

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
DOCKET NO. _____

ROGER BIRKS, JOHN BLACK,)
DAVID BOYER, ERIC BRAKEY,)
ERIN CANAVIN, CHRISTINA)
JONES, OLGA LaPLANTE,)
MATTHEW MALONEY, PAUL)
McCARRIER, TOM OBEAR,)
BETHANY PROFAIZER,)
SAMANTHA ROCRAY, DIANE)
RUSSELL, and LUKE SIROIS,)
)
Petitioners)
)
v.)
)
SECRETARY OF STATE)
MATTHEW DUNLAP,)
)
Respondent)

PETITION FOR REVIEW OF FINAL
AGENCY ACTION (M.R. Civ. P. 80C)

Pursuant to 21-A M.R.S.A. § 905(2) and Maine Rule of Civil Procedure 80C, the Petitioners hereby petition this Court to review and overturn the Secretary of State’s determination that the Direct Petition for Initiated Legislation entitled “An Act to Legalize Marijuana” (the “Direct Petition”) was invalid for failure to submit a sufficient number of valid signatures. Petitioner contends that the Secretary of State improperly invalidated a significant number of signatures, and that, absent these improper invalidations, the Direct Petition meets the requirements of the Maine Constitution, Article IV, Part Third, Section 18.

JURISDICTION AND VENUE

1. This court has jurisdiction over Petitioner’s claims pursuant to 21-A M.R.S.A. § 905(2) and 5 M.R.S.A. § 11001.
2. Venue is proper under 5 M.R.S.A. § 11002(1)(B).

PARTIES

3. Petitioner Roger Birks is a resident of the State of Maine and a registered voter and is one of the voters named in the application for the Direct Petition filed with the Secretary of State pursuant to 21-A M.R.S.A. § 901. Mr. Birks has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

4. Petitioner John Black is a resident of the State of Maine and a registered voter and is one of the voters named in the application for the Direct Petition filed with the Secretary of State pursuant to 21-A M.R.S.A. § 901. Mr. Black has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

5. Petitioner David Boyer is a resident of the State of Maine and a registered voter and is a person who validly signed the Direct Petition. Mr. Boyer has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

6. Petitioner Eric Brakey is a resident of the State of Maine and a registered voter and is a person who validly signed the Direct Petition. Mr. Brakey has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

7. Petitioner Erin Canavin is a resident of the State of Maine and a registered voter and is a person who validly signed the Direct Petition. Ms. Canavin has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

8. Petitioner Christina Jones is a resident of the State of Maine and a registered voter and is a person who validly signed the Direct Petition. Ms. Jones has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

9. Petitioner Olga LaPlante is a resident of the State of Maine and a registered voter and is a person who validly signed the Direct Petition. Ms. LaPlante has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

10. Petitioner Matthew Maloney is a resident of the State of Maine and a registered voter and is a person who validly signed the Direct Petition. Mr. Maloney has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

11. Petitioner Paul McCarrier is a resident of the State of Maine and a registered voter and is one of the voters named in the application for the Direct Petition filed with the Secretary of State pursuant to 21-A M.R.S.A. § 901. Mr. McCarrier has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

12. Petitioner Tom Obear is a resident of the State of Maine and a registered voter and is one of the voters named in the application for the Direct Petition filed with the Secretary of State pursuant to 21-A M.R.S.A. § 901. Mr. Obear has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

13. Petitioner Bethany Profaizer is a resident of the State of Maine and a registered voter and is a person who validly signed the Direct Petition. Ms. Profaizer has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

14. Petitioner Samantha Rocray is a resident of the State of Maine and a registered voter and is a person who validly signed the Direct Petition. Ms. Rocray has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

15. Petitioner Diane Russell is a resident of the State of Maine and a registered voter and is a person who validly signed the Direct Petition. Ms. Russell has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

16. Petitioner Luke Sirois is a resident of the State of Maine and a registered voter and is a person who validly signed the Direct Petition. Mr. Sirois has suffered, and will continue to suffer, a particularized injury due to the Secretary of State's determination that the Direct Petition will not be presented to the voters of Maine at the November, 2016, election.

17. Respondent Matthew Dunlap, in his capacity as Secretary of State of the State of Maine, is the official designated by 21-A M.R.S.A. § 905(1) to determine the validity of all proposed Petitions for Initiated Legislation.

FACTUAL BACKGROUND

Maine's Constitution and the Initiative Petition Process

18. As set forth in the Maine Constitution, the citizens of Maine have a right to "propose to the Legislature for its consideration any bill, resolve or resolution." ME CONST.

Art IV, Part 3, § 18(1).

19. Maine voters may exercise this constitutional right by collecting signatures on a petition, equal to at least 10% of the total vote for Governor cast in the prior gubernatorial election. ME CONST. Art IV, Part 3, § 18(2).

20. The Constitution imposes specific, limited requirements on the collection of signatures. First, the person collecting signatures—the “circulator”—must be a resident of the State of Maine and must be registered to vote in the municipality or plantation of the circulator’s residence. ME CONST. Art IV, Part 3, § 20.

21. Second, signatures must be collected in the presence of the circulator who must, after signatures are collected, take an oath that all signatures were collected in person, 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. The oath of the circulator must be sworn to in the presence of a person authorized by law to administer oaths. This could include a notary public, although attorneys and other persons may administer oaths in Maine. *Id.*

22. Third, all petitions must be submitted to the appropriate municipal clerk, or other local official authorized by law to maintain the voting lists, so that the municipal official can confirm that each signer is registered to vote. *Id.*

23. Finally, after the signatures are verified by the circulators and confirmed by the municipal officials, the petition is addressed to the Legislature, and filed in the Office of the Secretary of State, within 50 days of the commencement of the first regular session of the Maine Legislature, or within 25 days of the convening of the Legislature’s second regular session. ME CONST. Art IV, Part 3, § 18(1).

24. If the petition satisfies these criteria, and if the proposed legislation is not enacted by the Legislature without change, the proposed legislation must be submitted to the voters for consideration in the next November election. *Id.* The Constitution does not authorize imposition of other criteria.

25. The Maine Supreme Court has noted that the broad purpose of the direct initiative process is the encouragement of participatory democracy. The people of Maine, as sovereign, have retained the authority to enact laws, independent of the similar right accorded to the Maine Legislature.

26. The Maine Supreme Court has also determined that this process—the circulation of direct initiative petitions—is core political speech protected by the Maine Constitution. This right of the people to initiate and seek to enact new legislation is an absolute right, which may not be abridged, directly or indirectly, by any action by the Maine Legislature or the Secretary of State.

The Limited Role of the Maine Legislature

27. The Constitution provides that the Legislature may enact laws “not inconsistent with the Constitution to establish procedures for determination of the validity of written petitions.” ME CONST. Art IV, Part 3, § 22.

28. Any such legislative pronouncement must respect the substance of the constitutional right reserved to the people by Article IV, Part 3.

29. Such statutory provisions are to be interpreted narrowly, and the constitutional right broadly, to facilitate the people’s exercise of their sovereign power to legislate.

30. Relevant to this petition, the Legislature has enacted several provisions that govern the verification of ballot initiative signatures.

31. Petitions must be signed, verified and certified in the same manner as nonparty nominating petitions, meaning that signers must personally sign the petition and must include their address, so that the local registrar can confirm each signer is a registered voter in the state.

32. Mirroring the language in the Constitution, the circulator must sign the petition and verify the petition by oath, before a person authorized by law to administer oaths, 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.

33. Following review by the municipal officials, the petition is filed with the Secretary of State, who then reviews the petition and determines the "validity" of the petition. The relevant statute, Section 905(1) of Title 21-A, does not provide any specific standards for determining whether petitions are "valid," other than the procedural requirements stated above.

34. The Secretary of State is constrained to require a constitutional or statutory basis to invalidate a petition for initiated legislation.

Circulation and Submission of the Petition

35. Beginning in 2015, a number of Maine citizens began circulating petitions for voter signature pursuant to the Constitution of the State of Maine, Article IV, Part Third, Section 18 and 21-A M.R.S.A. § 901 *et seq.*, seeking to trigger a statewide referendum on the Direct Petition, "An Act to Legalize Marijuana."

36. In compliance with the requirements of 21-A M.R.S.A. § 903-A, the circulators solicited signatures for the petition by presenting the Direct Petition to voters, asking each voter to sign the petition, and personally witnessing the voter affixing the voter's signature to the petition.

37. Circulators obtaining signatures for the Direct Petition followed the certification procedures set forth by 21-A M.R.S.A. § 902. The circulators personally signed the petitions and verified by oath or affirmation before a notary public, or other person authorized to administer oaths, 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.

38. On February 1, 2016, approximately 20,671 petitions containing 99,229 signatures were submitted to the Secretary of State for consideration of the Direct Petition.

39. In order to be presented to the voters, the Direct Petition required only 61,123 valid signatures in support.

The Secretary of State's Determination

40. On March 2, 2016, the Secretary of State issued a Determination of the Validity of a Petition for Initiated Legislation (the "Determination"). The Secretary of State invalidated 47,686 of the 99,229 signatures, leaving only 51,543 valid signatures. Accordingly, the Secretary of State found the petition to be invalid for lack of sufficient signatures.

41. In his Determination, the Secretary of State identified numerous reasons for invalidating signatures. The largest number of signatures (31,338) were deemed invalid "because the circulator's signature on the circulator's oath or the signature of the notary listed as having administered the oath did not match the signature on file and it could not be determined that the signature was made by that person." Determination §2(A).

42. Based on the findings and conclusion in the Determination, of these 31,338 signatures, approximately 26,779 of them (the "OATSIG" signatures) were invalidated solely

due to the Secretary of State's finding that the signatures of the notary did not "match" the signature on file.

43. The Secretary of State also found that "[a] single individual was listed as the notary on 5,099 petitions containing the [OATSIG] signatures."

44. Upon information and belief the notary referenced in Section 2(A) of the Determination is Stavros Mendros.

45. Based on the findings and conclusions in the Determination, it appears that the Secretary of State concluded that not one of Mr. Mendros' 5,099 signatures matched the signature on file.

46. Although the petitions notarized by Mr. Mendros and three other notaries were invalidated on the basis that the notaries' signatures did not match the signature on file, all four of these notaries also submitted petitions as circulators, and, upon information and belief, none of those petitions were invalidated due to alleged discrepancies between the signatures on the petitions and the circulators' signatures on file.

47. For example, one of the notaries, Elliot Chicoine, signed 35 petitions as a circulator and 189 petitions as a notary. His signature is the same on all 224 documents. The Secretary of State invalidated all 189 petitions signed by Mr. Chicoine as notary. In contrast, every one of the 35 petitions signed by Mr. Chicoine as a circulator was validated.

48. Further, and upon information and belief, the Secretary of State determined that signatures on at least one petition circulated by Mr. Mendros were valid, even though Mr. Mendros' signature as circulator is the same as his notary signature.

49. Upon information and belief, the Secretary of State has determined, in petitions submitted in prior ballot measures, that petitions notarized by Mr. Mendros, and their associated signatures, were valid.

50. The Secretary of State has drafted instructions for staff review of initiative petitions. These instructions state that, “[i]f you question the signature of a notary, compare it to the most recent signature on file” and if “the signature does not match the signature on file” the entire petition should be invalidated. The instructions provide no guidance for how to “match” the signature of the notary to the one on file.

51. Upon information and belief, the Secretary of State’s office did not even review every notary signature invalidated on the grounds that the signature did not “match” the signature on file. Instead, the Secretary of State reviewed a portion of the notaries’ signatures, and then disallowed all petitions signed by those notaries.

52. Not only is this practice unlawful, but it appears to violate the Secretary of State’s own instructions, which require petition reviewers to use the “OATSIG” designation as a “secondary reason” for invalidating a petition. Thus, a petition may be invalidated for “OATSIG” only after the petition is reviewed and assessed for other violations.

53. The instructions also suggest that the “OATSIG” designation is to be used only in limited circumstances, warning reviewers: “[d]o not invalidate for OATSIG without checking with your immediate supervisor.”

54. In his Determination, the Secretary of State does not include any specific factual findings explaining how the signatures differed from those on file with the Secretary of State’s office.

55. Neither the Constitution nor the governing statute authorize the Secretary of State to disqualify an otherwise valid petition based on a subjective comparison of signatures performed by a non-expert employee.

56. As will be shown in this proceeding, each one of the petitions cited by the Secretary of State in Section 2(A) of the Determination was signed and notarized by the notary public listed on each petition.

57. As will be shown in this proceeding, each one of the petitions cited by the Secretary of State in Section 2(A) of the Determination was signed by the circulator listed on each petition.

58. As will be shown in this proceeding, each one of the petitions cited by the Secretary of State in Section 2(A) of the Determination was signed, and the oath taken, by the circulator in the presence of the person authorized to administer oaths.

59. As noted by the Secretary of State in media reports following issuance of the Determination, the Secretary of State's normal protocol is to contact circulators or notaries when there are questions or concerns regarding signatures, or the validity of the related petitions.

60. Further based on statements by the Secretary of State's office, this is done to ensure the "integrity" of the process of validating signatures.

61. In making his Determination the Secretary of State did not contact any of the circulators, any of the notaries, or the proponents of the Direct Petition, in order to seek further clarification regarding discrepancies in the form of any signatures. This notwithstanding the fact that the Secretary of State's office did contact the proponents of the Direct Petition with questions regarding some circulators' addresses.

62. As such, prior to disenfranchising more than 26,000 voters, the Secretary of State concluded he “could not determine” the validity of the circulator or notary signatures, but took no reasonable action to attempt to do so.

COUNT I

Review of the Secretary of State’s Determination Pursuant To 21-A M.R.S.A. § 905 and M.R. Civ. P. 80(C)

63. Petitioners repeat and reallege paragraphs 1 through 62 as if fully set forth herein.

64. As noted in Part 2(A) of the Determination, the Secretary of State invalidated the OATSIG signatures on the sole basis that “the circulator’s signature on the circulator’s oath or the signature of the notary listed as having administered the oath did not match the signature on file and it could not be determined that the signature was made by that person.”

65. The Secretary of State’s Determination to invalidate these signatures on the grounds that, based on a visual inspection, some of the signatures did not, in the Secretary’s opinion, “match” the signatures on record, is unlawful and should be reversed by this Court.

66. There is no provision in the Constitution of the State of Maine or 21-A M.R.S.A. § 901 *et seq.* that permits the Secretary of State to invalidate petitions or signatures based on his subjective visual evaluation of the signatures on the petitions.

67. The Constitution of the State of Maine and 21-A M.R.S.A. § 901 *et seq.* both permit persons, who do not have a signature on file with the Secretary of State’s office, to administer the circulator’s oath.

68. Furthermore, there is insufficient factual basis in the record to support the Secretary’s determination that the signatures of the circulators and/or the notary did not, in fact, match the signatures in the Secretary of State’s records.

69. The Secretary of State's decision to invalidate the OATSIG signatures:
(a) exceeded the statutory authority of the Secretary of State; (b) is grounded in an error of law;
(c) is unsupported by substantial evidence in the record; and (d) is arbitrary, capricious, and
constitutes an abuse of discretion.

70. For the reasons set forth above, the Secretary's decision should be overturned, and
the OATSIG signatures should be found valid. With the addition of these signatures, the Direct
Petition has a sufficient number of supporting signatures, is valid, and must be submitted to the
voters of the State of Maine in the November, 2016, election.

COUNT II
Violation of Petitioners' Rights Under the Maine and U.S. Constitutions

71. Petitioners repeat and reallege paragraphs 1 through 70 as if fully set forth herein.

72. The circulation, signing, filing and submittal to voters of direct initiative petitions
constitute core political speech protected by the Maine and United States Constitutions.

73. This right of the people to initiate and seek to enact new legislation is an absolute
right, which may not be abridged, directly or indirectly, by any action by the Maine Legislature
or the Secretary of State.

74. The Secretary of State's invalidation of the OATSIG signatures on petitions
submitted for the Direct Petition unconstitutionally restricts the petitioners' and the signatories'
rights of free speech and expression protected by the Maine Constitution, Article I, Section 4,
and the First and Fourteenth Amendments to the U.S. Constitution.

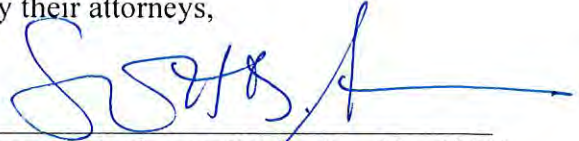
75. To the extent the Secretary of State alleges that Chapter 11 of Title 21-A supports
the invalidation of the OATSIG signatures, the relevant sections of Chapter 11 of Title 21-A are
not narrowly tailored to achieve a compelling governmental interest, nor are they the least
restrictive means for achieving any such interest.

WHEREFORE, Petitioner respectfully requests that this Court issue an order vacating and reversing the Determination of the Secretary of State and remanding the matter to the Secretary of State for issuance of a Determination that the Petition for Initiated Legislation Entitled "An Act to Legalize Marijuana" is valid.

ROGER BIRKS, JOHN BLACK, DAVID BOYER, ERIC BRAKEY, ERIN CANAVIN, CHRISTINA JONES, OLGA LaPLANTE, MATTHEW MALONEY, PAUL McCARRIER, TOM OBEAR, BETHANY PROFAIZER, SAMANTHA ROCRAY, DIANE RUSSELL, and LUKE SIROIS,

Dated: 3/10/2016

By their attorneys,



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