STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. LIN-25-56

PATRICIA M. MINERICH, et al.

Appellants

v.

BOOTHBAY-BOOTHBAY HARBOR
COMMUNITY SCHOOL DISTRICT

Appellee

ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT

BRIEF OF APPELLANTS PATRICIA M. MINERICH, et al.

Dated: May 5, 2025

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I. INTRODUCTION

The Boothbay-Boothbay Harbor Community School District seeks to remodel its elementary and high schools. After a first bond referendum for the project failed at a high turnout district referendum, the CSD several months later presented the item again to a new special referendum with much lower turnout. This time the referendum narrowly passed, but voters quickly mobilized to petition for a ballot article to reconsider the bond referendum pursuant to 20-A M.R.S. § 1504. However, despite the fact that the petition containing the reconsideration article included more than enough signatures, the CSD Board rejected it on the basis that the petition included a second article seeking an alternative bond authorization, should the reconsideration article pass. Rather treating the two articles separately as they were intended, the Board rejected the entire petition, thus preventing the petitioners' access to the polls on the reconsideration request, to which they were entitled under Section 1504 and the Maine and Federal Constitutions.

This appeal challenges the Lincoln County Superior Court's decision upholding the CSD Board's refusal. Like the CSD Board's actions, the Superior Court's decision is arbitrary and based upon errors of law. The Law Court should consider and determine the validity of each petitioned article separately. In doing so, it should find that each petitioned article was properly submitted under the relevant statutory authority and remand this matter to the Superior Court with

instructions to order the requested referendum and assess legal fees and costs to Plaintiffs under 42 U.S.C. § 1988.

II. STATEMENT OF FACT

On November 7, 2023, the Boothbay-Boothbay Harbor Community School District ("District") put forward a bond question which proposed to borrow a total of $28,800,000 to renovate the District's elementary and middle schools. R. 10-11. The question was rejected by a vote of 1,266 to 1,162. *Id.* Despite this rejection, on February 6, 2024, the Board voted to call a new special election to vote on the issuance of a $29,950,000 bond for the same purpose (the "Bond Question"). A. 28-30; R. 22-23. On April 24, 2024, the Bond Question passed by a margin of 52 votes, with 1,666 votes cast. *Id.*; R. 217.

On May 1, 2024, the Plaintiffs submitted a petition to the Board requesting that it initiate a referendum to reconsider the Bond Question (Article 1) and authorize the issuance of a lesser bond amount (Article 2) (the "Petition"). A. 22-27 (representative petition); R. 27, 29-30. The Petition was signed by 347 registered voters of Boothbay and Boothbay Harbor, more than the 10% required by Section 1504[1], and those voters' signatures were certified by the Town Clerks of Boothbay and Boothbay Harbor. R. 250, 251.

[1] Records of the Maine Office of the Secretary of State indicate that a total of 3,223 voters in the Towns of Boothbay and Boothbay Harbor voted in the 2022 gubernatorial election. R. 252. Ten percent of that number is 323.

On May 2, 2024, the Board certified the results of the election on the Bond Question. A. 20; R. 217. At meetings held on May 7th and 14th, 2024, the Board held executive sessions to discuss the Petition and, on May 14, 2024, the Board rejected the Petition for the reasons stated in an order adopted by the Board (the "Order"). R. 221, 228, 230-31. The Order acknowledged that "petitioners have the right, under 20-A M.R.S. § 1504 and P&SL 2023, Ch. 12, § 8, to petition the Trustees to reconsider a prior referendum vote, instead, the petitioners request a referendum on (i) an article that is different from the article considered by the District voters on April 24, 2024, and (ii) a second article that is unrelated to the April 24, 2024 referendum." A. 21; R. 231. The Order further stated that "the petitioners requests a referendum on two articles, which are not authorized by 20-A M.R.S. §1504 or any other law." *Id.* On June 10, 2024, the petitioners submitted a letter to the Board challenging the legal basis for the Order, as well as supplemental circulators' oaths to address the claimed technical deficiencies referenced in the Order. R. 254, 255-292. The Board did not act upon these submissions.

The Plaintiffs timely filed an appeal to the Lincoln County Superior Court on June 12, 2024 to challenge the Board's Order and obtain a judicial determination declaration of the requirements of Section 1504. On December 31, 2024, the Superior Court denied the Plaintiff's appeal and the Plaintiff's independent Constitutional claim.

III. ISSUES PRESENTED

A. Did the Superior Court err in finding that the Board had the discretionary authority to reject Plaintiffs' Petition?

B. Did the Superior Court err in finding that Article 1 on Plaintiffs' Petition was not a petition for reconsideration pursuant to 20-A M.R.S. § 1504?

C. Did the Superior Court err in finding that the perceived error in the petition could not have been addressed by separating the two articles?

D. Did the Superior Court err in finding that the Board did not abridge Plaintiff's First Amendment Rights to petition the government?

IV. SUMMARY OF ARGUMENT

The Superior Court erred in finding that the Board had the discretionary authority to deny Plaintiff's petitioned articles. As to Article 1, the process for requesting reconsideration of a regional school unit referendum is entirely described by 20-A M.R.S. §1504. Section 1504 imposes a ministerial duty upon the Board, and does not grant the Board discretionary authority. The Board's rationale for rejecting Plaintiff's Petition was based solely upon the inclusion of a second Article in Plaintiff's Petition. Section 1504 does not dictate any required format or content for a petition thereunder. Article 1 presented a valid reconsideration demand under Section 1504, which required a bond referendum to be held within 60 days. Article 2 presented a valid budgetary petition under 20-A M.R.S. § 1482-A(3) which required an article to be presented at the next budget

meeting (not a referendum). By conflating the two articles and deeming Article 1 to be invalid due to the presence of Article 2, the Board exceeded the scope of authority granted to it under the respective statutes, and the Superior Court erred in affirming the Board's denial of the Plaintiff's Petition.

The Superior Court erred in finding that Plaintiffs failed to classify Article 1 of their Petition as a Petition for Reconsideration. Article 1 of the Petition and the submitting cover letter both clearly invoked Section 1504 and used the word "reconsideration." The second Article stood alone from the reconsideration article. If the Board found there was no statutory authority for Article 2, it could have severed that article, thus allowing the reconsideration petition to move forward in recognition of the petitioners' statutory and constitutional rights.

The Superior Court erred in finding that the Board did not abridge Plaintiff's First Amendment Rights to petition the government. The Plaintiffs are constitutionally empowered to petition all branches of government for redress of their grievances, which includes the statutory rights of petition invoked here. The Maine and Federal Constitutions confer citizens with the right to petition their governments for the redress of grievances, and Sections 1504 and 1482(A-3) provide mechanisms to exercise that right. By denying Plaintiffs' valid Petition on grounds not supported by statute, the Board deprived Plaintiffs of their rights under the First Amendment. Therefore, the Superior Court erred in affirming the Board's denial of the Plaintiff's Petition.

V. ARGUMENT

A. Standard of Review

In a Rule 80B appeal, the Superior Court acts in an appellate capacity, and, therefore, reviews the administrative board's decision directly for "[e]rror of law, abuse of discretion, or findings not supported by substantial evidence in the record." *Fair Elections Portland v. City of Portland*, 2021 ME 32, ¶ 20, 252 A. 2d 504, 509.

In a Rule 80B appeal, issues of law, including whether the agency had jurisdiction, are reviewed de novo. *Town of Eddington v. Emera Maine*, 2017 ME 225, ¶ 15; 174 A. 3d 321, 324. The Court "seek[s] to discern from the plain language [of the statute] the real purpose of the legislation, avoiding results that are absurd, inconsistent, unreasonable, or illogical." *Harrington v. State*, 2014 ME 88, ¶ 5, 96 A. 3d 696, 697. If the statutory language is clear and unambiguous, the Court construes the statute in accordance with its plain meaning in the context of the whole statutory scheme. *Id.* (citations omitted).

To succeed on a claim under 42 U.S.C.A. §1983 ("Section 1983"), the claimant is required to show a "deprivation of a right secured by federal law, statutory or constitutional, and that the deprivation was achieved under color of state law." *Fox Island Wind Neighbors v. Department of Envt'l Prot.*, 2015 ME 53, ¶26, 116 A.3d 940 (quoting *Wyman v. Secretary of State*, 625 A.2d 307, 310 (Me. 1993)). A person acts under color of state law where they act "with knowledge

and pursuant to a state statute." *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, n. 23 (1970). A claimant that prevails in an action involving a Section 1983 claim is entitled to attorney's fees pursuant to 42 U.S.C.A. §1988, even if the basis for prevailing is a separate statutory claim for which attorney's fees cannot be awarded. *See Wyman v. Secretary of State*, 625 A.2d 307, 312 (Me. 1993).

B. The Court Improperly Affirmed the Board's Usage of Discretionary Authority.

Although the Court correctly highlighted the difference between Section 1504 and §1482-A(3) petitions, the Court incorrectly conflated Articles 1 and 2 in doing so. The Court mistakenly believed the Plaintiffs to have argued that the Board was bound to approve their Petition collectively and interchangeably under either Section 1504 or §1482-A(3). This anchored the Court's rationale that due to the perceived intermingling of petition categorization, the Board was within its right to exercise discretionary authority to deny the Petition.

However, the crux of the Board's error, repeated in the Superior Court's judgment, is that it considered the Petition as a whole, rather than looking at it as two distinct articles seeking two distinct actions. District referenda are ordered through a warrant posted by the municipal officers, just like any other municipal warrant. 20-A M.R.S. § 1701. Title 30-A M.R.S. § 2523 requires a municipal warrant to "state *in distinct articles* the business to be acted upon at the meeting." (Emphasis added). These were intended and presented as two distinct articles.

Article 1 was clearly and unambiguously a Section 1504 petition and had to have been accepted as such. The intent and language of Section 1504 was to reconsider and reverse the prior bond authorization. Article 2 was included to determine whether, only if Article 1 was approved and the April 2024 authorization therefore reversed, the voters wished to approve a different, lesser bond authorization. The two articles were separately numbered and worded for a reason: Article 1 stood on its own with the sole and express purpose of demanding a reconsideration referendum under Section 1504. Article 2 also stood on its own with the sole and express purpose of forcing inclusion of a new bond authorization under Section 1482-A(3) at the next school budget meeting to be held by the Board, likely the following year. If these articles had instead been included on different petition forms, the claimed basis for refusal would evaporate, pointing out the arbitrariness of the refusal. The Court erred in failing to separately consider the adequacy of each petitioned article under the respective statutory authority.

1. *Section 1504*

The District is organized as a community school district; however, for purposes of both financial matters and the holding of referendum elections, the District is required to comply with the statutes applicable to regional school units. *See* 20-A M.R.S.A. §1701-C; P & S.L. 1953, c. 156, §8. The process for requesting reconsideration of a regional school unit referendum election is entirely described by Section 1504, which reads, in pertinent part:

> **1. Time limit.** The regional school unit board shall, within 60 days, initiate a new regional school unit referendum to reconsider the vote of the previous referendum if, within 7 days of the first referendum, at least 10% of the number of voters voting for the gubernatorial candidates in the last gubernatorial election in the municipalities within the regional school unit petition to reconsider a prior regional school unit referendum vote.

The language of Section 1504 is unambiguous and should be applied based upon its plain meaning. *See Jones v. Sec'y of State*, 2020 ME 113, ¶ 11, 238 A.3d 982 ("We will interpret the constitutional or statutory provision according to its plain meaning if the language is unambiguous."). The plain language of Section 1504 imposes a ministerial, rather than discretionary, duty upon the Board. *See Young v. Johnson*, 207 A.2d 392, 395 (Me. 1965) ("When the law requires the public officer to do a specified act, in a specified way, upon a conceded state of facts, without regard to his own judgment as to the propriety of the act, and with no power to exercise discretion, the duty is ministerial in character and performance may be compelled[.]"). A statute's use of "shall" denotes a mandatory act and, where the statute contains clear requirements relating to that action, it creates a ministerial, rather than discretionary function. *See Casco Northern Bank, N.A. v. Bd. of Trs. of Van Buren Hosp. Dist.*, 601 A.2d 1085, 1087-1088 (Me. 1992); 1 M.R.S.A. §71(9-A) ("'Shall' and 'must' are terms of equal weight that indicate a mandatory duty, action or requirement.").

This analysis holds in the context of petitions, which, when submitted in accordance with applicable statutory and constitutional provisions, create a

mandatory obligation to order special elections for their consideration. *See Kelly v. Curtis*, 287 A.2d 436, 428 (Me. 1972) (finding mandatory language of Article IV, Part Third, Section 18 of the Maine Constitution subjected governor to ministerial function and required calling special election). Here, Section 1504 provides two bare procedural requirements that must be satisfied to initiate a referendum: first, that at least 10 percent of voters in the last gubernatorial election voting within the towns must "petition to reconsider" a prior referendum vote; and, second, that they do so within 7 days of the prior referendum. It contains no requirements relating to the substance or form of the petition and does not limit petitions to a single article.[2] Notably, Section 1504 does not give school district boards any authority to review or consider the content of petitions for reconsideration presented to them.[3] The submission of a petition with the required number of signatures in the required time period imposes on a school board a *nondiscretionary* duty to initiate a referendum within 60 days.

Article 1 as petitioned satisfied both requirements of Section 1504. The Plaintiffs timely petitioned to reconsider the Bond Question by submitting the Petition including Article 1 on May 1, 2024, exactly 7 days after the Bond

[2] Because of the lack of substantive requirements within Section 1504, it does not appear that petitioners must even submit the request for reconsideration in the form of a ballot article. A letter including the required signatures would arguably suffice.

[3] Compare 30-A M.R.S. § 2521, which allows for the "reasonable refusal" of a citizens' petition brought to municipal officers under that chapter, but still allows a path to the ballot for petitioners who feel a rejection was "unreasonable." See *Dunston v. Town of York*, 590 A.2d 526, 527-28(Me. 1991). There is no such discretionary refusal provision in Title 20-A.

Question was voted on and the day before the Board certified the election results. R. 27, 241. Additionally, the Petition contained the required number of signatures. R. 250-252. A total of 3,223 voters in the Towns of Boothbay and Boothbay Harbor voted for gubernatorial candidates in the November 8, 2022 general election, ten percent of which is 323 voters. R. 252. The Petition was signed by 347 voters of the Towns, more than the ten percent required by Section 1504, and those signatures were certified by the Town Clerks for Boothbay and Boothbay Harbor. R. 250, 251. Article 1 as petitioned therefore complied with the plain language and requirements of Section 1504 and thereby triggered the Board's ministerial duty to initiate a reconsideration referendum.

To the extent this Court considers the language of Section 1504 to be vague or susceptible of differing interpretations, which it should not, Plaintiffs' Article 1 still complies with the overarching statutory intent of Section 1504. *See Avangrid*, ¶14 ("[I]f the provision is ambiguous, we [will] determine the meaning by examining the purpose and history surrounding the provision." (*quoting Voorhees v. Sagadahoc County*, 2006 ME 79, ¶6, 900 A.2d 733)). School boards have essentially unlimited authority to repeatedly initiate referenda on school budgets and bond questions, provided they are willing to bear the cost. *See, e.g.*, 20-A M.R.S. §§1485, 1486, 1502. In this context, Section 1504's petition process serves a single function—to allow voters to challenge a previously approved referendum question. After all, a school district's board may simply initiate a new referendum

if a preferred question is defeated, as the Board did here in response to voters' rejection of the November 2023 referendum question. Voters, on the other hand, cannot contest or revisit those referendum votes other than by reconsideration under Section 1504. Reading Section 1504 to give school district boards gatekeeping authority over petitions for reconsideration allows the fox to guard the henhouse. Boards would be invited to arbitrarily reject petitions based on minor or imagined substantive issues, such as occurred here, solely to preserve their preferred election results. As a result, even if Section 1504 were somehow considered vague, a liberal interpretation in favor of petitioners would be the proper resolution.

The Plaintiffs properly submitted a "petition to reconsider" the Bond Question. The Board's concern regarding the form and content of the Petition is a red herring that elevates the form of the petition over its substance. The Petition was explicitly titled as a citizens' petition (A. 23; R. 29), and Article 1 was described in Plaintiffs' cover letter as a "petition supporting a Reconsideration Referendum of the April 24th" referendum." Article 1 specifically referenced Section 1504 in the text of the article. Article 1 proposed that the Bond Question be "reconsidered and repealed" (*Id.*), and the Board acknowledged and understood it to be a petition to reconsider the Bond Question (A. 21; R. 241). Given that the Article 1 is susceptible of no interpretation other than as a petition to reconsider the Bond Question, Section 1504 imposes a ministerial duty and mandatory obligation

on the Board to initiate a referendum to reconsider the Bond Question. Maine courts have long held that "it is beyond dispute that technical precision is not required in drafting warrants." *State v. Franklin,* 489 A.2d 525, 528 (Me. 1985) (citations omitted). The Superior Court erred in holding that it was reasonable for the Board to consider Article 1 as anything other than a petition to reconsider under Section 1504. This Court should declare that Section 1504 affords the Board no discretion to reject Article 1 based on its substance, and require the Board to initiate the requested referendum.

The Superior Court held that the Board "cannot grant an ambiguous request." Superior Court Order, at 4. Plaintiffs agree. The Plaintiffs' request for processing of Article 1 pursuant to Section 1504 was unambiguous, clear, explicit, and technically sound. It is difficult to understand the Superior Court's logic that a vague concept of "common sense" understanding of the nature of a petition would prevail over the Court's findings that "(1) the Board's role is ministerial; (2) the court may compel the Board to place the Petition for referendum; (3) the statutory language is unambiguous; (4) there are no timing issues; and (5) the Petition has no technical difficulties," and despite the obvious fact on its face that Article 1 was invoking the reconsideration authority under Section 1504.

Having questioned the "common sense" nature of the petition, the Superior Court then pointed out three common-sense and direct methods by which the Plaintiffs specifically identified their Petition as a reconsideration request: its

timing, the cover letter, and the language of Article 1. Superior Court Order, at 5. Again here, the Court mistakenly conflates Articles 1 and 2 in determining the nature of "the Petition," when each of those articles was intended to present a separate mandate under a separate statutory authority. Article 1, by all indications, was clearly and unambiguously a reconsideration petition pursuant to Section 1504, and the Board had no discretionary authority to find otherwise once Section 1504 was invoked and a petition with no technical difficulties was presented.

The Superior Court cited *Fair Elections* as precedent in which a board was granted interpretational authority. *Fair Elections Portland, Inc. v. City of Portland*, 2021 ME 32, ¶24, 252 A.3d 504. However, in that case, the interpretational authority derived from the explicit language of the statute at issue, 30-A M.R.S. §2104(4), with the Court finding in reference to the statute that, "[t]his section expressly contemplates review by municipal officers to determine whether a proposed amendment would in fact 'constitute a revision of the charter.'" Section 1504 does not contain any language instructing the Board to review a petition to determine whether it constitutes a "petition to reconsider," or any language even remotely resembling that considered in *Fair Elections Portland*. *Fair Elections* is both factually and legally distinct and provides no support for discretion in a school board when processing a reconsideration article under Section 1504.

2. *Board Error of Law.*

The Board lacked any legal basis to deny the Petition and failed to cite any such basis in its Order. With their submission of Article 1, Plaintiffs complied with all of the explicit requirements of Section 1504 – a fact with which the Superior Court agreed. Rather than fulfill its ministerial function and accept the Petition, the Board voted to deny it solely on the basis that the petition document presented two articles. A. 20-21; R. 230-31, 249. Section 1504 does not dictate or place any limitations upon the form or contents of a petitioned request for reconsideration, authorize the Board to review the substance of a petition for reconsideration, or even obligate the Board to accept the proposed language as written. 20-A M.R.S. §1504. Petitioners could even have submitted a one-sentence demand to "Request that the School Board call an election to reconsider the April 24, 2024 bond authorization," and this would have been sufficient to invoke the ministerial duty to call the referendum pursuant to Section 1504 (with the Board drafting the ballot question accordingly). When reconsideration is invoked under a properly submitted petition, the Board is simply obligated to call a referendum to "reconsider the vote of the previous referendum." 20-A M.R.S. §1504(1). To successfully accomplish this ministerial task, the Board could have simply called a new referendum with the exact same question as the prior referendum.[4]

[4] The Board stated as a basis for refusal that the petitioners (in reference to Article 1) "request a referendum on (1) an article that is different from the article considered by the District voters on April 24, 2024." This finding is

The Board's Order, as upheld by the Superior Court, subjects the Petition to a requirement that the Board invented from whole cloth and simply read into Section 1504—that the petition include only a single article. R. 231. The Board has no legal authority to impose additional requirements upon the process set out in Section 1504 and should not be permitted to do so—especially where, as here, those requirements are being imposed to defeat a public challenge to the Board's desires. In issuing the Order, the Board exceeded its ministerial role and denied the Petition without any basis in law. The Superior Court erred in affirming this judgment as it read further nuance into a statute that is succinct and clear on its face, and which therefore must be interpreted by its plain meaning and language.

The Superior Court erred by failing to consider the statutory basis for Article 2 and how it stood apart from Article 1 despite being included in the same petition document.[5] If the Board's Order is read to find that Article 2 went beyond the jurisdiction granted pursuant to Section 1504, the inquiry cannot stop there because the Board must have considered whether there was separate statutory authority for Article 2. Had the Board properly considered Article 2, it would have found that authority. Community school districts are obligated to prepare budgets in

unclear, as the reprinted Bond Article is the same as presented to the voters. A remand may be required to clarify this finding and allow for further review of it.

[5] Note that in the municipal petition context, 30-A M.R.S. § 2522 treats petitions on an article-by-article basis, stating that " the written petition of a number of voters equal to at least 10% of the number of votes cast in the town at the last gubernatorial election, but in no case less than 10, the municipal officers shall either insert a particular article in the next warrant issued or shall within 60 days call a special town meeting for its consideration." (Emphasis added).

accordance with procedures applicable to regional school units set forth in 20-A M.R.S. §§ 1485 and 1486. 20-A M.R.S. § 1701-C. Included within Section 1485 is a requirement that regional school unit budgets be approved at a regional school unit budget meeting. 20-A M.R.S. § 1485(3). Voters of a school district have the authority to petition for the inclusion of budget articles pursuant to 20-A M.R.S. § 1482-A(3), and it is under this authority that Article 2 was submitted.

Article 2 was deliberately separated out from the reconsideration request in Article 1. If the Petition was intended to repeal the April 2024 bond authorization solely to replace it with a new authorization, it would have combined those concepts in the same article. Had the Petition done so, the request would have been too broad to cleanly apply Section 1504 to the article. But the Petitioners did not do this, and instead presented two separate articles: Article 1, presented under Section 1504, and Article 2, presented under Section 1482-A(3). The Board was therefore free to accept one or both, each under the separate statutory authority giving rise to it. As a result, there is no basis upon which the Board could have properly denied the entire Petition for lack of jurisdiction.

In addition, the Board's Order lacked adequate findings or a substantial basis in evidence. Under Section 1504, to deny the Petition, the Board would need to find either that the Petition did not include a "petition to reconsider" the Bond Question, lacked an adequate number of signatures, or was untimely submitted. The Board's Order does not contain any findings indicating that the Petition was

untimely submitted or that it lacked the required number of signatures. R. 230-31. It also makes no findings of fact as to why the Board unified the Petition rather than considering each article separately. Instead, the Order apparently finds (without sufficient explanation to have allowed meaningful judicial review) that the Petition was *not* a "petition to reconsider" the Bond Question under Section 1504 because it contained two articles. R. 231.

A public body's findings of fact are normally entitled to deferential review except where record evidence compels a contrary conclusion. *See Trudo v. Town of Kennebunkport*, 2008 ME 30, ¶7, 942 A.2d 689. Here, there is virtually no record evidence supporting the Board's Order finding that Article 1 was not a "petition to reconsider," while there is ample record evidence that conflicts with the Board's findings and compels the conclusion that Article 1 of the Petition constituted a "petition to reconsider" the Bond Question. The cover letter submitted with the Petition, and incorporated within the Order, plainly identified the Petition as containing a "petition supporting a Reconsideration Referendum of the April 24th BRES referendum and a repair/renovate alternative." A. 22; R. 27 (Emphasis added). Article 1 explicitly asked if the Bond Question, which was reprinted in full within the article, should "be reconsidered and repealed pursuant to 20-A M.R.S. §1504." R. 29. Article 2 of the Petition was presented separately from and conditioned upon the approval of Article 1, to have effect only "[i]f Article 1 on this ballot is validly approved, resulting in the repeal of the April 24,

2024 vote regarding the Elementary/Middle School Project as described on the April 24, 2024 ballot[.]" *Id*. The Board was not presented with any evidence that the central purpose or intent of Article 1 was anything other than the reconsideration and repeal of the Bond Question, and that Article 2 would become relevant only after reconsideration passed, to fill the void by authorizing a lower bond article for a different scope of work. Nevertheless, the Board determined that the Petition was simply not a "petition to reconsider" the Bond question because it included Article 2.

In its holding, the Superior Court states that it "does not doubt that the Plaintiffs believe their Petition is a reconsideration request." The question is not what Plaintiffs believed (though notably the Superior Court indicated that it had "no doubt" that Plaintiffs were seeking reconsideration). Rather, the first and foremost question is whether the reconsideration article (Article 1) was unambiguous. This determination that Article 1 was simply "not a petition to reconsider," made by the Board and the Superior Court respectively, lacks any reasonable basis in the record evidence, which instead compels the conclusion that Article 1 explicitly sought the reconsideration of the Ballot Question and that Article 2 was presented under separate statutory authority and with no intent to affect Article 1 as a standalone request for reconsideration and repeal.

The Superior Court's logic in its holding hinged on an assessment that the "Plaintiffs argued the Board was required to accept their petition under either the

reconsideration requirement in Sec 1504 or the consideration requirement in §1482-A(3)" and that the Plaintiffs "cannot have it both ways." Superior Court Order, at 4. However, this articulation misrepresents Plaintiffs' intent as well as their clear wording within the Petition.

Plaintiffs cited §1482-A(3) only to explain the origin and authority of Article 2 as a separate request to the voters. It does not have anything to do with Article 1's intent, origination, wording, and presentation as a Section 1504 Petition. Therefore, the Superior Court erred both in finding that Plaintiffs' Petition was not one for reconsideration, as well as in affirming that the inclusion of Article 2 in Plaintiff's Petition granted the Board discretionary authority that exceeds the authority granted to it by Section 1504.

C. The Board Should Have Accommodated the Reconsideration Request.

In denying the Petition, the Board made a legal determination regarding its validity that it was not empowered to make. By denying the Petition in whole, it also took the action which most definitively and completely cut off the Petitioners' exercise of their statutory right to request reconsideration of the Bond Question, and the voters' rights to vote on each of the petitioned questions. Even if the Board felt that it had no jurisdiction to accept Article 2, or that the presence of Article 2 was not appropriate in a petition for reconsideration, it had two options before it that were vastly more appropriate and respectful of the Petitioners' rights.

The first option was to present the Petition, as written, to the voters and then—if both articles passed—present any challenge to the Petition's validity to a Court, the only body able to determine the legality of a legislative act. *See, e.g., In re Jackson Twp. Admin Code*, 97 A.3d 719, 728 (N.J. App. Div. 2014) ("If a voter signs a petition in a certain form, he or she should expect to see the proposed ordinance in substantially that same form on the ballot."); *In re Initiative Petition No. 347 State Question No.* 639, 813, P.2d 1019, 1031 (OK. 1991) ("Where the questioned provision is severable, and resolution of constitutional issues prior to the act becoming law would not prevent a costly and potentially unnecessary election…the questioned constitutionality is not ripe for determination since it presents nothing more than an abstract opinion on a hypothetical question").

The Superior Court rejected the idea of moving both articles forward and allowing the Board to bring any resulting legal question to the courts. It stated that the courts should give primacy to a school board's authority over referenda, and therefore to its autonomy to choose how to handle a citizens' petition. But this runs counter to the whole idea of a citizens' petition, which is, to compel action by the government. This is all the more true where, as here, the government had high incentive to protect the result of its bond authorization as against the reconsideration attempt. The problem with rejecting the Petition out of hand is that it prevented the ballot questions from even being brought to the voters, and the important discourse and feedback to the Board that would have followed. Unlike

this blockade of political speech, which was immediate and absolute, the results of the election were not absolute. Question 1 could have failed, and therefore the role of Question 2 would be moot. Question 1 could have passed, but Question 2 failed, making the role of Question 2 moot. In these outcomes the Petitioners' political speech would have been respected and there would have been no concern with the effect of Question 2. Such a process would have better respected the constitutional and statutory petition rights, rather than the Board's *a priori* rejection of the Petition.

D. Article 2 Presented a Separate and Severable Mandate.

Even more compelling, the Board could have severed Article 2 from the Petition and presented Article 1 to the voters. The Superior Court appears to have missed the very important fact that the two questions *would not have even been considered at the same election*. For Article 1, Section1504 compelled the Board to call a *ballot election* within 60 days from submission of the reconsideration request. By contrast, for Article 2, Section 1482-A compelled the Board to submit the question "at the next annual regional school unit budget meeting." The "budget meeting" is an in-person meeting, and in this case would not have been held until May of 2025. Thus, if the Board had accepted Plaintiffs' Petition, it would have scheduled a ballot referendum election on Article 1 to be held sometime likely in the summer of 2024, then waited to see if that reconsideration vote passed (thus voiding the prior vote), and only then placed Question 2 on the

warrant for the next school budget meeting in the spring of 2025. The two petitioned articles, by the authority which brought them in front of the Board, had to be addressed separately by the Board because of the separate means of voting upon them. There would also be no chance of voter confusion if the Board had accepted each article, because the voters would have known the outcome of Question 1 well before voting on Question 2.

If the Board was relying on the presence of Article 2 for the claimed illegal or nonbinding nature of the Petition, it cited no law or even an explanation to support that rejection of the entire Petition was necessary. Some courts have held that petition questions should be altered, rather than invalidated, where the voters' intent is clear and alteration would not change the spirit of the petition. *See, e.g.*, *Mallott v. Stand for Salmon*, 431 P.3d 159, 173-74 (Ak. 2018) (Severing petition questions appropriate if remainder can be given legal effect, severance does not substantially change the spirit of the measure, and content and circumstances indicate signatories would prefer alteration over invalidation). There is no indication in the Petition, or evidence in the record, that Article 1 was intrinsically and inseparably linked to Article 2. Article 2 is contingent on passage of Article 1, but Article 1 is not contingent on passage of Article 2. And as discussed above, Article 2 called for a different manner of voting, at a later date than Article 1. Therefore, anyone signing the Petition (or who had ultimately voted upon it) would appreciate that a potential outcome could be that the April 2024 Bond Question

might be repealed without being replaced with the lower authorization proposed by Article 2.

The Superior Court discussed *Common Cause v. State*, 455 A.2d 1, 13 (Me. 1983) as supporting the concept of single-issue referenda. The Court concedes, however, that the Maine Constitution does not require single-issue referenda, and points only to provisions regarding statewide referenda under Title 21-A which enable the Secretary of State to handle potential confusion by writing questions in a manner that describes the difference between the initiatives. If anything, that statute supports the idea that the government gatekeeper's job is to *facilitate* placement of all petitions despite in potential confusion, rather than to simply refuse a properly submitted petition.

E. The Superior Court Affirmed that the Petition is Technically Sufficient.

As acknowledged by the Superior Court, the Petition is technically sufficient, thus invoking the ministerial obligation to put the articles forward to a vote at the respective reconsideration referendum and budget meeting. The Board's Order identifies several claimed technical issues with the Petition that, while not relied upon as a basis for its determination, could not serve as a legal or evidentiary basis for refusing the Petition. The Board noted the lack of circulators' addresses, dating of circulators' affidavits, and the lack of an explicit statement that the Petitions' circulators were state residents, registered to vote in the state and

understood the penalties for violating laws governing petition circulation. R. 230. As has been addressed, Section 1504 does not include any requirements relating to the circulation of petitions for reconsideration, including requirements for circulators' oaths and affidavits. The Board's Order misapplied the requirements for petition circulation found in Title 21-A (which relates to statewide elections) to petitions pursuant to Section 1504. There is no legal authority supporting this extension. The circulation requirements under Title 21-A are limited to petitions supporting a peoples' veto referendum or initiated legislation; they are not generally applicable to all petitions circulated in Maine. *See* 21-A M.R.S. §§ 901, 903-A. Neither Section 1504 nor any other provision within Title 20-A incorporate or require compliance with Title 21-A for the submission of a valid petition to reconsider a school district's actions. The residency and registration requirements imposed on circulators under Title 21-A have also been held to likely violate the First Amendment and are, therefore, unenforceable. *See Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 197 (1999) (finding circulator registration requirements needlessly restrict petitioning activity and are not warranted); *We the People PAC v. Bellows*, 40 F. 4th 1, *19 (1st Cir. 2022) (upholding District Court decision finding likelihood of success in First Amendment challenge to Maine's circulator residency requirement). Finally, even if circulators' oaths were required to include the noted content, the Petitioners addressed those issues by submitting corrective oaths. R. 255-292. As a result, the

Board's alleged technical defects in the Petition do not provide a legal or evidentiary basis to reject the Petition, even if the Board had relied upon them in doing so.

In sum, the Superior Court did not dispute that the Petition complied with the requirements of Section 1504. Because the technical sufficiency of the Petition has been confirmed as a matter of law, this Court can order the Board to call the reconsideration election without need for any further substantive action by the Board or the Superior Court.

F. The Superior Court Erred in Failing to Find Violation of Plaintiff's First Amendment Rights to Petition the Government.

The Superior Court's holding that the Board did not violate Petitioners' First Amendment rights is defective, as it is premised on the errors of law explained above, which improperly conflated Articles 1 and 2 and then used that finding as a basis to refuse both validly petitioned articles. It is well established that the First Amendment to the Constitution gives individuals the right to petition all branches of government for redress of their grievances. *See Powell v. Alexander*, 391 F.3d 1, 16 (1st Cir. 2004) ("For decades, the Supreme Court has consistently recognized the right to petition all branches of government[.]"). Plaintiffs' submission of the Petition was an exercise of their First Amendment right to petition the Board, as well as their First Amendment right to political expression. Under Section 1504, Section 1482-A(3), and the First Amendment, Plaintiffs had the right to have the

petitioned articles, once properly submitted to the Board, presented to the voters at the respective referendum and budget meeting.

The Board's consideration and denial of the Petition were performed under color of state law. The Board is organized pursuant to state statute (R. 1-2) and acted in that capacity at its May 14, 2024 meeting when it issued the Order denying the Petition as the Board. A. 17-21; R. 227-231. All of these actions were taken with knowledge of and pursuant to the process provided by Sections 1504 and 1482-A(3). The Board was acting under color of law for purposes of Plaintiffs' Section 1983 claim.

It is clear from the Board's and Superintendent's communications, and their actions regarding the Bond Question, that they were bound and determined to move forward with their proposal to reconstruct the local schools. Even though district voters decisively defeated the Bond Question at a general election with high turnout, the Board presented the same question (adjusting only the amount of the bond based on updated construction estimates) to what it knew would be a much smaller and more friendly body of voters at a special election in April. And even when that much smaller body of voters—less than 70 percent of those participating in the 2023 general election—only narrowly approved the Bond Question, the Board did everything to materialize alleged technical and substantive defects in the Petition seeking to reconsider that vote. Communications between the Superintendent and Board members regarding the Petition demonstrate their

general disdain for the Petitioners and their efforts, which colors their arbitrary action to refuse the Petition with retaliatory and political animus.

The Board deprived Plaintiffs of their rights under the First Amendment when it denied the Petition and refused to initiate the demanded actions without a legal basis upon which to do so. The Board's Order was solely based on the Petition's alleged failure to comply with the format the Board unilaterally determined to be required by Section 1504. R. 23-31. As previously discussed, this determination was not only outside of the scope of the Board's ministerial role under Sections 1504 and 1482-A(3), it imposed requirements on the Petition above and beyond those contained the statutes, especially Section 1504, which does not mandate the form or contents of petitions for reconsideration. State and local governments are not free to impose limitations on state-created rights without satisfying First Amendment rights. *See Wyman*, 625 A.2d at 311 (citing *Meyer v. Grant*, 486 U.S. 414, 421–422 (1998)) (holding the Secretary of State's refusal to furnish petition form was a restriction subject to exacting scrutiny that must be justified by a compelling state interest and narrowly tailored to serve that interest). The Board's legally baseless denial of the Petition deprived Plaintiffs of their First Amendment rights to petition the government and engage in political expression, as well as their right to have the Bond Question reconsidered and repealed under Section 1504 and a new bond authorized under Section 1482-A(3).

Despite the above, the Superior Court held that the exclusivity principle bars Plaintiffs from seeking monetary relief under 42 U.S.C. §1983. The Superior Court cited *Antler's Inn & Rest., LLC v. Dep't of Pub. Safety*, 2012 ME 143, ¶ 14, 60 A.3d 1248 in support of applying exclusivity here. Order, at 9. *Antler's Inn* holds that Rule 80B review is exclusive unless inadequate and would cause a party irreparable harm. *Cayer v. Madawaska*, 2016 ME 143, ¶ 16, 148 A.3d 707. *Id.* at 10. The Superior Court held that Section 1983/1988 relief would not be allowable in this case under the exclusivity principle because Plaintiffs could receive their costs and attorney's fees under the Declaratory Judgments Act, 14 M.R.S. §§ 5957, 5960, 5962. This is incorrect. The Declaratory Judgments Act only allows for the award of attorney fees if the statute or contractual provision giving rise to the controversy allows for such award. *Union Mut. Fire Ins. Co. v. Town of Topsham*, 441 A. 2d 1012, 1017 (Me. 1982). The Act in 14 M.R.S. § 5962 only allows for "award of costs as may seem equitable and just," and that provision "does not provide for award of attorneys' fees." *Id.*

In this case, the Section 1983 claim is the only means by which Plaintiffs could recover the legal fees they have had to expend in seeking an order to move their petitioned questions forward. The Superior Court cites *Fair Elections Portland*, supra, as supporting a finding of exclusivity here, but the procedural posture of that case was quite different in that the Portland City Council had not rejected the citizens' petition in that case but merely exercised its statutory

authority to determine that the petition sought a charter revision which required formation of a charter commission, rather than placing it straight on a ballot. Under the standard set forth in *Cayer v. Town of Madawaska*, supra, exclusivity does not apply here because the record shows that the CSD Superintendent and certain Board members had disdain for the opposition and were attempting to undermine the petition effort before the Board ever received the Petition. R. 238-244.

Finally, the Superior Court erred in holding that the Plaintiffs' right to petition the government has not been abridged because the right "does not extend to a right to force the government to accept the petition on any grounds", as held in *Cf. Jones v. Sec'y of State*, 2020 ME 113, ¶ 22, 238 A.3d 982. However, Plaintiffs are not alleging a right to force the Board to accept their petition on *any* grounds, but rather are alleging that the Board's rationale for denying their petition in this instance is statutorily impermissible and exercises a discretionary authority that the Board is not vested with by the law as written. Because the Superior Court agrees that there are no defects in the Plaintiffs' Petition to Reconsider as submitted to the Board in this matter, the Board's decision to reject their petition on discretionary grounds not provided in the statutes bolsters Plaintiffs' independent Constitutional claim as the only means by which Plaintiffs may get adequate redress for the Board's pretextual rejection of the petitioned articles.

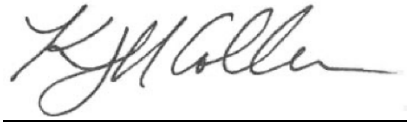
VI. CONCLUSION

Plaintiffs' Petition presented two distinct articles which each derived from different statutory authority and sought to force two different votes to be held at two different times. The Petitioners' intent was to reverse the April 2024 bond authorization and, only if that passed, to present a new and lower bond authorization to the voters at a later budget meeting. It was error for the Board to conflate the two separate articles and, in doing so, construe Article 1 as requesting something other than a reconsideration under Section 1504 contrary to the express statements of the petitioners. The two articles should have been addressed separately, with the first step being to call a reconsideration referendum as is the Board's ministerial duty under Section 1504. This would have preserved the petitioners' constitutional and statutory rights to bring the reconsideration request to a vote. The Board's decision to reject the entire Petition out of hand discounted its statutory obligations as well as the Plaintiffs' and petition signers' rights, and must be reversed. At the very least, the Board's decision was vague as it lacked any explanation or citations of law or fact supporting its conflation of the two articles, and must be returned to the Board for further findings.

WHEREFORE, Plaintiffs request that the Court reverse the Superior Court's holding and remand this matter to the Superior Court to direct the Board to accept the Petition and schedule the reconsideration referendum within 60 days of its

order, and to make a determination of awardable damages pursuant to 42 U.S.C. §§ 1983 and 1988.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Kristin M. Collins, hereby certify that I served electronically the foregoing Brief of Appellants and two copies via U.S. mail, first-class, postage prepaid when prompted to the parties listed below addressed as follows:

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