STATE OF MAINE
CUMBERLAND, ss.

BUSINESS AND CONSUMER COURT
Location: Portland
DOCKET NO. BCD-AP-16-04

ROGER BIRKS, et al.

Petitioners

v.

SECRETARY OF STATE, MATTHEW DUNLAP,

Respondent

PETITIONERS' RULE 80C BRIEF AND MOTION FOR COURT TO TAKE ADDITIONAL EVIDENCE

Petitioners appeal the determination of the Secretary of State that the Direct Petition for Initiated Legislation entitled "An Act to Legalize Marijuana" (the "Direct Petition") was invalid for failure to submit a sufficient number of valid signatures. The Secretary of State (the "Secretary") invalidated the signatures of over 30,000 Mainers who supported placing the Direct Petition before the voters, and did so in violation of the Maine Constitution and every applicable Maine statute. This Court should overturn the Secretary's determination and find the Direct Petition valid.

STATEMENT OF FACTS

Constitutional and Statutory Requirements for Initiative Petitions

In 2015, a number of Maine citizens began circulating petitions for voter signatures to trigger a statewide referendum on the Direct Petition. Compl. ¶ 35. These proponents collected 99,229 signatures on approximately 20,671 petitions, and filed these petitions with the Secretary's office on February 1, 2016. Compl. ¶ 40; Record Document 1 (Determination of the Validity of a Petition for Initiated Legislation Entitled: "An Act to Legalize Marijuana," dated

Mar. 2, 2016 (the "Determination" or "Det.")), ¶ 1.[1]

The right to submit proposed legislation directly to the voters is a constitutional right, and constitutes core political speech that is reserved to the people. ME CONST. Art. IV, Part 3, § 18. This reserved right is subject to several constitutional requirements, including a deadline for submitting petition signatures (Section 18(1)), a requirement to collect a certain amount of signatures (Section 18(2)), a requirement to include the signature date next to each signature (Section 18(2)), and a requirement that the "circulators"—or persons that collect the signatures—must be residents of the State and must witness each voter's signature on the petitions (Section 20).

After collecting these signatures, the Constitution requires that the circulator "verify" the petitions by taking an oath that "all 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." *Id.* § 20. The circulator's oath "must be sworn to in the presence of a person authorized by law to administer oaths." *Id.* Such persons include, but are not limited to, notaries public.[2] After the circulator verifies the signatures, the petitions are submitted to municipal clerks for confirmation that all signers are registered voters. *Id.*

Following confirmation by the municipal clerks, all petitions are submitted to the Secretary for final review under a statute enacted by the Maine Legislature for determining the validity of signatures. *See id.* § 22. This statute, 21-A M.R.S.A. 901 *et seq.* (the "Ballot Act" or the "Act"), mirrors much of the language in the Constitution regarding the process for collecting and submitting voter signatures.

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[1] Citations to documents contained in the Agency Record will be in the form "R. Doc. __."

[2] Attorneys admitted to practice in the State of Maine may also administer oaths. *See* 4 M.R.S.A. §1056.

Specific to the present appeal, the Act repeats the requirement that the circulators verify, before a person authorized by law to administer oaths, that he or she personally witnessed each signature and that, to the best of the circulator's knowledge and belief, the signatures are those of the persons whose name it purports to be. *See* 21-A M.R.S.A. § 902. The Ballot Act does not, however, impose any additional substantive requirements for collecting or submitting signatures. ME CONST. Art. IV, Part 3, § 22. This is because Section 22 of Part 3 of the Maine Constitution only authorizes the Legislature to enact laws that "establish procedures for determination of the validity of written petitions," not to add substantive requirements. *Id.* (emphasis added).

The Secretary of State's March 2, 2016 Determination

On March 2, 2016, the Secretary issued the Determination and found that of the 99,229 signatures submitted for the Direct Petition, 47,686 signatures were invalid, leaving only 51,543 valid signatures—9,580 signatures too few to validate the Direct Petition. Det. ¶ 3. Of the 47,686 signatures found to be invalid, 31,338 were invalidated because,

> ...the circulator's signature on the circulator's oath or the signature of the notary listed as having administered the oath did not match the signature on file and it could not be determined that the signature was made by that person (OATSIG).

Det. ¶ 2A.

Since the filing of this action, the Secretary has stipulated that none of the 31,338 signatures invalid on "OATSIG" grounds were invalided as a result of a failure of a circulator's signature to match his or her signature on file with the Secretary. Instead, all "OATSIG" invalidations were due to the alleged failure of the relevant notary's signature to match the signature on file with the State. *See* Affidavit of Julie L Flynn, dated March 21, 2016 ("Flynn Aff."), ¶ 18. In the affidavit filed by Ms. Flynn, the Secretary has clarified that for five notaries

he could not "match" the notaries' signatures to the file copies due to the "significant variations" in the signatures of these five notaries. Flynn Aff. ¶16.

Although the Determination identified other reasons for invalidating signatures, the OATSIG signatures were the largest group by far. Further, the great majority of the OATSIG signatures, 26,779, were on petitions notarized by "a single individual," Stavros Mendros (the "Mendros Petitions"). Det. ¶ 2A. Thus, given the number of signatures attributed to the Mendros Petitions, the failure of Mr. Mendros's signature to "match" the signature on file was, in effect, the reason the Direct Petition was invalidated. Det. ¶ 2A.

The Determination also noted that of the 31,338 signatures invalidated on "OATSIG" grounds, 9,541 were also invalid for other reasons. Det. ¶ 2A. The Secretary did not, however, clarify whether these 9,541 signatures should be subtracted from the 31,338 signatures or the 26,779 signatures attributed solely to Mr. Mendros. Assuming that the entire 9,541 signatures were deducted from the 26,779 signatures notarized by Mr. Mendros, there would remain 17,238 signatures invalidated solely due to a alleged failure of Mr. Mendros's signature to "match" the signature on file with the Secretary. Det. ¶ 2A.

As noted above, whether 26,779 or 17,238 signatures in the Mendros Petitions were invalidated solely for this lack of a "match" with the signature on file, the validation of these signatures would exceed the number of signatures needed to certify the Direct Petition (9,580 signatures), sufficient to satisfy the requirements under the Maine Constitution.[3] ME CONST. Art. IV, Part 3, § 18(2); Det. ¶ 3.

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[3] Even after reviewing the disputed petitions and the Secretary's submitted record, it is still not possible to understand the Secretary's math calculations. The Secretary should clarify, in his brief, whether the 9,541 signatures which are invalid for other reasons than OATSIG are a subset of the 31,338 signatures struck for OATSIG, or the 26,779 signatures attributed to Mr. Mendros (in other words, what constitutes "this category" for subtraction of the 9,541 invalid signatures). Petitioners are focusing the Court's review (and our legal arguments) on the Mendros Petition signatures (26,779) with the assumption that

For the following reasons, the Secretary's "matching" analysis was outside his statutory authority, was not permissible under the Maine Constitution, and was, as a matter of fact, incorrect. As a result, and for the reasons more fully set forth below, Petitioners respectfully request that the Court vacate the Secretary's Determination and remand with instructions for the Secretary to certify the Direct Petition for the November, 2016, ballot.

ARGUMENT

The Secretary invalidated more than 17,000 signatures on the basis that "significant variations" in the signatures of five notaries public prevented the Secretary from finding that these signatures "matched" the signatures of these notaries on file with the Secretary and, due to this lack of a match, the Secretary could not confirm that these notaries actually signed the disputed petitions. Det. ¶2A; Flynn Aff. ¶¶13(e), 16. But for this one conclusion, more than 17,000 signatures, all of which the Secretary concedes were otherwise valid, would have been valid and the Direct Petition would have been certified for the November, 2016 ballot.

The Secretary's Determination on this issue —based on the existing record submitted to the court—was unlawful for several reasons:

First, there is no requirement in the Maine Constitution or the Ballot Act for notary signatures to "match" any other signature. Compliance with the notary public statute, cited by the Secretary, is not required in order for these petitions to be valid, and at least one court in Maine has so determined.

Second, to the extent the cited notary public statute provides any guidance to the

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"this category" references the 26,779 signatures. In doing so, Petitioners have relied on representations by the Attorney General's office that that the resolution of the question of whether the Secretary may, or should have, invalidated the Mendros Petitions for OATSIG, will result in the validation of sufficient signatures for the Direct Petition to be sent to the ballot in November. If this reliance is misplaced, and these 17,000+ signatures are subject to other objections, the Attorney General should clarify.

Secretary, even this statute does not require notaries' signatures to "match" the signature on file. Nor is this alleged requirement consistent with the Secretary's stated interpretation of the cited notary statute, which he has conceded only requires that notaries' signatures be "generally consistent" with the signature on file.

Third, the action the Secretary purportedly took—concluding that the notaries' signatures on the disputed petitions could not be "matched" to the one on file—is not physically possible, even for a handwriting expert. This is because the variation cited by the Secretary is part of the natural variation of these notaries' signatures, is not evidence that someone other than these notaries signed these documents, and is actually evidence that the signatures do "match" the ones on file.

Further, and in the alternative, Petitioners have moved to supplement the submitted record with evidence that definitively answers the question the Secretary states he could not previously resolve—can it be "determined" that the signatures by these five notaries are, in fact, the signatures of these notaries? Petitioners have submitted an affidavit by Mr. Mendros and the other four notaries confirming that it is their signatures on all of the disputed petitions. Petitioners have also proposed that the Court review other evidence, including affidavits from a subset of circulators, the report of a handwriting expert, and copies of prior petitions notarized by Mr. Mendros and validated by the Secretary, showing that the Secretary's Determination is this case is unlawful, not supported by any evidence, and should be vacated.

I. THE SECRETARY ACTED OUTSIDE HIS STATUTORY AUTHORITY IN INVALIDATING ALL PETITIONS NOTARIZED BY STAVROS MENDROS AND THE OTHER NOTARIES.

The Secretary has invalidated more than 17,000 otherwise valid signatures on the basis that the notary public's signature on those petitions did not "match" the signature on file with the Secretary's office and, therefore, "it could not be determined that the signature was made by that

person." Det. ¶3. There is no requirement, however, in the Maine Constitution, the Ballot Act, or any other law or regulation, for a notary's signature to "match" the one on file with the Secretary.

A. The Right to Propose Legislation by Written Petition Is "Core Political Speech" and Statutes Establishing Procedures for Determining the Validity of Such Petitions Must Be Narrowly Construed.

Maine's Constitution provides that "[t]he electors may propose to the Legislature for its consideration any bill, resolve or resolution . . . by written petition addressed to the Legislature." ME CONST, Art IV, Part 3, § 18(1). The Constitution does not merely "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. Sec'y of State*, 2006 ME 50, ¶ 25, 896 A.2d 933, 941 (emphasis added). Indeed, "the right of the people to initiate and seek to enact legislation is an absolute right." *Id.* ¶ 21, 896 A.2d at 940. As the Law Court has stated, "the broad purpose of the direct initiative is the encouragement of participatory democracy . . . and that constitutional provision must be liberally construed to facilitate, rather than handicap, the people's exercise of their sovereign power to legislate." *Allen v. Quinn*, 459 A.2d 1098, 1102-3 (Me. 1983).

The Constitution permits the Legislature to enact laws to establish "procedures" for the determination of the validity of written petitions, but provides that those laws may "not [be] inconsistent with the Constitution." ME CONST. Art. IV, Part 3, § 22. Moreover, the circulation of direct petitions "is core political speech and any state regulation of the initiative process must be narrowly tailored to carry out a compelling state purpose." *Maine Taxpayers Action Network v. Sec'y of State*, 2002 ME 64, ¶8, 795 A.2d 75, 78 ("*MTAN*").

It is against this constitutional framework, along with the directive that the laws "be liberally construed to facilitate, rather than handicap, the people's exercise of their sovereign

power to legislate," that the Secretary's Determination must be evaluated. *Allen*, 459 A.2d at 1102-3.

B. There is No Constitutional or Regulatory Basis for the Secretary's Invalidation of the Mendros Petitions.

Although the Secretary's Determination does not state the specific basis for his "matching" analysis, in Ms. Flynn's affidavit, the Secretary cites 4 M.R.S.A. Section 951-A, which requires a notary's signature to be written "in hand" and "in the same form" as the notary public's commission. Flynn Aff. ¶13(e). The Secretary appears to have concluded that Mr. Mendros's signature was not "in the same form" as the signature on file and, therefore, the Secretary could not confirm that Mr. Mendros notarized those petitions. *Id.* There are several problems with this argument.

1. There is no constitutional or statutory requirement that a person witnessing a circulator's oath have a signature on file or that such a signature "match" the signature on the petitions.

The Act states that the Secretary will review submitted petitions to "determine the validity" of each petition. *Id.* at § 905(2). The Law Court has noted that Section 905, which gives the Secretary the right to "verify" petition signatures, does not provide any "specific grounds" to guide the Secretary's decision. *See MTAN*, 2002 ME 64, ¶ 13, 795 A.2d at 80 (*citing Opinion of the Justices*, 103 A.2d 761, 771-72 (Me. 1917)). Given that the Ballot Act is subject to specific constitutional limitations, there is an immediate concern regarding whether Section 905 is too vague to pass constitutional muster.

A statute is unlawfully vague "when its language either forbids or requires the doing of an act in terms so vague that people of common intelligence must guess at its meaning." *City of Portland v. Jacobsky*, 496 A.2d 646, 649 (Me. 1985). The Secretary has not promulgated any regulations, subject to the Administrative Procedures Act, that allow for the "interpretation,

implementation and enforcement" of the Secretary's undefined authority under Section 905. *See Uliano v. Board of Envt'l Protection*, 2009 ME 89, ¶28, 977 A.2d 400, 411. What we are left with is the Secretary exercising statutory authority utterly lacking in "precise [legislative] guidelines." *Id.*

Recognizing this concern, the Law Court has held that objections to petitions must be based on a failure to comply with specific constitutional or statutory requirements. *See MTAN*, 2002 ME 64, ¶12, 795 A.2d at 79-80. Neither the Constitution nor Title 21-A, however, contain any requirement that the signature of the notary public on petitions "match" the signature for such notary on file with the Secretary. Nor does the Constitution even require that a notary public be part of this process. While the Constitution requires that circulators take their oath "in the presence of a person authorized by law to administer oaths," other persons, including attorneys, have the authority to administer oaths, and attorneys do not have a signature on file with the Secretary to "match." *See* 4 M.R.S.A. §1056. As such, the Secretary has formulated a test for confirming the validity of signatures that would not even apply to an entire group of persons authorized to take the oath of the circulators.

Further, failure to comply with the technical requirements for notaries public is not, alone, sufficient to invalidate a petition. In a similar case in 2009, the Secretary validated petitions signed by a notary notwithstanding the fact that the notary's signature violated the same provision cited by the Secretary in this case. *See Johnson v. Sec'y of State,* AP-09-56, 2009 WL 6631827, p. 3 (Me. Super. Dec. 23, 2009).[4] In *Johnson*, the Kennebec County Superior Court was asked to review a determination by the Secretary regarding petitions filed to trigger a people's veto referendum. Among other determinations, the Secretary validated petitions

[4] A copy of the *Johnson* case is attached hereto at Exhibit 4 for the convenience of the Court.

containing 3,837 signatures that were notarized by a notary public using her married name, despite the fact that the notary's maiden name was on file with the Secretary. The lack of a match in that case was not based on any alleged "inconsistency" with the signature on file—the last name was entirely different.

Not only did the Secretary accept the notary's signature in that case, but the Superior Court found that although the notary's signature did not comply with the statute and the rule regarding notary publics (because it was not "in the same form" and the notary had not informed the Secretary of her name change), compliance with these requirements was not necessary "in order for the notary to perform her duties with authority." *Id.* The Court continued that "there does not appear to be any authority for the proposition that the use of the registered name rather than the new married name invalidates the function performed on the referendum petitions." *Id.* (emphasis added).

The "function" performed by the person administering the oath is clear and it is limited. The primary focus of the Ballot Act is on the circulator not the notary. "Indeed, the integrity of the initiative and referendum process in many ways hinges on the trustworthiness and veracity of the circulator." *MTAN*, 2002 ME 64,¶ 13, 795 A.2d at 80. This is because the circulator's oath is the only way for the Secretary to verify that "a signing voter actually signed the petition." *Id.*

In contrast, the role of the notary in the petition process is only to be present when the circulator's oath is signed, in order to impress upon the circulator the importance of the oath the circulator must make regarding the validity of the petitions. *See id.* Unlike the circulator, who has responsibility of "constitutional import," a notary is not subject to any constitutional requirements. He or she is simply there to witness the circulator complying with his or her obligations. *Id.*

The Court in *Johnson* properly determined that this function is not impaired even if the notary violates Section 951-A by signing the petitions with a signature that is clearly not "in the same form" as the one on file. Given the *Johnson* court's ruling that a notary's signature need not even match the *name* on file with the Secretary, there can be little question that alleged "inconsistencies" among signatures of the *same name* is insufficient to invalidate a petition.[5] Flynn Aff. ¶13(e).

This conclusion is consistent with decisions of other courts, which have refused to invalidate signatures on petitions due to technical defects in the notarization. *See Berney v. Bosworth,* 87 A.D.3d 948, 949 (N.Y. App. 2d. 2011) (holding that lower court erred in invalidating signatures on a petition where notary date was illegible, noting "technical defects in the notarization of a document should not invalidate the official acts of a notary public"); *McCavitt v. Registrars of Voters of Brockton*, 434 N.E.2d 620, 626-27 (Mass. 1982) (holding that the lower court erred in rejecting a ballot with an illegible notary signature, and stating "a voter who has cast his ballot in good faith should not be disenfranchised because of the failure of a ministerial officer to perform some duty imposed upon him by law"); *United Labor Committee of Missouri v. Kirkpatrick*, 572 S.W.2d 449, 454 (Mo. 1978) (finding that notary's failure to comply with statutory requirements was insufficient to invalidate signatures, noting the "registered voters who suffered the happenstance of having signed the petitions which were subsequently improperly notarized . . . should not have their signatures invalidated due to the conduct [of the notary]"); *In re Initiative Petition No. 365, State Question No. 687*, 2001 OK 98, ¶ 14, 55 P.3d 1048 (upholding signatures on improperly notarized petitions noting that the defect

[5] The other role played by the notary is to assure that the person taking the oath is clearly identified should questions arise regarding particular signatures." *MTAN*, 2002 ME 64, ¶ 13, 795 A.2d at 80. Although the Secretary knew who the "disputed" notaries were, it is unclear why the Secretary never reached out to Mr. Mendros or the other notaries whose signatures were in dispute.

in notarization did not "impeach the [circulator's] oath" and that the petitions and signatures thereon were valid).[6]

2. *To the extent the notary statute provides any guidance, Mr. Mendros' signature on the Mendros Petitions is "in the same form" as that term is used in 4 M.R.S.A. Section 951-A.*

To the extent that the notary public statute provides any guidance for the Secretary in validating petitions, Mr. Mendros complied with all applicable provisions when he notarized the Mendros Petitions.

The notary statute cited by the Secretary provides that,

> When performing a notarization, a notary public must sign by producing that notary public's signature by hand in the same form as indicated on the notary public's commission. For the purposes of this section, the notary public's official signature is the signature that appears on the notary public's most recent oath of office or most recent application for a notary public commission.

4 M.R.S.A. §951-A.

In interpreting this statute, the Court begins with its plain language, which required Mr.

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[6] Numerous courts in other contexts have also rejected attempts to invalidate documents based on alleged technical infirmities in the notarization. Indeed, the Supreme Court affirmed this principle over a century ago in *Kelly v. Calhoun*, 95 U.S. 710 (1877). In *Kelly*, the Supreme Court held that a technical violation relating to an attestation on a deed was not sufficient grounds upon which to invalidate the deed in its entirety. *Id.* at 713. The Court stated "instruments like this should be construed, if it can be reasonably done, *ut res magis valeat quam pereat*. It should be the aim of courts, in cases like this, to preserve and not to destroy." Other courts have found that parties may not invalidate deals and documents based on technical errors by notaries. *See e.g., Raymar Development Corporation v. Barbara*, 404 So. 2d 813, 814 (Fla. 2d 1981) (technical defects in notarization did not invalidate deed); *White v. BAC Home Loans Servicing, LP*, 2011 WL 4479299 at *5 (N.D. Ga. Sept. 26, 2011) (same); *Berney v. Bosworth*, 87 A.D.3d 948, 949 (N.Y. App. Ct. 2011) ("Technical defects in the notarization of a document should not invalidate the official acts of a notary public."); *Ozawa v. Bank of New York Mellon*, 2012 WL 3656520 at *3 (D. Nev. Aug. 24, 2012) (notarial mistake insufficient to invalidate document under Nevada law); *Texas Dept. of Public Safety v. Rajachar*, 2006 WL 467964 at *2 (Tex. App. Ct. 2006) ("An inartfully applied notary stamp should not negate the intent of the affiant and notary public and the purpose of the affidavit. . . we will not invalidate a document notarized by a notary based on a partially illegible notary stamp."); *Adair Holdings, LLC v. Escher*, 2015 WL 576057 at *5 (Iowa App. Ct. Feb 11, 2015) ("We find the scrivener's error in the notary jurat of the affidavit of service is not a defect which invalidates the tax deed"); *Thomas v. Gastroenterology Associates of Gainesville, P.C.*, 280 Ga. 698, 701 (Ga. 2006) (upholding validity of affidavit notarized by notary after commission had expired).

Mendros to sign the Mendros Petitions "in hand" and with a signature that is in the "same form" as the one on his most recent application for a commission. *See McGee*, 2006 ME 50, ¶12, 896 A.2d at 938 (in assessing the Secretary's interpretation of the Ballot Act, the Court begins with the plain language of the Act). The statute does not require Mr. Mendros's signature to "match" his application or anything else. Det. ¶2A. Section 951-A does not require identical signatures, nor does it require anyone to act as a "handwriting expert" to evaluate the validity of a notary's signature to determine "that the signature was made by that person."[7] Det. ¶2A.

Although there is variability in Mr. Mendros's signatures, both among the Mendros Petitions and among the signatures on file, these signatures are all in the "same form" as each other and are "consistent," to the extent the Secretary may consider this issue. Mr. Mendros does not use nick names, shortened names, initials, or other symbols that do not appear to spell out "Stavros J. Mendros."

As the term "form" is not defined in Section 951-A, it should be interpreted with its ordinary dictionary definition. *See Friends of Congress Square Park v. City of Portland*, 2014 ME 63, ¶9, 91 A.3d 601, 604. In Webster's Dictionary "form" is defined generally as "the shape and structure of something" and specifically to this case, "one of the different modes of existence, action, or manifestation of a particular thing."[8] Thus, a notary's signature has the same "form" as the signature on file when, based on its physical structure, it represents a mode—a particular form or variety—of the file signature.

The "same form" does not mean "match," and expressly contemplates something far less than an exact reproduction. Although there is variability in Mr. Mendros's signature, the notary

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[7] Please see the discussion below regarding the fact that such an action, even for a handwriting expert, is not possible.

[8] http://www.merriam-webster.com/dictionary/form.

public statute does not prohibit variability. Nor could any notary meet a standard that required his or her signatures to match a single signature filed months or years previously with the State. *See, e.g., Harrison v. Bank of America, N.A.*, 2013 WL 440163 at *5 (E.D. Mich. Jan 17, 2013) (court held that Michigan's similar notary statute did not require a "match" with the notary's filed signature, noting that such a reading of the state "would set a nearly impossible standard and is not required by the statutory language"); *see also United States v. Mitchell*, 2002 WL 1433725 *5-6 (D. N.J. June 28, 2002) (a "substantial degree of variability" in signatures does not undermine their validity).[9]

Moreover, the Secretary did not even follow his stated interpretation of Section 951-A in this case. In the Flynn Affidavit, the Secretary concludes that "in the same form" means the signatures must only "appear generally consistent" with the signature on file. Flynn Aff. ¶13(e). This is consistent with the Superior Court's decision in *Johnson*, which simply required that the name used by the notary be "consistent" with the signature registered with the Secretary. *Johnson*, 2009 WL 6631827, p. 3.

The Court has obtained copies of more than 6,000 petitions invalidated by the Secretary, with the great majority being the Mendros Petitions. (R. Doc. 8). Record Document 13 then contains several copies of Mr. Mendros's signature on file with the Secretary of State's office,

[9] Further, the notion that the Secretary could render a decision on whether the notaries' signatures "matched" the on file signature is not possible, even for a handwriting expert, given that the notary statute defines the "on-file" signature as only a single signature. 4 M.R.S.A. § 951-A. Broadly speaking, ten to twenty example signatures, at the minimum, are necessary for handwriting experts to make a determination regarding the validity of an individual signature. *See* 27 Am. Jur. Proof of Facts 3d 489 § 63 ("in cases involving a questioned signature, ten to twenty examples are generally sufficient"). Indeed, consistent with this standard, courts have rejected handwriting expert analysis based on review of an insufficient number of exemplars. *See e.g. Smith v. Sullivan,* 959 N.Y.S.2d 588, 599-600 (noting that expert handwriting analysts prefer to have 25 known signature exemplars, and rejecting expert analysis based on fewer than five signature exemplars); *State v. Thomason*, 538 P.2d 1080, 1087 (Ok. Ct. App. 1975) (agreeing with state that a sample size of two signature exemplars was an insufficient permit expert handwriting analysis). If a handwriting expert could not determine whether Mr. Mendros's petition signatures matched the signature on file, neither can the Secretary of State.

including his 2004 and 2011 applications to renew his notary public commission. Based on a review of the Mendros Petitions and the "most recent oath of office or most recent application for a notary public commission" filed by Mendros, it is apparent from the face of the Mendros Petitions that Mr. Mendros applied his notary signature "by hand" and that his signatures are "generally consistent" with his 2011 notary application. Although there is no requirement in the Maine Constitution or the Ballot Act for Mr. Mendros's signature to be "generally consistent" with anything, to the extent the Secretary is permitted to evaluate the form of a notary's signature, there is nothing on the face of the Mendros Petitions that supports the Secretary's decision to disenfranchise more than 17,000 registered Maine voters.[10]

3. The Secretary's finding that these notaries signatures were "variable" necessitates a contrary legal conclusion.

The Secretary's factual and legal findings do not match.

The Secretary has concluded that the signatures of the five disputed notaries were subject to "significant variations" and were "widely variable." Flynn Aff. ¶16. Based on this factual finding, the Secretary concluded that he could not determine that these petition signatures matched the signatures on file with the State. *Id.* This observed variability, however, should have resulted in a different conclusion.

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[10] The only relevant document in Record Document 13 is Mr. Mendros's 2011 application for his commission. *See* 4 M.R.S.A. § 951-A ("the notary public's official signature is the signature that appears on the notary public's most recent oath of office or most recent application for a notary public commission"). The state has included numerous other documents in Record Document 13, including an unsigned Administrative Consent Agreement between Mr. Mendros and the Secretary regarding Mr. Mendros's notary commission. This document should not be considered part of this record as it not the type of document held on file by the Secretary pursuant to Section 951-A. Further, Petitioners object to the inclusion of this document, and any other document, regarding prior disputes between Mr. Mendros and the Secretary of State's office as these are not relevant to whether the Direct Petition signatures are valid. 5 M.R.S.A. § 11005 (judicial review confined to the agency's administrative record). Petitioners hope that these documents were not included in the record to create some adverse inference regarding Mr. Mendros that is otherwise unsupported by the Secretary's Determination. If the Secretary believed Mr. Mendros's past activities created uncertainty regarding the validity of his notarial statements, the Secretary should have taken action to suspend Mr. Mendros's commission, which he has not done.

The Secretary has recognized that these five notaries have significant natural variation in their signatures. When then turning to the official signature on file, this wide variability would make it more likely, not less likely, that the official signature was made by the same person. This conclusion is obvious if we consider the alternative. Had the Secretary found that there was no variability in these notaries' signatures, then any differences between the petition signatures and the file signature would have, appropriately, been cause for concern. If the notaries were so particular about their signatures that they almost always look the same, then any variation with the signature on file would have suggested a problem.

Here, the Secretary has noted that there is significant variability in these five notaries' signatures. As this is not evidence of the invalidity of any of them (*see Mitchell*, 2002 WL 1433725 *5-6), the Secretary should have concluded that, given this variation, the file signatures were likely signed by the same notary. This is because any variation between the signature on file and the petition signatures would have been normal.

Instead, the Secretary reached the opposite legal conclusion. It was irrational and illogical for the Secretary to conclude that significant variation led to uncertainty, even to the extent he has the authority to "match" a signature to the file copy. The basis for the Secretary's Determination, therefore, is not only unlawful and outside the Secretary's authority, but it is logically deficient and should be set aside.[11]

C. If the Court Concludes that the Statute Permits the Secretary to Invalidate the Mendros Petitions on the Stated Basis, then the Ballot Act is Unconstitutional.

Petitioners' Count II asserts an as-applied constitutional challenge to the Secretary's application of the Ballot Act. In the event the Court determines that the Ballot Act permits the

[11] Should the Court determine that additional evidence is necessary to resolve any of the claims in this case, please see the attached expert report of Vicki L. Willard, which explains why the Secretary's "variability" analysis is invalid and cannot support the Determination.

disenfranchisement of more than 17,000 voters on the basis of an alleged technical violation of a notary public statute, then the statue, as applied, is unconstitutional.

1. The Court May Reach the Merits of Count II.

The Secretary has suggested Count II should be dismissed as it is "duplicative" of Count I. *See* Attorney Gardiner March 22, 2016, e-mail (*citing Antler's Inn & Restaurant LLC v. Department of Pub. Safety*, 2012 ME 143, ¶¶14-15, 80 A.3d 1248 and *Kane v. Commissioner of Dep't of Health and Human Svcs.*, 2008 ME 185, ¶¶30-32, 960 A.2d 1196).

In *Antlers' Inn* and *Kane*, the petitioners alleged that the agency's action violated both the Maine Administrative Procedures Act ("Maine APA") and 42 U.S.C. §1983. *See* 2012 ME 143, ¶14, 80 A.3d at 1253-54; 2008 ME 185, ¶32, 960 A.2d at 1205. In both these cases the "independent" federal claim were dismissed, either because the petitioner was relying on the same facts and seeking the same relief under all counts (*Kane*, 2008 ME 185, ¶32, 960 A.2d at 1205) or because relief under the Maine APA, as a matter of law, fully addressed the petitioner's federal claims (*Antlers' Inn*, 2012 ME 143, ¶14, 80 A.3d at 1253-54).

This case is distinguishable as Petitioners' Count II seeks different relief, based on different factual allegations, and resolution of Count I will not address the claims asserted in Count II. Count I alleges that the Secretary's Determination is invalid under the standards articulated in the Maine APA—the decision is outside the Secretary's authority, is not supported by the record (existing or as may be amended), and is arbitrary and capricious. Compl. ¶¶63-70; 5 M.R.S.A. §11007(4)(C). Count II alleges that if the Court determines that the Secretary's Determination does not violate the Maine APA, then the Ballot Act, as applied and interpreted by the Secretary, is unconstitutional. Compl. ¶¶71-75.

This as-applied constitutional claim does not seek the same relief, and is not based on the

same alleged facts. Nor does resolution of Count I dispose of the relief sought in Count II, in fact, a finding in favor of the Secretary on Count I is necessary before Petitioners can pursue Count II. For these reasons, Count II in this proceeding has stated an independent claim and should not be dismissed.

2. The Ballot Act is unconstitutional as applied by the Secretary to the Mendros Petitions.

Should the Court find that the Secretary's decision to invalidate petitions based on the failure of the signature of the notary on such petitions to match the signature of such notary on file with the Secretary was a reasonable and non-arbitrary application of 21-A M.R.S.A. § 902, it should nonetheless enter judgment in Petitioners' favor on the basis that Section 902's "matching" requirement is inconsistent with the Constitution, and therefore void.

The circulation of an initiative petition "involves the type of interactive communication concerning political change" that constitutes "core political speech." *See On Our Terms '97 PAC v Secretary of State*, 101 F. Supp. 2d 19, 25 (D. Maine 1999). The Maine Legislature may not, consistent with the First Amendment, severely burden such speech unless the statute at issue is "narrowly tailored to serve a compelling state interest." *Id.*

There is no "compelling state interest" in compliance with technical requirements for notaries public in the initiative and referendum process. Although the State has an interest in confirming that voter signatures are valid, the Secretary in this case has conceded that all 17,000+ signatures on the Mendros Petitions were signed by registered voters. Det. ¶2A. The Secretary has also conceded that there are no concerns with the circulator's signatures on these petitions. Flynn Aff. ¶18. The sole basis for the Secretary's invalidation of these 17,000+ signatures is the alleged failure of Mr. Mendros to write clearly when he notarized these petitions.

This is not a "compelling" state interest. The Constitution sets forth a series of requirements with respect to written petitions, but has only one *potential* requirement with respect to notaries. That requirement is that, to the extent a notary is acting as "a person authorized by law to administer oaths," the notary administer to the circulator the oath 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." ME CONST. Art IV, Part 3, § 20. The Law Court has noted that the purpose of the presence of the notary in this process is to impress upon the circulator the importance of the oath the circulator must make regarding the validity of the petitions. *See MTAN*, 2002 ME 64, ¶ 13, 795 A.2d at 80. It is the presence of the notary that is important, not the notary's compliance with any of the technical requirements of the notary statute.

As there is no requirement that (i) the notary or other person authorized by law to administer oaths sign the petitions, (ii) that, to the extent the notary signs, that signature be an actual match to the signature on file for such notary; or (iii) that the signature of a notary on a petition be determined, by a non-expert examiner, to be signed by the same person who signed the application on file, the Legislature's imposition of any or all of these requirements on the direct initiative process is inconsistent with the Constitution and is therefore invalid. *See On Our Terms '97 PAC*, 101 F. Supp. 2d at 26.

For these reasons, in the event the Court concludes that Title 21-A, Chapter 11 empowered the Secretary to issue the Determination, it should find that portion of Chapter 11 as applied by the Secretary to be unconstitutional, and therefore void.

II. IF THE COURT DETERMINES THAT THE SECRETARY REASONABLY FOUND THAT HE COULD NOT CONFIRM WHETHER MR. MENDROS SIGNED THE MENDROS PETITIONS, PETITIONERS MOVE THE COURT TO TAKE ADDITIONAL EVIDENCE THAT SHOWS THAT THE MENDROS PETITIONS WERE, IN FACT, VALID.

In his Determination, the Secretary states that "it could not be determined" that Mr. Mendros's signature "was made by that person." Det. ¶2A. The Secretary's assertion that such a determination was not possible is flatly wrong. The Secretary could have sought information—from the Petitioners, the circulators, Mr. Mendros or others—as to whether Mr. Mendros, in fact, notarized the petitions in question. In failing to take any steps to determine the validity of those signatures before invalidating them, the Secretary acted arbitrarily and Petitioners hereby move, pursuant to M.R. Civ. P. 80C(e) and 5 M.R.S.A. §11006(1), for the Court to take additional evidence that confirms that Mr. Mendros and two other notaries notarized their respective petitions.[12]

A. The Proffered Additional Evidence.

Petitioners have attached the following proposed additional evidence to supplement the record on appeal:

- The affidavit of Mr. Mendros, which affirms that he administered the circulators' oath for each of the Mendros Petitions, and that he signed each of the Mendros Petitions. Mr. Mendros affidavit encompasses all 5,099 of the petitions he notarized with regard to the Direct Initiative.
- Affidavits by two other "disputed" notaries, James Tracey, Jr. and Elliot Chicoine, with the same affirmations as in Mr. Mendros's affidavit.
- Affidavits by eight circulators, each of whom circulated petitions notarized by Mr. Mendros and each of whom affirmed that Mr. Mendros administered the

[12] Indeed, the Secretary sought additional information from Petitioner David Boyer regarding whether certain circulators were registered voters and Maine residents, as required by the Constitution. The Agency Record contains 108 pages of email correspondence between the Secretary and proponents of the Direct Petition seeking such information. (R. Doc 12.) Neither the record nor the Flynn Affidavit provide any basis for why a similar effort was not made with respect to whether Mr. Mendros notarized the Mendros Petitions.

circulator's oath. These affidavits encompass approximately 15,516 signatures on petitions notarized by Mr. Mendros, Mr. Tracey, and Mr. Chicoine.

- A report by forensic document examiner Vickie L. Willard. Ms. Willard states that the statutory act the Secretary purports to have done—reviewing the notary signatures on the Mendros Petitions to determine if they match Mr. Mendros's signature on file with the Secretary—is impossible, even for a handwriting expert report. Mr. Willard also contends that without the Secretary reviewing a significant number of Mr. Mendros's uncontested signatures, it is not possible for the Secretary to conclude that the variation in the notary signatures on the Mendros Petitions is due to anything other than normal variation in Mr. Mendros's signature.[13]

The Mendros Affidavit

The Secretary invalidated the Mendros Petitions on the basis that he could not determine whether Mr. Mendros actually signed his petitions. Det. ¶2A. Mr. Mendros's affidavit makes it clear that he signed every one. The affidavits by the other notaries are similarly dispositive of this question.

Further, Mr. Mendros's affidavit also addresses a new basis for invalidating the Direct Petition, suggested for the first time by the Secretary in the Flynn Affidavit. Although not part of the Determination, the Secretary now claims that due to the failure of Mr. Mendros's signature to "match" the signature on file, the Secretary "could not determine whether [Mr. Mendros] had in fact administered the oaths to the circulators who signed the petitions." Flynn Aff. ¶16. There are several problems with this argument.

First and foremost, it is flatly refuted by the affidavits filed by Mr. Mendros and the other two notaries.

Second, it is not possible for the Secretary to determine, based on the review of a physical signature, whether these notaries "administered the oath" to the circulators. Doing so entails the

[13] The affidavits of the notaries are attached hereto as Exhibit 1. The affidavits of the circulators are collected and attached hereto as Exhibit 2. Ms. Willard's affidavit and report is attached hereto as Exhibit 3.

physical presence of the notary with the circulator when the circulator takes the oath. There is no way the Secretary could determine where the notary was, based on a physical review of the notary's signature.

Third and finally, the Act requires the Secretary to issue a "written decision stating the reasons for the decision within 30 days from the date of filing of a written petition" with the Secretary. 21-A M.R.S.A. §905(1). Upon the filing of the present action, the Secretary no longer had jurisdiction over his Determination to amend or add to it. *See York Hosp. v. Department of Health and Human Svcs.*, 2008 ME 165, ¶33, 959 A.2d 67, 74. Nor is it legal or appropriate or constitutional, absent a remand by the Superior Court, for any governmental entity or agency to continue to add findings or conclusions to a decision under review.

In his Determination, the Secretary stated that "it could not be determined that the signature" of Mr. Mendros (or of four other notaries) was the signature "made by that person." The obvious conclusion is that the Secretary could not determine whether Mr. Mendros had, in fact, signed the Mendros Affidavits. Although by necessary implication that meant that the Secretary could not determine whether Mr. Mendros administered the oath on those petitions, confirming that Mr. Mendros did sign those documents fully and finally resolves both issues—did he sign, and did he administer the oath.

The Circulator Affidavits

Petitioners also have submitted affidavits from eight circulators, representing more than 15,000 signatures on the Mendros Petitions and petitions notarized by Mssrs. Tracey and Chicoine, affirming their constitutional oaths and confirming that they took their oaths in the presence of these notaries. This is undisputed evidence that the primary constitutional test was met with regard to these 15,000+ signatures.

Willard Report

Vicki Willard, D-BFDE, is a Board Certified Forensic Document Examiner. Ms. Willard was provided with 100 randomly selected Mendros Petitions, and a copy of Mr. Mendros's 2011 notary application (his "Certificate of Qualification"), the same document produced by the Secretary and found at Record Document 13. Willard Report p. 1. Ms. Willard was asked to offer an opinion about whether she could determine, based on the sample of Mendros Petitions and the signature on file, whether Mr. Mendros's signatures matched the signature on file. *See id.*

Ms. Willard noted that although there is a "common belief that a writer can be positively identified from only one or two of his or her signatures," this is not the case, and that as a general rule a handwriting expert would need to review 10-20 undisputed signatures before being able to make a determination as to whether an unknown or disputed signature had been signed by the same person.[14] Willard Report p. 2. The review of a significant number of undisputed signatures is important to assess the natural variation in the signer's signature. Ms. Willard noted that "[s]ince variation is an integral part of natural writing, no two samples of writing prepared by one person are identical in every respect. The extent of variation differs among writers and, consequently, natural variation forms an important element in the identification of handwriting." *Id.* No comparison of signatures can take place, therefore, unless the reviewer has reviewed a sufficient number of undisputed copies of the signature to understand the "range of variation" for that signer. *Id.* at p. 1.

Understanding the natural variation in a signature is critical, as the failure to do so could

[14] Here, based on the Secretary's Determination that he could not determine that the Mendros Petitions were in fact signed by Mr. Mendros, the Mendros Petitions contain disputed signatures. The only undisputed signatures appear on Mr. Mendros's Certificate of Qualification.

result in a reviewer incorrectly associating variation with uncertainty regarding who made the signature. Ms. Willard noted that "[i]f there is not an adequate number of [undisputed] specimens submitted to study the writer's patterns of natural variation, then whether the writing feature observed is a natural variation or a different writer cannot be properly determined." *Id.*

Ms. Willard then reviewed the Secretary's findings, specifically his determination that "the signature of the notary listed as administering the oath did not match the signature on file and it could not be determined that the signature was made by that person." In response, Ms. Willard concluded,

> With all due respect to the Secretary of State, in my opinion, the two signatures on the Certificate of Qualification do not provide an adequate basis for determining the authenticity of the notary's signature on the petitions. The results of a comparison using only two specimens from 2011 must be inconclusive [no opinion] on the basis of an inadequate quantity of comparison signatures from which to study the writer's range of natural variation when executing his signature.

Id. p. 2.

The invalidation of the Direct Petition on the basis of "significant variations in the signatures of five notaries that did not appear to match their official signature on file," is, therefore, as a matter of fact and law, indefensible. Even if the Secretary was a handwriting expert, which he is not, he could not have reached any rational conclusion about the validity of these signatures (and certainly not whether these persons administered the oath to the circulators) based on the perceived variation of the notaries' signatures, as that variation says nothing about whether the person who signed the document on file with the Secretary was the same person who signed the petitions. *See e.g.,* 27 Am. Jur. Proof of Facts 3d 489 (1994) (the number of undisputed signatures that must be reviewed to render an opinion regarding the validity of a disputed signature will depend on the quantity of disputed writing and on the nature of the

writing itself; in cases involving a questioned signature, ten to twenty samples are generally sufficient; however, a proper examination may require fifty, one hundred, or even more samples if extenuating factors exist).

Ms. Willard's expert opinion raises even more fundamental problems with the Secretary's interpretation of the Ballot Act and the requirement that notaries signatures must be in the "same form" as the signature on file. The notary statute states that the notary public's official signature on file "is the signature that appears on the notary public's most recent oath of office or most recent application for a notary public commission." 4 M.R.S.A. §951-A. In other words, the "on-file" signature is a single signature, and is limited to the most recent oath or application by that notary.

As the Secretary would need to review many undisputed signatures on file to do the sort of "matching" exercise he has suggested his office conducted, or to make any decisions based on concerns about the "significant variation" in petition signatures, the statute cannot be read to permit such a review, as the statute only requires a notary's signature to be in the "same form" as one official signature on file. The Secretary's reliance on the notary statute is unreasonable and unlawful, as the statue is structured in a way that prohibits, even for an expert, the type of assessment the Secretary has purportedly done.[15]

What is left is as suggested above—the Secretary invalidated more than 17,000 otherwise valid signatures based on a subjective, unlawful, and impossible "test." The fact is that the "significant variation" in these five notaries' signatures is simply part of the natural variation

[15] In the event the Court determines that an evidentiary hearing is necessary to decide this case, Petitioners would propose to also submit testimony from a handwriting expert that Mr. Mendros did, in fact, sign the Mendros Petitions. Such testimony would require the Secretary to agree on a set of 10-20 agreed-to signatures by Mr. Mendros as a test group. For this reason no such expert report is being submitted at this time.

when we sign many documents. The record supports no other conclusion and the Secretary's error is fatal to the Determination.

Ranked Choice Voting

In addition to the additional evidence listed above that is attached to this Motion, Petitioners make an offer of proof for one additional category of evidence the Court should consider in this proceeding. Last Fall the Secretary of State's office certified the Maine ranked choice voting initiative petition ("RCV Petition"), which will be considered by Maine voters in the November, 2016 election.

Stavros Mendros was one of the notaries that administered the circulator's oath in the RCV Petitions submitted to the Secretary. Based on communications with the Attorney General's office, Mr. Mendros notarized 446 of the petitions filed with the Secretary with the RCV Petition. The Attorney General also confirmed that it is a matter of public record that none of Mr. Mendros's petitions in the RCV Petition were invalidated due to OATSIG. *Id.*

Petitioners expect that when produced, the Mendros RCV Petitions will appear similar, including similar "inconsistencies," with the Mendros Petitions in this case. This disparate treatment of Mr. Mendros's notary signature by the Secretary is material to the claims in this proceeding and raises obvious concerns about arbitrary governmental action, and determinations by the Secretary that appear to be tied to the merits of a proposed initiative, not compliance with the applicable constitutional and statutory requirements. Given the lack of guidelines in 21-A M.R.S.A. Section 905 regarding the scope of the Secretary's legal authority, concerns regarding the legal and logical basis for the Secretary's Determination, the RCV Petitions should be

reviewed by the Court.[16]

B. The Court—Not the Secretary—Should Review and Consider the Proposed Supplemental Evidence.

Section 11006 of the Administrative Procedures Act empowers the Court to supplement the record in a number of circumstances, including where there are "alleged irregularities in procedure before the agency which are not adequately revealed in the record," (5 M.R.S.A. §11006(1)(A)) and "in cases where an adjudicatory proceeding prior to agency action was not required" and where effective judicial review is precluded due to the state of the record as it exists (5 M.R.S.A. §11006(1)(D). Because both circumstances apply in this case, the Court should consider the proffered supplemental evidence in reviewing the Secretary's Determination.

Petitioners alleged that the disparate treatment of Mr. Mendros's petitions in the RCV Petition constitute irregularities in the procedure used by the Secretary to invalidate the Mendros Petitions. Further, as noted in Section 11006(1)(D), there was no hearing or even any public process associated with the Secretary's review of the Direct Initiative. The petitions were filed and the Secretary's work took place behind closed doors without the participation of the proponents of the Direct Petition and without the participation of Mr. Mendros. Although the Secretary inquired about concerns with other aspects of the submitted documents, he never sought clarification to confirm that the signature on each Mendros Petition "was made by that person." Det. ¶2A.

A simple call to Mr. Mendros would have allowed the Secretary to "determine" this issue. The affidavits submitted by Mr. Mendros, the other notaries, and the circulators resolve, without question, this uncertainty. Remand of any issue to the Secretary is not necessary as there

[16] Petitioners first requested copies of the Mendros RCV Petitions on March 18, 2016. To date the Secretary's office has been unable to make these petitions available due to staffing issues. Petitioners have informed the Secretary's office that they are available to review and copy these petitions at any time.

exists no fact or piece of evidence for the Secretary to review—no discretion for the Secretary to exercise.

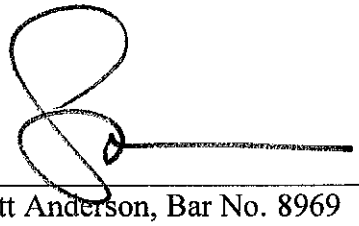
Finally, Petitioners anticipate that the Secretary will argue that the Court should not supplement the record with the affidavits referenced above without first holding an evidentiary hearing during which Mr. Mendros and the circulators are subject to cross examination. The Court should deny this request. Absent specific evidence proffered by the Secretary that demonstrates genuine issues of fact with respect to the matters testified to by the affiants, the Secretary is not entitled to a hearing. As with motions for summary judgment, where the party opposing a motion supported by affidavits "may not rest upon the mere allegations or denials of that party's pleading, but must respond by affidavits or as otherwise provided" (M.R. Civ. P. 56(e)), so too must the Secretary respond to Petitioners' proffered evidence. It is not sufficient for the Secretary to state that he has questions regarding the testimony provided by the affiants or other "concerns" with the affiants' credibility.

Unless and until the Secretary of State sets forth specific facts that contradict those set forth in the affidavits, exposing the existence of a genuine issue of fact, there is no need for further fact-finding. *See Houlton Band of Maliseet Indians v. Boyce*, 1997 ME 4, ¶ 13, 688 A.2d 908 (requiring a party to submit controverting facts through affidavit or otherwise in order to show the existence of a genuine issue of fact necessitating trial); *Haskell v. Planning Bd. of Town of Yarmouth*, 388 A.2d 100, 102 (1978) ("where, as here, the moving parties by affidavit and other evidence have plainly discharged their responsibility of demonstrating [compliance with the requirements of a zoning ordinance], the only issue complained of in the 80B complaint, [the opposing party was] then obligated to produce specific controverting facts exposing the existence of a genuine issue.").

CONCLUSION

For the reasons set forth herein, the Secretary of State's decision to invalidate all petitions notarized by Stavros Mendros, James Tracey, Jr. and Elliot Chicoine, invalidating at least 17,238 signatures in support of the Direct Petition, was based on numerous errors of law, was arbitrary and capricious, and should be reversed. Petitioners respectfully request that the Court vacate the Secretary's March 2nd Determination, and remand this matter to the Secretary with instructions to validate the Direct Petition for the November, 2016, election.

Dated: March 25, 2016



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