

STATE OF MAINE
SECRETARY OF STATE

In re: Challenges of Nathan Berger, Anne Gass, and Sandra Marquis to Nomination of Slate of Presidential Electors to Support Dr. Cornel West

**DECISION OF THE
SECRETARY OF STATE**

This consolidated matter involves two challenges to the candidate petition, filed with my office on July 30, 2024, pursuant to 21-A M.R.S.A. § 354 (2024), to nominate a slate of presidential electors to support Dr. Cornel West for the office of President of the United States (the “Petition”). One challenge is from Nathan Berger (“Berger”) of Portland, Maine. The second challenge is from Anne Gass of Gray and Sandra Marquis (together, “Gass”) of Lewiston. Both challenges were brought under 21-A M.R.S.A. § 356(2) (2024).

The challenges allege fraud by a circulator of Dr. Cornel West’s candidate petition and errors on the part of the municipal registrars and the Department of Secretary of State in reviewing the petitions. It is extraordinarily important to the public confidence in our elections that the process be fair and free from fraud and that election administration be accurate. I have a responsibility to the voters of the State of Maine to ensure that the rights of voters are protected every step of the way from nominating candidates to casting ballots. Our democracy depends upon the free and fair exercise of the constitutional rights of the citizenry.

Upon review of the proceedings and the evidence before me, I conclude that some signatures were gathered fraudulently, and I reject the petition forms that contain those signatures. However, the bad actions of one should not impugn the valid First Amendment rights of the many.

I have also reviewed in great detail the evidence presented by the challengers regarding alleged errors by local and state election officials in certification of the signatures. While other states across the country may direct election officials to exclude voters from duly participating in our elections processes on the basis of scrivener’s quibbles, Maine does not. Our election laws are grounded in encouraging full and fair voter participation, and the registrars acted appropriately in certifying signatures for voters that they could verify regardless of whether a voter signed with a nickname or dated the petition with the day and month only.

On the basis of the evidence presented to me at the hearing and the reasons outlined below, I therefore conclude that there are a sufficient number of valid signatures submitted by the Campaign for Dr. West to appear on Maine’s presidential ballot and otherwise reject the challengers’ arguments for invalidating the Petition.

PROCEDURAL HISTORY

The Cornel West Campaign (the “Campaign”) filed the Petition with my office on July 30, 2024, where it was reviewed and accepted by Elections Division staff. Staff determined that

the Petition contained a total of 4,978 valid signatures. Per 21-A M.R.S.A. § 356(2)(A), challenges to the Petition had to be filed by 5 pm on August 8, 2024.

On August 8, 2024, Berger and Gass timely filed challenges to the Petition. Berger alleges that the petition was invalid because it exceeded the maximum number of signatures specified in 21-A M.R.S.A. § 354(5)(A) and, in the alternative, that specific signatures on the petition were invalid due to one or more of 26 specified irregularities. Gass alleges that the petition should be invalidated due to fraud perpetrated by petition circulators and further alleges that individual petition signatures should be invalidated due to one or more of seven categories of alleged irregularities.

On the morning of August 9, 2024, a notice of hearing was issued by email and regular mail to the challengers and a representative of the Campaign. Consistent with the statutory requirement that a hearing be held within seven days of the final date for filing challenges, the notice scheduled a hybrid in-person/remote hearing for August 14, 2024, at 1 pm, in Augusta.

A pre-hearing conference was held at 9:00 am on August 12, 2024. At that conference, the parties discussed hearing procedures and Gass's request that she be permitted to offer into evidence declarations signed without a notary-administered oath but over a statement that they were signed under penalty of perjury. Both Challengers also requested that data from the Central Voter Registration system be made available at the hearing to support their allegations that certain signatures on the petition were invalid. In an order issued following the conference, the parties were asked to brief the admissibility of unsworn declarations and whether CVR data, which is confidential under 21-A M.R.S.A. § 196-A (2024), should be made available to the parties. Both Challengers filed briefs on this question, though the Campaign did not.

On August 12, 2024, Gass requested issuance of four subpoenas for the Campaign's four designated presidential electors. Although these subpoenas were duly issued on the morning of August 13, 2024, Gass withdrew her subpoena request after reaching an agreement with the Campaign that it would voluntarily produce a witness at hearing with knowledge of the Campaign's activities.

The adjudicatory hearing was held as scheduled on August 14, 2024, at 1 pm. All parties were present in-person or remotely. At the start of the hearing, I made the following exhibits part of the administrative record:

- the original petition of the electors, as processed by the municipal registrars and the Elections Division, Department of Secretary of State (SOS Ex. 1);
- the tally tapes showing the Election Division's calculation of the number of valid signatures on the petitions (SOS Ex. 2);
- the challenge filed by Berger, dated August 8, 2024, and attachments (SOS Ex. 3);
- the challenge filed by Gass, dated August 8, 2024 (SOS Ex. 4); and
- the Notice of Hearing, dated August 9, 2024 (SOS Ex. 5).

The following witnesses testified under oath:

Gass

Richard McCoy
Meryl Poulin
Michael Kuhn
Ceyanna Dent
Alex Coronado
Andrew Roth-Wells
Elizabeth Wester

Berger

Benjamin Messner

The Campaign engaged in cross-examination of each of the above witnesses but declined to call any witnesses of its own.

In addition, the following exhibits were admitted without objection:

Gass/Marquis

Gass Ex. 10: declaration of Meryl Poulin
Gass Ex. 13: declaration of Rich McCoy
Gass Ex. 16: declaration of Michael Kuhn
Gass Exs. 19–26: spreadsheets listing petition signatures with alleged irregularities
Gass Ex. 27: Patrick Powers LinkedIn profile
Gass Ex. 28: MA Corporations Business Entity Summary
Gass Ex. 29: Petition Organization Registration Application for Ballot Access Management, LLC
Gass Ex. 30: Petition Organization Registration Application for Revolution Field Strategies
Gass Ex. 31: Petition Organization Registration Application for JEF Associates LLC
Gass Ex. 32: Petition Organization Registration Application for Ben Chipman

Berger

Berger Ex. A: native spreadsheet listing petition signatures with alleged irregularities
Berger Ex. B: Cornel West petition as produced by Secretary of State¹
Berger Exs. C–T: spreadsheets listing petition signatures with alleged irregularities

Campaign

¹ Berger Exhibit B is a duplicate of SOS Exhibit 1—a set of seven high-quality color scans of the original petition submitted by the West campaign. Although the original paper petition forms are held by my office and were available for my (or the parties’) inspection if necessary, both I and (to the best of my knowledge) the parties have relied entirely on the electronic scans of the petitions during this challenge. I find that these electronic scans were of sufficient quality and detail to resolve all challenges brought by the parties.

The Campaign did not offer any exhibits.

The Campaign objected to the admission of Gass Exhibits 8–9, 11–12, 14–15, and 17–18, all of which were declarations signed under penalty of perjury by individuals who were not present at the hearing. These declarations were admitted provisionally, subject to my determination of whether they satisfy the requirements of 5 M.R.S.A. § 9057 (2013).

I also made Deputy Secretary of State Julie Flynn available to the parties at the hearing to perform queries of the CVR system under oath at the request of any party. No parties requested that Deputy Secretary Flynn perform any queries during the testimonial portion of the hearing.

Following the close of the testimonial portion to the hearing, the parties were invited to submit written closing arguments by 5 pm on Friday, August 15, 2024. I requested orally, and again via a procedural order issued August 15, 2024, that the parties address certain questions in their closing arguments, in addition to any other topics they wished to present. All parties submitted arguments.

RULING ON ADMISSIBILITY OF DECLARATIONS

As noted above, Gass Exhibits 8, 9, 11, 12, 14, 15, 17, and 18 are declarations by individuals that are signed over a printed statement that reads “the above statements are based on my personal knowledge, and I declare under penalty of perjury that the foregoing is true and correct.” The declarations do not contain a certificate indicating that a notarial officer administered an oath or affirmation to the witness or confirmed their identity. *See* 4 M.R.S.A. §§ 1902(5), 1905(2), 1917(3) (Supp. 2024). Ms. Gass and Ms. Marquis seek admission of these declarations under 5 M.R.S.A. § 9057(5).²

Section 9057(5) provides that “[n]o sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.” Also relevant is section 9057(3), which requires that “[a]ll witnesses shall be sworn.”

The Law Court has recognized that the Administrative Procedure Act’s (“APA”) oath requirement is “more than a mere technicality” and that acceptance of unsworn testimony can constitute reversible error by the agency. *Sewall v. Spinney Creek Oyster Co.*, 421 A.2d 36, 39 (Me. 1980) (quoting *Paradis v. Webber Hosp.*, 409 A.2d 672, 675 (Me. 1979)); *see also Maddocks v. Unemployment Ins. Comm’n*, 2001 ME 60, ¶ 15, 768 A.2d 1023. Emphasizing the importance of the oath requirement, the Court has further held that the usual rule of procedural default does not apply to a failure to object to unsworn testimony, at least “[w]hen a party is not aware, or is not chargeable with responsibility to be aware, of the requirement to swear witnesses.” *Sewall*, 421 A.2d at 39–40.

² The declarations marked Exhibits 10, 13, and 16, were admitted at hearing without objection, since the declarants appeared at the hearing, adopted their declarations under oath, and submitted to cross-examination.

Gass argues that the proffered declarations are “sworn” by virtue of the fact that the document indicates that the witness is making the statements under penalty of perjury. She cites a Law Court decision and three Superior Court decisions (all authored by the same Justice) as supporting her position that a declaration is sworn.

After reviewing these authorities, I am not persuaded that the declarations are, in fact, “sworn” within the meaning of the APA. The Maine Revised Statutes define “sworn” to refer to a required “oath” and “every necessary subscription to such oath.” 1 M.R.S.A. § 72(23) (Supp. 2024). Under Maine law, oaths are administered by notarial officers, who are required by law to “determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.” 4 M.R.S.A. § 1905(2). The declarants at issue here did not submit to that process before a notarial officer.

It is true that declarations are permissible under federal law. But they are permissible because Congress has passed a statute expressly allowing for the use of declarations in federal proceedings. 28 U.S.C.A. § 1746 (Westlaw through Pub. L. No. 118-78); see *Toledo Bar Ass’n v. Neller*, 809 N.E.2d 1152, 1153 (Ohio 2004) (observing that section 1746 applies only to federal proceedings and leaves states free to set their own policies concerning affidavits). Moreover, the federal declaration statute is notable in its phrasing: it provides that parties may utilize an “unsworn declaration” in lieu of a “sworn declaration, verification, certificate, statement, oath, or affidavit” if it is “subscribed by [the witness] as true under penalty of perjury.” 28 U.S.C.A. § 1746. The declarations offered here would thus be considered “unsworn declarations” under the federal statute.

Maine has no similar statute allowing use of unsworn declarations in lieu of sworn written testimony. I therefore conclude that, even if the declarations otherwise complied with the requirement for written testimony that the witnesses be available for cross-examination or subject to subpoena, they are not “sworn” declarations, and are therefore inadmissible under 5 M.R.S.A. § 9057(3).

The caselaw cited by Gass does not alter my analysis. *Franchini v. Investor’s Bus. Daily, Inc.*, 2022 ME 12, 268 A.3d 863, merely notes, in the context of a certified question from a federal court of appeals concerning Maine’s anti-SLAPP statute, that unsworn declarations filed in that case in *federal* court “are equivalent to affidavits filed in Maine courts.” *Id.* ¶ 7 n.5. *Franchini* thus merely describes the right to use unsworn declarations in federal proceedings under 28 U.S.C.A. § 1746; it does not suggest that such unsworn declarations would be acceptable if filed in a state-court proceeding. Moreover, the three Superior Court decisions cited by Gass, which seem to accept the use of unsworn declarations in certain procedural contexts, are not binding authority—indeed two decisions refused to consider the statements for other reasons, making their observations dicta—and each cite 28 U.S.C.A. § 1746 as authority for considering unsworn declarations under penalty of perjury in lieu of sworn statements. See *Diggins v. Jeld-Wen Inc.*, No. CV-19-167, 2021 WL 3651828, at *1 n.1 (Me. Super. Mar. 5, 2021); *Mank v. MSAD 15*, No. CV-14-320, 2015 WL 6086154, at *2 n.2 (Me. Super. Sep. 24, 2015); *Mazerolle v. Daimlerchrysler Corp.*, No. CV-01-581, 2005 WL 6964922, at *6 n.5 (Me. Super. May 24, 2005). I respectfully disagree with the Superior Court Justice who authored all

three of these opinions that 28 U.S.C.A. § 1746 authorizes witnesses in state proceedings in Maine to submit unsworn declarations in lieu of sworn affidavits. *See Toledo Bar Ass'n.*, 809 N.E.2d at 1153.

Finally, I note that two of the declarants signed the declarations by DocuSign because they were “on a boat off the coast of Maine.” *See* Gass Pre-Hearing Brief at 2 n.1; Gass Exs. 14, 15. These exhibits are inadmissible for the additional reason that, even if these declarations could be considered “sworn,” the witnesses were not, as a practical matter, “available for cross-examination or subject to subpoena.” 5 M.R.S.A. § 9057(5).

Because I conclude below that the circulator at issue in these declarations did engage in fraud, my exclusion of these declarations is ultimately immaterial to the outcome of that issue. The individuals who signed the declarations can rest assured that their signatures were not counted in my final ruling. However, my ruling below is based solely on the sworn witness testimony presented by Gass and not the written declarations at issue here.

ADMISSION OF ADDITIONAL EXHIBITS TO THE RECORD

At the hearing, I explained that I would grant the Challengers’ request to incorporate data from the central voter registration system (CVR) into the administrative record to the extent I determined that Challengers had made a prima facie showing that a signer of the petition was not a registered voter. After review of the hearing evidence, I instructed Elections Division staff to review the registration status in CVR of 954 individuals who signed the petition. I am accordingly making available to the parties an up-to-date party/campaign use voter file under 21-A M.R.S.A. § 196-A(1)(B) as SOS Exhibit 6. Because that Exhibit contains voter personal information that is confidential by statute, *see* 21-A M.R.S.A. § 196-A, I cannot make Exhibit 6 available to the general public. I will make Exhibit 6 available to the parties to the proceeding on a thumb drive, which parties may either pick up from the Burton Cross Building, Fourth Floor, or request that it be mailed to them.

In addition, I hereby ORDER that the parties to this proceeding may not use Exhibit 6 or any of the data contained therein for any purpose other than litigation and appeal of this challenge and, further, may not disseminate any portion of Exhibit 6 except as may be necessary for purposes of litigating and appealing this challenge.

Following the hearing, I also directed my staff to retrieve the signatures on file with my office for notaries public Kelly Amadei and Mar cayla Amadei, whose notarizations are challenged by the Berger Challengers on grounds that they allegedly signed petitions with initials rather than their official signature. Those files are hereby incorporated into the administrative record as SOS Exhibits 7 and 8 respectively.

Finally, it came to my attention after the testimonial hearing concluded that the number of total valid signatures reflected on the tally tapes admitted as SOS Exhibit 2—5,046 signatures—could not be reconciled with the number of valid signatures reflected on the scanned petition forms themselves, as marked by the municipal registrars and my office. Although the tally tapes showed an original tally of 4,978 valid signatures, it reflects an apparent addition of 68 signatures “after review,” for a total of 5,046 signatures. SOS Ex. 2.

After investigation, I determined that the discrepancy was the result of the fact that the Campaign submitted an additional 14 petition forms that were reviewed and tallied, but ultimately rejected by the Elections Division because they were deemed to exceed the 5,000-signature statutory maximum in 21-A M.R.S.A. § 354(5)(A). Because they were rejected, the forms were segregated from the accepted petition forms and, as a result, inadvertently not scanned and provided to the parties.

These 68 signatures were added to the tally tape at SOS Exhibit 2 by the Elections Division staffer who was tasked with reviewing those petition forms, but only after a more senior Elections Division staffer had made the decision to accept the petition for filing without counting the 14 additional petition forms. That decision is reflected on the Candidate Petition Receipt, which was provided to the Campaign upon acceptance of the petition. That Receipt states that the Petition contained 4,978 valid signatures.

Although my preference would have been to make this information available to the parties in advance of the hearing, it was not possible given that these facts only just came to light. Given the highly expedited nature of this proceeding and the need for a complete record of my office's original determination of the petition's validity in the event of an appeal, I am adding the rejected petition forms to the record as SOS Exhibit 9 and the Candidate Petition Receipt showing 4,978 valid signatures as SOS Exhibit 10 and making those exhibits available to the parties with this decision.

FINDINGS OF FACT

The Petition

1. The Campaign submitted to the Secretary of State's office petition forms containing more than 5,000 signatures, counting both those signatures found valid by municipal registrars and Elections Division staff, and those found invalid by either the registrars and Elections Division staff. SOS Ex. 1; SOS Ex. 9.
2. The Petition was filed in my office on July 30, 2024, two days before the August 1, 2024, filing deadline. SOS Ex. 1.
3. The petition forms contain marks in red pen in the "For Registrar use only" column showing the municipal registrars' review, with unregistered voters generally labeled "NR" and registered voters labeled with a checkmark. SOS Ex. 1.
4. The petition forms also contain marks in green pen showing the review conducted by the Elections Division. SOS Ex. 1.
5. The Elections Division rejected 14 petitions containing 68 valid signatures on grounds that they exceeded the statutory maximum at 21-A M.R.S.A. § 354(5)(A) and did not include them in the tally of valid signatures provided to the Campaign. SOS Ex. 9, 10.
6. The Elections Division accepted the Petition for filing after determining that the Petition contained 4,978 valid signatures. SOS Ex. 2, 10.

Circulator Misstatements

7. The Campaign conducts petitioning in a “decentralized” manner. The Campaign had no representative in Maine overseeing signature gathering and did not employ any paid circulators in Maine. Instead, the Campaign made petition forms available to the public online, allowing any member of the public to circulate petitions on the Campaign’s behalf. Dent testimony.
8. Patrick Powers circulated a total of 28 West petition forms, which were found by the Elections Division to contain a total of 135 valid signatures, and 41 invalid signatures. SOS Ex. 1, L1 at 243–246; L2-31–34; L3-19–20; L3-63–66; L3-71–74; L4-41–44; L4-123–24; L4-163–164; L4-169-170; L4-195–96; L4-489–90; L4-693–694; L4-763–64; L4-779–780; L5-159–62; L5-129–30; L5-173–174; L7-35–36; L7-83–84; L7-149–50; L7-313–15; L7-321–22.³
9. Mr. Powers was not known to the Campaign’s director of organizing. Coronado Testimony.
10. All but three of the petition forms circulated by Mr. Powers contained signatures only on the back side of the petition form. SOS Ex. 1, L1 at 243–246; L2-31–34; L3-19–20; L3-63–66; L3-71–74; L4-41–44; L4-123–24; L4-163–164; L4-169-170; L4-195–96; L4-489–90; L4-693–694; L4-763–64; L4-779–780; L5-159–62; L5-129–30; L5-173–174; L7-35–36; L7-83–84; L7-149–50; L7-313–15; L7-321–22.
11. The petition form is a two-sided document. The front side states it is a non-party nomination petition for a slate of presidential electors, and identifies “West, Cornel R” as the “Presidential Candidate.” The front side also identifies Dr. West’s vice-presidential candidate and the four presidential electors he has selected and contains 15 blank lines for voters to sign the petition. *See, e.g.*, L1-1.
12. The back side of the petition form contains another 20 blank lines for voters to sign, as well as the circulator’s oath and registrar’s certification. It does not identify the name of the candidate or the nature of the petition. *See, e.g.*, L1-2.
13. Richard McCoy is a registered voter who resides in Portland. Gass Ex. 13; McCoy testimony.
14. Sometime in the last few months, Mr. McCoy was approached by Mr. Powers in the parking lot of the Hannaford grocery store in Portland. Gass Ex. 13; McCoy testimony; L2-32-25.

³ The Elections Division divided the petition forms submitted by the Campaign into seven “lots.” Each lot was assigned a number from L1 to L7 and scanned separately into a high-resolution color PDF file. Hereinafter, all citations to the petition forms admitted as SOS Exhibit 1 and Berger Exhibit B will be given as “L[lot number]-[page number or range]-[line number or range].”

15. Mr. Powers represented to Mr. McCoy that he was circulating a petition to eliminate the ability of politicians to trade stocks. Mr. Powers did not disclose to Mr. McCoy that the petition was to support the candidacy of Cornel West. Gass Ex. 13; McCoy testimony; L2-32-25.
16. Mr. Powers presented Mr. McCoy with the back side of a West petition form, on which Dr. West's name was not visible, even though blank signature lines were available on the front side of the petition form. As a result, Mr. McCoy did not see Dr. West's name on the petition. Gass Ex. 13; McCoy testimony; L2-32-25.
17. As a result of Mr. Powers' deceptive statements, Mr. McCoy signed the petition. McCoy testimony; L2-32-25.
18. The petition form signed by Mr. McCoy contained a total of 20 signatures found to be valid by the Elections Division, including Mr. McCoy's signature. L2-31–32.
19. Meryl Poulin is a registered voter who resides in Falmouth and licensed attorney. Gass Ex. 10; Poulin testimony.
20. On June 23, 2024, Ms. Poulin was waiting for her fiancée in the parking lot of the Shaws supermarket in Falmouth. While waiting, she observed Patrick Powers interacting with people entering and exiting the store concerning a petition he was circulating. Gass Ex. 10; Poulin testimony; L7- 36-31.
21. While Ms. Poulin was observing Mr. Powers, Powers told multiple people that the petition was to enact legislation to prevent federal lawmakers from buying and selling stocks while in office. Mr. Powers did not mention Dr. West while Ms. Poulin was observing him. Gass Ex. 10; Poulin testimony; L7- 36-31.
22. Mr. Powers then approached Ms. Poulin and asked her to sign the petition, again claiming it was to prevent federal lawmakers from buying and selling stocks while in office. Mr. Powers did not tell Ms. Poulin that the petition was to support Cornel West. Gass Ex. 10; Poulin testimony; L7- 36-31.
23. Mr. Powers presented Ms. Poulin with the back side of a West petition form, on which Dr. West's name was not visible, even though unused signature lines were available on the front side of the petition. As a result, Ms. Poulin did not see Dr. West's name on the petition. Gass Ex. 10; Poulin testimony; L7-36-31.
24. As a result of Mr. Power's deceptive statements, Ms. Poulin signed the petition. Gass Ex. 10; Poulin testimony; L7- 36-31.
25. For reasons not reflected in the evidentiary record, the Falmouth registrar did not certify any names on the back side of the petition form Ms. Poulin signed. As a result, only 5 signatures on this petition form, not including Ms. Poulin's signature, were counted as valid signatures. L7-35–36.

26. Michael Kuhn is a registered Maine voter who resides in Portland. Kuhn testimony; Gass Ex. 16.
27. Mr. Powers approached Mr. Kuhn while he was in the parking lot of Hannaford supermarket in Portland with his daughter. Kuhn testimony; Gass Ex. 16; L4-72-29.
28. Mr. Powers told Mr. Kuhn that he was circulating a petition to prevent politicians from trading in the stock market. Mr. Powers did not mention Cornel West to Mr. Kuhn. Kuhn testimony; Gass Ex. 16.
29. Mr. Powers presented Mr. Kuhn with the back side of a West petition form, on which Dr. West's name was not visible, even though all the signature lines on the front side of the petition were unused. As a result, Mr. Kuhn did not see Dr. West's name on the petition. Gass Ex. 16; Kuhn testimony; L4-72-29.
30. As a result of Mr. Powers' deceptive statements, Mr. Kuhn signed the petition. Kuhn testimony; L4-72-29.
31. The petition form signed by Mr. Kuhn contained a total of 18 signatures found to be valid by the Elections Division, including Mr. Kuhn's signature. L4-71-72.
32. In investigating the validity of the Petition, counsel for Gass asked a non-lawyer associated with their law firm, Andrew Roth-Wells, to attempt to contact individuals who had signed petitions. Roth-Wells testimony.
33. Mr. Roth-Wells attempted to locate phone numbers for petition signers, concentrating on petition forms on which the front of the form contained no signatures. Roth-Wells testimony.
34. Mr. Roth-Wells successfully reached four individuals: Richard McCoy and three other individuals who did not testify at the hearing: Amy Thompson, Rick Cote, and Kendall Wyman. Roth-Wells testimony.
35. All four individuals Mr. Roth-Wells spoke with confirmed to him that they were unaware that they had signed the West petition.⁴ Roth-Wells testimony.
36. All four individuals Mr. Roth-Wells spoke with signed petition forms circulated by Mr. Powers. Roth-Wells testimony; L2-31-2 (Thompson); L2-32-25 (McCoy); L4-490-16 (Cote); L4-490-17 (Wyman).

Alleged Petition Irregularities—Gass

⁴ The Campaign did not object to Mr. Roth-Wells testimony concerning what the signers told him.

37. An individual affiliated with the Democratic Party, Elizabeth Wester, oversaw a team of people who reviewed the West petition on behalf of Gass. Wester Pre-Filed Testimony (“Wester”) ¶¶ 1, 5.
38. Wester and her team sought to identify errors made in certifying the Petition. *Id.* ¶ 7. As a result, the errors alleged by Gass are intended to be limited to signatures that were determined valid by my office.
39. The alleged errors found by Wester and her team are listed in Gass Exhibits 19–25.
40. The irregularities Gass alleges are as follows:
 - a. Voter not registered at the time of petition signing: 543 (Gass Ex. 24);
 - b. Voter registered, but not at the address written on petition: 142 (Gass Ex. 25);
 - c. Voter listed an incomplete address: 28 (Gass Ex. 19);
 - d. Ditto marks used for something other than address or municipality: 16 (Gass Ex. 20);
 - e. No notary signature on petition form: 1 (Gass Ex. 21);
 - f. Dates on petition form did not make sense: (Gass Ex. 25);
 - g. Something wrong with the way a signer’s name was listed or certified: 10 (Gass Ex. 23).

Wester ¶ 9; Gass Exs. 19–25.

41. The total number of signatures for which Gass alleges at least one irregularity is 704.
42. In order to determine whether signers were not registered to vote or registered at a different residence than the one listed in the petition, Wester’s team compared the names to the Democratic Party’s Voter Activation Network, or VAN. The VAN is populated using data from Maine’s party/campaign use voter file, which can be purchased by political parties under 21-A M.R.S.A. § 196-A(1)(B).
43. At the time Wester’s team conducted the analysis, the VAN was populated with a party/campaign use voter file uploaded on July 10, 2024. The voter file was issued by the Elections Division on July 9, 2024.
44. The party/campaign use voter file shows the voter registration status of voters as of the date the file is generated by the Elections Division. It does not include historical data concerning a voter’s registration status. 21-A M.R.S.A. § 196-A(1)(B).

Alleged Signature Irregularities—Berger

45. Berger retained Benjamin Messner of New River Strategies to conduct an analysis of the West Petition for errors. Mr. Messner contracted with a third-party vendor to conduct this analysis, which had access to a party/campaign use voter file.
46. To identify unregistered voters, the vendor sought to match names on the petition forms with data from the party/campaign use voter file.
47. The party/campaign use voter file used by the vendor was obtained on July 1, 2024.
48. The vendor applied human judgement to determine whether an inconsistency between the party/campaign use voter file and the information on the petition showed that the voter was unregistered.
49. Where there were discrepancies between voter name or address that the vendor determined were not sufficient to show that the voter was unregistered, the vendor nonetheless categorized those discrepancies as irregularities that invalidate the signatures. Messner testimony; Berger Ex. T.
50. Berger asserts the following irregularities on the petition:
 - a. Circulator printed rather than signed name: 14 (Berger Ex. C);
 - b. Circulator wrote initials rather than signing name: 672 (Berger Ex. D);
 - c. Notary did not sign petition: 35 (Berger Ex. E);
 - d. Notary wrote initials rather than signing name: 2,499 (Berger Ex. F);
 - e. Notary did not use stamp: 29 (Berger Ex. G);
 - f. Voter signature lacks date: 13 (Berger Ex. H);
 - g. Voter signature date is outside petitioning window: 24 (Berger Ex. I);
 - h. Voter signature is dated after notarization: 9 (Berger Ex. J);
 - i. Voter signature date is incomplete: 1,790 (Berger Ex. K);
 - j. Voter signature contains improper ditto marks: 18 (Berger Ex. L);
 - k. Signer is not a registered voter: 1,459 (Berger Ex. M);
 - l. Voter signature contains illegible city name: 1 (Berger Ex. N);
 - m. Voter printed rather than signed name: 67 (Berger Ex. O);
 - n. Voter wrote initials rather than signing name: 166 (Berger Ex. P);
 - o. Voter signature does not match printed name: 2 (Berger Ex. Q);

- p. Voter name is illegible: 8 (Berger Ex. R);
- q. Voter signed petition twice: 54 (Berger Ex. S);
- r. Voter address does not match party/campaign use voter file: 905 (Berger Ex. T).

51. Berger asserts that a total of 4,805 of the 5,983 raw signatures submitted by the Campaign—approximately 80%—are invalid.

52. When signatures already invalidated by the registrars and my office are taken into account, Berger challenges 4,016 of the 4,978 validated signatures. Berger Ex. A.

CONCLUSIONS OF LAW

Fraud or Knowingly False Statements by a Circulator

As the above findings of fact show, Gass presented credible evidence that a circulator of the Petition, Patrick Powers, used deception to obtain signatures of at least three voters on the Petition. According to 21-A M.R.S.A. § 354(9), “[i]f the circulator swears an oath or affirmation in accordance with subsection 7, paragraph A that the circulator reasonably believes to be true and accurate at the time the oath or affirmation is sworn and *there is no proof of fraud or a knowingly false statement by the circulator*, then the voters’ signatures that do not meet the requirements of subsection 7, paragraph A may not be counted, but the petition is otherwise valid.” (Emphasis added.)

Here, Gass has shown proof of both fraud and knowingly false statements by a circulator of the West petition on at least three occasions. Each witness credibly testified that the circulator’s misrepresentation of the petition contents was material to their decision to sign the petition and the circulator’s regular use of only the back side of the petition, on which no information about the subject of the petition is visible, corroborates an intent to deceive.

Gass argues that under the language of section 354(9), the proper remedy for fraud by a circulator is invalidation of the entire Petition. Gass cites for this proposition *Knutson v. Dep’t of Sec’y of State*, 2008 ME 124, 954 A.2d 1054, which rejected the position of the then-Secretary of State that a prior version of section 354(9) did not invariably require him to invalidate entire petition forms—as opposed to individual signatures—when the evidence at hearing showed that the circulator made an honest mistake in understanding that he was required to witness each signature on a petition form. *Id.* ¶¶ 27–28.

Knutson is, of course, binding precedent. And I agree that it suggests, at a minimum, that all signatures on the petition *forms* signed by Mr. McCoy, Ms. Poulin, and Mr. Kuhn, be invalidated. Moreover, Mr. Powers’ frequent use of only the back sides of petition forms, *see, e.g.*, L1-243, L1-245, L2-33, L3-19, L3-63, coupled with the witnesses’ testimony, is sufficient to establish a pattern of voter deception sufficient to warrant invalidation of all petition forms circulated by Mr. Powers on grounds that those petition forms were more likely than not infected by fraud or knowingly false statements by the circulator.

As Gass seems to acknowledge, however, Gass Closing at 3, *Knutson* does not stand for the proposition that proof of fraud or deception by a single circulator requires invalidation of a candidate's entire petition, inclusive of all petition forms regardless of who circulated them. While *Knutson* speaks in terms of invalidating "petitions," it is clear from context that the Court is discussing whether full petition *forms* must be invalidated if fraud is determined. For example, the Court notes in a footnote that full invalidation of the "petitions" would result in the candidate still having a total of 3,929 "valid signatures." *Knutson*, 2008 ME 124, ¶ 7 n.4, 954 A.2d 1054. If *Knutson* were truly talking about the candidate petition as a whole, the number of valid signatures following its ruling should have been zero.

Gass argues that, following *Knutson*, the Legislature "expanded" subsection 9 so that it now "specifically requires that the entire petition be invalidated when there is fraud." Gass Closing at 3. But while it is true that the Legislature altered subsection 9 to expressly address fraud and deceptive statements by circulators, it did so not to expand the remedy available under subsection 9, but to override *Knutson*'s strict ruling that entire candidate petition forms must be invalidated due to defects in the circulator oath even absent "the presence of fraud" or bad faith by the circulator. Under the post-*Knutson* version of subsection 9, an "oath that the circulator reasonably believes to be true and accurate" that is nonetheless defective requires invalidating only the specific signatures that run afoul of the statute, "but the petition is otherwise valid." 21-A M.R.S.A. § 354(9).

Given that the Legislature was sharply limiting *Knutson*'s holding, not expanding it, it is not plausible that it was simultaneously seeking to redefine "nomination petition"—which is found in both the pre- and post-amendment version of subsection 9—to mean not just a particular petition form, as *Knutson* held, but the candidate's entire petition. *Knutson*'s holding that a "nomination petition" for purposes of subsection 9 means an individual petition form thus remains good law.

The Superior Court confirmed as much in *Boyer v. Dep't of the Sec'y of State*, Docket No. AP-18-20 (April 26, 2018). There, the Superior Court directly considered whether the amended version of 21-A M.R.S.A. § 354(9) requires invalidation of a candidate's entire petition if it is established that a circulator committed fraud and concluded it does not. In that case, my predecessor concluded that some of the candidate's petition forms contained forged signatures among other serious irregularities. As a result, he invalidated full petition forms in some cases, but not the candidate's entire petition. On appeal, the challenger contended that Secretary Dunlap had erred by not invalidating the candidate's entire candidate petition, which included thousands of signatures not implicated in the irregularities found by the Secretary.

The court rejected the challenger's argument. It concluded that "nowhere in 21-A M.R.S. § 335 [the party-candidate analogue to § 354] or any other part of the statutory scheme is there a basis for the Secretary of State to invalidate non-fraudulent petitions due to fraud found in other petitions." Slip Op. at 14. Specifically considering the parallel subsection 9 in section 335, the court noted that while it intended to uphold the integrity of the petitioning system, it also "contemplates a balancing of this concern with the voter's right to have his or her voice heard by allowing valid signatures to stand as long as there is no proof of fraud." Slip Op. at 16.

Gass presented no evidence at hearing that any circulators other than Mr. Powers engaged in fraud or deception in collecting signatures. Nor did she present any evidence that the Campaign was directing circulators to engage in fraud or misrepresentation. To the contrary, the evidence indicated that Campaign organizers had little involvement in the circulation of their petitions in Maine. *See Dent Testimony; Coronado Testimony.* The mere fact that other circulators of the Petition were professional circulators (*see Gass Exs. 29–32*) does not by itself suggest that they also engaged in fraud or deceit. Absent evidence to the contrary, voters who signed these petitions must be assumed to have done so based on their genuine support for the presidential candidacy of Dr. West. It would be unfair to those supporters to disqualify their signatures because of misconduct by an individual that had nothing to do with their decision to sign the petition.

Therefore, consistent with *Knutson* and *Boyer*, I conclude that all signatures on the 28 petition forms circulated by Mr. Powers are invalid under 21-A M.R.S.A. § 354(9), but that the Petition as a whole cannot be invalidated on this basis.

Exceeding the 5,000 Signature Maximum

Berger argues that the Petition must be invalidated because the Campaign submitted 5,983 signatures, 983 signatures above the maximum as set out in 21-A M.R.S.A. § 354(5)(A). I interpret the statutory maximum as setting a limit on the number of signatures that Elections Division staff must review at 5,000 valid signatures. As a result, the Elections Division properly declined to count the additional petitions found at SOS Ex. 9 once it determined that the West Campaign had reached approximately 5,000 valid signatures. SOS Exs. 9 & 10. No further consequences to the Campaign are required or permitted. My reasoning follows.

Section 354, subsection (5)(B) provides that, for non-party candidates for president, “[n]omination petitions must be signed by . . . at least 4,000 and not more than 5,000 voters.” Subsection 7 of that provision requires petition signatures to be submitted to applicable municipal registrars (or clerks), who must “certify which names on a petition appear in the central voter registration system as registered voters in that municipality.” 21-A M.R.S.A. § 354(7)(C). After the registrars’ review, those petition forms must be submitted to the Elections Division, which must accept it for filing “if the petition contains the required number of certified names and is properly completed.” *Id.* § 365(1). Finally, § 354(9) provides that “[f]or a candidate to qualify for the ballot, a nomination petition must meet all the requirements of this section.”

Maine has had a statutory maximum for the number of signatures permitted on a petition since 1977. *See P.L. 1977, ch. 425, § 1* (codified at 21 M.R.S.A. § 494 (1977)). However, I can find no record of any candidate ever being disqualified by my office for violating this statutory maximum, nor am I aware of any court or agency decision interpreting the statutory maximum, despite its venerability. As far as I can tell, Berger’s challenge, if successful, would be the first time in Maine history that a candidate would be disqualified for demonstrating too much public support for their candidacy.

I start with the text. Section 354(5) provides minimums and maximums for the numbers of “voters” that must sign a petition for it to be valid. From this text alone it is clear that the

statute is not concerned with the number of “raw” signatures collected by the candidate. A candidate cannot qualify for the ballot by submitting to my office a petition containing 4,000 signatures if some of those signatures are determined invalid by my office or the registrars. To qualify, the candidate must have 4,000 signatures that have been certified were provided by “voters.” 21-A M.R.S.A. §§ 354(5)(A), 356(1).

If 4,000 raw signatures are not sufficient to achieve the minimum required under section 354(5)(A), it necessarily follows that 5,000 raw signatures is equally insufficient to take a candidate over the maximum. Not only are both the minimum and the maximum in section 354(5)(A) modified by the same word— “voters”—they are modified by the same instance of that word in the statutory text. The word therefore must mean the same thing as applied to the minimum as it does applied to the maximum. It follows that the statutory maximum describes how many signatures on the petition are certified as voters, and not how many raw signatures the campaign collects. Any other interpretation would disregard the syntax of section 354(5).

The above interpretation is corroborated by section 356(1). That provision governs when my office must accept a candidate petition for filing. Under that provision my office must accept and file a candidate petition “if the petition contains the required number of certified names.” 21-A M.R.S.A. § 356(1) (emphasis added). This provision thus confirms that my office should be considering not raw signature numbers but the number of valid signatures.

This interpretation is also supported by legislative intent. When the statutory maximum was reduced several years ago, legislative history makes clear that the concern was to protect the resources of Election Division staff. Deputy Secretary Flynn testified to the Legislature that the amendment was intended to “reduce[] the workload for the Elections Division staff in certifying candidate petitions, while still allowing the candidate to submit additional signatures over the minimum required, to provide ‘cushion’ in case of a petition challenge.” *An Act To Amend the Laws Governing Elections: Testimony Before the J. Standing Comm. on Veterans and Legal Affairs*, 130th Legis., 33 (2021) (testimony of Deputy Secretary of State, Julie L. Flynn). In contrast, the testimony of the Maine Town & City Clerks Association in support of the bill made no mention of the proposed lowered statutory maximum, suggesting that it too regarded the primary beneficiary of a lower statutory maximum to be the Elections Division and not municipal registrars. *Id.* at 22–23. Interpreting the statutory maximum as a limit on the number of certified signatures that the Elections Division must process is consistent with this intent to protect my office from unnecessary work.

Berger’s alternative interpretation—that the maximum limits how many raw signatures can be submitted to registrars for certification, *see* Berger Closing Argument at 2–3—would, contrary to legislative intent, create more work for my office. Because candidates are under no obligation to submit all of their petition forms to my office when they file the petition, a mere review of the forms would not establish whether a candidate had violated this interpretation of the statutory maximum. Candidates over the threshold could simply remove from their submissions the petition forms with the most invalidated signatures. The only way to avoid arbitrary enforcement of this interpretation would be for my office to contact all 486 municipal registrars at the end of each collection window to determine how many signatures each had reviewed for each of the hundreds of candidates that run for office every election and then tally

those signatures for each candidate. Such a task would be impracticable if not impossible for busy Elections Division staff.

I also note that, to the extent that a secondary purpose of the statutory maximum may be to reduce the workload of municipal registrars, a 5,000-valid-signature maximum achieves this goal indirectly. If excess certified signatures on petitions will not be counted by Elections Division staff, there is little incentive for candidates to burden registrars with certifying vast numbers of signatures above the statutory maximum.

Under my interpretation of section 354(5)(A), it is clear that I cannot invalidate the Petition because it contains (according to Berger's tally) 5,983 raw signatures. Registrars and my office declined to certify many of those signatures after determining that it could not be established that they were from "voters" as that term is used in 21-A M.R.S.A. § 354(5)(A). The relevant number for determining whether the petition exceeded the statutory maximum is the same as the number for determining whether it fell below the minimum: the number of signatures determined to be valid by registrars and the Elections Division.

Berger suggests that the Petition should be invalidated even if the applicable metric is not raw signatures, since the tally tapes, SOS Ex. 2, show the Campaign submitted a total of 5,046 signatures that the Elections Division determined to be valid (putting aside the fact that these valid signatures were ultimately not included in the official tally because they exceeded the 5,000 maximum).

I conclude that section 354(9) does not contemplate such a drastic consequence for such a minor infraction. The purpose of the statutory maximum differs from the purpose of the other parts of section 354. While those other provisions are intended to measure a candidate's support among Maine voters to protect Maine's ballots from becoming cluttered with "frivolous candidacies," *Storer v. Brown*, 415 U.S. 724, 743 (1974), the signature limits in section 354(5) are meant to protect my office from having to expend its limited resources reviewing excessive petition signatures that may be more aimed at appeasing a candidate's vanity or achieving public relations goals than at qualifying for the ballot.

This unique statutory goal can be fully achieved without wholesale invalidation of an oversized petition. Rather, the Elections Division can, as it did here, simply stop validating signatures once the maximum number is reached and treat all additional signatures as invalid. This approach is fully consistent with how my office enforces other petition requirements under section 354. Notwithstanding subsection 9's prescription that a petition "must meet all of the requirements of this section" to qualify a candidate for the ballot, my office has never invalidated whole candidate petitions because, for example, individual signers signed outside the collection window. *See, e.g., id.* § 354(6). Rather, it invalidates individual signatures or petition forms that fail to meet petition requirements.

In reaching this conclusion I am mindful of the need to construe ballot-access statutes to avoid potential constitutional infirmities. *See Nader v. Me. Democratic Party*, 2012 ME 57, ¶ 19, 41 A.3d 551, *abrogated by Gaudette v. Davis*, 2017 ME 86, ¶ 18, 160 A.3d 1190. In *Richards v. Lavelle*, the Seventh Circuit Court of Appeals considered the constitutionality of a statutory maximum for signatures that is similar to Maine's. It concluded that the maximum

“serves the legitimate state interest of providing an orderly election procedure, especially in light of the time constraints placed on [elections officials].” *Richards v. Lavelle*, 620 F.2d 144, 147 (7th Cir. 1980). However, the court went on to hold that the “drastic sanction” Illinois law imposed as a result of breaching the limit—removal from the ballot—was unconstitutional because there was no “rational relationship between the means used (removal from the ballot) and the end sought (enforcement of a maximum signature limitation).” *Id.* at 148. Quoting the lower court, the Seventh Circuit panel noted that the statutory objective of the maximum could be achieved in other less drastic ways: “by returning the excess petitions, *by refusing to consider any signatures beyond the statutory maximum* or by concluding the objection hearing as soon as the minimum required signatures have been validated.” *Id.* (emphasis added).

While *Richards* is not binding precedent in Maine, its analysis is still instructive. Here, the statutory framework allows a remedy for a signature overage that is tailored to the violation and consistent with how my office treats many other petition defects: invalidation of the offending signatures without invalidation of the entire petition. Berger’s interpretation, in contrast, requires a drastic sanction for a relatively minor infraction. Even if Berger’s interpretation might survive constitutional scrutiny if put to the test and could otherwise be squared with the statutory framework and legislative intent, the canon of constitutional avoidance leads me to adopt an interpretation that is more protective of the constitutional rights of the Campaign and its supporters in Maine.

Accordingly, I decline to invalidate the Petition in its entirety for submitting signatures in excess of the 5,000-signature maximum. Rather, consistent with the Election Division’s decision to reject petition forms containing valid signatures in excess of 5,000, I treat the Petition as containing 4,978 valid signatures.

Notary Irregularities

I next address the alleged irregularities by Gass and Berger concerning notarizations of the petition forms.

“Initialed” Notary Signatures

Berger alleges that 2,499 petition signatures (2,100 validated⁵) are invalid because the notaries public certifying the petition forms they signed placed their initials, rather than their signature, in the notary signature block. Berger Ex. F. Maine law requires that a certificate of notarial act “[b]e signed and dated by the notarial officer and, if the notarial officer is a notary

⁵ I provide the number of validated signatures for each of the categories that follow because the Campaign is not making any argument that my office erred in declining to count any signatures determined to be invalid by municipal registrars or my office when it reviewed the Petition to determine whether to accept it for filing. I therefore treat it as established fact that those signatures were properly invalidated and should not count toward the 4,000-voter threshold. Berger’s challenges to those already-invalidated signatures are therefore moot and, particularly in the context of this highly expedited proceeding, I decline to consider them further.

public, be signed in the same manner as on file with the Secretary of State.” 4 M.R.S.A. § 1916(1)(B) (Supp. 2024).

Two notaries public notarized the petitions containing the 2,499 challenged signatures. Kelly Amadei notarized petitions containing 2,485 of the challenged signatures (though Berger Exhibit A lists 11 of these signatures as notarized by “NULL”), while Marcayla Amadei notarized petitions containing 11 challenged signatures.

A review of the relevant petition forms indicates that each notary utilized a consistent mark on each notary signature line. What is more, while Ms. Amadei’s signature in particular can be described as a somewhat stylized version of her initials, there is nothing improper about a notary using such a signature, as long as it is the signature on file with my office. Although notary public signatures on file with my office can be requested by any member of the public as public records, Berger submitted no evidence indicating that the signatures found on the challenged petitions were not the signatures on file with my office. Berger’s claim fails for this reason alone.

Recognizing, however, the importance of maintaining public trust in our elections and given the small number of notaries whose signatures were subject to challenge, I have reviewed the signatures on file for the two notaries public. As SOS Exhibits 7 and 8 show, the signatures on the challenged petitions are consistent with the signatures on file with my Office.

I decline to invalidate any petition signatures on the basis of “initialed” notary signatures.

Missing Notary Signatures

Berger claims that a petition form containing 34 signatures (26 validated) and a petition form containing 1 signature (1 validated) are invalid because the notary public failed to sign the notarial certificate. Berger Ex. E. Gass joins the challenge to the latter petition form. Gass Ex. 21. Both petitions were notarized by Rosemarie DeAngelis.

Upon review both petitions, it appears to me that the challengers are correct that these petitions are unsigned by the notary public. *See* L2-18; L4-237. I agree with the challengers that an unsigned notarial certificate is a material irregularity on the petition form, invalidating the petition. *See* 4 M.R.S.A. §1916(1)(B).

I therefore invalidate the 27 validated signatures on the two petition forms with no notary public signature.

Notary Did Not Use Stamp

Berger claims that 29 signatures (28 validated) on six petition forms are invalid because the notary failed to use a notary stamp when notarizing the petitions. Berger Ex. G. Maine law does not require a certificate of notarial act to contain a stamp. *See* 4 M.R.S.A. § 1916(1) & (2).

I decline to invalidate any petition signatures for lack of a notary stamp.

Notary Expiration Date Incomplete

Berger claims that 35 signatures (32 validated) on one petition form are invalid because the notary's commission expiration date is "incomplete." Berger Ex. A. The relevant petition form (L2-54) shows that the petition was notarized by Rosemarie DeAngelis and that when she applied her notary stamp, the "8" in "2028" was not fully applied to the page. However, Ms. DeAngelis's full notary stamp—stating that she is commissioned through August 1, 2028—appears on dozens of other petitions submitted by the campaign. *See, e.g.*, L1-1, 3, 5, 7, 9, 11, 13, 15, 17. My office's online notary public database also confirms that Ms. DeAngelis's commission expires on that date. *See Total Notary Solution*, Me. Bureau of Corps., Elections & Comm'ns, <https://apps1.web.maine.gov/cgi-bin/online/notary/search/search.pl> (last visited Aug. 20, 2024).

Given that my office issues notary public commissions and keeps the official records of those commissions, it would not be appropriate to invalidate a petition for an incomplete notary commission expiration date without checking to determine if the notary public's commission had, in fact, expired. Any other approach would elevate form over substance, at the expense of individuals exercising their right to support candidates for office.

Moreover, even assuming *arguendo* that a missing commission expiration date could, by itself, require invalidation of a petition, the defect alleged here relates to a missing portion of a single numeral in the stamped date. Such an irregularity is *de minimis*, and not a basis to invalidate otherwise valid petition signatures where records show that the notary's commission had not in fact expired.

I decline to invalidate any petition signatures due to an incomplete numeral in the notarial certificate's statement of commission expiration date.

Circulator Signature Irregularities

Berger claims that 672 signatures (519 validated) on 29 petition forms are invalid because circulators used initials, rather than their valid signatures, to sign the petition forms. Berger Ex. D. Berger claims that an additional 14 signatures (9 validated) on one petition form are invalid because the circulator printed, rather than signed, their names. Berger. Ex. C.

As with the notary public "initials" discussed above, Berger submitted no evidence that the persons who signed the petitions as circulators were impostors. Nothing about the marks on their face suggest they could not be the circulators' bona fide signatures.

What is more, the circulator applied their signature in the context of the administration of an oath by a notary public. Absent evidence to the contrary it must be presumed that the notary public complied with their legal obligation to "determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual." 4 M.R.S.A. § 1905(1)–(2); *see Henderson v. Berce*, 50 A.2d 45, 49 (Me. 1946) ("The law raises the presumption that the public officers have acted with fidelity and properly discharged their duties").

Thus, while Berger points out one instance in which circulator Ezra Hickey appears to have written out his full name on the signature line instead of applying his usual practice of signing with his initials, *see* Berger Closing at 19, I am satisfied that the notarization process ensured that it was in fact Mr. Hickey subscribing to the required oath in all cases. Moreover, even if Berger were correct that Mr. Hickey’s use of something other than his usual signature on the petition would render all the names on it invalid, the record evidence strongly suggests that Mr. Hickey’s usual signature is the version of his initials appearing on numerous petition forms in the record and the petition for at L2-14 is the outlier. At most, Berger’s challenge in this category would invalidate 9 validated signatures.

I decline to invalidate any petition signatures due to the form of the circulator’s signature on the petition form.

Signature Date Irregularities

Both Berger and Gass allege irregularities with the dating of various signatures.

Incomplete Signature Dates

Berger alleges that 1,790 (1,474 validated) signatures are invalid due to incomplete signature dates. Berger Ex. K. A review of the challenged signatures indicates that in nearly all cases the challenged signature date provides a day and month, but no year. And in all cases, context establishes that the signatures were made within the collection window.

Under Maine law, non-party candidates for president were permitted to gather signatures to nominate slates of presidential electors between January 1, 2024, and July 25, 2024. 21-A M.R.S.A. § 354(6) & (7)(B). Any signatures gathered before or after these dates are invalid.

Although the petition forms prepared by my office include blanks for signature date, Maine law does not expressly require voters to date their signatures. 21-A M.R.S.A. § 354. A failure to provide a complete date on a petition form therefore cannot invalidate a signature if the petition otherwise shows that the signature occurred within the collection window. Indeed, my office has for decades employed a consistent policy of invalidating signatures “only if the reviewer cannot determine what the date of signing was.” *Johnson v. Dunlap*, No. AP-09-56, 2009 WL 6631827 (Me. Super. Dec. 23, 2009). The Superior Court has upheld this practical approach, which “allows the consideration of factors such as obvious mistakes in a date and other dates appearing on the petition.” *Id.*; *see also Bucknell v. Gwadosky*, No. AP-98-07, 1998 WL 35596492 (Me. Super. Apr. 8, 1998).⁶

⁶ Berger suggests that *Bucknell* supports invalidation of the signatures they are challenging for inadequate dates. Berger Closing at 17. But *Bucknell* upheld the Secretary’s approach of invalidating signatures where the date of signing “cannot be discerned from the face of the petition.” *Bucknell v. Gwadosky*, No. AP-98-07, 1998 WL 35596492, at *6 (Me. Super. Apr. 8, 1998). Here, in all but the two cases discussed above, the date stamp on the back of the petition form, as well as other dates shown on the petition forms, allows for precisely such a determination.

This practical approach to determining signature dates, in the context of this particular petition, leads to the conclusion that all of the signatures challenged by Berger for incomplete dates were made during the collection window. I reach this conclusion because each petition form used by the Campaign has a date stamp on the back page, “(Rev. 12/23),” which was applied by my office upon preparation of the generic petition form to distribute to 2024 non-party presidential candidates. Thus, all signatures on all petition forms must have been made sometime between December 2023, and July 30, 2024, when the petitions were submitted to my office. Any other signing dates are impossible. From this starting point, it becomes clear that all given day-month signature dates between 1/1 and 8/1 must have been made on the given date in 2024, placing them within the signature gathering window.

A review of the petitions shows that all of the day-month signature dates challenged by Berger were dated no later than the date that the petition form was submitted to the municipal registrar for certification, as reflected on the Registrar’s Certification for that form. As a result, it is apparent from the face of the petition that all of these signatures were made in 2024, during the collection window for non-party presidential candidates.

Gass also challenges two signature dates for missing the year, though she appears to have made such challenges only in cases where the year-less date is the first signature on the petition, on the apparent theory that it cannot be discerned from context that the date given is a 2024 date. Gass Ex. 22; *see* L1-179-1; L6-71-1. As explained above, because the petition form was created in December 2023, it is impossible for the two signatures challenged by Gass to have been made in any year but 2024.

I decline to invalidate any petition signatures due to incomplete dates on the petition form.

Missing Signature Dates

Berger claims that 13 signatures (5 validated) are invalid because they are undated. Berger Ex. H. Notably, 2 of the 8 invalid signatures were invalidated by my office for lack of a date, since they were the first two signatures on the form and there was therefore no way to tell if the signatures had been made before or after January 1, 2024. *See* L1-13-1–2.

In reviewing the remaining valid signatures, I agree that the signatures on lines 1 and 2 of page 49 of Lot 1 of the Petitions (L1-49-1–2) should be invalidated, as it cannot be determined from context whether the signatures were made before or after January 1, 2024. However, it is clear from context that the remaining 3 validated signatures were made during the collection window. Specifically, in each case, there are signatures dated within the challenge window before and after the undated signature on the petition form.

The *Bucknell* case, cited by Berger to support this challenge, Berger Closing at 14, does not support invalidating these signatures. In that case, the court upheld invalidation of a signature where “there is no date by the signature.” *Bucknell*, No. AP-98-07, 1998 WL 35596492, at *5. However, this invalidation is in a list of invalidated signatures that also includes “no date on first signature on petition” and “no date on last signature of petition.” *Id.* From this context it seems nearly certain that the invalidated signature relied upon by Berger was

not just undated, but also the sole signature on a petition form. With no dated signatures above or below, it would have been impossible to “discern[] from the face of the petition” whether such a signature was made within the collection window. *Id.* at *6. Had the then–Secretary instead taken the approach of invalidating all signatures lacking dates, regardless of whether context allowed a determination of when the signature was made, it would not have mattered that the other two invalidated signatures were on the “first” and “last” lines of their respective petitions. *Id.* The court mentioned the placement of those signatures presumably because it was relevant that there was no dated signature either above or below the undated signature to cabin when the signature could have been made.

I conclude that the two signatures described above are invalid. I otherwise decline to invalidate any additional petition signatures due to incomplete dates on the petition form.

Ditto Marks in Signature Dates

Berger challenges 18 signatures (15 validated) because they contain ditto marks in the date field. Berger Ex. L. Gass challenges 16 signatures (16 validated) for the same reason, which includes 15 of the same validated signatures challenged by Berger. Gass Ex. 20. Notably, the Campaign does not contest that ditto marks in the date field render the signatures invalid. Candidate Closing at 2.

As described above, my office’s approach to review of dates on petition forms, which has been upheld by the courts, is to use context to determine whether a voter has signed the petition during the collection window. The use of ditto marks in the date field, however, presents a different question, since 21-A M.R.S.A. § 354(4) provides that “[d]itto marks are permitted for residence address and municipality of registration only.”

In enacting section 354(4), the Legislature has expressed a clear command that ditto marks on a petition may not be used for any fields other than residence address and municipality. Indeed, it is notable in this regard that the relevant statute was formerly phrased as permissive, allowing use of ditto marks for residence address and municipality, without the restrictive word “only.” *See* R.S. 1954, ch. 3-A, § 48(IV) (“After his name, the voter must personally add his place of residence and his street address. Ditto marks are permitted.”). By rewording the statute to make it restrictive, the Legislature sent a clear message that use of ditto marks is to be strictly confined to residence information.

Indeed, one of the problems with ditto marks can be seen in one of the petition forms challenged by both Berger and Gass. At L3-66 it appears that the circulator, after the first voter signed and dated the back side of the petition, added ditto marks down the entire date column before anyone else signed the petition, including in rows where no voter ultimately signed. This practice could easily lead to false signing dates reported on the petition. Maine law wisely prohibits such a practice.

For the reasons stated above, I invalidate the 16 validated signatures collectively challenged by Gass and Berger for improper use of ditto marks.

Signature Date Outside Collection Window

Berger challenges 24 signatures (19 validated) as made outside the collection window. Berger Ex. I. Four of the validated signatures listed on Gass’s Exhibit 22, which compiles various alleged “problems with dates,” also involve signatures dated outside the collection window.⁷

On review of the 19 validated signatures identified by Berger, it appears that in each case, the voter wrote a date that would be within the collection window (i.e., a day and month between January 1 and July 25) except that it included a year that was not “2024.” Most commonly, the challenged voter wrote the year as 2023, although some voters wrote other years before and after 2024.

For reasons already discussed, signatures are invalid as outside the collection window only if it cannot be determined from context that the voter signed the petition before or after the collection window. It is literally impossible for any voter to have signed the petition form at issue prior to December 2023, when it was issued by my office. Moreover, voters obviously could not have signed the petition in 2025 or later. It is therefore clear from context that all 19 challenged signatures validated by the registrars were made within the collection window and the voter simply wrote the wrong year on the petition.

The four signatures identified by Gass in this category involve a series of four voters providing a numeric short-form date beginning with a “9” (i.e., September). L1-23-2–5. However, signers immediately before and after these signatures on the petition form provided valid signing dates starting with “6” (i.e. June). Moreover, the registrar’s certification of all of these signatures is dated July 16, 2024. L1-24. The only plausible explanation for this discrepancy is that the four signers simply wrote the incorrect month designation when they dated their signatures.

I decline to invalidate any additional signatures on the petition due to signature dates outside the collection window.

Signature Date After Subscribed to Date

Berger challenges 9 signatures (5 validated) as made after the notary administered the oath to the circulator. Berger Ex. J. Upon review of each of the 5 validated signatures, the context makes clear that each signature was made during the collection window and that the voters simply wrote the wrong date on the petition form. I note here that 3 of the 4 invalid signatures in this category were invalidated by my office precisely because the signature was dated after the subscribed to date and context did not allow a determination that the date was misreported.

⁷ The Gass “problems with dates” challenges are addressed in several sections of this decision, as applicable. I was unable to discern the basis for Gass’s challenge to the signatures at L1-171-2, L5-255-26, and L7-261-7 and do not address those challenges further.

I decline to invalidate any additional signatures on the petition due to signature dates after the subscribed to date.

Non-Sequential Signature Date

Gass challenges two signatures on grounds that they are dated earlier than the signatures above it on the petition. Gass Ex. 22; L2-47:2, 3. Specifically, the challenge identifies two signatures that may be dated “6/19/24” sandwiched between signatures above and below dated “6/14/24.” Context makes clear that these signatures were, at most, misdated. They were clearly made within the circulation window. Indeed, I note that the day of the date written at L2-247-2 is difficult to read due to the handwriting and may well be a “14” rather than a “19.” It may be that the first signer correctly wrote the date, but the second signer misread it as “6/19” and simply copied that date. But, in any event, there can be no serious doubt that the two signers signed within the collection window.

I decline to invalidate any signatures for being non-sequential on the petition form.

Missing Registrar Certification Date

Gass challenges 12 validated signatures on grounds that the petitions they signed do not specify the date of registrar certification. Gass Ex. 22; see L1-220; L6-72; L6-74; L7-322. However, in each case, the registrar’s certification contains a stamp showing the date and time the petition form was received (which is after the circulator’s oath date in every case), a signature of the registrar, and a date stamp showing the date the petition was submitted to the Elections Division. It is therefore apparent from the face of the petition that the registrar certified the petition

I decline to invalidate any signatures due to lack of a registrar date.

Registrar Certification Date Predates Received Date

Gass also challenges one signature because the registrar provided a certification date that predated by one day the time stamp showing the date the petition was received. Gass Ex. 22; L4-79-1. While one of these two dates is clearly erroneous, both dates postdate the signature and notarization date, and the petition is stamped received by my office within the statutory deadline. It is therefore apparent that the registrar certified the signature within the appropriate timeframe.

I decline to invalidate any signatures due to date discrepancies in the registrar’s certification.

Signature Date After Registrar Certification Date

Gass challenges one signature because it is dated after the registrar certification date. Gass Ex. 22; L4-81-1. In this case the signer appears to have given an incorrect date, since the registrar in fact certified the signature. However, because it is the only signature on the petition, I have no means of determining whether the voter signed before or after January 1, 2024. I therefore invalidate this signature.

Voter Name and Address Irregularities

Imperfect Name Match

Berger claims that 292 signatures (269 validated) are invalid because the voter printed their name in a manner that is an “imperfect” match to the name listed in the central voter registration system, even though the name was sufficiently close to allow Berger to match the voter to a voter listed in the party/campaign use voter file.

Maine law does not require a perfect match between a voter’s handwritten name and the name on file. Under 21-A M.R.S.A. § 3 (2024), “immaterial irregularities do not invalidate the name or signature if the identity of the person named is clear to the public official charged with reviewing that document.” The statute specifies that “[i]mmaterial irregularities include, but are not limited to, misspelling, inclusion or omission of initials and substitution of initials or nicknames for given names.”

By not asserting that the challenged signatures are unregistered voters, Berger effectively concedes that the irregularities in their names are immaterial. The red checkmarks on the petition forms reflect, for the 269 validated names, that identities of the signers were “clear” to the municipal registrars, 21-A M.R.S.A. § 3, just as they were clear enough to Berger to match them to a voter in the party-campaign use voter file. Moreover, a spot review of petition lines challenged in this category confirms that Berger made no effort to distinguish between material and immaterial irregularities. In all but one instance reviewed, Berger challenged the use of common nicknames (e.g., “Katie,” “Max,” “Chris,” or use of first/middle-name initials, e.g., “E.J.,” “S. Aram”). Because Berger clearly did not apply the correct legal standard under Maine law in challenging these 292 signatures, I decline to conduct a full review of this challenge category in the CVR system. Rather, I will accept the registrar’s determination of whether the signer is a registered voter.

I decline to invalidate any petition signatures due to “imperfect” voter name matches to the party-campaign use voter file.

Voter Signature Printed or Initialed

Berger also challenges voter signatures that were, in Berger’s judgment, “printed” or “initialed.” Berger challenges 67 signatures (52 validated) as “printed,” and 166 signatures (139 validated) as “initialed.”

A signature is not invalid merely because it looks like initials or a printed name. Such marks could just as easily be the voter’s standard signature as a cursive scrawl. Further, the integrity of these signatures is protected by two other features of the petitioning process: (1) the circulator must take an oath that they witnessed the person sign their name on the petition and that, to the best of their knowledge and belief, “each signature is that of the person whose name it purports to be,” and (2) the municipal registrar must review each signature and be “satisf[ied]” that “the voter is a registered voter.” 21-A M.R.S.A. § 354(3) & (7). The petition forms reflect that, for each of the 191 validated signatures challenged in this category, both of these safeguards were met.

In addition, like voter names, voter signatures are valid under Maine law even if there are “immaterial irregularities” in the signature. 21-A M.R.S.A. § 3. If the registrar is satisfied that the signature is that of the voter, they must ignore minor variances between the signature on the petition and the signature on the registration card. *Id.*

Particularly given this legal backdrop, Berger did not present sufficient evidence to call into question the authenticity of the signatures he challenges. If Berger had genuine doubts about the veracity of a particular signature, he could have requested copies of the voters’ registration cards from the applicable municipal registrar and submitted those cards as evidence that signature was not the same. Berger submitted no such evidence. Rather, his challenge is based entirely on subjective judgments by his reviewers that the marks made by the challenged signers do not look like proper signatures. This is not a sufficient basis to challenge voter signatures that have already been twice confirmed as made by a registered voter.

I decline to invalidate any petition signatures due to alleged use by a signer of initials or printed names for a signature.

Municipality Mismatch

Berger claims that 33 signatures (26 validated) are invalid because the voter listed a different municipality as their residence address. I note that 2 of the 7 invalid signatures in this category were invalidated by my office due to this issue.

A review of the 26 validated signatures with this alleged issue shows that all objections are without merit. In most cases, the voter clearly listed as their municipality the municipality to which the petition was submitted for certification. The petition form itself confirms that, at least of those signatures determined valid, that the registrar was able to confirm that the voter was registered in the municipality. In a few cases, the voter listed a geographic subdivision of their municipality, such as Peaks Island or South Gardiner, which is functionally equivalent to stating the official name of the municipality and certainly sufficient for a registrar to decipher the voter’s municipality and determine whether they are a registered resident.

In two cases, signers listed their counties of residence as their municipality. *See* L2-197-5 (listing “Kennebec” instead of Augusta), L7-249-1 (listing “Sagadahoc” instead of Bath). While a voter’s use of their county rather than their municipality on the petition might be grounds for a registrar to decline to review and certify the voter’s name under § 354(7)(B), in these cases it is clear that the registrars in fact reviewed the information provided, including street address and name, and were able to determine that the voter was a registered resident of Augusta and Bath respectively. Where there is no evidence that these voters are not in fact registered voters in Augusta and Bath, I decline to invalidate those two signatures merely because the voter listed their county rather than their municipality on the form.

Address Mismatch

Berger challenges 905 signatures (882 validated) on grounds that the street address provided by the voter on the petition form did not match the data in the possession of Berger’s vendor. Notably, Berger does *not* contend that these voters are not registered to vote in the

municipality stated on the petition, but only that his vendor's data show a different street address for the voter within that municipality.

Gass makes a similar challenge, contending that 135 signers of the petition (132 validated) are not registered at the address listed on the petition.⁸ As with Berger's challenge, my understanding is that Gass does not dispute that the signers are registered voters, but contends only that the address they provided on the petition is not the address contained in the data that Gass's vendor consulted.

Section 354(4) requires that voters signing a candidate petition provide their "residence address." A voter's material misstatement of their current residential address at the time of signing the petition thus could be a basis to invalidate that voter's signature. I do not interpret subsection 4, however, to require the voter to provide on the petition an address that is no longer current if that happens to be the one on file with the municipal registrar. Nor do I interpret section 354 to make a voter who has not yet updated their voter registration to reflect their current address after a move within the same municipality to be ineligible to sign a candidate petition. Consistent with my interpretation, my office has long instructed municipal registrars that, when they conduct petition reviews, they should update the addresses of confirmed registered voters in CVR when those voters provide a residence address on the petition within the municipality that differs from the address listed in CVR. *See generally* 21-A M.R.S.A. § 162-A(1) (2024). This practice reflects the reality that voters often do not immediately update their voter registration when they change residences within the same town, particularly if their move is not proximate to a major election.

Obviously, if voters give residence addresses that differ from those in CVR because they have not updated their voter registrations, they take the risk that the registrar will not be able to confirm to the registrar's satisfaction that their names "appear in [CVR] as registered voters in that municipality," *see* 21-A M.R.S.A. § 354(3) & 7(C), and that their signature will therefore be invalidated. And, indeed, that may well have occurred here with some of the invalidated signatures in this category. But that consequence is a far cry from Berger's proposed rule, which automatically negates the participation of any registered voter in the petitioning process if they happen to sign the petition after a change in residence but before they have had a chance to update their voter registration information. Such a rule fails to adequately protect the important rights of petition signers to participate in the democratic process.

Given that section 354(4) merely requires a registered voter signing a petition to provide their current residence address, which need not be the address on file with the registrar if the registrar can otherwise verify that the voter is registered in the municipality, the fact that the given residence address differs from the address listed in the party/campaign use voter file does not establish that the voter gave a false residence address on the petition. Berger and Gass present no other evidence that the challenged residence addresses are not, in fact, the places at which the signers resided when they signed the petition forms. Absent such proof, and given that

⁸ Although Gass Ex. 25 suggests that 142 signatures are challenged, I was only able to link the listed challenges in that exhibit to 135 signatures on the petition forms.

this category of challenge does not question the registrar’s determination that the voter was a registered voter within the municipality (which Berger and Gass separately challenge below), this challenge fails.

Finally, I note that my approach here is consistent with agency precedent. In a challenge to the petition of U.S. Senate candidate Herbert Hoffman, challenger John Knutson sought to disqualify a number of signatures on the ground that the address listed on the petition was not the same as the address listed in CVR or on their voter registration card. According to the recommended decision issued by Deputy Secretary Flynn and adopted by the then-Secretary, “[s]ection 354 does not obligate the registrar to determine that the address listed for the voter on the nominating petition is the current residential address appearing in the CVR or on the most recent voter card on file in the registrar’s office.” Recommended Decision, 2008 WL 8779172 (June 19, 2008).

I decline to invalidate any petition signatures due to allegedly false residence addresses.

Incomplete Address

Gass challenges 28 signatures (26 validated) on grounds that the voter provided an incomplete address. In contrast to Berger’s challenge to “mismatched” dates, Gass brings a narrower challenge, identifying only those petition entries that she claims are missing some or all of the street address or municipality.

It is the longstanding policy of my office, stretching back to at least the 1990s, that missing information in the residence or municipality field do not automatically invalidate petition signatures.⁹ Rather, a voter’s failure to list some or all of their address or municipality on the petition subjects them to the risk that the registrar will be unable to confirm that they are a registered voter in the municipality. But assuming the registrar can confirm from the voter’s signature and other elements on the petition that the voter is indeed a registered voter in the municipality, there is no reason to invalidate the signature. The approach advocated by Berger would elevate form over substance and disqualify legitimate signers due to immaterial errors in form.

Moreover, I note that even if a complete absence of a street address or municipality is somehow problematic, most of the signatures challenged by Gass in this category seem to be missing only portions of an address, such as a street number or road designation such as “rd.” or “ave.” Some even appear to be complete addresses, as far as I can tell. Even if Gass were correct that a signature with no address information must be invalidated despite the registrar confirming the person is a registered voter in the municipality, approximately 15 of the validated signatures in this category would appear to still be valid.

⁹ Indeed, the written guidance my office provides to circulators of citizens’ initiative petitions states: “Absence of an address or use of a mailing address will not automatically invalidate the signature, but may invalidate it if the registrar cannot determine who the voter is based on the signature alone.” Department of Secretary of State, *Instructions to Initiative Circulators* at 2 (July 23, 2023).

I decline to invalidate any petition signatures due to missing or incomplete address information.

Same Handwriting Across Rows

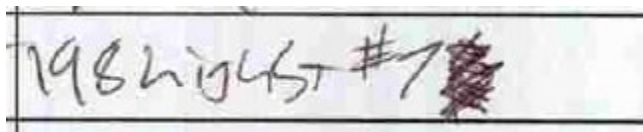
Berger challenges 25 signatures (20 validated) on grounds that the handwriting on the challenged petition forms appear to show that the same person completed multiple rows of information on the petition.

Upon review of the challenged petitions, it is not clear that Berger is correct in all cases that multiple challenged signature lines contain the same handwriting. For example, the signatures at SOS Ex. 5, page 243, lines 1–5 & 9, all challenged by Berger, appear to contain different handwriting on each line. In any event, Maine law permits the circulator to print the voter’s name and address on the petition and contains no requirements as to who may print the date. *See* 21-A M.R.S.A. § 354(3) & (4). Even in cases in which handwriting across rows looks similar, there is no reason to think it was not the circulator filling in this information as permitted by law. Further, while multiple *signatures* made by the same person on a petition form would of course be improper, there is no visual indication of any such forgeries. In short, Berger has not shown a basis to invalidate any signatures based on the use of the same handwriting on the petition forms.

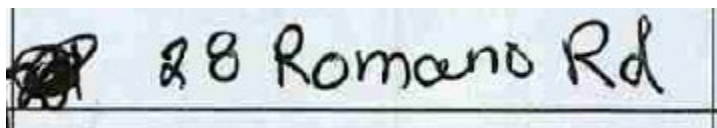
I decline to invalidate any petition signatures due to alleged use of the same handwriting on multiple lines of a petition form.

Uninitialed Cross-outs

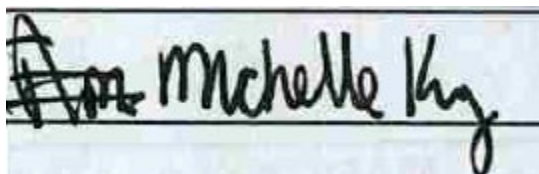
Berger challenges 90 signatures (78 validated) on grounds that the voter information contained on the petition contains “uninitialed cross-outs.” To be clear, these cross-outs are not instances in which the entire line is crossed out, as Mr. Messner testified that those full cross-outs were not part of his analysis (and, in any event, all such full cross-outs would not have been tallied as valid signatures by my office). Rather, these cross-outs by voters involve corrections to only portions of the information on a signature line. Examples of challenged cross-outs are reproduced below:



(L1-42-17)



(L3-75-3)



(L6-169-1)

Maine law does not require that a voter's cross-outs on a petition form be initialed by the author. *See* 21-A M.R.S.A. § 354. Putting aside the question of whether I could prospectively impose such a requirement on future petitioners through guidance or rulemaking, it would be manifestly unfair, and potentially unconstitutional, for me to impose such a requirement retroactively, where candidates, circulators, and voters had no prior notice that failure to initial any cross-outs would render signatures invalid. I therefore decline to impose any such requirement.

I decline to invalidate any petition signatures due to “uninitialed crossouts.”

Illegible Name or Address

Berger challenges assert that 8 signatures (2 validated) are invalid due to illegible names, 1 signature (0 validated) is invalid due to illegible street address, and 1 signature (1 validated) is invalid due to illegible municipality.

Maine law does not provide that a signature is invalid if some portion of the voter's information is illegible. Rather, a voter signature will be invalidated if the registrar cannot determine to their satisfaction that the signer is a registered voter in the municipality. *See* 21-A M.R.S.A. § 354(3). Illegibility may of course prevent the registrar from making such a determination, as it may have in some or all of seven signatures in this category that the registrars determined invalid. But if the registrar can satisfy themselves as to the identity of the signer, it does not matter if some portion of voter's information is difficult or impossible to decipher.

In the three cases in which registrars were able to decipher the identity of the voter, I see no basis to question the registrars' determination. The allegedly illegible information is sufficiently legible that registrars would have had no difficulty deciphering it after using other more legible portions of the record, such as street address, to look up the likely voter record in CVR. I therefore decline to invalidate any signatures on the basis of illegibility.

Other Voter Name Issues

Gass challenges 10 signatures under the general rubric of “problems with names,” which involve miscellaneous challenges to particular printed names of the signer. Gass Ex. 23.

The specific issues are as follows: (a) registrar wrote in different first name (2 signatures), (b) no last name given (1 signature), (c) registrar wrote in a different last name (3 signatures), (d) first name plus first initial of last name given (2 signatures), (e) signature is a mark rather than letters (1 signature), and (f) no obvious issue (1 signature – L6-119-2).

I decline to invalidate any signatures on the basis of these varied objections. In each case, the registrar was able to confirm the identity of the voter based on residence address, signature, and partial name information despite incomplete or differing information provided by the voter. In the five cases in which the registrar wrote in different information, the discrepancy is explainable as a name change or nickname.

I decline to invalidate any signatures with the “name” issues identified in Gass Ex. 23.

Challenges to Qualifications of Voters to Sign

Duplicate Signatures

Berger challenges 54 signatures (53 validated) on grounds that the voter had previously signed the Petition. Voters, of course, may only sign a candidate's petition once, so if Berger is correct that the challenged voters signed more than once, only the first validated signature should have been counted.

Upon review of the 53 validated signatures challenged on this ground, I agree with Berger that all are duplicates by a voter who had already previously signed the Petition. I invalidate those signatures.

Not Registered to Vote

Berger challenges 1,459 signatures (599 validated) claiming that the signers were not registered to vote at the time they signed the petition. Gass also challenges 517 signatures (507 validated) on the same basis. In 152 cases, Berger and Gass challenge the same validated signatures as coming from unregistered voters. In the remaining cases, Berger identifies different voters as unregistered than Gass does, resulting in a total of 954 challenged signatures that were determined by municipal registrars to be from municipal voters.

As I stated at the hearing, I agreed that the CVR system provided the best data as to whether a particular signer is a registered voter. I also stated that I would authorize review of CVR data by my staff on an in-camera basis if I were persuaded that the parties made a prima facie showing that one or more voters counted by municipal registrars were in fact unregistered.

I note there is a significant divergence between the voters challenged by Gass versus those challenged by Berger, despite testimony indicating that they used similar methods and data to perform their analyses. This divergence, resulting in an overlap of only 152 signatures between the two challenges, gives me some pause as to the reliability of the analyses that they each performed. Nevertheless, I was persuaded by the testimony of Mr. Messner and Ms. Werner that both challengers at least utilized a reasonable process to identify alleged unregistered voters based on party/campaign use voter files that were roughly contemporaneous with the time period that circulators were gathering signatures. I therefore directed my staff to conduct further review of the 954 challenged signatures using the CVR system to determine if they are in fact not registered to vote.

My staff conducted a review of the 954 challenged voters using the live CVR system. Staff looked up the challenged voters by name to determine if they were registered voters. If it was not immediately apparent that the signer was a registered voter—for example, there was no address match and multiple voters in the municipality with the same name—staff reviewed the voter's signature, if available in CVR, to confirm the identity of the voter. After review, my staff was able to confirm that 920 of the 954 challenged signatures in this category are registered Maine voters. My staff was unable to confirm the remaining 32 voters, either because scanned registration cards with voter signatures were unavailable in CVR or for other reasons.

Based on my staff's review, I invalidate 32 signatures based on an inability to confirm that they are registered voters.¹⁰ I decline to invalidate the other signatures challenged in this category.

As already noted, an updated party/campaign use voter file containing data concerning these voters current as of today, August 20, 2024, is being provided to the parties as Confidential Exhibit 6. I do not have a ready means by which to provide the parties with the voter registration cards of the challenged voters, though I note the challengers could have sought these cards from municipal registrars.

Registered After Signing Petition

Berger also identifies 3 voters (2 validated) that he claims registered to vote after signing the petition. As with the much larger category above, I instructed my staff to review these two voters in the CVR system. My staff found that each of these voters were registered to vote prior to signing the petition.

Conclusion

Maine law requires that I assess the facts and the legal arguments presented by any voter presenting a proper challenge to the nomination of any candidate to public office. Pursuant to my duties under Maine law and my oath to the Constitution, I have carefully examined the facts presented by the challengers and reviewed in careful detail the nomination petitions of Dr. West's campaign.

To summarize, of the 4,978 validated signatures contained in the Petition, I invalidate the following signatures:

- 135 validated signatures contained in petition forms circulated by Patrick Powers;
- 27 validated signatures for lack of a notary public signature on the certificate of notarial act;
- 2 validated signatures for incomplete dates because the date of signature could not be confirmed;
- 16 validated signatures for improper use of ditto marks;
- 1 validated signature dated after the registrar's certification;

¹⁰ So that the parties can identify which signors Election Division staff were unable to confirm as registered voters, I provide the following list: L1-1-2; L1-55-1; L1-99-4; L1-127-13; L1-149-2; L1-199-10; L1-211-9; L1-235-6; L1-237-17; L2-9-28; L2-87-4; L2-247-4; L2-255-7; L2-267-1; L3-13-2; L3-29-29; L3-47-30; L3-51-3; L4-117-6; L4-491-2; L4-793-9; L4-797-1; L5-25-1; L5-55-3; L5-255-25; L6-179-1; L7-53-2; L7-79-2; L7-79-3; L7-81-1; L7-119-2; L7-339-26. All other signors challenged in this category were confirmed to be registered voters.

- 53 validated signatures as duplicates; and
- 32 validated signatures for inability to confirm registration status.

In total, these findings invalidate 258 additional signatures (including 8 signatures with more than one basis for invalidation). Since the Petition was originally determined to contain 4,978 signatures, I conclude that, following adjudication of this challenge, the Petition has **4,720** valid signatures. Because the Petition contains the signatures of more than 4,000 and less than 5,000 voters, it is valid. 21-A M.R.S.A. § 354(5)(A).

This review underscores the extraordinary professionalism and adherence to Maine law demonstrated by our hardworking clerks and elections staff and upholds the accuracy of the initial certification.

Furthermore, I have reviewed the law and my obligation to ensure that the constitutional rights of the voters are preserved. To find more signatures invalid on the basis of the ministerial concerns detailed by the challengers would be to establish new legal precedents not found in Maine law that would restrict the constitutional rights of voters in the petition process. The evidence presented by the challengers of fraud perpetrated by one signature collector is more troubling. Make no mistake, fraud has no place in our elections process. However, the challengers did not demonstrate in a clear or convincing way that other circulators, notaries or most importantly, voters engaged in fraud. Some might argue that Dr. West's campaign should have exercised more oversight over the petition process, and the evidence presented suggests that some of the signature collectors were paid by an entity other than his campaign, but Maine election law does not require or indeed permit me to deny the constitutional rights of the voters signing the petitions sincerely on the basis of the actions of a few who may have acted in bad faith. Democracy is not served well by lies and obfuscation, but it would be ill-served if the remedy were to deny the constitutional rights of voters acting in good faith.

Gass's and Berger's challenges to the Petition are therefore **DENIED**.

Dated: August 20, 2024



Shenna Bellows
Secretary of State

NOTICE OF APPEAL RIGHTS

The challengers or candidate may appeal this decision by commencing an action in the Superior Court within 5 days of this date, pursuant to 21-A MRSA section 356, subsection 2, paragraph D.