

MAINE STATE LEGISLATURE

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MATTHEW DUNLAP
SECRETARY OF STATE

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March 1, 2010

Honorable Nancy B. Sullivan
Chair, Joint Standing Committee on Legal and Veterans Affairs
100 State House Station
Augusta, Maine 04333-0100

Honorable Pamela Jabar Trinward
Chair, Joint Standing Committee on Legal and Veterans Affairs
100 State House Station
Augusta, Maine 04333-0100

Dear Senator Sullivan, Representative Trinward and Members of the Committee:

Maine election law, Title 21-A §195, requires the Secretary of State to report annually "on the administration of the central voter registration system." The law permits that the report may address issues of "public access to the information from the central voter registration system, taking into consideration the compelling state interests to prevent voter fraud and the potential disenfranchisement of voters and to ensure that voters are not discouraged from participating in the voting process." The law further provides that the "report may include suggested legislation necessary to administer the central voter registration system." I am pleased to present the 2010 report.

Since the 2009 report covered the 2008 election cycle, that report provided significant background on the implementation of the Central Voter Registration System (CVR) as well as the use of the system by state and local election officials for all facets of conducting the primary and general elections during that year. This report addresses the use of CVR to conduct the 2009 referendum election cycle.

2009 Election Cycle

In 2009, municipal officials continued to use CVR for conducting both state and local elections. Most of the medium to large municipalities logged in to CVR weekly, if not daily, to add new voters and to make updates to existing voters. Some of the smaller municipalities only logged in just before an election, to make all of their updates and produce their voting list for the election. Due to unreliable internet connections, our office assisted a small number of towns by making updates to their voter records as directed by the municipalities and by producing and delivering the incoming voting lists to the municipalities for Election Day.

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Throughout 2009, the Clerks and Registrars across the State were able to efficiently process 48,643 new voter registrations and 51,869 registration changes (such as party enrollment changes or new addresses). The CVR was also used to successfully process 140,737 absentee ballots requested in the November 2009 Referendum Election, which represented 25% of the over 572,000 total ballots cast in that election. After the Referendum Election, the municipalities also used CVR to scan or data enter the voter participation history (i.e. the voters who voted at the election).

Municipal and State election officials also worked to improve and maintain the accuracy of voter records. There were a total of 69,032 registration records cancelled in the CVR by municipal and State officials. Of the voters whose registration records were cancelled, almost 9,900 of them were deceased. The CVR has a built-in function that allows municipal election officials to easily identify and cancel the records of their deceased voters. Each month our office receives an update file from the office of Vital Records containing the records of recently received death certificates. This update file data is automatically compared to the voters in CVR and any apparent matches are presented to each municipality. A municipal election official then chooses to accept the match and cancel the voter, or to deny the match as not being the same voter. This monthly process takes most municipalities less than 30 minutes to complete.

Another major reason leading to the cancellation of voter records was that the voter had moved from the municipality (to another municipality either within or outside of Maine). Nearly 19,000 records were cancelled for this reason, either by the municipalities, or by the State during a statewide data cleanup process. The centralization of the voter registration database makes it more efficient for the Department to conduct some of the data maintenance and cleanup functions that were once conducted by individual municipalities.

In the summer of 2009, our office conducted a statewide process of data matching and cleanup using the USPS National Change of Address (NCOA) data. We started by sending -- to an authorized NCOA vendor -- 291,975 records of active status voters who had not voted in the November 2008 Presidential. The vendor provided the state with a file containing 23,651 records that matched the NCOA database (i.e. voters who potentially had moved from the address on file in CVR). Our office mailed a Change of Address Confirmation Card with a postage-paid reply card to those voters who had potentially moved, as required by the National Voter Registration Act (NVRA). In response to this mailing, over 4,600 voters confirmed they had moved and the State cancelled their voter records. More than 1,400 voters replied that they had not moved; thus, their voter records were not cancelled. The remainder of the voters, over 17,600, who did not reply to the confirmation card or whose card was returned as undeliverable, were designated with an "Inactive" status in CVR in accordance with federal law (NVRA).

Another batch data maintenance process that the State conducted in 2009 was the identification of voters who had been designated as Inactive for a period of two federal general elections without voting. Pursuant to NVRA, our office changed the status of these

nearly 34,000 voter records from “Inactive” to “Cancelled” through this batch update process. Thus, almost 56% of the cancelled voter records were completed by the Department through an efficient, centralized batch process rather than necessitating a more laborious process involving 500 individual municipalities.

Throughout the 2009 election cycle, the Department, in partnership with InforME, was able to use the CVR data to offer new and innovative citizen services. The Voter Information Look-up Service allows citizens to find the name and address of their polling place; to quickly find information about all the candidates for office in their district; and to find contact information for their municipal officials. The CVR also allowed the State to monitor and audit its new Online Absentee Ballot Request Service, to assure that all requests were properly processed.

The smooth conduct of the 2009 Referendum Election gave further evidence that Maine has successfully transitioned from hosting elections using over 500 separate municipal-based voter lists kept in a variety of formats, to hosting those elections with a single central voter registration system, along with its many benefits.

Ongoing Obligations, Improvements and Enhancements

In addition to its election-specific CVR activity, the Department has ongoing responsibilities to maintain the system and provide support to its municipal partners in the election process. The Department maintains and staffs a toll-free Help Desk to provide assistance to municipal clerks and registrars, as needed, and offers annual refresher training. In 2009, the CVR Manager, with assistance from the Assistant Director of Elections, handled almost 2,350 Help Desk calls, which were only about 500 fewer calls than were taken during 2008. Almost 18% of the calls during the past year have involved the scanning of voter registration card images into CVR. While many of the clerks have been able to complete their scanning by following the detailed instructions in the CVR training manual, some called the Help Desk seeking a more hands-on method of instruction or because they had encountered a problem. These calls can take from 15 to 90 minutes and often require the use of special software that allows the Help Desk staff to see and control the clerk's PC, in order to demonstrate how the clerk would complete the activity in CVR. Another 36% of the Help Desk calls relate to entering voter registration records, tracking absentee ballots, or generating various reports. These calls last on average between 1 and 5 minutes. The remainder of the calls covered passwords, voter history, hardware, data requests and a variety of other topics.

Additionally, the Department continues to work with the *ElectionNet* software vendor and municipal users to introduce new or enhanced functionality that was not required at the outset. For example, the Department is implementing a robust petition module which will streamline the certification of statewide and municipal citizen initiative and candidate petitions; and also is designing a module that will facilitate redistricting.

As previously noted, the CVR is a statewide system maintained by the Department, and accessed by municipal clerks and registrars over the Internet. Clerks and registrars in over 500 municipalities are primarily responsible for voter record maintenance, including: adding

new voter records; updating records with address changes, party changes, or other changes; and entering election participation history. Consequently, as we noted in prior reports, the success and accuracy of the CVR relies not only on the Department performing its system maintenance duties, but also on the accurate and timely use of the system by municipal clerks and registrars. Updates and changes are made in real time and are immediately visible to authorized Department staff. This provides the Department with an unprecedented view of municipal compliance with election laws and procedures.

With this visibility, as the Department identifies issues, staff has worked with municipalities to resolve the problems on an expedited basis. The CVR Manager, with assistance from other staff in the Elections Division, continues to monitor the CVR data for accuracy and completeness, as well as the municipal officials' compliance with pre- and post-election statutory obligations. As we continue in this maintenance phase of CVR usage, more of our staff time will be spent on outreach to municipal officials to conduct these voter registration and maintenance activities in a timely manner.

CVR Funding

The implementation and ongoing maintenance of the CVR has been paid for with federal HAVA funds along with the required 5% State matching funds. Prior to 2007, the Department applied for and secured the full amount of federal HAVA funds for which Maine was eligible, based on federal appropriations at the time. On June 30, 2009, Maine obtained the needed \$30,263 in State matching funds to be eligible for \$575,000 in federal funds allocated in 2008. In addition, the U.S. Elections Assistance Commission (EAC) recently confirmed that the State can use monies it receives from the sale of voter registration data as State matching funds for the receipt of 2009 federal HAVA funds. The State match of \$26,316 (from voter list sales) will be used to secure \$500,000 in 2009 grant money. In 2010, the Department anticipates completion of all the steps necessary to fully draw down all available federal funds. In addition, we intend to continue to work with our Congressional delegation to seek ongoing federal funding.

CVR Data: Use and Distribution Recommendations

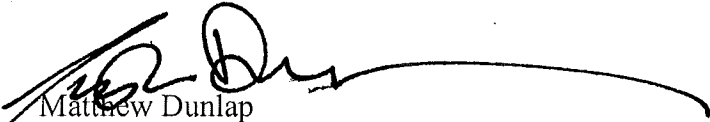
Our office submitted LD 1627, *"An Act to Improve Access to Data in the Central Voter Registration System"* during this legislative session, in an attempt to continue the protections on the use and redistribution of CVR data; to provide clarity regarding the individuals and entities that may obtain data from the CVR; and to provide some additional limited access to CVR data by governmental or quasi-governmental entities for use in accordance with the entities' authorized activities. Having received a unanimous "Ought to Pass" vote from this Committee, this bill will be on the consent calendar in the House of Representatives for a second day on March 2nd. This legislation will assist state and municipal election officials in appropriately responding to requests for access to CVR data, while retaining the confidentiality of voter data as a whole.

Throughout the Department's effort to deploy the CVR and through its first uses, my primary objective has been to seamlessly implement a reliable system that facilitates the voter registration process and assures the accuracy and integrity of Maine's elections. I am confident that we have met and exceeded that goal, and we have begun to enjoy many additional benefits of the CVR.

Maine currently has 977,533 registered voters in an "Active" status in CVR, which represents 95% of Maine's Voting Eligible Population (i.e. citizens 18 years or older) of 1,027,174 persons. In combination with the CVR, Maine's nation-leading accessible voter registration laws and procedures have clearly resulted in a voter registration system that is robust and inclusive.

I look forward to working with you as you consider this report, and as our Department continues to maintain the CVR, administer other HAVA initiatives and fulfill its ongoing obligations. As always, you may contact me at 626-8400 if I can provide you with any additional materials, answer any questions, or assist you in any way.

Sincerely,



Matthew Dunlap
Secretary of State

Summary of Exhibits Provided to Legal and Veterans Affairs Committee

February 17, 2010

Prepared by the Office of the Secretary of State

Document Number	Description
1	Affidavit of Deputy Secretary of State Julie Flynn submitted in the Charles Webster v. Matthew Dunlap, Secretary of State lawsuit -- <i>provides summary of process followed to determine validity of people's veto petition as well as a description of other tasks completed by the Division of Elections during the certification time period</i>
2	Determination of the Validity of a Petition for People's Veto of Legislation Entitled: "An Act To Implement Tax Relief and Tax Reform" -- <i>decision is issued to detail final determination of petition effort, includes a description of why signatures were invalidated for the petition</i>
3	Peoples' Veto Petition Certification Instructions -- <i>instructions used internally by Division of Elections staff to certify petitions</i>
4	Sample People's Veto Referendum petition for P.L. 2009, c. 382 "An Act to Implement Tax Relief and Tax Reform" -- <i>sample does not include legislation (printed inside on actual petition)</i>
5	Instructions to Petition Circulators -- <i>instructions provided to all circulators of citizen initiative and people's veto petitions -- required by statute since 2005. Copies of relevant laws and excerpts from Maine Constitution are also provided. This information is reviewed with proponents before the petition is issued for circulation. Proponents are instructed to copy and review with all circulators before beginning to circulate petitions.</i>
6	Certification Instructions for "An Act To Preserve Maine's Drinking Water Supply" -- <i>instructions used internally by Division of Elections for petition filed in September, 2005.</i>
7	2009 Division of Elections Task Schedule -- <i>month by month listing of tasks completed, including projected deadlines and actual dates task was completed</i>

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-09-055

CHARLES WEBSTER,)
)
 Petitioner)
)
 v.)
)
 MATTHEW DUNLAP,)
 SECRETARY OF STATE,)
)
 Respondent)

AFFIDAVIT OF JULIE L. FLYNN,
DEPUTY SECRETARY OF STATE

I, Julie L. Flynn, being duly sworn, hereby depose and state as follows:

1. I am the Deputy Secretary of State in charge of the Bureau of Corporations, Elections and Commissions and have held this appointed position since February of 1999. I served as Director of the same Bureau, including the Elections Division, from March of 1995, until I was appointed Deputy.

2. The Secretary of State's Office, through the Elections Division of the Bureau of Corporations, Elections and Commissions, reviews all petitions for direct initiatives and people's veto referenda, filed pursuant to the Maine Constitution, Article IV, part third, sections 17-20, and 21-A M.R.S. §§ 901-906. The office also oversees all statewide elections and administers the Maine election laws set forth in Title 21-A. In my capacity as Deputy Secretary of State for the Bureau, I have supervisory responsibility for all of these activities. I have personal knowledge of the matters set forth in this affidavit.

3. Since 1995, when I joined the Department of the Secretary of State as Director of Elections, the Department has received and reviewed five people's veto referendum petitions – three between 1995 and 2008, and two in 2009. Until the most recent filing in 2009, we have

amount of staff time and enabled us to begin counting and numbering petitions promptly following receipt (*see* description in paragraph 13 below). Because of time constraints, we actually reviewed only 13,000 of the petitions that were submitted, which contained about 62,000 signatures certified as registered voters by local registrars. Between August 1 and September 1, Department staff logged over 1,500 hours reviewing these petitions. On September 2, 2009, the Secretary of State issued a determination that the petition had enough valid signatures to qualify for the ballot, and the Governor issued a proclamation the same day setting the election for November 3rd.

7. The time involved in reviewing the same sex marriage people's veto petitions during the month of August required Elections Division staff to defer until September many of the tasks necessary to prepare for the November 3rd election, as described in paragraph 8 below. By statute, a people's veto referendum question must be listed on the ballot before any direct initiative, bond issue or constitutional amendment. *See* 21-A M.R.S. § 906(7). Accordingly, we could not finalize the ballots for the November 3rd election, or any of the election materials specific to the ballot questions (described in paragraphs 8 (a), (b), (e), (g), (i) and (j) below) until after our office had determined whether the same sex marriage people's veto referendum qualified for the ballot.

Preparation for the Nov. 3rd statewide election:

8. Preparation for a statewide election in November begins in the summer and is particularly time-intensive from mid-August through October. To prepare for the election on November 3, 2009, the Elections Division staff had to accomplish a variety of tasks, including the following:

another 235 other clerks and registrars in separate one-day sessions in Portland, Augusta and Houlton, on September 16, 17 and 23 and October 7, 2009;

e) instructions and forms for election officials – prepare, proof, print and distribute five separate mailings to election officials, containing the following materials:

September 9 – forms and instructions for posting the notice of election, early voting security plans and procedures, CVR reminders, instructions for early processing of absentee ballots, and state party contact information;

September 18 – absentee voting guide, absentee ballot receipt form, sample ballot receipt form, instructions on testing of the Accessible Voting Solution (“AVS”), and the Treasurer’s statement for distribution with absentee ballots;

October 7 – updates for the Central Voter Registration (“CVR”) system, and a guide to the use of incoming voting lists;

October 13 – receipt form for official ballots, voter rights posters, fiscal impact statements (for posting during absentee voting period and with notice of election), and *Uniform Guidelines for Determining Voter Intent*;

October 21-23 – individualized mailings to each municipality including a sufficient number of the posters and Treasurer’s statement described above for each voting booth, plus election return forms and other materials as required by 21-A M.R.S. § 606; and

October 26 – special mailing of training guide updates to 259 clerks and registrars who were unable to attend any of the trainings sessions or elections conference described above;

f) distribution of voter registration applications – collect, sort by municipality, and distribute 9,767 voter registration application cards filed with Bureau of Motor Vehicle

of administering the statewide election. Our office's telephone system maintains a call log which records all incoming and outgoing calls handled by the four line staff in the Elections Division. The log shows that the staff received and responded to 1,443 calls in August, 1,637 in September and 2,997 in October. These figures do not include the hundreds of calls handled by management staff on more complicated matters relating to voter registration and election administration.

Petition review process:

11. The process of reviewing petitions to determine whether the minimum statutory and constitutional requirements have been met is a multi-step process.

12. As noted in paragraph 5 above, our office received the petitions for a people's veto of tax reform legislation (P.L. 2009, c. 382) on Friday, September 11, 2009. (*See* receipt forms provided to petitioners upon delivery, attached hereto as Exhibit 4.) Although we did not count the petitions upon delivery, the staff subsequently determined that a total of 9,955 separate petition forms had been submitted. The petitions fill 40 archive boxes.

13. Department staff first had to sort the petitions by town, count them into lots of 25 and file them in labeled folders with 25 petitions in each folder. This required one team of two staff people since multiple teams would have made it impossible to produce one numbered sequence of petitions. After the petitions were counted and placed in folders, each petition had to be numbered in sequence. These preliminary steps are essential to facilitating the entire review process.

14. Sorting the petitions into town order took 45 hours of staff time and involved three people. The remainder of the preliminary steps described in paragraph 13 above consumed 106 hours of staff time.

registrar to confirm their voter registration status. Petitioners are requested to file these forms with our office, with attached copies of each circulator's voter registration card, as evidence of the circulator's registration and residency status. If everything is in order on the form and is confirmed by review of the voter card, we consider these requirements met. If we do not receive a certificate of registration form for a particular circulator, then we attempt to find the circulator's name in the Central Voter Registration System ("CVR") and confirm it by comparing their signature on the petition to the signature shown on the voter registration card. If the information submitted or obtained in this review shows that the circulator registered to vote very recently – e.g., shortly before beginning to circulate petitions – then we take additional steps to attempt to verify that the individual is a bona fide Maine resident. Three of us spent a total of 62 hours reviewing and verifying the residency and voter registration status of all the circulators of this people's veto petition. A total of 565 circulators were involved in this petition drive.

c) circulator's oath – We make sure that the circulator's original signature appears in the circulator's oath section of the petition form, and that a properly commissioned notary signed and dated the oath after the date of all the signatures of voters appearing on the petition. Any signatures dated after the date of the circulator's oath are invalidated.

d) notary status – We verify that each notary who signed a petition as having administered the oath to the circulator has a valid notary commission. We do this by first checking the notary's name against our database of commissioned notaries. If the notary has the same last name as the circulator, we check to make sure that the notary and circulator are not related. If the notary's name does not appear in our notary database, then we check to see if the person is a licensed attorney. The tax reform people's veto petition involved a total of 435 notaries and attorneys.

proof read carefully once it is complete. The database allows us to print reports by petition number, with the total numbers of signatures found valid or invalid, and if invalid for what reason. We can also generate reports by notary and by circulator. We utilize the summary information in these reports to prepare the Secretary's determination of validity of the petition.

Staff resources:

20. The Elections Division has only four line staff, a director, an assistant director, and a central voter registration system manager – a total of seven people. For tasks such as sorting, numbering, data entry, and proof reading of the certifications, we bring in staff from the Division of Corporations, UCC & Commissions, or elsewhere in the Department to assist. The actual certifications, however, are performed by one of the seven members of the Elections Division or by me, in order to assure consistency in application of the statutory and constitutional requirements for a referendum petition. For the tax reform people's veto petition, we also trained senior management staff elsewhere in the Department to assist.

21. The Department's budget for this fiscal year contains no funds to pay overtime or to hire temporary workers to assist in this effort. Bureau staff worked extra hours during the week and every Saturday during the past three weeks, for compensatory ("comp") time, to assist in the review of this petition. Salaried management staff also worked many extra hours during the week and on weekends to complete the review.

22. As of the date this lawsuit was filed, on November 2, 2009, the Elections Division and other Department staff had logged 1,045 hours reviewing the tax reform people's veto petitions.

STATE OF MAINE
OFFICE OF THE SECRETARY OF STATE

**DETERMINATION OF THE VALIDITY
OF A PETITION FOR PEOPLE'S VETO OF LEGISLATION ENTITLED:**

"An Act To Implement Tax Relief and Tax Reform"

1. On September 11, 2009, 9,955 petitions containing 71,035 signatures were submitted to the Secretary of State pursuant to the Constitution of Maine, Article IV, Part Third, Section 17 on behalf of the people's veto of the legislation entitled, "An Act To Implement Tax Relief and Tax Reform".
2. Following a review of these 9,955 petitions I find the following signatures to be invalid for the following reasons:
 - A. 8,774 signatures are invalid because they were not certified by the registrar as belonging to a registered voter in that municipality. (REG)
 - B. 3,380 signatures are invalid because the circulator's oath was not complete or not administered properly. (OATH)
 - C. 1,315 signatures are invalid because they are duplicates of signatures already counted. (DUP)
 - D. 638 signatures are invalid because the voter's signature was withdrawn (crossed out) on the petition. (WD)
 - E. 286 signatures are invalid because the voter dated his or her signature after the date of the circulator's oath before the notary, or the voter's signature was not dated and it could not be determined that the voter signed the petition before the circulator took the oath. (DATE)
 - F. 194 signatures are invalid because the petition was not on the approved form. (FORM)
 - G. 83 signatures are invalid because the petition was submitted to the municipal registrar for determination of whether the petitioners were qualified voters after the deadline set by the Maine Constitution, Article IV, Part Third, Section 20. (AMD)
 - H. 75 signatures are invalid because the registered voter's signature was made by another. (ANO)
 - I. 71 signatures are invalid because the petitioner failed to provide a signature. (SIG)
 - J. 50 signatures are invalid because the notary was related to the circulator. (OWN)

PEOPLES' VETO PETITION CERTIFICATION INSTRUCTIONS

ANY WRITING MUST BE DONE IN GREEN PEN ONLY. MARK ONLY IN THE PETITION LOG (FOR SECRETARY OF STATE USE ONLY).

There are several areas to check when certifying petitions. The most efficient order is:

- (1) check for FORM;
- (2) check the Circulator's Oath section;
- (3) check the Registrar's Certification section; and
- (4) check the signatures (main body).

You should examine items that will disqualify the entire petition before looking at individual signatures.

Petition Form

Scan the entire petition to make sure that it is an approved form. If the signatures are not on an approved petition form, all the signatures are discounted for **FORM** (i.e., photocopies with no original signatures, petition forms missing the legislation or other required elements.)

NOTE: This petition consists of 4 2-sided pages. If any of the pages are missing, the petition must be discounted for **FORM**.

Circulator's Oath

1. Make sure that the circulator's oath is completed with the circulator's signature and the notary's signature and date. If the circulator did not sign the verification, the entire petition will be discounted for **FORM**. If a notary did not sign or date the verification, the petition also will be discounted for **OATH**. A stamped signature of the circulator or notary would invalidate the petition for **OATH** as well. **NOTE:** The notary does not have to use a notary seal or stamp.

2. Check that the notary and the circulator are not the same person and that they are not related. If they appear to be related (have the same last name), see the immediate supervisor. If it is the same person or an immediate family relation, all the signatures will be invalidated for **OWN**.

3. Be sure that the notary date is on or after the dates of all the signatures. If any signatures are dated after the notary date, the later signatures will be discounted for **DATE**.

4. If a circulator collected any signatures **before** becoming a registered voter, those signatures would be discounted for **CIRC**. Signatures collected after the circulator registered to vote are valid. **Please refer to the list of circulators who have a registration date close to or after the date when this effort began.**

Certification of Registrar

1. Make sure that the certification of the registrar is completed with the date, municipality and registrar's signature. If the municipality is missing, try to determine the city or town or check with the immediate supervisor. If the registrar did not sign or date the certification, you should contact the registrar to determine if he/she kept copies or is able to determine when the petitions were certified. If the registrar did not keep copies or is unable to determine when the petitions were certified, all of the signatures may be rejected for **CERT** – please bring the petition to the attention of your immediate supervisor (along with a note of your attempts to determine when the petition was certified). **If Registrars have used a signature stamp rather than signing their own names, you must check with them to determine that they personally used the signature stamp. If you can determine that the registrar did use a stamp, the petition can be accepted but you must make note that you spoke with the registrar and confirmed that fact. Please also advise the registrar not to use the stamp again.**

5. Refer to the chart below to determine how to treat blank lines or signatures that have been crossed out on the petition.

Description	Certification Procedure
Voters have left blank lines between signatures.	Do not include the blank lines in the count. Count only lines with a signature even if Registrar has included these lines in the town count.
A voter has started to print his name in the area for the signature – voter crosses that line out and signs properly on the line below.	The line where the voter started to sign his name should be treated as a blank line and not included in the count. Only the properly completed line should be included in the certification.
A signature has been crossed out but it appears that at one time a voter had completely signed his name and filled out the additional information.	Signature should be designated as WD – signature has been withdrawn either by voter or by circulator. It is not necessary to distinguish who actually withdrew the signature (voter or circulator).
A signature has been crossed out but the Registrar has certified it as valid.	Signature should be designated as WD .
A partial signature has been crossed out – it appears that voter never completed his signature.	Treat as a blank line – there was never a full signature on this line. Do not include the signature line in the final count.
Voter has taken up two lines – elderly voter has large signature which goes into 2 signatures boxes or voter has signed on one signature line and printed address information/printed name on line below.	The second line should be treated as a blank signature. Only the first line with the actual signature is included in the certification (counted as valid or as invalid as determined by registrar).

6. Check each line for two signatures that look exactly alike – e.g. where one spouse may have signed the other. Always check with the immediate supervisor if there is any question of one person signing both names. If you and the supervisor determine the signatures were completed by the same person, the first signature will be valid if certified by the registrar and the second signature will be rejected for **ANO**. A signature can be determined as signed by another by either the registrar or by our office.

If you detect multiple signatures that are discounted for ANO by the registrar or find signatures that are certified by the registrar, but appear to be made by the same person, bring it to the attention of your immediate supervisor. Possible fraud involving 2 circulators has been brought to our attention. Pay particular attention to petitions circulated by:



7. If it appears that the petition has been altered in any way see your immediate supervisor – this might include alterations to notarizations, signatures and/or signatures dates, etc. If it is determined that a material alteration was made to a petition, the signatures in question are invalidated for **ALT**.

If you encounter anything not described in these directions, please bring it to the attention of your supervisor. We will issue additional certification memos as issues arise in order to ensure that all staff is treating the issue the same way.

All signatures discounted for **REG** should be listed on the first line of the petition log. **DUP** should be the second reason listed followed by a third reason, if applicable. Having the reasons listed in this order will make preparing the final determination easier. You cannot invalidate signatures using more than 3 reasons – if you have a petition with more than 3 reasons, see your immediate supervisor. If an entire petition is being discounted for one reason (such as OATH or DATE), list only that one reason – do not break down for REG, DUP, etc.

People's Veto Referendum

P.L. 2009, c. 382 "An Act To Implement Tax Relief and Tax Reform"

Do you want to reject the new law that lowers Maine's income tax and replaces that revenue by making changes to the sales tax?

Date of Issuance: June 30, 2009

Filing Deadline: September 11, 2009

Registrar use only	SIGNATURE	DATE SIGNED	ACTUAL STREET ADDRESS (Not P.O. Box or R.F.D.)	MUNICIPALITY (Where Registered)	NAME PRINTED
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					

INSTRUCTIONS TO PETITION CIRCULATORS
Revised by the Office of the Secretary of State, May 2009

Pursuant to Title 21-A, Maine Law on Elections, §903-A, sub-§3, the Secretary of State is required to provide a copy of the laws and rules governing the circulation of petitions for a direct initiative or people's veto. These instructions will provide guidance in interpreting the attached laws.

Requirements for Circulators:

- You must be a resident of Maine. This means you must have established a fixed and principal home to which you, whenever temporarily absent, intend to return.
- You must be registered to vote in the municipality where you reside. In order to confirm your registration, you must complete the Certificate of Registration for Citizen Initiative Petition Circulator and submit it to your municipality for completion. The municipal registrar/clerk must certify that you are a registered voter in that municipality.

Signature Requirements:

- When you present the petition to individual voters to sign, you must first give them an opportunity to read the full text of the legislation that is printed on the petition.
- Individual voters must sign their own names to the petition. No one (not even a spouse or child of an elderly parent) may sign for another person.
- The voter must sign the petition in your presence. You may not leave the petitions unattended at a location, or attended by someone other than yourself. You must be able to take the oath that is written on the petition and state truthfully that each person who signs the petition did so in your presence.
- A voter may only sign a particular initiative or referendum petition once. If a voter tells you that they have already signed a petition for this same initiative or referendum and asks if the voter can sign again, you should inform voters that duplicate signatures will not be valid and that signing a petition more than once is a Class E crime.
- Each voter must sign their name in the far left column of the petition, using the voter's cursive signature, and using the name under which they are registered to vote. The use of initials, nicknames or other variations in the name (e.g. Mrs. John Doe instead of Jane Doe) will not automatically invalidate the signature, but may invalidate it if the registrar cannot determine if the signer is a registered voter.

Certification of Petitions by Municipal Registrars:

- In addition to the Circulator's Oath, the Registrar's Certification must also be completed on each petition. The registrar of voters in the municipality where the petition was circulated must complete this certification verifying which signatures were made by registered voters from that municipality.
- As a circulator, you should check with the organizers of the petition effort to determine if you should take the signed petitions to the registrar or if the organizers will do this.
- Petitions should be delivered to the appropriate municipal registrar for certification as soon as possible after circulation. This will provide the municipal election officials ample time to certify the petitions to determine which signatures were made by registered voters of the official's municipality.

Deadlines for Submitting Petitions to Municipal Registrars:

Direct Initiative

Pursuant to the Maine Constitution, Article IV, Part Third, Section 20, the deadline for submitting petitions to the registrar for certification is by 5:00 p.m. on the 10th day before the Constitutional deadline for filing with the Secretary of State. Petitions that have been filed on time must be certified and returned within 5 business days after receipt.

People's Veto

Pursuant to the Maine Constitution, Article IV, Part Third, Section 20, the deadline for submitting petitions to the registrar for certification is by 5:00 p.m. on the 5th day before the Constitutional deadline for filing with the Secretary of State. Petitions that have been filed on time must be certified and returned within 2 business days after receipt.

Under a Constitutional Amendment, which was approved in 2006 and became effective on January 3, 2007, **local officials are no longer authorized to certify any petitions received after the deadline specified in the Constitution for submission to the registrars.**

- Our office will be advising local election officials to date stamp all petitions received for certification so that it can be determined whether they were submitted on time. Signatures on late filed petitions will be deemed invalid.

Alterations on the Petition:

It is illegal for a circulator (or anyone else) to make changes or alterations to petitions (i.e. changing the date of signatures or date of notarization for the circulator's oath). If an election official determines that unauthorized persons have made material alterations to a petition, it is possible that all signatures on that petition will be determined invalid. Circulators should make sure that the correct date is written beside each signature. If you find that the notary has made a mistake in dating the circulator's oath, you must take the

INITIATIVE PETITION CERTIFICATION INSTRUCTIONS

September, 2005

There are several areas to check when certifying petitions. You may check the following in any order, but each section needs to be thoroughly examined.

Circulator's Oath

1. Make sure that the circulator's oath is completed with the circulator's signature and the notary's signature and date. If the circulator does not sign the verification, the entire petition will be discounted for **OATH**. If a notary does not sign or date the verification, the petition will be also discounted for **OATH**. A stamped signature would invalidate the petition for **OATH** as well.
NOTE: The notary does not have to use a notary seal or stamp.
2. Check that the notary and circulator are not the same person or that they are not related. If they appear to be related (have the same last name), see the immediate supervisor. If it is the same person or a relation, all the signatures will be invalidated for **OWN**.
3. Be sure that the notary date is after the dates of all the signatures. If any signatures are dated after the notary date, the later signatures will be discounted for **DATE**.
4. The circulators will be verified as registered voters in the municipality stated in the Certificate of Registration. Any circulator that is determined not to be a registered voter will invalidate the entire petition for **MUNI**. **DO NOT** discount for **MUNI** without seeing the immediate supervisor. *If a circulator collected any signatures before becoming a registered voter, those signatures would be discounted for CIRC. Signatures collected after the circulator registered to vote are valid.*

Certification of Registrar

1. Make sure that the certification of the registrar is completed with the date, municipality and registrar's signature. If the municipality is missing, try to determine the city or town or check with the immediate supervisor. If the registrar did not sign or date the certification, you must contact the registrar to determine if he/she kept copies or is able to determine when the petitions were certified. If the registrar did not keep copies or is unable to determine when the petitions were certified, all of the signatures should be rejected for **CERT**. **A stamped signature is acceptable for the registrar but you must check with Registrar to determine that he/she did use a signature stamp – also advise the registrar not to do that again.**
2. Note which signatures the registrar has marked as valid by placing a check mark in the column next to the signature. The total number of valid signatures should be noted as valid in the petition log. Invalid signatures can be noted in several ways – a line through it, by placing “NR” or a note beside the name, etc.). These signatures should be marked invalid due to **REG**. If you cannot determine which signatures are valid by simply examining the petition, you may call the Registrar and ask for clarification. If you cannot determine which signatures are valid from the petition or by speaking to the Registrar, you would also reject due to **REG**.

6. If it appears that the petition has been altered in any way see your immediate supervisor. Every attempt to verify actual signatures must be made. Contact the municipality concerned and obtain any copies on file. If it is positively identified as an altered petition the signatures in question are invalidated for **ALT**.

If you encounter anything not described in these directions, please bring it to the attention of your supervisor. We will issue additional certification memos as issues arise in order to ensure that all staff are treating the issue the same way.

ANY WRITING MUST BE DONE IN **GREEN PEN ONLY**. MARK ONLY ON THE PETITION LOG (FOR SECRETARY OF STATE USE ONLY). ALL NOTES SHOULD BE MADE ON A STICKY NOTE.

Division of Elections Schedule 2009

January

ADMINISTRATIVE TASKS

TARGET	ACTUAL	ASSIGNED			
01/05/09	01/06/09	Staff	<input checked="" type="checkbox"/>	CI	Clerk/Registrar mailing: certification of citizen initiative petitions
01/05/09	01/05/09	M	<input checked="" type="checkbox"/>	08	Prepare Certificates and Qualification Papers for Constitutional Officers
01/06/09	01/06/09	T	<input checked="" type="checkbox"/>	09	Special Election House 89: Ballot to Central Print for absentees (by 1/7) and regulars (by 1/12)
01/07/09	01/06/09	M	<input checked="" type="checkbox"/>	09	Special Election House 89: Prepare absentee receipts
01/08/09	01/07/09	Staff	<input checked="" type="checkbox"/>	09	Special Election House 89: Absentee Ballots and receipts mailed to Farmington and Industry
01/09/09	01/09/09	T, D	<input checked="" type="checkbox"/>	WEB	Update CI/PV page with current initiative/proponent information
01/09/09	01/22/09	M	<input checked="" type="checkbox"/>	CI	Prepare financial statement for citizen initiative petitions - provide to OEPR for review
01/12/09	01/12/09	M, J	<input checked="" type="checkbox"/>	LEG	Presentation to State and Local Government Committee
01/13/09	01/13/09	T, D	<input checked="" type="checkbox"/>	WEB	Update Clerk Temp Site
01/14/09	01/14/09	J,M	<input checked="" type="checkbox"/>	LEG	Presentation to Legal and Veteran's Affairs Committee
01/12/09	01/22/09	M	<input checked="" type="checkbox"/>	09	Special Election House 89: Regular ballots and receipts mailed to Farmington and Industry
01/22/09	01/22/09	M	<input checked="" type="checkbox"/>	09	Special Election House 89: Clerk Mailing
01/22/09	01/22/09	M	<input checked="" type="checkbox"/>	CI	Letter to initiative proponents re: number of required signatures, constitutional amendment
01/26/09	01/26/09	J,M,T	<input checked="" type="checkbox"/>	AV	Accessibility meeting with Ross Duerr (DRC)
01/27/09	01/27/09	J,M	<input checked="" type="checkbox"/>	CI	Correspond with proponents re Summary for Groundwater Initiative
01/31/09	01/30/09	D, M	<input checked="" type="checkbox"/>	LEG	Report to Legislature re: Rulemaking Activity
ONGOING		J,M		LEG	Track legislative documents - prepare testimony/attend public hearings and work sessions
ONGOING		Staff		EAC	Compile data for EAC Election Day Survey/NVRA Data Report
01/05/09	01/02/09	Elec/T	<input checked="" type="checkbox"/>		Petition 3-TR: Start sorting and numbering petitions
01/06/09	01/06/09	Elec/T	<input checked="" type="checkbox"/>		Petition 4-EX: Start sorting and numbering petitions
01/07/09	01/07/09	Elec/T	<input checked="" type="checkbox"/>		Petition 3-TR: Sorting and numbering petitions complete
01/07/09	01/07/09	T/O	<input checked="" type="checkbox"/>		Petition 3-TR: Start data entry of duplicates (finish in 5 working days)
01/08/09	01/09/09	Elec/T	<input checked="" type="checkbox"/>		Petition 4-EX: Sorting and numbering petitions complete
01/08/09	01/08/09	Elec	<input checked="" type="checkbox"/>		Petition 2-HI: Start duplicate checking (finish in 6 working days)
01/13/09	01/16/09	T/O	<input checked="" type="checkbox"/>		Petition 3-TR: Data entry of duplicates complete
01/14/09	01/16/09	T/O	<input checked="" type="checkbox"/>		Petition 4-EX: Start data entry of duplicates
01/15/09	01/16/09	Elec	<input checked="" type="checkbox"/>		Petition 2-HI: Duplicate checking complete
01/15/09	01/14/09	Elec	<input checked="" type="checkbox"/>		Petition 2-HI: Start certifying petitions
01/20/09	01/20/09	Elec	<input checked="" type="checkbox"/>		Petition 3-TR: Start checking for duplicates
01/21/09	01/21/09	Elec	<input checked="" type="checkbox"/>		Petition 2-HI: Certifying petitions complete
01/21/09	01/21/09	J,S	<input checked="" type="checkbox"/>		Petition 5-MJ: Start sorting and numbering petitions
01/27/09	01/27/08	T/O	<input checked="" type="checkbox"/>		Petition 4-EX: Data entry of duplicates complete

Division of Elections Schedule 2009

February

ADMINISTRATIVE TASKS

TARGET	ACTUAL	ASSIGNED			
02/04/09	02/04/09	J,M,T	☒	09	Special Election House 89: wrap up election results – transmit to House of Representatives
02/06/09	02/06/09	Staff	☒	09	CLERK MAILING: final data for EAC Election Day Survey/NVRA Data Report – due:
02/09/09	02/09/09	S	☒	CVR	CLERK/REGISTRAR MAILING: Registration Date Correction
02/13/09	02/13/09	S	☒	CVR	CLERK/REGISTRAR MAILING: Update Clerk and Registrar Data
02/17/09	02/17/09	J. M	☒	RFP	RFI issued for ballot system/software
02/25/09	02/25/09	M	☒	ORG	Provide Executive Disclosure Filing Information to Ethics
02/25/09	02/25/09	Staff	☒	EAC	File EAC Election Day Survey
ONGOING				LEG	Track legislative documents – prepare testimony/attend public hearings and work sessions
ONGOING		M, Staff		RULES	Weekly publication of proposed rules and adoptions in Don's absence (beginning 2/27/09)
ONGOING		Staff		EAC	Compile data for EAC Election Day Survey/NVRA Data Report
ONGOING				ORG	Organize and file Election Division's historic ballot file
ONGOING				ORG	Review retention/destruction of election reports (Obtain Updated Archives Retention Schedule)
02/02/09	02/02/09	BMV/O	☒		Petition 3-TR: Start data entry
02/06/09	02/04/09	Elec	☒		Petition 3-TR: Certifying petitions <u>complete</u>
02/07/09	02/05/09	Elec/O	☒		Petition 4-EX: Start checking for duplicates
02/03/09	02/09/09	T/O	☒		Petition 5-MJ: Data entry of duplicates <u>complete</u>
02/09/09	02/09/09	T/O	☒		Petition 3-TR: Data entry <u>complete</u>
02/09/09	02/09/09	Elec/O	☒		Petition 4-EX: Start certifying petitions
02/10/09	02/10/09	Elec	☒		Petition 4-EX: Duplicate checking <u>complete</u>
02/10/09	02/10/09	O	☒		Petition 1-SC: Proofing <u>resumed</u>
02/11/09	02/11/09	T/O	☒		Petition 4-EX: Start data entry
02/12/09	02/12/09	Elec	☒		Petition 1-SC: Proofing <u>complete</u>
02/12/09	02/12/09	O	☒		Petition 2-HI: Proofing started
02/12/09	02/12/09	Elec/O	☒		Petition 4-EX: Certifying petitions <u>complete</u>
02/13/09	02/13/09	T/O	☒		Petition 4-EX: Data entry <u>complete</u>
02/13/09	02/13/09	O	☒		Petition 2-HI: Proofing <u>complete</u>
02/13/09	02/13/09	Elec/O	☒		Petition 3-TR: Proofing started
02/13/09	02/13/09	Elec/O	☒		Petition 3-TR: Proofing <u>complete</u>
02/14/09	02/14/09	Elec/O	☒		Petition 4-EX: Proofing started
02/16/09	02/16/09	Elec/O	☒		Petition 4-EX: Proofing <u>complete</u>
02/13/09	02/13/09	J.M.T	☒		Petition 1-SC: Make and proof corrections

Division of Elections Schedule 2009

March

ADMINISTRATIVE TASKS

<u>TARGET</u>	<u>ACTUAL</u>	<u>ASSIGNED</u>			
<u>03/01/09</u>	<u>03/01/09</u>	J, M, S	<input checked="" type="checkbox"/>	LEG	Report to Legislature regarding CVR
<u>03/04/09</u>	<u>03/04/09</u>	Staff	<input checked="" type="checkbox"/>	CI	Transmit Citizen Initiative Legislation to Legislature
<u>03/06/09</u>	<u>03/06/09</u>	Staff	<input checked="" type="checkbox"/>	ORG	Basement storage area reorganized and petitions brought down for storage
<u>03/06/09</u>	<u>03/06/09</u>	S	<input checked="" type="checkbox"/>	CVR	CLERK/REGISTRAR MAILING: Update Absentee Ballot Status
<u>03/24/09</u>	<u>03/24/09</u>	M,T	<input checked="" type="checkbox"/>	Staff	Proofed and finalized new Marijuana petition (repeal prohibition); prepared other proponent forms
<u>03/24/09</u>	<u>03/24/09</u>	M,T	<input checked="" type="checkbox"/>	Staff	Proofed and finalized new Marijuana petition (medical use); prepared other proponent forms
<u>03/27/09</u>	<u>03/27/09</u>	M,T	<input checked="" type="checkbox"/>	CI	Issued Marijuana petition (repeal prohibition) to proponent
<u>03/27/09</u>	<u>03/27/09</u>	M,T	<input checked="" type="checkbox"/>	CI	Issued Marijuana petition (medical use) to proponent
<u>03/31/09</u>	<u>03/31/09</u>	S	<input checked="" type="checkbox"/>	CVR	CLERK/REGISTRAR MAILING: Using CVR data for mailings; messaging; training
<u>03/31/09</u>	<u>03/31/09</u>	J,M,T	<input checked="" type="checkbox"/>	09	CLERK/REGISTRAR MAILING: Conference, Locks and Tabulator Surveys; EAC statistics
<u>ONGOING</u>				LEG	Track legislative documents -- prepare testimony/attend public hearings and work sessions
<u>ONGOING</u>		M, Staff		RULES	Weekly publication of proposed rules and adoptions in Don's absence (beginning
<u>ONGOING</u>				CVR	Begin process to make voter reg. applications images available to municipalities -- send reports
<u>ONGOING</u>		T		TRA	Begin conference planning: contacting facilities, drafting survey to clerks/registrars
<u>ONGOING</u>				ORG	Organize and file Election Division's historic ballot file
<u>ONGOING</u>				ORG	Review retention/destruction of election reports (Obtain Updated Archives Retention Schedule)
<u>ONGOING</u>				ORG	Inventory Election supplies (Cert. of Sealed Ballot Container: #5 & #6 Return env's; IVL certs)
<u>ONGOING</u>				ORG	Shredding (after petitions are done, we should schedule some for each day)
<u>ONGOING</u>				ORG	Cut remaining brown tape so that we now how much more to order for 2010
<u>ONGOING</u>				ORG	Review Election web pages -- update as necessary (Petition site, deadlines, etc.)

Elections Schedule for May 2009

	A	B	C	D	E	F
1	Target	Actual		Assigned	Code	Description
2	5/1/2009	5/1/2009	<input checked="" type="checkbox"/>	Staff	CI	Proof HTML and PDF versions of Marijuana legislation for posting to web
3	5/4/2009	5/4/2009	<input checked="" type="checkbox"/>	J,M,S	LEG	CVR presentation to Legislature
4	5/5/2009	5/5/2009	<input checked="" type="checkbox"/>	Staff	2008	Return election documents to clerks submitted to us in error from 11/4/08 election
5	5/8/2009	5/6/2009	<input checked="" type="checkbox"/>	T,J	WEB	Post new "Upcoming Elections" page for November 3, 2009 Referendum Election
6	5/7/2009	5/7/2009	<input checked="" type="checkbox"/>	J,M,T,S	RFI/RFP	Meeting on RFI/RFP for Optical Scan Tabulating Machines
7	5/6/2009	5/6/2009	<input checked="" type="checkbox"/>	J,T	TRA	Memo to Betty Lamoreau/Purchases re: Elections Conference
8	5/13/2009	5/13/2009	<input checked="" type="checkbox"/>	Staff	WEB	Proof HTML and PDF versions of Tax Relief legislation for posting to web
9	5/14/2009	5/14/2009	<input checked="" type="checkbox"/>	M	TRA	Final Coordination of FVAP Voting Assistance Guide
10	5/15/2009	5/15/2009	<input checked="" type="checkbox"/>	T,Staff	AVP	Organize Accessible Voting Place material (Phase 2 - towns that have not completed certification)
11	5/18/2009	5/18/2009	<input checked="" type="checkbox"/>	J	PV	Ballot Clarity Board Conference Call to draft question/provide memo to Secretary
12	5/21/2009	5/19/2009	<input checked="" type="checkbox"/>	Staff	PV	Deadline to provide ballot question to people's veto proponents
13	5/20/2009	5/20/2009	<input checked="" type="checkbox"/>	M,T,J	PV	Provide petition to veto proponents/meet with proponent to review circulation instructions
14	5/28/2009	5/28/2009	<input checked="" type="checkbox"/>	M, Staff	PV	Provide petition to 2nd veto proponents/meet with proponent to review circulation instructions
15	5/28/2009	5/28/2009	<input checked="" type="checkbox"/>	J,M,T,S	RFI/RFP	Meet with selected municipal clerks to review RFP process and documents
16	5/29/2009	5/29/2009	<input checked="" type="checkbox"/>	J,T	TRA	Response from Purchases regarding Elections Conference; authority to proceed as in past
17	5/31/2009	5/31/2009	<input checked="" type="checkbox"/>	Staff	SURVEYS	Contact municipal officials by phone and fax regarding delinquent surveys
18						
19	ONGOING			M,J	LEG	Track legislative documents - prepare testimony/attend public hearings-work sessions
20	ONGOING			M, Staff	RULES	Weekly publication of proposed rules and adoptions in Don's absence
21	ONGOING			J,M,T	AV	Select vendor for outreach DVD; draft script; meet with disability groups
22	ONGOING			T,J,M	2009	Summary of New Laws for 2009 for use with training and mailings
23	ONGOING			Staff	2009	Cut remaining brown tape; inventory what we'll need for 2010
24	ONGOING			J,M,T	WEB	Review Election web pages - update as necessary
25	ONGOING			Staff	ORG	Organize and file Election Division's historic ballot file
26	ONGOING			J,M	ORG	Review retention/destruction of election reports (obtain updated Archives Ret. Sch.)
27	ONGOING			Staff	ORG	Shredding (old ballots, ballot proofs, and old documents)

Election Schedule for July 2009

Target	Actual		Assigned	Code	Description
7/13/2009	7/13/2009	<input checked="" type="checkbox"/>	J,T	PV	Draft schedule for Civil Marriage PV petition certification
7/14/2009	7/14/2009	<input checked="" type="checkbox"/>	T	TRA	Complete first review of Election Guide and what is needed for replacement pages
7/14/2009	7/14/2009	<input checked="" type="checkbox"/>	Staff	WEB	Update public comments documents and design web page
7/15/2009	7/15/2009	<input checked="" type="checkbox"/>	T	AV	Finalize Caratunk's request for reimbursement and submit to Julie
7/16/2009	7/16/2009	<input checked="" type="checkbox"/>	T, Staff	AV	Organize AVP material (Phase 3 - towns that are pending certification)
7/17/2009	7/17/2009	<input checked="" type="checkbox"/>	T	PV	Set up database for Civil Marriage PV
7/20/2009	7/20/2009	<input checked="" type="checkbox"/>	T	AV	Letter to Dennysville re AVP issues/send forms
7/27/2009	7/27/2009	<input checked="" type="checkbox"/>	M	2009	Deadline for public comments on ballot questions
7/31/2009	7/31/2009	<input checked="" type="checkbox"/>	Staff	SURVEYS	Review any remaining delinquent municipalities with Julie
7/31/2009	7/21/2009	<input checked="" type="checkbox"/>	T	AV	Provide Kenduskeag with ADA guidelines for doors/thresholds
7/31/2009	7/31/2009	<input checked="" type="checkbox"/>	Staff	PV	Prepare folders/boxes for Civil Marriage PV petitions
7/31/2009	7/31/2009	<input checked="" type="checkbox"/>	Staff	2009	CLERK MAILING: Absentee Ballot Applications
7/31/2009	7/31/2009	<input checked="" type="checkbox"/>	J	TRA	Review Tina's Summary of New Laws and first review of Elections Guide/replacement pages
7/31/2009	7/31/2009				Civil Marriage PV Petition submitted
ONGOING			Staff	TRA	Draft outlines for Conference sessions
ONGOING			J,T	SUPPLIES	Contact Stanley Security Solutions regarding available combinations to purchase
ONGOING			J,T	SUPPLIES	Meet with Purchases regarding Stanley Security Solutions/purchase of additional locks/keys
ONGOING			M, Staff	RULES	Weekly publication of proposed rules and adoptions in Don's absence; post rules on web site
ONGOING			T,J,M	2009	Summary of New Laws for 2009 for use with training and mailings
ONGOING			Staff	CI	Tina's petition database
ONGOING			S	CVR	Scanning and imaging process
ONGOING			J,T, Staff	AV	Work on finalizing pending AVP certifications
ONGOING			Staff	2009	Inventory Election supplies (forms, envelopes, seals, brown tape, etc.) for 2010
ONGOING			J,M,T	WEB	Review Election web pages - update as necessary
ONGOING			Staff	ORG	Organize and file Election Division's historic ballot file
ONGOING			J,M	ORG	Review retention/destruction of election reports (obtain updated Archives Ret. Sch.)
ONGOING			Staff	ORG	Shredding (old ballots, ballot proofs, and old documents)

**Elections Schedule for
Aug 2009**

Future deadlines:					
11/20/2009			J,M,T,S	RFP	Finalize and issue Optical Scan RFP
12/15/2009			Staff	SUPPLIES	Finalize database and spreadsheet re inventory of tamper-proof containers and locks
ONGOING			T	TRA	Draft outline for Accessibility chapter in Guide; work with Julie
ONGOING			J,T	SUPPLIES	Contact Stanley Security Solutions regarding available combinations to purchase
ONGOING			J,T	SUPPLIES	Meet with Purchases regarding Stanley Security Solutions/purchase of additional locks/keys
ONGOING			Staff	CI	Tina's petition database
ONGOING			J,T, Staff	AV	Work on finalizing pending AVP certifications
ONGOING			Staff	2009	Inventory Election supplies (forms, envelopes, seals, brown tape, etc.) for 2010
ONGOING			J,M,T	WEB	Review Election web pages - update as necessary
ONGOING			Staff	ORG	Organize and file Election Division's historic ballot file
ONGOING			J,M	ORG	Review retention/destruction of election reports (obtain updated Archives Ret. Sch.)
ONGOING			Staff	ORG	Shredding (old ballots, ballot proofs, and old documents)
ONGOING			Staff	2010	Update Candidate's Guide, Petitions for 2010 Primary and General Election

**Election Schedule for
September 2009**

ONGOING		S	CVR	Scanning and imaging process
ONGOING		J,T, Staff	AV	Work on finalizing pending AVP certifications
ONGOING		Staff	2009	Inventory Election supplies (forms, envelopes, seals, brown tape, etc.) for 2010
ONGOING		J,M,T	WEB	Review Election web pages - update as necessary
ONGOING		Staff	ORG	Organize and file Election Division's historic ballot file
ONGOING		J,M	ORG	Review retention/destruction of election reports (obtain updated Archives Ret. Sch.)
ONGOING		Staff	ORG	Shredding (old ballots, ballot proofs, and old documents)
ONGOING			2010	Update Candidate's Guide, Petitions for 2010 Primary and General Election

Election Schedule for November 2009

Target	Actual		Assigned	Code	Description
11/3/2009	11/3/2009	<input checked="" type="checkbox"/>	Staff	2009	Staff telephones 7am to 11pm to answer election telephone calls
11/5/2009	11/5/2009	<input checked="" type="checkbox"/>	S	CVR	CLERK/REGISTRAR MAILING: Post Election CVR Reminders
11/9/2009	11/12/2009	<input checked="" type="checkbox"/>	MP	CI	Provide draft legislation to Revisor/OFPR for 2 new citizen initiatives
11/10/2009	11/10/2009	<input checked="" type="checkbox"/>	Staff	2009	Process and data enter Returns of Votes Cast
11/10/2009	11/10/2009	<input checked="" type="checkbox"/>	Staff	2009	Mail proofing reports (election results) to municipalities
11/16/2009	11/16/2009	<input checked="" type="checkbox"/>	Staff	CVR	Meet with PCC to discuss Petition Module requirements
11/20/2009	11/20/2009	<input checked="" type="checkbox"/>	Staff	2009	Proof tabulations (official and web) for November 2009 election
11/20/2009	11/23/2009	<input checked="" type="checkbox"/>	Staff	2009	Compile and proof report of Total Ballots Cast
11/23/2009	11/23/2009	<input checked="" type="checkbox"/>	M,P	2009	Prepare tabulations/proclamations for SOS/Governor signatures
11/23/2009	11/23/2009	<input checked="" type="checkbox"/>	Staff	2009	Copy and certify tabulations and proclamations; distribute to required parties
11/23/2009	11/24/2009	<input checked="" type="checkbox"/>	Lou	2009	Post 2009 Referendum results on web site and move Citizen Guide to Results page
11/23/2009	11/23/2009	<input checked="" type="checkbox"/>	Staff	PV	Make petitions available for copying in regard to the lawsuit (11/19-11/23)
11/25/2009	11/25/2009	<input checked="" type="checkbox"/>	Staff	LEG	Begin data-entry of Early Voting Surveys
11/30/2009	11/30/2009	<input checked="" type="checkbox"/>	J	PV	Prepare, with AG's Office, Agency record for lawsuits

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-09-55

CHARLES WEBSTER,

Petitioner

v.

DECISION

MATTHEW DUNLAP,
SECRETARY OF STATE,

Respondent

This matter comes before the court on Charles Webster's petition for review of an agency action pursuant to M.R. Civ. P. 80C and 5 M.R.S.A. § 11001 *et seq.* and a complaint for declaratory judgment.

This dispute arises from the submission and review of petitions intended to trigger a people's veto referendum of "An Act to Implement Tax Relief and Tax Reform," P.L. 2009, ch. 382 (effective 1/1/10) (*hereinafter* the "Tax Reform Act") signed into law by Governor John Baldacci on July 12, 2009.

Following the signing of the Tax Reform Act by Governor Baldacci, petitioner began circulating petitions to trigger a people's veto referendum pursuant to the Maine Constitution and the laws of the State of Maine. Me. Const. Art. IV, pt. 3, § 17 *et seq.*; 21-A M.R.S.A. § 905. Within ninety days of the Legislature's adjournment, petitioner was required to submit at least 55,087 signatures, constituting ten percent of the total number who voted in the last gubernatorial election. Me. Const. Art. IV, pt. 3, § 17(1). On September 11, 2009, petitioner submitted completed petitions containing

approximately 71,035 signatures. The Secretary stayed the effective date of the Tax Reform Act pending a determination of the validity of the petitions.

When a people's veto petition is filed with the Secretary of State, the Secretary has thirty days to determine the validity of the petitions. 21-A M.R.S.A. § 905(1). Accordingly, the deadline to issue a decision was October 13, 2009. The Secretary failed to issue a decision by that date. On November 2, 2009, petitioner filed his petition for review of agency action including an independent claim for declaratory relief.

On November 9, 2009, the Secretary issued a determination of the validity of the petition for people's veto of legislation, invalidating 14,928 signatures for various reasons, but finding petitioner had submitted 56,107 valid signatures. On November 17, 2009, Charles Johnson filed his petition for review of final agency action under M.R. Civ. P. 80C and pursuant to 5 M.R.S.A. § 11001 *et seq.*, alleging the Secretary failed to invalidate at least 1,021 signatures that were in some way deficient. *Johnson v. Sec'y of State*, AP-09-56. At a hearing held on November 23, 2009, the court granted petitioner leave to intervene in *Johnson*, but declined to consolidate the two cases.

On December 7, 2009, petitioner filed his brief, arguing (1) that by failing to comply with the thirty-day time limit found in 21-A M.R.S.A. § 905, the Secretary lost his authority to review the petitions and must issue a proclamation submitting the matter to a people's veto referendum and (2) that 21-A M.R.S.A. § 905 is facially unconstitutional.

STANDARD OF REVIEW

When the decision of an administrative agency is reviewed under M.R. Civ. P. 80C, the court reviews the agency's decision for abuse of discretion, errors of law, or findings not supported by the evidence. *Centamore v. Dep't of Human Servs.*, 664 A.2d 369, 370 (Me. 1995). An agency's decision must be vacated when it is in violation of

constitutional or statutory provisions or the decision exceeds the agency's lawful statutory authority. *Bath Iron Works Corp. v. Unemployment Ins. Comm'n*, 2005 ME 54, ¶ 10, 870 A.2d 580, 587 (citing 5 M.R.S.A. § 11007(4)(C)).

Interpretations of constitutional and statutory provisions are questions of law. *McGee v. Dunlap*, 2006 ME 50, ¶ 5, 896 A.2d 933, 936. "Legislative enactments are presumed constitutional, and the party challenging a statute's constitutionality bears the burden of proof to the contrary." *Passamaquoddy Water Dist. v. City of Eastport*, 1998 ME 94, ¶ 10, 710 A.2d 897, 900 (quoting *McBreairty v. Comm'r of Admin. and Fin. Servs.*, 663 A.2d 50, 52 (Me. 1995)). (internal quotations omitted). The party challenging a statute must demonstrate the infirmity "by strong and convincing reasons." *Id.*

MOOTNESS

A threshold issue is whether the fact that the Secretary ultimately validated the Petition renders this case moot. "The test for mootness is whether there remain sufficient practical effects flowing from the resolution of the litigation to justify the application of limited judicial resources." *Nugent v. Town of Camden*, 1998 ME 92, ¶ 6, 710 A.2d 245, 247 (citing *Campaign for Sensible Transp. v. Me. Turnpike Auth.*, 658 A.2d 213, 215 (Me. 1995)). "Unless the questions that have become moot occur in a context where there is a 'reasonable likelihood that the same issues will imminently and repeatedly recur in future similar contexts with serious impact upon important generalized public interests,' the determination of those questions should be avoided." *Campaign for Sensible Transp.*, 658 A.2d at 215-16 (quoting *Good Will Home Ass'n v. Erwin*, 285 A.2d 374, 380 (Me. 1971)).

Although the Secretary has determined that the petition is valid, no proclamation has issued because that determination is under review in the companion case, *Johnson v. Sec'y of State*, AP-09-56, in which petitioner is an intervenor. The issues presented in

this case are threshold issues that could potentially dispose of *Johnson*. Accordingly, the determination of these issues will result in sufficient practical effects to justify the application of judicial resources. *Nugent*, 1998 ME 92, ¶ 6, 710 A.2d at 247. Additionally, the issue is one of significant importance to the State and is capable of repetition yet evading review in any event where the Secretary issues a delayed decision relating to the validity of petitions for a people's veto referendum. *Campaign for Sensible Transp.*, 658 A.2d at 215-16.

CONSTITUTIONAL AND STATUTORY FRAMEWORK

The power of the people of the State of Maine to approve or disapprove of legislation via a people's veto referendum is set forth in Article IV, Part Third, Section 17 of the Maine Constitution.¹ As relevant to the facts of this case, that procedure is as

¹ Article IV, Part Third, Section 17 of the Maine Constitution provides in full:

§ 17. Proceedings for people's veto

Section 17.

1. **Petition procedure; petition for people's veto.** Upon written petition of electors, the number of which shall not be less than 10% of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition, and addressed to the Governor and filed in the office of the Secretary of State by the hour of 5:00 p.m., on or before the 90th day after the recess of the Legislature, or if such 90th day is a Saturday, a Sunday, or a legal holiday, by the hour of 5:00 p.m., on the preceding day which is not a Saturday, a Sunday, or a legal holiday, requesting that one or more Acts, bills, resolves or resolutions, or part or parts thereof, passed by the Legislature but not then in effect by reason of the provisions of the preceding section, be referred to the people, such Acts, bills, resolves, or resolutions or part or parts thereof as are specified in such petition shall not take effect until 30 days after the Governor shall have announced by public proclamation that the same have been ratified by a majority of the electors voting thereon at a statewide or general election.

2. **Effect of referendum.** The effect of any Act, bill, resolve or resolution or part or parts thereof as are specified in such petition shall be suspended upon the filing of such petition. If it is later finally determined, in accordance with any procedure enacted by the Legislature pursuant to the Constitution, that such petition was invalid, such Act, bill, resolve or resolution or part or parts thereof shall then take effect upon the day following such final determination.

3. **Referral to electors; proclamation by Governor.** As soon as it appears that the effect of any Act, bill, resolve, or resolution or part or parts thereof has been suspended by petition in manner aforesaid, the Governor by public proclamation shall give notice thereof and of the time when such measure is to be voted on by the people, which shall

follows. A petition containing signatures equal to or greater than ten percent of the total vote cast for Governor in the last gubernatorial election must be filed with the Secretary of State within ninety days of the recess of the Legislature. Me. Const. Art. IV, pt. 3, § 17(1). The filing of the petition suspends the effect of the legislation. *Id.* at § 17(2).

At this point, the petitions are reviewed to ensure they conform to constitutional requirements. Whether this authority is vested in the Constitution or in statute is the first substantive issue in this case. See *Opinion of the Justices*, 116 Me. 557, 580-82, 103 A.761, 771-72 (1917) (explaining that the Constitution requires that it must "appear" to Governor that the requisite number of voters have signed the petition, implicitly granting executive authority to review the validity of the petitions); *but see* Me. Const. art. IV, pt. 3, § 17(2) ("If it is later finally determined, *in accordance with any procedure enacted by the Legislature pursuant to the Constitution*, that such petition was invalid, such Act, bill, resolve or resolution or part or parts thereof shall then take effect upon the day following such final determination.") (emphasis added).

Once it appears that the petitions are valid, the Governor is required to issue a public proclamation giving notice that "such measure is to be voted on by the people, which shall be at the next statewide or general election, whichever comes first, not less than 60 days after such proclamation." *Id.* at § 17(3). If the Governor fails to issue such proclamation, the Secretary of State is both authorized and required to issue the same. *Id.*

be at the next statewide or general election, whichever comes first, not less than 60 days after such proclamation. If the Governor fails to order such measure to be submitted to the people at the next statewide or general election, the Secretary of State shall, by proclamation, order such measure to be submitted to the people at such an election and such order shall be sufficient to enable the people to vote.

Additionally, Article IV, Part Third, Section 22 of the Maine Constitution allows the Legislature to enact laws applying the people's veto and direct initiative.² Section 22 requires that any such laws "include provision for judicial review of any determination, to be completed within 100 days from the filing of a written petition in the office of the Secretary of State." *Id.* The Law Court has explained that enacting legislation under Section 22 "is permitted, but not required" because the constitutional provisions are drafted in such a way as to be self-executing. *McGee v. Sec'y of State*, 2006 ME 50, ¶ 20, 896 A.2d 933, 940 (citing *Allen v. Quinn*, 459 A.2d 1098, 1100 (Me. 1983)), *see also Farris ex rel. Dorsky v. Gross*, 143 Me. 227, 232, 60 A.2d 908, 911 (1948).

Exercising this authority, the Legislature passed the statutory provision at issue, 21-A M.R.S.A. § 905, to permit review of the petitions by the Secretary of State. Section 905(1) provides that the "Secretary of State shall determine the validity of the petition and issue a written decision within 30 days after the final date for the filing the petitions in the Department of the Secretary of State under the Constitution of Maine, Article IV, Part Third, Section 17 or 18." Section 905(2) and (3) provide a procedure for judicial review of the Secretary's decision, requiring judicial review be completed by the Superior Court no later than forty-five days following the Secretary's decision, and review by Supreme Judicial Court no later than thirty days following the Superior Court's decision.

² Article IV, Part Third, Section 22 of the Maine Constitution provides in full:

§ 22. Election officers and officials, how governed

Section 22. Until the Legislature shall enact further laws not inconsistent with the Constitution for applying the people's veto and direct initiative, the election officers and other officials shall be governed by the provisions of this Constitution and of the general law, supplemented by such reasonable action as may be necessary to render the preceding sections self executing. The Legislature may enact laws not inconsistent with the Constitution to establish procedures for determination of the validity of written petitions. Such laws shall include provision for judicial review of any determination, to be completed within 100 days from the date of filing of a written petition in the office of the Secretary of State.

BASIS FOR THE PETITION REVIEW PROCESS

Petitioner argues that by failing to issue a decision within the thirty-day period required by 21-A M.R.S.A. § 905(1), the Secretary lost his authority to issue a decision under Me. Const. art. IV, pt. 3, § 17(2) because he did not follow the "procedure[s] enacted by the Legislature." Respondent argues that the Constitution confers plenary power to review petitions, and interpreting section 905 to limit the time granted to the Secretary to review petitions would be unconstitutional. See *MTAN v. Secretary of State*, 2002 ME 64, ¶ 12, n. 8, 795 A.2d 75, 80, n. 8 (noting³ that the executive officer charged with overseeing the petition process has "plenary" power to review petitions).

The Court is confronted with two seemingly contradictory propositions. The Law Court has recognized that the Secretary has plenary power to review petitions, yet the text of the Constitution recognizes the review must be in accordance with procedures enacted by the Legislature. These two propositions can be harmonized by comparing the dates of the Law Court's authority against amendments made to the Constitution.

The Law Court's basis for recognition that the Secretary has plenary power to investigate the validity of petitions is an advisory opinion written in 1917. See *MTAN*, 2002 ME 64, n. 8, 795 A.2d at n. 8 (citing *Opinion of the Justices*, 116 Me. at 580-82, 103 A. at 771-72). At the time *Opinion of the Justices* was decided, however, the people's veto provisions did not include the language relating to review established by

³ The use of the word "noting" rather than "holding" is intentional. In *MTAN*, the court held that the Secretary has the authority to review petitions for constitutional and statutory infirmities pursuant to 21-A M.R.S.A. § 905. 2002 ME 64, ¶ 12, 795 A.2d at 79-80. The issue was what different grounds are sufficient for the Secretary rely upon for a finding that a signature is invalid. *Id.* In support of the Court's conclusion that the Secretary has authority to disqualify petitions circulated by an imposter with a stolen identity, the court noted in a footnote that it has recognized the Secretary's authority to investigate petitions. *Id.* The question of whether that authority originates from legislation passed pursuant to the Constitution or from the Constitution itself was not before the Court. *Id.*

procedures enacted by the Legislature.⁴ The Court explained that it was necessary that some mechanism exist to ensure that the signatures on the petitions conformed to the constitutional requirements, reasoning:

"[i]n the case of a referendum however, there is no intermediate board and no appellate board. There is the Governor alone before whom are brought not returns or certificates or records of the petitions but the original petitions themselves with all the original signatures upon them, and if he has not the power to reject forged signatures then no relief exists anywhere, a situation repugnant to the fundamental conception of our government and of the rights of its people."

Id. at 580, 103 A. at 771-72. Therefore, the Court interpreted the phrase that it must "appear[]" to the Governor that the effect of the legislation has been suspended to implicitly confer unto him authority to review the petitions. *Id.*

Since *Opinion of the Justices* was decided, the constitutional provisions establishing the people's veto referendum process have been substantially amended. The 1975 amendments added the language presently found in section 17(2) referencing review of petitions in accordance with procedures enacted by the legislature. The amendments further added the language in section 22 requiring that any legislation applying the people's veto include a provision providing for judicial review to be

⁴ In 1917, the Maine Constitution, Article IV, Part Third, § 17 read, in full:

Section 17. Upon the written petition of not less than ten thousand electors, addressed to the governor and filed in the office of the secretary of state within ninety days after the recess of the legislature, but not then in effect by reason of the provision of the preceding section, be referred to the people, such acts, bills, resolves, or resolutions or part or parts thereof as are specified in such petition shall not take effect until thirty days after the governor shall have announced by public proclamation that the same have been ratified by a majority of the electors voting thereon at a general or special election. As soon as it appears that the effect of any act, bill, resolve or resolution or part or parts thereof has been suspended by petition in manner aforesaid, the governor by public proclamation shall give notice thereof and the time when such measure is to be voted on by the people, which shall be at the next general election not less than sixty days after such proclamation, or in the case of no general election within six months thereafter the governor may, and if so requested in said written petition therefore, shall order such measure submitted to the people at a special election not less than four nor more than six months after his proclamation thereof.

completed within 100 days of filing. Con. Res. 1975, Ch. 2. The statement of fact in the legislative history summarized these amendments as follows:

The Legislature is given authority to establish a statutory procedure for review of the validity of petitions. The procedure must provide for some form of judicial review of any administrative determination of validity, and the procedure must be completed within one hundred days from the filing of petitions.

L.D. 188, *Statement of Fact* (107th Legis. 1975). Additionally, the title of L.D. 188 is instructive regarding whether the Legislature intended for the amendments to establish the basis for reviewing the petitions. L.D. 188 was entitled "RESOLUTION, Proposing an Amendment to the Constitution to . . . Clarify the Petition Process, and *Provide* for Review of the Validity of Petitions." (emphasis added). The Legislature's use of the word "provide" suggests that the constitutional basis for review was intended to be established expressly in the text of the amendments rather than implicitly under the word "appear[]." .

In light of the 1975 amendments, the rationale underlying the Law Court's interpretation in *Opinion of the Justices* no longer applies. The amendments provide a mechanism for the Legislature to enact procedures establishing an administrative determination that petitions conform to constitutional requirements and for judicial review of any determination made. Furthermore, interpreting the present constitutional language to still confer plenary power to the executive branch to review the validity of petitions would create a fundamental problem where both the Governor and the Legislature would appear to have concurrent powers. See Me. Const., Art. III, § 2 ("No person or persons, belonging to one of [the separate branches of government], shall exercise any of the powers properly belonging to either of the others, except in the cases herein *expressly directed or permitted.*") (emphasis added); *Me. Ass'n of Health Plans v. Superintendent of Ins.*, 2007 ME 69, ¶ 73 ("Article III of the Maine Constitution imposes

a strict separation of powers, reserving specific authority to the Executive Branch, to the Legislature, and to the Judiciary."'). Interpreting the Constitution to permit an executive officer to ignore procedures enacted by the Legislature pursuant to Sections 17 and 22 by virtue of an implied independent executive authority to review petitions would run afoul of this principle. A more sensible interpretation of the presently existing constitutional language is that the 1975 amendments establish that the Legislature is charged with enacting the procedures for reviewing petitions and the Executive Branch is charged with determining whether the petitions comply with constitutional requirements in accordance with those procedures.

This interpretation is consistent with the Law Court precedent that the constitutional provisions applying the people's veto were designed to be self-executing. *McGee v. Sec'y of State*, 2006 ME 50, ¶ 20, 896 A.2d 933, 940 (citing *Allen v. Quinn*, 459 A.2d at 1100); see also *Farris v. Gross*, 143 Me. at 232, 60 A.2d at 911. As presently written, the default rule⁵ is that the suspension of an act due to the filing of a petition

⁵ Under Me. Const. Art. IV, pt. 3, § 20, a "written petition" is defined as

"one or more petitions written or printed, or partly written and partly printed, with the original signatures of the petitioners attached, verified as to the authenticity of the signatures by the oath of the circulator that all of the signatures to the petition were made in the presence of the circulator and that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be, and accompanied by the certificate of the official authorized by law to maintain the voting list or to certify signatures on petitions for voters on the voting list of the city, town or plantation in which the petitioners reside that their names appear on the voting list of the city, town or plantation of the official as qualified to vote for Governor. The oath of the circulator must be sworn to in the presence of a person authorized by law to administer oaths."

This definition essentially contains three requirements. First, that a petition include the original signatures of the petitioners. Second, that a circulator take an oath, sworn in the presence of a person authorized at law to administer oaths, that each signature is that of the person it purports to be. Third, that an official authorized by law to maintain the voting list of the town, city, or plantation issue a certificate that the names of the petitioners appear on the voting list as qualified to vote for Governor.

In deciding whether to accept a filing as a "written petition," the Secretary needs to ensure that the petition(s) contains these three items. The presence of which are sufficient to create the prima facie evidence necessary to support the presumption that the petition is valid. To the extent that the presumption creates a risk of fraud, that risk is addressed when the Secretary, in accordance with

with the requisite number of signatures triggers a duty to issue a proclamation giving notice that the measure shall be voted on by the people. Me. Const. Art. IV, pt. 3, § 17. The provision relieving the duty to issue a proclamation is an exception to the default rule, occurring when, "in accordance with any procedure enacted by the Legislature," a determination is made that the petition is invalid. *Id.* at § 17(2). Accordingly, it "appears" to the Governor that the legislation has been "suspended in manner aforesaid" when the review procedures are completed. The preference for a default rule that defers matters to the voters is in accordance with the Law Court's holding that constitutional provisions establishing the people's right to participate in the legislative process "must be liberally construed to facilitate, rather than handicap, the people's exercise of their sovereign power to legislate." *McGee*, 2006 ME 50, ¶ 25, 896 A.2d at 940 (quoting *Allen*, 459 A.2d at 1102-1103). Additionally, the provisions now found in Section 17(2) address the concern expressed in *Opinion of the Justices* because the Legislature now has the authority to establish procedures to prevent fraud in the filing of petitions. Me. Const. Art. IV, pt. 3, § 17(2); *Opinion of the Justices*, 116 Me. at 580-82, 103 A. at 771-72.

Applying these principles to the case at bar, the "procedure enacted by the Legislature" requires the Secretary to determine the validity of the petitions and issue a written decision within thirty days of filing.⁶ 21-A M.R.S.A. § 905. That procedure was not followed here because no determination was made nor decision issued for fifty-nine days following the filing of the petitions. Consequently, the Secretary had no authority

procedures enacted by the Legislature, conducts a review of the petitions to challenge veracity the oaths and certificates themselves.

⁶ The use of the word "shall" in 21-A M.R.S.A. § 905 indicates that the thirty-day requirement is a mandatory duty imposed on the Secretary rather than a directory provision. See 1 M.R.S.A. § 71(9-A) (defining "shall" and "must" as terms indicating a mandatory duty, noting that "shall" and "must" are terms of equal weight); *McGee*, 2006 ME 50, ¶ 16, 896 A.2d at 939 (construing the time deadlines found in the direct initiative statute to be mandatory because the statute read that petitions "must" be filed within one year of the issuance).

under 21-A M.R.S.A. § 905 because the time period in the statute had lapsed. Because the Secretary lost his authority to issue a decision determining the validity of the petitions, the default presumption that the petition is valid applies and a proclamation must be issued.⁷

Petitioner also seeks declaratory relief pursuant to 14 M.R.S.A. § 5954, arguing that 21-A M.R.S.A. § 905 is facially unconstitutional because it was beyond the scope of the authority granted to the Legislature because it failed to include adequate provisions for judicial review. *See McGee*, 2006 ME 50, ¶ 19, 892 A.2d at 940. Because the Secretary lost his authority to review the Petitions, the Court need not decide this issue.⁸

⁷ This is an action for a review of agency action brought pursuant to the Maine Administrative Procedures Act, 5 M.R.S.A. § 11001 *et seq.* based on the refusal of an agency to act. The Constitution requires that the Governor issue a proclamation "as soon as it appears that the effect of any Act, bill, resolve, or resolution or part or parts thereof has been suspended by petition." Me. Const. Art. IV, pt. 3, § 17(3). If the Governor fails to issue such a proclamation, the Secretary is required to issue a proclamation. *Id.* Here, the effect of the Tax Reform Act has been suspended by petition consistent with the constitutional requirements found in Me. Const. Art. IV, pt. 3, § 17, and the Secretary's authority to review the review the petitions lapsed at the expiration of the thirty-day period found in 21-A M.R.S.A. § 905. To date, the Governor has not issued a proclamation. Accordingly, the Secretary is under a constitutional duty to issue a proclamation giving notice of the time when the people's veto of the Tax Reform Act is to be voted on by the people, not less than 60 days after such proclamation. Me. Const. Art. IV, pt. 3, § 17(3). Therefore, the court must order that the Secretary issue a proclamation. 5 M.R.S.A. § 11001(2).

⁸ This matter is decided upon the narrower ground of the petition. However, in the event this conclusion is not sustainable, the court feels constrained to discuss its conclusions regarding the Constitutional issue. In response to the Petitioner's constitutional argument, the Respondent argues that any constitutional infirmity only relates to the timing provision rather than the entire statute and that the deficiency is insufficient to support a facial challenge.

It is not disputed that the Legislature may pass legislation for applying the people's veto and procedures for determining the validity of written petitions. *Id.* at ¶ 20, 892 A.2d at 940. However, the constitutional authority to enact such legislation is not without constraints. The Constitution provides that any legislation passed under section 22 must "include provision for judicial review of any determination, to be completed within 100 days from the filing of a written petition in the office of the Secretary of State." Me. Const. art. IV, pt. 3, § 22. Here, section 905's judicial review procedures plainly fail to include such a provision. Section 905's judicial review provision permits, at most, seventy-five days for judicial review to conclude. However, the seventy-five days runs from the date of the *Secretary's decision*, rather than the date of the *filing of a petition*. Because section 905 allows thirty days for the Secretary to issue a decision, judicial review could take as long as 105 days from the date of the filing of the petition.

Respondent's position that any constitutional infirmities in Section 905 are severable from the remainder of the statute fails to appreciate the basis of the argument. The Legislature's constitutional authority for passing section 905 is found in Me. Const. art. IV, pt. 3, § 22. As a condition precedent to lawfully passing legislation under that section, the Legislature is *required* to include a provision in the legislation providing for judicial review to be completed within 100 days of the filing of the petition.

The entry will be:

The petition for review of agency action of Matthew Dunlap, Secretary of State of the State of Maine, regarding the petition for people's veto referendum of P.L. 2009, c. 382, "An Act to Implement Tax Relief and Tax Reform," is SUSTAINED.

It is hereby ORDERED that the Secretary of State shall, by proclamation, order such measure to be submitted to the people at the next State-wide or general election pursuant to article IV, Part Third, section 17 of the Maine Constitution.

DATED: 9 December 21, 2009



Donald H. Marden
Justice, Superior Court

Because section 905 does not include such a provision, the Legislature lacked the authority to pass section 905 as written. *McGee*, 2006 ME 50, ¶ 19, 896 A.2d at 940.

The same reasoning applies to respondent's argument that petitioner has failed to show that "no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). Here, petitioner is not claiming section 905 is unconstitutional because the review process took longer than 100 days following the filing of petition, rather, he is arguing that because section 905 permits for the review process to take longer than 100 days following the filing of the petition, section 905 is inconsistent with the constitution and therefore exceeds the Legislature's authority. Because a statute may be found facially unconstitutional if it exceeds the Legislature's constitutional authority, petitioner's contentions are sufficient to support a facial challenge to section 905. *McGee*, 2006 ME 50, ¶ 19, 896 A.2d at 940.

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-09-56

CHARLES L. JOHNSON III,

Petitioner

v.

DECISION

MATTHEW DUNLAP,
SECRETARY OF STATE,

Respondent

and

CHARLES WEBSTER

Intervenor

Before the court is the petition for review of final agency action of Charles L. Johnson, III pursuant to M.R. Civ. P. 80C, 5 M.R.S.A. §11001 and 21-A M.R.S.A. §905(2).

This dispute arises from the submission and review of petitions intended to trigger a People's Veto referendum of "An Act to Implement Tax Relief and Tax Reform," P.L. 2009, ch. 382 (effective 1/1/10) (*hereinafter* the "Tax Reform Act") signed into law by Governor John Baldacci on 7/12/09.

Following the signing of the Tax Reform Act by Governor Baldacci, Intervenor Charles Webster began circulating petitions to trigger a People's Veto referendum pursuant to the Maine Constitution and the laws of the State of Maine. Me. Const. Art. IV, pt. 3, § 17; 21-A M.R.S.A. § 905. Within 90 days of the legislature's adjournment, Webster was required to submit at least 55,087 signatures, constituting ten percent of the total number who voted in the last

gubernatorial election. Me. Const. Art. IV, pt. 3, § 17(1). On 9/11/09, Webster submitted completed petitions containing approximately 71,035 signatures. The Secretary stayed the effective date of the Tax Reform Act pending a determination of the validity of the petitions.

When the People's Veto petition was filed with the Secretary of State, the Secretary had 30 days to determine the validity of the petitions. 21-A M.R.S.A. § 905(1). Accordingly, the deadline to issue a decision was 10/13/09. The Secretary failed to issue a decision by that date. On 11/2/09, Webster filed a petition for review of agency action including an independent claim for declaratory relief in the companion case, *Webster v. Dunlap*, AP-09-55.

On 11/9/09, the Secretary issued a Determination of the Validity of the Petition for People's Veto of Legislation, invalidating 14,928 signatures for various reasons, but finding Webster had submitted 56,107 valid signatures. On 11/17/09, Petitioner¹ Charles Johnson filed his Petition for Review of Final Agency Action alleging the Secretary failed to invalidate at least 1,021 signatures that were in some way deficient.

Petitioner assigns five areas of error by the Secretary of State. Petitioner's specific arguments include that (1) petitions containing 4480 signatures are invalid because the oaths of circulator's were administered by Stavros Mendros, a notary public who petitioner alleges is a "self interested notary" due to payments received by his company for organization of signature gathering services; (2) petitions containing 3837 signatures are invalid because Cynthia

¹ Petitioner is a registered voter in Town of Hallowell. 21-A M.R.S.A. § 905(2) permits any voter to appeal a decision by the Secretary validating a petition.

Mendros² f/k/a Cynthia Bodeen signed the attestation that she administered the circulators' oaths on the petitions as "Cynthia Bodeen" when her legal name was in fact "Cynthia Mendros;" (3) 315 signatures are invalid because the signatories do not appear on the Central Voter Registry (CVR), which petitioner contends is the authoritative database to determine whether a person is a registered voter; (4) signatures are invalid because the Secretary relied on the certifications of town registrar's that the signatories were registered voters and did not conduct his own independent investigation; and (5) 1042 signatures are invalid due to factual issues presented on the face of the petitions, including incorrect dates, illegible signatures, duplicate signatures, and clerical errors. In total, accounting for signatures that fall into more than one category, petitioner has challenged that 9674 signatures are invalid.

On 12/21/09, this court entered a decision in the *Webster* case, holding that the Secretary had lost his authority to act by failing to complete his review within the thirty-day period proscribed in 5 M.R.S.A. § 905. The holding in *Webster* necessarily means that any error the Secretary's substantive review in this case is moot. However, in the event that the *Webster* decision is not sustainable on appeal and due to constrained deadlines for judicial review in this case, the court addresses the merits of petitioner's claims.

In conducting a judicial review of the evidence presented by the record and additional evidence, the court is guided by two important principles established in Maine law. The power in the agency "to reject names and names falsely certified may tend to prevent fraud and to protect the referendum from

² Cynthia Mendros and Stavros Mendros are married. Accordingly, petitioner argues that if the court invalidates petitions due to Stavros Mendros' financial interests, petitions containing an attestation by Cynthia Mendros should be similarly invalidated.

disrepute." *Opinion of the Justices*, 116 Me. 557, 103 A. 761, 772 (1917). On the other hand, in the context of the direct initiative, the Maine Constitution "cannot be said merely to *permit* the direct initiative of legislation upon certain conditions. Rather, it reserves to the people the *right* to legislate by direct initiative if the constitutional conditions are satisfied." *McGee v. Secretary of State*, 2006 ME 50, ¶ 25; 896 A.2d 933, 941. Certainly the Constitution creates the *right* in the people to veto legislation under certain conditions. Accordingly, this court is constrained to require a constitutional, statutory, regulatory or common law basis to overturn a decision of the respondent in accordance with the Administrative Procedures Act.

Subsequent to the filing of his petition, discovery procedures revealed that two individual notary publics taking the oaths of circulators on petitions containing 8,550 signatures had a financial interest in the outcome of the petition campaign by contract with the sponsor of the referendum. This allegation was not presented to the Secretary of State and is not a part of his validation process. The issue, therefore, is whether, as a matter of law, those documents containing the acknowledgement of those notaries must be disallowed and the signatures thereon not validated to meet the veto referendum requirement. Petitioner relies on public policy and a publication of the Secretary called the Notary Public Handbook and Resource Guide. The document states that a notary public must not act in any official capacity if there is any interest that may affect impartiality. The statement relies upon the general "conflict of interest" principle and refers to a "beneficial interest" rule. This provision of the Handbook does not rely on any

statute or regulation nor does it provide the basis for invalidating elector's signatures under the circumstances.³

Petitioner further challenges the notary's authority to take the oath of the circulator on a petition wherein the notary has signed as a registered voter. To this deficiency, the Secretary responds that the Constitution spells out very clearly the role of the notary in the referendum petition process, to administer an oath to a circulator who swears that the signatures on the petition are original, made in the presence of the circulator and that to the circulator's best knowledge and belief, each signature is that of the person whose name it purports to be. Me. Const. Art. IV, pt. 3, § 20.

Whatever concerns may be appropriate regarding the public interest in the enforcement of a rule of "conflict of interest" or "beneficial interest," the court has not been presented with any substantive law to cause it to invalidate the signatures on petitions acknowledged under such circumstances.

Likewise, the petitioner has challenged the signatures on petitions on which the notary public has taken the oath of a circulator by signing her previous name and not her married name existing at the time of the acknowledgement. It is clear from the record that a notary public involved in a substantial number of petitions applied for, was granted and is registered with the Secretary under her name at the time of the application. However, without notification to the Secretary, she married and assumed the surname of her husband prior to this petition campaign. By administrative rule, a notary public must notify the

³ The court is advised by the Assistant Attorney General at oral argument that a Maine statute prohibiting the payment of circulators on the basis of number of signatures was struck down by the Federal District Court on Constitutional grounds. *See On Our Terms '97 Pac v. Secretary of Me.*, 101 F. Supp.2d 19 (D. Me. 1999).

Secretary of a change of address, email address, name or other contact information within 10 days of the change. 29-250 CMR Ch. 700. This, also, appears in the Handbook. However, there is no indication that such a filing is a condition that must be met in order for the notary to perform her duties with authority as long as she does not use the name of another and the name used is consistent with that registered with the Secretary. *See Maine Taxpayer's Action Network v. Sec'y of State*, 2002 ME 64, 795 A.2d 75. Further, there does not appear to be any authority for the proposition that use of the registered name rather than the new married name invalidates the function performed on the referendum petitions.

Petitioner's third argument is that the signatures of persons who do not appear on the Central Voter Registry are invalid. *See* 21-A M.R.S.A. § 902 (providing that verification of people's veto must be conducted in the same manner as nonparty nomination petitions); 21-A M.R.S.A. § 354(7)(C) (providing that, for nomination petitions, the registrar "shall certify which names on a petition appear in the central voter registration system as registered voters in that municipality and may not certify any names that do not satisfy subsection 3⁴"). An examination of the language of the statute reveals the deficiency with petitioner's argument. Section 354 requires that the registrar shall *certify* names that are found on the CVR. The statute does not provide that the registrar is required to *invalidate* names due to their absence on the CVR. To the extent that an argument could be made that the negative implication of Section 354 is that the CVR is the exclusive authority to consult in determining whether a name could be certified, the sentence of Section 354 providing that the registrar may

⁴ Subsection 3 requires that the voter must personally sign the petition.

not certify names under certain conditions reveals that the Legislature did not intend such an implication.

Petitioner's fourth argument is that the Secretary is under an independent duty to review signatures under section 905, notwithstanding valid certificates from the municipal registrars that the names on the petitions are of persons qualified to vote in the municipality. Presumably, this review would require the Secretary to consult the CVR, as the CVR is the voter list within the Secretary's custody. This argument presents two problems, one resulting from the text of section 905 and another from the constitution. Section 905 requires the Secretary to review the "petitions," not the individual signatures. Accordingly, it would be difficult to read section 905 as imposing a mandatory duty to inspect each individual signature rather than relying on the certificate by the municipal registrar that the names are those of persons qualified to vote.⁵ With regard to the Constitutional issue, Section 20 of Article IV, part third of the Maine Constitution defines "electors" as the persons of the State qualified to vote for Governor. The certification of the registrar that the names "appear on the voting list of the city, town, or plantation of the official as qualified to vote for Governor" constitutes prima facie evidence that the signatories to the petitions are registered voters. Me. Const. Art. IV, pt. 3, § 20; *Opinion of the Justices*, 116 Me. 557, 571, 103 A. 761, 768 (1917). Additionally, 21 M.R.S.A. § 121 provides that the registrar has the "exclusive power" to determine whether a person is a registered voter, and being listed on the CVR is not considered a prerequisite to

⁵ This does not imply that the Secretary lacks the power to review individual signatures for duplicates, forgery, and other issues. Rather, it means that relying on the certificates of municipal registrars, who have the "exclusive power" under 21-A M.R.S.A. § 121 to determine whether a person is a registered voter is not error.

voting for Governor under Title 21-A. *See also Palesky v. Sec'y of State*, 1998 ME 103, ¶ 13, 711 A.2d 129, 133 (acknowledging the registrar's exclusive authority to maintain the municipal voting list). Accordingly, if the Secretary had the authority to invalidate a person's signature because his or her name is not listed on the CVR, that authority would infringe upon the right any person "qualified to vote for Governor," who is absent from the CVR for one reason or another, to sign a people's veto petition. Me. Const. Art. IV, pt. 3, § 20.

The remaining challenges by petitioner relate to particular factual allegations regarding specific signatures. The Secretary has explained the activities undertaken by him and his staff to address the alleged deficiencies but the explanations take the form of arguments in the briefing material and the statute providing for judicial review is specific regarding the correction of the record and the taking of additional evidence. The respondent has not requested the taking of evidence on these issues. Under the circumstance, the court would normally remand the matters to the Secretary to prepare findings for the court's review. However, inasmuch as the present situation is more than 100 days from the filing with the Secretary and the Constitution anticipates the final review by the appellate court within that period, the court does not seem to have such a luxury. Relying on the record, as corrected, the court considers the petitioner's challenges.

The parties agree that there are an additional 62 signatures that may be considered duplicates notwithstanding the agency review and the court will disallow same.

The petitioner asserts that an additional three signatures are illegible and must be disallowed. He premises the claim on his argument that the Secretary

has the statutory authority to make the final determination of each signature, a premise to which this court disagrees as held above. The court is satisfied that the Secretary has the authority to rely on the local registrar who has examined the writing and the printed name and has certified the voter. As stated in the procedure required by the Secretary in his People's Veto Petition Certification Instructions, ("Instructions") found in the record, " . . . if you believe the voter has signed the petition, you may accept it. We want to give the benefit of the doubt to the voter who signed the petition."

The petitioner challenges over 500 signatures he claims were written after various petitions were notarized. Based on date issues, he asserts that the signatures were either dated after the notary took the circulator's oath, the signature was not dated or the signature was dated outside of the circulation period. He challenges the acceptability of the Secretary in making an assumption that undated signatures, or signatures with unlikely dates are not in compliance with the Constitution. To some degree, he, again, relies on his position that the Secretary has an independent duty not to rely on the notarized oath of the circulator. The Instructions provide that the signatures must be determined to have been entered during the circulation dates between June 30, 2009 and September 8, 2009. It requires a signature to be discounted only if the reviewer "cannot determine what the date of signing was." This allows the consideration of factors such as obvious mistakes in a date and other dates appearing on the petition. The respondent accepts the challenge as to 66 signatures but denies a factual basis for the others. The court is satisfied that the agency exercised acceptable judgment in this circumstance.

Me. Const. Art. IV, pt. 3, § 20 requires that petitions "must be submitted to the appropriate officials of cities, towns or plantations, or state election officials as authorized by law, for determination of whether the petitioners are qualified voters by the hour of 5:00 p.m. on the fifth day before the petition must be filed in the office of the Secretary of State, . . ." Presumably this important provision is to assure the registrars receive the petitions before the close of business and have sufficient time to certify the signatures. Mr. Johnson alleges that 117 signatures were on petitions submitted to the town clerks after the Constitutional deadline. The Secretary agrees as to 54 signatures. However, he argues that in spite of being encouraged to do so, not all town clerks have and use date stamps. In his brief, the Secretary asserts that he is in possession of evidence to establish receipt by the officials in due time. The record is not clear as to the complaint and the court makes no findings except to accept the allegation.

Three signatures are challenged because the date of notarization is indicated as September 27, 2009. The response is that the other signatures are dated in the vicinity of August 27th and on September 27, 2009, the petition was already in the possession of the Secretary. This is an obvious error and recognized as such by the Secretary within his discretion.

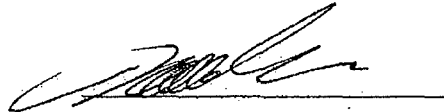
The petitioner challenges 1,597 signatures because the signature of the notary is illegible. This happens to be the notary whose name change has occasioned the challenge previously discussed. As is recognized by the court in the case of the registrars familiar with a number of characteristics of the registered voter, the Secretary has sufficient documentation and familiarity with this notary public's signature to remove doubt as to authenticity. Examples of such documentation exist in the record.

With the exception of the findings of this court in *Webster v. Dunlap*, AP 09-55 (Ken. Cty. Sup. Ct., Dec. 21, 2009), as to the date of the Secretary's determination, the court is satisfied that the agency decision of the Secretary of State in this matter is founded upon constitutional and statutory provisions, not in excess of such authorities, followed lawful procedure, was not affected by bias or error of law, is supported by substantial evidence, (with the minor exceptions as noted) and is not arbitrary or capricious or characterized by abuse of discretion.

Accordingly, the entry will be:

The Determination of the Validity of a Petition for People's Veto of Legislation Entitled: "An Act To Implement Tax Relief and Tax Reform" dated November 9, 2009 by the Office of the Secretary of State is AFFIRMED.

December 23, 2009



JUSTICE, SUPERIOR COURT