nonresident circulator, having submitted to the jurisdiction of a state, has failed to comply with a subpoena issued by a state in which the nonresident circulator filed petitions – a scheme now successfully employed in every jurisdiction which used to impose out-of-state circulator bans but where nonresident circulators are now permitted to circulate ballot access petitions without the evils States predicted would befall them if the ban were struck down as unconstitutional. The foregoing fact makes perfect sense, as most (virtually all) petition circulators who travel to a state to circulate ballot access petitions are professional circulators whose reputation is contingent on their ability to produce a high number and percentage of valid

signatures. Very often, out-of-state professional circulators, such as Appellee Kowalski, are professional circulators who receive payment for signatures collected contingent on attaining a certain high percentage rate of valid signatures (usually in excess of 70%). Accordingly, out-of-state professional circulators have a very high degree of motivation to follow through to the end and assist in any challenge to signatures that they file – the underlying basis of any subpoena or other process (such as a deposition notice) served on the out-of-state circulator. Certainly, out-of-state professional circulators have more incentive to keep themselves available and in touch with the signature validation process than an unpaid, volunteer, Maine resident circulator.

Every federal court of appeals and the vast majority of district courts have determined that a blanket ban on out-of-state circulators is not narrowly tailored to advance the state's legitimate interest in policing petition fraud when they were presented with the narrower option of permitting out-of-state petition circulators to submit to the jurisdiction of the forum state. Every federal court of appeals to have examined cognate facts as presented in this action have determined that requiring the out-of-state circulator to submit to the jurisdiction of the petitioning state is more narrowly tailored to protect the state's interest than a blanket out-of-state circulator ban. In this action, Appellee Kowalski is willing to submit to the jurisdiction of the State of Maine as a condition precedent to being able to lawfully

circulate initiative and referendum petitions in the state of Maine. Accordingly, Appellees have demonstrated a strong likelihood of success on the merits of Appellees' claim challenging the constitutionality of Maine's ban on out-of-state circulators for initiative and referendum petitions.

## III. Appellees' Future Harm is Not Speculative.

On May 25, 2021, Appellees filed with the Secretary of State the necessary documents to qualify their new voter identification initiative to be circulated to the registered voters of the state of Maine. Appellees' Addendum at pp. 001-03.

Appellees' deadline to file their new initiative petitions to secure access to Maine's 2022 general election ballot is January 31, 2022. Accordingly, Appellees will be circulating their new initiative petition using out-of-state professional petition circulators to secure the required 63,067 valid signatures from Maine's registered electorate until at least mid-January, 2022. Accordingly, in the absence of the preliminary injunction issued by the court below, rights guaranteed to Appellees under the First Amendment will be severely impaired.

The constitutional injury to Appellees' First Amendment rights is not being able to use the petition circulators of their choice. The reduction of available petition circulators resulting from and evident on the face of the challenged statute is sufficient to establish Appellees' injury under the First Amendment now and into the future. It is not speculative that a facial reduction of the pool of available

petition circulators occurs when a state excludes unregistered voters and out-of-state petition circulators from being able to lawfully join with Appellees in the circulation of Appellees' initiative petition. Appellants incorrectly attempt to reduce the concept of injury to whether or not the challenged restrictions prevent access to the ballot. Appellants also argue that because out-of-state petition circulators are still free to engage on other forms of speech to assist Appellees in other ways, including standing right beside a Maine registered voter as the Maine resident collects signatures, shows that the challenged statutes do not impair free speech is wholly inaccurate. As explained by the United States Supreme Court in *Meyer*:

> That appellees remain free to employ other means to disseminate their ideas does not take their speech through petition circulators outside the bounds of First Amendment protections....That [the statute] leaves open "more burdensome" avenues of communication, does not relieve its burden on First Amendment expression. The First Amendment protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.

*Meyer*, 486 U.S. at 423-24 (internal citations omitted).

Under the *Meyer* Court's analysis: It does not matter for purposes of this appeal how many initiative and referendum petitions have been able to qualify for Maine's ballot under the challenged restrictions. It does not matter if Appellees could have qualified if they did something different to better cope with the challenged restrictions. It does not matter that those excluded from the circulation

of initiative and referendum petitions can engage in other forms of speech. So long as a restriction reduces the pool of available circulators, such as the challenged voter registration and state residency requirement for initiative and referendum petition circulators do in Maine, strict scrutiny applies and the injury is metastasized because Appellees have a First Amendment right "not only to advocate their cause but also to select what they believe to be the most effective means for so doing." *Meyer* 486 U.S. at 424. The challenged voter registration and state residency requirement for initiative and petition circulators severely impairs Appellees right to "select what they believe to be the most effective means" to collect the required number of valid signatures to secure ballot access, which is to contract with the best professional petition circulators available to Appellees – none of whom are residents of the state of Maine. Accordingly, Appellees constitutional injury is real and not speculative and the preliminary injunction issued by the lower court is necessary for Appellees to be able to collect petition signatures for their new voter identification initiative to be filed in January, 2022.

## IV. Maine's "Considerable Leeway" to Regulate Petition Circulators Does Not Extend to Permit Maine to Exclude Entire Classes of Petition Circulators from Maine's Initiative and Referendum Process.

The "considerable leeway" to regulate petition circulators as part of the regulation of the election process, *Buckley*, 525 U.S. at 191, that Appellants argue support their appeal does not extend to the right to exclude entire classes of

petition circulators from the state of Maine. Appellants' Br. at pp. 18-19. Maine certainly have leeway to dictate who may sign an initiative petition, the dates that petition circulators may validly collect signatures, the method by which signatures are collected, the form of the petition that petition circulators must use to collect signatures, they can require that petition circulators personally witness the collection of a signature and not collect them through the mail and all the other minutiae that States are permitted to require in order for signatures to be collected and filed in support of any ballot access effort. However, what is clear under *Buckley* is that states are not free and they do not have "considerable leeway" under the First and Fourteenth Amendments to exclude entire classes of individuals from circulating ballot access petitions, thereby reducing the pool of available circulators, unless the restriction is narrowly tailored to advance a compelling governmental interest. As discussed above, neither the voter registration nor the blanket state residency requirement is narrowly tailored to advance the state's legitimate interests in policing the petition process.

## V. The Lower Court Did Not Abuse Its Discretion in Extending the Time for Appellees to File Sworn Answers to Appellants' Interrogatories As a Result of the Impact on the Inability for Appellees to Quickly Secure Notary Services During the Pre-Vaccination Environment of the COVID-19 Pandemic.

Plaintiffs-Appellees initially filed signed answers to Defendants-Appellants' interrogatories, but did not file sworn answers because they were not able to secure

the services of a notary public prior to the time set to file their answers. After representing that Plaintiffs-Appellees were diligently attempting to secure sworn answers to the Court, the Court extended the time for Plaintiffs-Appellees to file sworn answers to February 20, 2021. Plaintiffs-Appellees filed their sworn answers to Defendants-Appellants' interrogatories on February 19, 2021. Appellees' sworn answers are identical in all respects to the signed answers previously timely filed.

It is not an abuse of discretion for a court to extend the time for a party to accomplish a required act. Appellees could find no authority supporting Appellants' objections to a court extended the time to file sworn answers in consideration of some exigent circumstance beyond the control of the answering party, especially where the subsequently filed sworn answer was identical to the previously timely filed signed answers causing no prejudice to the other party.

Furthermore, to Appellants' objections, all Plaintiffs who signed the answer to Defendants' Interrogatories did have full knowledge as to everything contained in the answer. Appellants' Br. at p. 17. All Appellees were fully aware and consulted as to the veracity of each answer provided to Defendants' interrogatories. This legal terrain is not new to any of the Appellees, and all are equally knowledgeable of all answers provided.

## CONCLUSION

For all the foregoing stated reasons, the decision of the court below preliminarily enjoining Maine's voter registration and state residency requirement for initiative and referendum petition circulators should be affirmed.

Respectfully submitted,

Dated: May 25, 2021

**/s/ Paul A. Rossi**
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Partner - IMPG Advocates
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## CERTIFICATE OF COMPLIANCE

Appellees' Brief is submitted pursuant to Federal Rule of Appellate Procedure 32(a)(7)(B). I hereby certify that the foregoing brief complies with the type-volume limitations set forth in Rule 21(a)(7)(B) limiting a brief to 13,000 words. In support of this Certification, Appellees' legal counsel relied on the word count function of the word-processing software used to draft this brief – Microsoft Word 2010, which reports the foregoing brief consists of 9,376 words. I further hereby certify that the foregoing brief is proportionally spaced using Times New Roman 14-point font.

Dated: May 25, 2021

**/s/ Paul A. Rossi**

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## CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(d), Appellees, by and through their undersigned legal counsel, Paul A. Rossi, hereby certify that on this date, the 25th day of May, I filed the foregoing Appellees' Brief electronically using the Court's ECF system. I further certify that on this date, the 25th day of May, 2021, I caused to be served the foregoing brief electronically on the following individuals. Who are ECF filers, via the Notice of Docket Activity:

JASON ANTON
JONATHAN BOLTON
Assistant Attorneys General
Six State House Station
Augusta, ME 04333-0006
*Attorneys for Appellants*

Dated: May 25, 2021

**/s/ Paul A. Rossi**
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# APPELLEES' ADDENDUM

## Appellees' Addendum Table of Contents

# STATE OF MAINE
# APPLICATION FOR CITIZEN INITIATIVE

**APPLICANT INFORMATION:** (List the contact person for the initiative proponents.)

Name of Applicant William R Faulkingham billybob518709@msn.com

Mailing Address: PO Box 121

Municipality of Residence Winter Harbor, ME 04693

Home Phone: 207 460 6967 Work Phone N/A FAX N/A

I hereby invoke the citizen initiative procedure provided for by the Constitution of Maine, Article IV, Part Third and governed by Title 21-A M.R.S.A. Chapter 11. Attached is a draft of the legislation for consideration under these provisions

Signature of Applicant

Subscribed and sworn before me on

5/25/2021

(Date)

[signature], Esq. ME Bar # 007451

(Signature of Notary Public or Agent of the Secretary of State)

John C. Bott, Esq.

(Print Name of Notary Public or Agent of the Secretary of State)

**DESIGNATED VOTER INFORMATION:** (List five voters, other than the applicant, to receive notices of proceedings.) Please list voter's name, as it appears on the voting list, the mailing address, telephone number, (if published), the municipality of legal residence (where registered to vote), and voter's signature

1. Carrie Faulkingham
PO Box 121
Winter Harbor ME 04693
Phone 207 963 2224
Municipality of Residence Winter Harbor
Signature Carrie Faulkingham

2. Rebecca Faulkingham
PO Box 71
Winter Harbor ME 04693
Phone 207-963-2955
Municipality of Residence Winter Harbor
Signature Rebecca Faulkingham

3. Patrick O. Faulkingham
PO Box 71
Winter Harbor, ME 04693
Phone 207 460 5989
Municipality of Residence Winter Harbor
Signature Patrick Faulkingham

4. Herman P Faulkingham
PO Box 551
Winter Harbor, ME 04693
Phone 207 610-0022
Municipality of Residence
Signature

5. Justin Fecteau
7 Davis St
Augusta, ME 04330
Phone 207-248-7185
Municipality of Residence Augusta
Signature

RECEIVED
MAY 25 2021
SECRETARY OF STATE
AUGUSTA MAINE

# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

**Legislative Document** **No. 1083**

H.P. 798 House of Representatives, March 11, 2021

**An Act To Create a Voter Identification System**

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative FAULKINGHAM of Winter Harbor.
Cosponsored by Representatives: CONNOR of Lewiston, FECTEAU of Augusta, SAMPSON of Alfred.

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 21-A MRSA §671, sub-§1,** as amended by PL 2019, c. 371, §20, is further amended to read:

**1. Name announced.** A voter who wishes to vote must present proof of identity in the form of a photograph identification document and state the voter's name and residence address to an election clerk, who shall announce the name in a loud, clear voice. If the voter's stated residence address is different from the residence address listed on the incoming voting list, the voter must be directed to complete an updated voter registration application before voting. For purposes of this subsection, "photograph identification document" means a current and valid driver's license or nondriver identification card issued in this State, a United States passport, a military identification or a permit to carry a concealed handgun issued under Title 25, chapter 252 if that permit includes a photograph. "Photograph identification document" does not include an identification issued by a college or university in this State.

**Sec. 2. 21-A MRSA §671, sub-§9** is enacted to read:

**9. Special voter photograph identification card.** Notwithstanding subsection 1, a voter who wishes to vote and who does not possess a photograph identification document may request from the Secretary of State a special voter photograph identification card, which must be issued free of charge and is valid for voter identification under this section. The Secretary of State shall establish procedures through rulemaking for the issuance of special voter photograph identification cards under this subsection. Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A.

**Sec. 3. Effective date.** This Act takes effect January 1, 2022.

## SUMMARY

This bill requires the presentation of proof of identity in the form of a photograph identification document when voting in person. Acceptable photograph identification is a current and valid driver's license or nondriver identification card issued in this State, a United States passport, a military identification or a permit to carry a concealed handgun issued in this State if that permit includes a photograph. An identification issued by a college or university in this State may not be accepted for voter identification. The bill also allows a person who does not possess a photograph identification document to request a free special voter photograph identification card from the Secretary of State.

RECEIVED
MAY 25 2021
OFFICE OF SECRETARY OF STATE
AUGUSTA, MAINE