STATE OF MAINE

MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. LIN-25-56

PATRICIA M. MINERICH, et al.,

Petitioners – Appellants,

v.

BOOTHBAY-BOOTHBAY HARBOR COMMUNITY SCHOOL DISTRICT, et al.,

Respondents –Appellees.

APPEAL
FROM THE LINCOLN COUNTY SUPERIOR COURT

BRIEF OF APPELLEES

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INTRODUCTION

Here, a small minority of voters—not more than 347—seek to interfere with the will of the majority of voters who, on April 24, 2024, voted to approve a school construction and renovation project and to authorize bonds to fund the project. Contrary to Petitioners' assertions, Maine law does not compel a school board to schedule a revote to present a less-expensive alternative construction project upon petition by voters on an issue that has already been acted on by the electorate.

This appeal must be dismissed, as any timeframe for any reconsideration vote pursuant to 20-A M.R.S. § 1504 has expired and a Rule 80B mandamus order can no longer be issued. If it is not dismissed, it must fail because the petition seeking to put an alternative construction project before the voters was not a "petition to reconsider" the prior vote and the Boothbay-Boothbay Harbor Community School District ("District") and its Board of Trustees (the "Board"), and even if they could, no statute or other law compelled them to exercise that discretion to reform the faulty petition. Finally, this Court should ignore the substantial portions of Petitioners' brief that raise new issues on appeal, which were not presented to the Board or the Superior Court and are not preserved for appellate review.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On February 6, 2024, the Board called a District-wide referendum election to vote on a single warrant article to approve (1) constructing a middle school addition

to and performing renovations at Boothbay Regional Elementary School (the "Project") and (2) issuing bonds in the amount of $29,950,000 for the Project. *See* (A. 28-29.) On April 24, 2024, the referendum was held to consider this single article. (A. 28-30.) On May 2, 2024, the Board declared that the article passed by a count of 859 affirmative votes to 807 negative votes. (A. 30.)

Before the Board declared the final results of the April 24th referendum, on May 1, 2024, it received a petition for "the Board of Trustees to initiate a regional school unit referendum to consider" two articles: proposed Article 1, which called for the April 24th vote to be "reconsidered and repealed"; and proposed Article 2, which sought approval of an alternative, less costly school renovation project to be completed "in an amount not to exceed $10,250,300." (A. 22-27.) In declining to submit the petitioned articles to a referendum vote, the Board noted that the petition suffered from several facial defects on which they did not ultimately base their decision, including one petition with 39 signatures that did not state the circulator's address, eight petitions with 80 signatures missing the date the circulator signed the affidavit, an absence from all the circulator affidavits that the circulator is a State resident and registered voter in the State and understands the penalties for violating laws governing circulating petitions. (A. 20.) The Board acknowledged that petitioners had a statutory "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" but found that

"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.) The Board noted that reforming the articles as drafted on the petition to comply with 20-A M.R.S. § 1504 by modifying the first question and eliminating the second "would change what the voters who signed the petition put their name to." (A. 21.) Ultimately, the Board voted on May 14, 2024, that they:

> will not initiate a new District referendum to reconsider the article considered by District voters on April 24, 2024, because they have not received a petition that complies with 20-A M.R.S. § 1504, because the petition requests a referendum on two articles, which are not authorized by 20-A M.R.S. § 1504 or any other law.

(A. 21.)

On June 12, 2024, Petitioners filed a complaint in the Superior Court seeking review of the Board's decision pursuant to M.R. Civ. P. 80B; a declaratory judgment action regarding the petition's compliance with 20-A M.R.S. § 1504; and a claim pursuant to 42 U.S.C. § 1983 alleging deprivation of Petitioners' First Amendment rights to petition the government. *See* (Complaint at 6-8.) The complaint sought an injunction requiring the Board to initiate a referendum to address the two articles posed in the petition, as well as attorneys' fees and costs.

On December 31, 2024, the Superior Court issued an order denying Petitioners' Rule 80B appeal, as well as the two independent claims included with

their Complaint. *See* (A. 6-15.) Petitioners filed a timely appeal of that decision with this Court on January 17, 2025. (A. 5.)

STATEMENT OF THE ISSUES FOR REVIEW

1. Whether the Superior Court had subject matter jurisdiction to hear Petitioners' Rule 80B appeal of the Board's May 2, 2024, decision.
2. Whether the Board erred as a matter of law in declining to hold a referendum vote on Petitioners' requested articles as set forth in their May 1, 2024, petition.
3. Whether Petitioners are entitled to relief on their independent claims brought pursuant to the (a) the Maine Uniform Declaratory Judgment Act and (b) 42 U.S.C. § 1983 on allegations that their First Amendment right to protest was unlawfully denied.

SUMMARY OF THE ARGUMENT

At a referendum held on April 24, 2024, 859 registered voters in the Boothbay-Boothbay Harbor Community School District (the "District") approved a construction and renovation project at the District's Boothbay Region Elementary School and a bond to finance the project. On May 1, 2024, in an effort to upset the will of the voters, a small fraction of the opposition—347—submitted a petition seeking, not only to "reconsider[] and repeal" the April 24th vote, but to supplant it with an alternative bond question to finance a less costly renovation project. While 20-A M.R.S. § 1504 provides District voters with the opportunity to seek *reconsideration* of a prior bond vote, it does not afford the Petitioners the right to force a vote to repeal and replace the bond authorization with an alternative proposal.

Therefore, the Board of Trustees for the Boothbay-Boothbay Harbor Community School District acted in concert with both the statute and their discretionary authority by declining to send the petitioned articles to a referendum vote. For the Court to rule otherwise would disrupt decades of precedent recognizing the discretion granted to school boards in calling school district referenda. *See Dobbs v. Me. Sch. Admin. Dist. No 50*, 419 A.2d 1024, 1028-29 (Me. 1980).

And more importantly, grounds for review of that discretionary authority appear nowhere in statute. While Rule 80B outlines the procedures for addressing appeals of government action or inaction to the Superior Court, it does not create an independent right of action or grant the Superior Court subject matter jurisdiction. Here, Petitioners have cited no authority under which the Court may direct the Board to submit the Petitioners' proposed articles to referendum or explained how their appeal is not otherwise mooted by the expiration of statutory deadlines applicable to reconsideration referenda. Petitioners having failed to establish subject matter jurisdiction in the Superior Court over its Rule 80B petition for review of the Board's decision, and lacking a justiciable claim for which relief can be granted, this appeal should be dismissed.

Ignoring for a moment the jurisdictional issues and unavailability of the relief requested, Petitioners' administrative appeal fails on the merits. While they never argued before the original tribunal—i.e., the Board—on appeal, Petitioners now

contend that the two petitioned articles were presented under different enabling statutes and that the Board could have severed the articles. That is simply an untenable interpretation of the petition as-filed, one that ignores the basic construction of the information circulated and, therefore, the intention of the signatories to the petition. In addition to waiving this argument by failing to raise it below, it ignores the plain language of those enabling statutes and the discretionary authority of the Board under 20-A M.R.S. § 1501 to manage the referendum process. Here, voters specifically petitioned the Board to "initiate a regional school unit referendum *to consider the petitioned] articles*" (emphasis added), without any statutory basis for the request, making reference to only Section 1504 in the body of Article 1. To expect the Board to know, without any indication by the signatories, that the intention of the signers was to bring both an immediate referendum to reconsider the April 24th vote under 20-A M.R.S. § 1504, and a separate, potentially subsequent vote pursuant to 20-A M.R.S. § 1482-A at the next school budget meeting calls on the Board to not only read the minds of the Petitioners, but of the 347 petition signatories whose intention can only be found in the plain language of the petition submitted. That is certainly not the expectation the Legislature had when it created a narrow right to petition a school Board for reconsideration of a prior referendum vote. Put simply, the Petitioners are seeking an appeal of a discretionary action of the Board, one that was made in consultation with legal counsel and with

direct reference to 20-A M.R.S. § 1504, the only statutory authority cited in the petition. Even if the Court were to find, contrary to the District's position, that the Superior Court had subject-matter jurisdiction to hear the Rule 80B appeal, under such a review, the Court is without any authority to order the Board to initiate the referendum, especially where the statutory deadline for reconsideration has passed. In short, Petitioners have sought relief that simply is not available to them.

As for the Petitioners' independent claims, should the Court find subject matter jurisdiction to hear the Rule 80B appeal, both Counts II and III are barred by the exclusivity doctrine. And even if the independent claims are addressed on their merits, the claims nevertheless fail. As for Count II, Petitioners seek a declaration that their May 1st petition comported with the requirements of Section 1504 and that the Board was required to call a referendum to consider both petitioned articles. While Count II should be denied, even if the Court were to agree with Petitioners, they have not established any authority for the equitable relief sought, which is to force a referendum on their petitioned articles. As for Count III, Petitioners have not established that they have been deprived of their right to petition the government. Any constitutional right to petition the government does not mandate the government act in a certain way. And even if voters have a statutory right under Section 1504 to petition the Board to call a referendum, that right to petition is expressly limited to requesting reconsideration of a prior referendum vote. There is

no other legal authority whereby voters can petition the Board to submit a question to a referendum vote.[1] Having failed to submit a petition conforming to the limits of Section 1504, their petition was denied, but at no point were Petitioners prohibited from exercising their First Amendment rights. For these reasons, the independent claims must be dismissed.

ARGUMENT

I. The Superior Court was Without Subject Matter Jurisdiction to Hear Petitioners' Rule 80B Appeal.

This Court reviews "de novo whether the Superior Court had subject matter jurisdiction" to hear the Rule 80B petition. *Hurricane Island Found. v. Town of Vinalhaven*, 2023 ME 33, ¶ 10, 295 A.3d 147. "Rule 80B does not create an independent right to appeal any governmental action to the Superior Court, but only provides the procedure to be followed for those disputes in which the court has jurisdiction." *Id.* (quoting *Dowey v. Sanford Hous. Auth.*, 516 A.2d 957, 959 (Me. 1986)). Jurisdiction exists under Rule 80B if review "is provided by statute or is otherwise available by law." *Id.* (quoting M.R. Civ. P. 80B(a)). "When a court's jurisdiction is challenged, the plaintiff bears the initial burden of establishing that

[1] There is no school analog to the broad scope of petition provided in the municipal context pursuant to 30-A M.R.S. § 2522. The Legislature plainly knows how to give a broad scope of rights to petition, but has not done so for schools. Also, the legislature narrowed the provision formerly found in 20 M.R.S. § 225(2)(A). Now, with some limitations, 20-A M.R.S. § 1482-A(3) allows voter to petition the Board to include a specific warrant article at a school budget meeting. That school budget meeting is typically an open New England-style meeting; it is not a secret ballot referendum.

jurisdiction is proper." *Commerce Bank & Tr. Co. v. Dworman*, 2004 ME 142, ¶ 8, 861 A.2d 662. Where there was not statutory authority providing the Superior Court with subject matter jurisdiction to review the decision of the Board, and where the Petitioner's requested equitable relief was not "otherwise available by law," the appeal should have been dismissed for lack of jurisdiction. *See Dowey*, 516 A.2d at 962 (vacating decision and remanding to Superior Court for dismissal "[b]ecause the plaintiff's right to appeal the actions of the [governmental entity] is not provided by statute and is not 'otherwise available by law,' we conclude that the Superior Court lacked jurisdiction to review the [governmental entity's] actions on the plaintiff's complaint brought pursuant to Rule 80B.").

A. Judicial Review is Only Available Under the Former Writ of Mandamus.

Here, neither 20-A M.R.S. § 1504, nor the statutory scheme of which it is a part, provides a basis for the Court to assert jurisdiction over this administrative appeal. Because no statutory provision provides for judicial review of any action or inaction taken pursuant to 20-A M.R.S. § 1504, judicial review is available only to the extent that such review would have been available under the former writs—and here, only mandamus could be applicable. *See Me. Sch. Admin. Dist. No. 37 v. Pineo*, 2010 ME 11, ¶¶ 18 & 21, 988 A.2d 98; *Dunston v. Town of York*, 590 A.2d 526, 528 (Me. 1991) ("The court is governed by the procedural requirements of M.R. Civ. P. 80B and advised by the common law principles that governed the writ [of mandamus]. .

. . The remedy of mandamus is statutorily available, *see* 14 M.R.S.A. § 5301 (1980), although the writ no longer exists in Maine."); *Dowey*, 516 A.2d at 959 ("Review is deemed 'otherwise available by law' if it is in the nature of that formerly available under the common law extraordinary writs, such as certiorari, mandamus or prohibition, adapted to current conditions." (quoting *Lyons v. Bd. of Dir. of Sch. Admin. Dist. No. 43*, 503 A.2d 233, 236 (Me. 1986)).

1. Mandamus can only be used to compel officials to perform mandatory, ministerial acts.

"It is well established that mandamus can be used to compel officials to perform only mandatory, not discretionary, functions, although it may be used to compel them to exercise their discretion." *Dunston*, 590 A.2d at 528 (emphasis added) ("Thus, unless the Court determines that their obligation to act was mandatory, and not discretionary, the Court must dismiss the 80B petition outright because of the common law principles that govern the writ of mandamus."); *Me. Sch. Admin. Dist. No. 37*, 2010 ME 11, ¶¶ 18 & 21, 988 A.2d 987. This contrasts situations where review is available by statute or under the former writ of certiorari where the Court reviews the operative decision "for error of law, abuse of discretion or findings not supported by substantial evidence in the record." *Fair Elections Portland, Inc. v. City of Portland*, 2021 ME 32, ¶¶ 20 & 21 n.6, 252 A.3d 504 (review explicitly available by statute under 30-A M.R.S. § 2108). In sum, unless this Court

determines—inconsistent with the findings of the Superior Court and its applicable precedent—that the Board's obligations under Section 1504 are mandatory, rather than discretionary, the administrative appeal must be dismissed.

2. This Court has made clear that school boards have discretionary authority over the conduct of school referenda.

Contrary to Petitioners' contentions, "Maine law does not compel either a municipal board or a school board to schedule a revote upon petition by voters on an issue that has already been acted on by the electorate." *Field v. Town of Harpswell*, No. PORSC-CV-180334, 2018 WL 4705043, at *16 (Me. Super. Ct., Sep. 05, 2018). Rather, to the contrary, this Court has held, in reflecting on the statutory predecessor to 20-A M.R.S. § 1504,[2] that that Legislature "expressly empowered [school districts] directors *in their discretion* to put a referendum question to a second vote, and that no subsequent legislature has altered that grant of power." *Dobb,* 419 A.2d at 1027 (emphasis added); s*ee also Heald v. Sch. Admin. Dist. No. 74*, 387 A.2d 1 (Me. 1978). What the holdings in *Dobb* and *Heald* made clear is that school district directors and boards have both authority and obligation to manage the referendum process in their districts. While Petitioners fail to address

[2] 20 M.R.S. § 225(2), repealed by P.L. 1981, ch. 693 (eff. July 1, 1983). This provision is now found in substantially similarly form today at 20-A M.R.S. § 1482-A(3), which Petitioners incorrectly characterize in their brief as enabling them to compel consideration of the second article presented. *See, e.g.,* (Bl. Br. 8, 21, 23.)

either of these cases in their Blue Brief, the holdings in these cases are not only controlling, but their facts also bear striking similarities.

For example, in *Heald*, the fact-pattern mirrors that of this case: voters approved a referendum to authorize the issuance of "bonds to cover the costs of building a new high school." 387 A.2d at 2. Shortly after the election, voters "comprising ten percent of the number of voters in the [district]. who had voted in the last gubernatorial election" signed petitions presented to the Board "[s]eeking reconsideration of the bond issue," and citing 20 M.R.S. § 225(2)(A) as the basis for their request. *Id.* "After receiving the petition, however, the Board refused to hold another election." *Id.* Several voters who signed the petition brought suit seeking to compel the Board to hold another election. *Id.* In dismissing the suit for lack of standing, the Law Court rested its decision on 20 M.R.S. § 225(2)(A), which then read as follows:

> When requested by 10% of the number of voters voting for the gubernatorial candidates at the last statewide election in the municipalities comprising the district, the directors shall call a district meeting, placing before the voters the specific school construction article which has been requested by the petitioners.

Id. at 2 n.2 (quoting 20 M.R.S. § 225(2)(A)). Specifically, the Court noted that "Plaintiffs contend that they are statutorily entitled, under 20 M.R.S.A. § 225(2)(A), to a new election on the bond issue. If they were so entitled, then" they "arguably might have demonstrated direct and personal injury" to establish standing. *Id.* at 3.

While former Section 225(2)(A) contained the same word "shall" that Petitioners here rest on in in 20-A M.R.S. § 1504, the Court in *Heald* held to the contrary "that § 225(2)(A) does not require the directors to resubmit the bond issue to election." *Id.* The Court reasoned that because the education statutes—both under former Title 20 and now under the revised Title 20-A—granted the school directors the general discretion to determine whether to send an issue to the referendum, "the ten-percent provision merely provides a mechanism whereby voters may insure that certain issues will considered." *Id.* Applicable here, the Court declared: "To hold that ten percent of the voters could *force* reconsideration would allow a small minority to interfere, whenever they desired, with decisions approved by a majority of voters. We cannot conceive that the Legislature intended such a result." *Id.* (emphasis added). And that is what Petitioners here are attempting: a majority of voters here approved the Project at a referendum vote, and now a small minority is attempting to interfere in order to force a vote on an alternative renovation to the Project, pursuant to both Section 1504 and Section 1482-A(3). *See* (A. 23-24.)[3]

[3] Petitioners further demonstrate their misunderstanding of the applicable law, arguing (for the first time on appeal) that "Article 2 [] 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." (Bl. Br. 8 (emphasis added).) As noted, Section 1482-A(3) is substantially similar, and effectively supplanted former 20 M.R.S. § 225(2)(A). *Compare* 20 M.R.S. § 225(2)(A) ("When requested by 10% of the number of voters voting for the gubernatorial candidates at the last statewide election in the municipalities comprising the district, the directors shall call a district meeting, placing before the voters the specific school construction article which has been requested by the petitioners.") *with* 20-A M.R.S. § 1482-A(3) ("If requested by a written petition of at least 10% of the number of voters voting for the gubernatorial candidates in the last gubernatorial election in each municipality within the regional school unit, the regional school unit board shall place specific articles, not in conflict with existing state statutes, in the warrants for consideration at the next annual regional school unit budget meeting.").

Also noticeably absent from Petitioners' Blue Brief is this Court's decision in *Dobbs*, holding that

> Our examination of the relevant statutes and their legislative histories satisfies us that the legislature that first created Maine's school administrative district system expressly empowered [school district]. directors in their discretion to put a referendum question to a second vote, and that no subsequent legislature has altered that grant of power.

419 A.2d at 1026; *accord* 20-A M.R.S. §§ 1482-A,1501-1504. In *Dobbs*, "three propositions that would have authorized certain school construction in [the district], and the issuance of bonds to finance the same, were defeated by vote of residents of the district." *Id.* at 1025. Subsequently, the school board was presented with "petitions signed by 903 citizens of the district in support of the proposed construction." *Id.* "The petitions, however, failed to comply with the requirements of 20 M.R.S. § 225(2) [the predecessor statute to 20-A M.R.S. §§ 1504 and 1482-A]." *Id.* The Board recognized that they were not compelled to resubmit the question to the voters, but decided to do so anyway. *Id.* This Court first addressed whether

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Repealed Section 225(2), as well as the two current statutes cited as authority in this appeal, all used materially similar language, including the use of the term "shall," yet consistent with this Court's holdings in *Heald* and *Dobbs*, there is nothing to indicate that the legislature intended, by giving voters the ability to petition their government for reconsideration of a prior referendum vote or request a vote on a voter-sponsored article at a budget meeting that it would limit the discretionary authority of school districts and their directors to use their judgment in determining whether to grant the relief requested. *See Dobbs*, 419 A.2d at 1028 (There is nothing in section 225(2)(A) or its legislative history that suggests that in 1973 the legislature, by giving voters the power to force the calling of a district meeting, intended to limit in any way the directors' existing authority to do so whenever in their judgment the meeting was "necessary." (discussing *Heald*, 384 A. 2d 1.) For these reasons, Petitioners' newly raised argument that the language of Section 1482-A mandates the Board place any article petitioned by the requisite number of voters on the next referendum is completely at odds with controlling law and must be rejected.

that board "had the independent authority to resubmit the school construction questions to the voters," and after review of the structure and history of the education statutes concluded that it did. *Id.* In so holding, the *Dobbs* Court reiterated its discussion in *Heald* that the provisions of 20 M.R.S.A. § 225(2)(A), the predecessor to 20-A M.R.S. § 1482-A(3), "did not empower" any number of voters to "compel the calling of a reconsideration" election, but noted in dictum the discretionary "power of the district directors to call" such a meeting "whenever in their judgment the meeting was 'necessary.'" 419 A.2d at 1028 (adopting the *Heald* dictum in its holding). The *Dobbs* Court then turned to a newly adopted portion of the statute, 20 M.R.S. § 225(2)(I)—the predecessor to 20-A M.R.S. §1504—and found that that provision likewise did not limit the school board's authority. *Id.* That provision is substantively identical to the provision of 20-A M.R.S. § 1504 at issue here. *Compare* 20 M.R.S. § 225(2)(I), enacted by P.L. 1977, ch. 195 ("When requested by 10% of the number of voters voting for the gubernatorial candidates at the last statewide election in the municipalities comprising the district within 7 days of any prior district meeting, the directors shall call a district meeting to be held within 30 days of the presentation of the petition to reconsider any prior district meeting vote under this section.") *with* 20-A M.R.S. § 1504(1) ("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 Court in *Dobbs* went on to explain that that those two provisions—*i.e.*, 20 M.R.S. § 225(2)(A) and (I), now 20-A M.R.S. § 1482-A(3) and 1504(1)—"are the only two provisions that give the power to bring issues before a district meeting to anyone other than the [district] directors." *Id.* at 1028 n.10. As discussed, there is no reason to diverge from that long standing rule, especially where

> [i]t must be remembered that all we are concerned with here is the authority of the directors to initiate voter reconsideration of a public issue. As with any other power of the directors, if a majority of the citizens believe the [district] directors have overused their authority to call district meetings, <u>their remedy lies in the ballot box at the time those directors are up for reelection.</u>

Dobbs, 419 A.2d at 1029 (emphasis added). In short, if the Petitioners disagree with the determinations of the Board in exercising its discretionary authority to initiate and manage school referenda pursuant to 20-A M.R.S. §§ 1501 and 1504, their recourse is to vote for Board members that support their position and vision for the District at the next election.

In the more recent case of *Dunston v. Town of York*, referenced *supra*, a small group of voters sought to compel a revote on a school construction issue. There, the issue arose in the context of a municipal school district, where in September of 1989,

the voters approved a warrant article "that authorized the School District to spend up to $5,081,000 to buy land and build a new elementary school." 590 A.2d at 527. There, "Dunston and other members of a local political group opposed the plan for the new school from the outset but took no action after the 1989 vote until August 23, 1990, when they submitted to the office of the Town Clerk a petition requesting a special town meeting to consider an article rescinding the vote." *Id.* The "selectmen voted not to place the article before the voters or take further action on the petition" and the petitioners brought suit. *Id.* The Court ultimately concluded that reconsideration of the prior vote was a "discretionary" and not a "mandatory" duty of school board members such that a Rule 80B petition in the nature of a writ of mandamus was unavailable. *Id.* at 528. The Court went so far as to award attorneys' fees to the Defendant Town and School District. *Id.*

These three cases, which Petitioners do not discuss in their Blue Brief,[4] provide an unbroken line where this Court has declined the relief sought here: the setting aside of the approval of a school construction project by forcing a re-vote on the already approved issue or invalidating an approval on a previously defeated

[4] The only reference to any of the three controlling cases here is to *Dunston*, arguing the statute under which that case was decided—20-A M.R.S. § 2521—limiting selectboards to declining to call a meeting when refusal was "reasonable" and granting voters the right to petition the board if a requisite number agree the refusal was "unreasonable." Despite these issues being briefed to the Superior Court, the Petitioners here ignore the long-standing precedent. Moreover, the holding in Dunston further supports the intention to provide elected town and school boards discretionary authority over the management of their meetings and elections.

question. In contrast, Petitioners cite no case from Maine or any other jurisdiction where a Court has ever compelled an election to address a school construction project already approved by the voters. That is because such a ruling would be entirely at odds with the controlling precedent and legislative intent behind the enactment of Section 1482-A and 1504, which calls on this Court to find the Board had the authority and did so exercise its authority in declining the relief sought in the May 1st petition.

3. Petitioners' own arguments concede the Board had discretionary authority in addressing the May 1st petition.

Even the Petitioner's own arguments support the District's argument and Superior Court's ruling that the Board was exercising its discretion in its consideration of the May 1st petition. Petitioners posit that the Board had multiple options to choose from—the very definition of a discretionary decision—which defeats their required showing that the Board had only a ministerial act with no discretion to exercise.

For example, Petitioners assert that the Board could have ignored the text of the petition that was presented to it and "could have simply called a new referendum with the exact same question as the prior referendum." (Bl. Br. 16.). However, this would be an exercise of the Board's discretion, which cannot be compelled under the former writ of mandamus. *See Dunston*, 590 A.2d at 528; *see also Heald*, 387

A.2d at 3; *LaFleur ex rel. Anderson v. Frost*, 146 Me. 270, 283, 80 A.2d 407, 414 (1951) ("mandamus d[oes] not lie to compel a referendum upon an appropriation resolve") (citing *Burkett, v. Youngs*, 135 Me. 459, 199 A. 619 (1938)).

Likewise, Petitioners argue that "if the Board found there was not statutory authority for Article 2, it could have severed the article, thus allowing the reconsideration petition to move forward [separately]. . .." (Bl. Br. 5; *see also id.* at 18 ("The Board was . . . *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.").)

Petitioners' severability argument, in its many forms, effectively concedes that the Board was faced with an exercise of discretion, and not a ministerial duty, and so the choice of those options cannot be compelled under the common law principles of the writ of mandamus. *Dunston*, 590 A.2d at 528. In fact, there is another option: refusal to grant the relief sought in the May 1st petition. This is the option that was upheld in both *Heald* and *Dunston*, and the one taken by the Board on May 2nd when it issued its decision, which this Court should affirm.

B. Petitioners' action under Count I is mooted by passage of the statutory deadline for calling a reconsideration referendum under Section 1504.

Even assuming Section 1504 provides a mandatory duty here (it does not), the availability of a mandamus order is now moot because of the passage of time. The timing requirements on petitions for reconsideration under Section 1504 evidence

the Legislature's intent to honor the finality of municipal votes and ensure school construction projects can move forward efficiently. With the instant appeal, Petitioners are asking the Court to force the Board to place both its proposed "reconsideration and repeal" of the April 24th, 2024 voter approval, as well as its alternative construction proposal, on a District referendum more than a year after the vote approving the Board's proposed project and associated financing. However, the statute does not provide for such relief and instead prescribes that

> [t]he 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.

20-A M.R.S. § 1504(1) (emphasis added.) On June 30, 2024, sixty days had lapsed from the Board receipt of the May 1, 2024, petition. At no time during this proceeding did Petitioners seek to stay the Board's decision or otherwise seek injunctive relief prohibiting the Board from acting in accordance with the April 24th vote. *Cf. Trump v. Bellows,* Docket No. AP-24-01, 2024 WL 989060, at **6-9 (Me. Super. Jan. 17, 2024) (addressing stay of administrative decision in election context); *Me. Sch. Admin. Dist. No. 37,* 2010 ME 11, ¶ 4, 988 A.2d 987 (addressing injunctive relief in election context).

This Court has held that "when the passage of time and the occurrence of events deprive the litigant of an ongoing stake in the controversy, the case is no

longer justiciable." *Id.* ¶ 8 (citing *Carroll F. Look Constr. Co. v. Town of Beals*, 2002 ME 128, ¶ 6, 802 A.2d 994; *Roop v. City of Belfast*, 2008 ME 103, ¶¶ 2-3, 953 A.2d 374 (per curiam)). In *Pineo*, the Court made clear that it "will not expend limited judicial resources to review the legal correctness of a decision that will no longer affect the parties involved." *Id.* Addressing mootness in a similar context, the Court explained that it "do[es] not have the authority to 'undo' an election" or force action by the Board that is inconsistent with the will of the people. *Id*. Therefore, Petitioners are without the relief sought in the request for review and their appeal of the Board's May 14th decision is moot. As such, this appeal should be dismissed. *See Me. Civ. Liberties Union v. City of S. Portland*, 1999 ME 121, ¶ 8, 734 A.2d 191 ("A justiciable controversy is a claim of present and fixed rights, as opposed to hypothetical or future rights, asserted by one party against another who has an interest in contesting the claim. If issues become moot, an appeal is nonjusticiable. A dispute loses its controversial vitality when a decision by this court would not provide an appellant any real or effective relief." (internal citations, marks omitted)).

In other words, the expiration of the statutory period for a reconsideration election means that, even if the Board's action under Section 1504 were ministerial rather than discretionary, mandamus is no longer available. *See Burkett v. Youngs*, 135 Me. 459, 199 A. 619, 623 (1938) ("Mandamus will not be granted where it will avail nothing.") Even if the Court could issue an 80B Order in the nature of

mandamus to compel the Board to call an election, it would need to do so within the statutory time frame. Because there is no statutory right of review of a decision under 20-A M.R.S. § 1504, there are no statutory timeframes for that review. However, the common-law principles of the writ of mandamus (the only review available), together with the 60-day clock in the statute provide the outer limits of when the Court can grant such relief.

II. The Board Correctly Found that the Petition Failed to Comport with Section 1504.[5]

A. The May 1st petition did not constitute a "petition or reconsideration" under Section 1504.

Should the Court reach the merits of Petitioners' appeal, it will begin with a *de novo* review of the statutory terms, including "petition to reconsider" under 20-A M.R.S. § 1504(1). *Fair Elections Portland, Inc.*, 2021 ME 32, ¶ 27, 252 A.3d 504 (analyzing statutory terms "amendment" and "revision" in the context of referenda to alter a municipal charter); *see also Black v. Bureau of Parks & Lands*, 2022 ME 58, ¶ 69, 288 A.3d 346 (addressing Rule 80B's counterpart, 80C, noting that this Court reviews the "[board's] actions directly, without deference to the trial court's decision, and compare them against the record evidence to determine whether the agency's actions were in excess of their statutory authority and therefore ultra

[5] Petitioners claim in their brief that the Superior Court "acknowledged" and "affirmed" that the "Petition was technically sufficient. (Bl. Br. 25.) This is not consistent with the Superior Court's order, which does not address technical challenges and limits its ruling to a discussion to the meaning of the phrase "petition for reconsideration" and the Board's discretionary authority over the referendum process. *See* (A. 11-14.)

vires.") However, "the determination of whether a particular petition" meets such a statutory definition is "fact-based" and this Court must "accord substantial deference to [the Board's] characterizations and fact-findings as to what meets" those statutory definitions. *Fair Elections Portland,* 2021 ME 32, ¶ 27, 252 A.3d 504 That is particularly true where, as here, such a determination "calls for the proposal" presented in the petition "to be evaluated not just in terms of its effect on the [prior referendum vote], but also in terms of its practical effect on existing [District] policies, practices, and operations" related to the competing proposals over the extent to which school renovations and additions should occur. *See id.* at ¶¶ 27, 34 (according deference to a City Council's adjudication of whether charter changes should follow the statutory procedure for an "amendment" or a "revision.")

20-A M.R.S. § 1504, in relevant part, reads as follows:

> 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.

20-A M.R.S. § 1504(1) (emphasis added). Even assuming, for the sake of argument, that Section 1504 imposes a ministerial duty on the Board to "within 60 days, initiate a new regional school unit referendum to reconsider the vote of the previous referendum," it requires three predicate factual determinations: 1. "within 7 days of the first referendum"; (2) "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;" (3) "petition to reconsider a prior regional school unit referendum vote." Here, the Board determined that the third requirement had not been met. Consistent with the Superior Court's findings, that finding was not in error.

The term "petition to reconsider" is not defined in statute. It is therefore appropriate to look to the dictionary definition of such terms. *See Apex Custom Lease Corp. v. State Tax Assessor*, 677 A.2d 530, 533 (Me. 1996) ("In construing a statutory term that is undefined in the statute itself, our primary obligation is to determine its plain meaning. We often rely on the definitions provided in dictionaries in making this determination." (citation omitted)). The term "reconsider" is defined as "[t]o discuss or take up (a matter) again." BLACK'S LAW DICTIONARY (12th ed. 2024). That definition goes on to explain that "[u]nder parliamentary law, a motion to reconsider sets aside a certain vote already taken and restores the motion on which the vote is being reconsidered to its status immediately before the vote occurred." *See id.* Applying this definition, a "petition to reconsider" is one that seeks to "take up" the identical matter previously voted on.[6] That definition is consistent with the use of the similar term "reconsideration referendum" of that same statute, which

[6] This highlights an additional infirmity with Article 1 as presented in the Petition, which is worded such that a "YES" vote on the new Article 1 would be the equivalent of a "NO" vote on the original article and a "NO" vote be the equivalent of an original "YES" vote.

requires that "a reconsideration referendum is not valid unless the number of persons voting in that referendum is at least equal to the number who voted in the prior regional school unit referendum," 20-A M.R.S. § 1504(2), and with the provisions that require the posting of a bond if the "margin of the vote being reconsidered" is sufficiently large and result of the second vote is the same. Id. § 1504(3). This is consistent with the origin of these statutory provisions, which were original addressed to such votes that would occur in-person at a "district meeting" rather than at a referendum election. *See Heald*, 387 A.2d at 2 n.2 (quoting the history of the text of the then-current provision 20 M.R.S. § 225(2)(A) regarding a "district meeting"); *compare* 20-A M.R.S. § 1482-A(3); *see also Dobbs*, 419 A.2d at 1026 n.3 & 1028 n. 9 (quoting the history of the text of the then-current provision 20 M.R.S. § 225(2)(I) regarding a "district meeting"); *see also* P.L. 1977, ch. 195 *compare* 20-A M.R.S. § 1504.

While Petitioners assert in their brief that "[t]he language of Section 1504 is unambiguous and should be applied based upon its plain meaning. (Bl. Br. 9 (citing *Jones v. Sec'y of State*, 2020 ME 113, ¶ 11, 238 A.3d 982 (quotation omitted)), they essentially ignore their obligation to ensure what their submission under Section 1504 is, in fact, a "petition to reconsider" a prior referendum vote, not—as they did here—present a petition that seeks to "reconsider and repeal" the voter-approved article along with an entirely separate bond question under Article 2 that is only

triggered by an affirmative vote on Article 1. A similar issue was addressed by the Court in *Heald*, where the Board received a petition within that timeframe and containing the required signatures, but the petition sought to put to vote a different article from that previously considered by the voters. *See* 387 A.2d at 2-3. Indeed, that is precisely what occurred here—the Petitioners circulated a petition that sought to advance a scaled-down alternative repair/renovation project funded with bonds "in an amount not to exceed $10,250,300." (A. 23.) This is the very thing that *Heald* held a board had discretion to refuse to put to vote.

B. The Board is entitled to deference in its interpretation of the underlying factual basis for their May 2nd decision.

To reiterate, the Board holds discretionary authority to manage its referendum process, including requests for reconsideration thereof. As a result, this Court must afford the Board deference with regard to its "determination of whether a particular petition" meets the "fact-based" determination of whether it is indeed a "petition to reconsider" or something else. *Fair Elections Portland, Inc.*, 2021 ME 32, ¶¶ 27, 34, 252 A.3d 504 (according deference to a City Council's adjudication of whether charter changes should follow the statutory procedure for an "amendment" or a "revision."). Contrary to Petitioners attempt to distinguish the deference described in *Fair Elections Portland Inc.*, *see* (Bl. Br. 15) the holding in that decision analyzed statutory terms *de novo*—each of which mandated a different process—but noted that a determination of whether a petition met that definition required deference. *Id.*

Accordingly, where, as here, the Board's decision contains explicit fact finding that the petition presented a competing "$10,250,300 school renovation project as an alternative to the Project," considered in the original referendum, (A. 21), this Court must "accord substantial deference" to the Board's adjudication of whether this "particular petitioner proposes" a "petition to reconsider" as that statutory term is used 20-A M.R.S. § 1504(1). Here, the Board made the factual determination that some voters could have been motivated to sign the petition because they favored the option to vote on a less-expensive construction alternative—something they are not entitled to as a matter of law. Furthermore, while the inclusion of Article 2 is fatal to Petitioners claims here, it is also worth noting that the phrasing of Article 1 is framed so that a "YES" vote under that article would have the effect of a "NO" vote in the original April referendum. This phrasing, as written, would thus not be a "reconsideration" of the original vote, but would be a new vote where the effect of the YES/NO would have been reversed. Thus, even Article 1 standing alone would require discretionary revision before it could be presented consistent with 20-A M.R.S. § 1504(1). Given this factual underpinning, the Court cannot second-guess the Board on those issues of fact and issue a mandamus order.

C. Petitioners' severability arguments are inconsistent with this Court's precedent on reformation of nonconforming voter-petitioned initiatives.

Not only does Petitioners' severability argument directly concede the discretion of the Board, it raises questions concerning the intent of the signatories to

the May 1st petition and whether the Petitioners' suggested revision here properly reflects the expectations of the signatories when they signed the petition. As discussed, the Petitioners argue the two articles can and should have been treated as entirely separate requests, and that the Board could have elected not to put Article 2 to vote while still proceeding with a referendum on Article 1. *See, e.g.*, (Bl. Br. 18.) However, this Court has rejected such arguments, refusing to revise or reform nonconforming citizens initiatives before they are sent to the general electorate for vote. *See Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, ¶ 37, 237 A.3d 882 (refusing to reform a faulty initiative into something that could permissibly be presented to the voters); *see also Wagner v. Sec'y of State*, 663 A.2d 564, 566 n. 3 (Me.1995) (stating, prior to addressing the substantive constitutional challenges to a proposed initiative, that "[s]ince the Legislature has not enacted the initiative without change, it must be referred to the electors."); *see also Opinion of the Justices.*, 673 A.2d 693, 697 (Me. 1996); *Opinion of the Justices*, 623 A.2d 1258, 1264 (Me.1993). The Board can no more discern with any certainty which provisions of the petition induced each voter to sign it any more than could a Court. *In re Jackson Twp. Admin. Code*, 437 N.J. Super. 203, 217, 97 A.3d at 728.[7] Thus, the Board—and this Court—

[7] This principle is not unique to Maine:

> 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. A court cannot discern with any certainty which provisions of an initiative ordinance induced each voter to sign it.

must look at the petition in its entirety, and if it is not simply a "petition to reconsider," then the Board can properly refuse to send it to the voters. *Heald*, 387 A.2d at 2-3.

D. Petitioners' severability arguments are waived.

While the Petitioners spend a great deal of time in their brief addressing the Board's option to sever and treat the two articles put forth by the May 1st petition independent of one another, the Court should deem these arguments waived. This Court has held that "[i]n order to preserve an issue for appellate review, a party must timely present that issue to the original tribunal; otherwise, the issue is deemed waived." *Brown v. Town of Starks*, 2015 ME 47, ¶ 6, 114 A.3d 1003 ("The preservation rule ensures that the decision-making body has the opportunity to consider the issue and correct any perceived error in order to avoid having its decision vacated or remanded after an appeal.") Here, Petitioners never raised this argument in their petition to the Board or the Superior Court. Now, on brief, they point to their cover letter accompanying the Petition, which provided that the May

In re Jackson Twp. Admin. Code, 437 N.J. Super. 203, 217, 97 A.3d 719, 728 (App. Div. 2014); *see also Redd v. Bowman*, 223 N.J. 87, 122, 121 A.3d 341, 362 (2015) ("Notwithstanding the Committee's contention, the ordinance before this Court may not be rewritten at this late stage. The Faulkner Act clearly envisions that an initiated ordinance appear on the ballot in precisely the same form in which it was proposed, supported by the required signatures and certified by the municipal clerk."); *Opinion of the Justices*, 309 Mass. 631, 640, 35 N.E.2d 676, 681 (1941) ("But we are of opinion that a title attached to a proposed law contained in an initiative petition constitutes a part of the 'full text' of such proposed law, and that the General Court has no power to authorize the Attorney General to change such 'full text,' either by adding thereto a title where none was attached to the proposed law by the petitioners, or by changing the title of a proposed law attached thereto by the petitioners. Such a change would amount to a change in the law proposed by the petition contrary to the purpose of said art. 48 and inconsistent with said article.")

1st petition contained a "petition supporting a Reconsideration Referendum of the April 24th BRES referendum and a repair/renovate alternative" (A. 19 (quoting A. 22)), to support the contention that the signatories to the petition intended the articles to be treated as two separate proposals. However, this is not at all clear from the May 1st petition itself, which is the only document before voters at the time the petition was circulated, nor is it evident from the cover letter that Petitioners were not submitting the second article for consideration at the next referendum along with the first. In fact, a review of Petitioners' Complaint filed with the Superior Court indicates that Petitioners intended to petition for the inclusion of both articles on the same referendum ballot. *See, e.g.*, (Complaint at 6, ¶ 28 ("Section 1504 does not contain any requirements related to the form or content of the petition for reconsideration of a school district referendum, including any prohibition on the inclusion of additional articles for reconsideration.") A review of the language of the petition itself demonstrates the same intention. (A. 28) ("The undersigned voters … hereby petition [the Board] to initiate **a regional school unit referendum to consider the following articles**: . . .") (emphasis added). There is no plausible reading of that language that suggests the signatories were asking for a referendum on Article 1, and consideration at the next in-person annual regional school unit budget meeting on Article 2. Moreover, this new found argument comes far too late for another practical reason: the petition was submitted on May 1, 2024, which

means that—had Section 1482-A actually been applicable or invoked by the signatories (which it was not)—the "next annual regional school unit budget meeting" that was "at least 15 days" after the petition would have been the one held on May 21, 2024, and Petitioners did not raise the issue at or prior to that meeting. Where Petitioners failed to raise this argument before the Board, the argument must be rejected as waived on appeal.

III. Counts II and III Claims Must Be Dismissed.

A. Should the Court Find the Superior Court had Jurisdiction to Hear the Rule 80 Petition for Review, the Independent Claims Must Be Dismissed.

"When a claim for purportedly independent relief is joined with an administrative appeal and the court strikes the former as duplicative," this Court will "review the judgment for an abuse of discretion." *Cape Shore House Owners Ass'n v. Town of Cape Elizabeth*, 2019 ME 86, ¶ 7, 209 A.3d 102.

Should the Court find the Superior Court had jurisdiction to hear Petitioner's Rule 80B appeal, Petitioners independent claims, which include a declaratory judgment action and a separate claim for relief pursuant under 42 U.S.C. § 1983, are barred by the exclusivity doctrine bars where, as here, the alleged deprivation of civil rights occurs as part of the action or inaction for which judicial review is sought pursuant to Rule 80B. *Cayer v. Town of Madawaska*, 2016 ME 143, ¶¶ 16-17, 148 A.3d 707. *See also Fair Elections Portland, Inc*, 2021 ME 32, ¶ 19, 252 A.3d 504 (dismissing declaratory judgment and section 1983 claims as "duplicative of the

Rule 80B appeal," judgment remanded on the sufficiency of findings on the 80B claim).

B. If the Court finds the Superior Court Lacked Jurisdiction to Hearing the Rule 80B Appeal, It Should Nevertheless Affirm Dismissal of the Independent Claims as Nonjudicable.

1. Count II: Declaratory Judgment

"A declaratory judgment action cannot be used to create a cause of action that does not otherwise exist" and "may only be brought to resolve a justiciable controversy." *Sold, Inc. v. Town of Gorham*, 2005 ME 24, ¶ 10, 868 A.2d 172. "Thus, a declaratory judgment action cannot be used to revive a cause of action that is otherwise barred by the passage of time." *Id*.

This Court has held that "the purpose of the Declaratory Judgment Act is to provide a more adequate and flexible remedy in cases where jurisdiction already exists" and that "the and the declaratory judgment remedy should be liberally construed to provide a simple and effective means by which parties may secure a binding judicial determination of their legal rights, status, or relations pursuant to statutes and written instruments." *Colquhoun v. Webber*, 684 A.2d 405, 411 (Me. 1996). What the Declaratory Judgment Act does not do it "create a claim in the absence of injury." *Ten Voters of City of Biddeford v. Biddeford*, 2003 ME 59, ¶ 7, 822 A.2d 1196 (citation, marks omitted). Here, Petitioners are seeking a declaration that the May 1st petition comported with Section 1504 and that the Board was

required to hold a referendum. Even if the Court were to find that were the case, as discussed in Section I(B), the statutory deadline for placing a reconsideration referendum on the ballot has passed. Therefore, there being no justiciable issue and the relief sought is not available, the declaratory judgment action should be dismissed.[8]

2. Count III: Deprivation of First Amendment Right Under 42 U.S.C. § 1983.

The basis for Petitioners' Section 1983 claim alleging violation of their First Amendment rights mirrors their grounds for review under Rule 80B: that the Board's exercise of discretionary authority and the rejection of the petitioned articles constituted an independent cause of action for which Petitioners are entitled to damages. *See* (Bl. Br. 31-32.) The issue of exclusivity aside, the facts simply do not support any finding that the Petitioners' constitutional right to petition the government was ever abridged.

As the Superior Court found, "[t]he right to petition does not extend to a right to force the government to accept the petition on any grounds." (A. 15 (citing *Jones*, 2020 ME 113, ¶ 22, 238 A.3d 982).) As this Court indicated in *Jones*, "[u]nlike with other regulations of core political speech, an important—but not necessarily

[8] As for relief in the form of attorneys' fees and costs, as Petitioners point out in their brief, "[t]he Declaratory Judgment Act only allows for the award of attorney fees if the statute . . . allows for such award." (Bl. Br. 30 (citing *Union Mut. Fire Ins. Co. v. Town of Topsham*, 441 A. 2d 1012, 1017 (Me. 1982)).) Here, neither Section 1504 nor 1482-A provide for the award of fees and costs.

compelling—governmental interest in regulating ballot access may outweigh the burden placed on even core political speech because of the need for fairness and order in the democratic process," *id.* ¶ 20, as the government has a legitimate interest in managing the referendum and initiative process, *id.* ¶ 24 (quoting *Me. Taxpayers Action Network v. Sec'y of State*, 2002 ME 64, ¶ 8, 795 A.2d 75). For these reasons, the instant case is distinguishable from *Wyman v. Sec'y of State*, cited by Petitioners, (A. 29), where the Court held that the Secretary of State's refusal to furnish petition forms prevented the "political discourse" involved in the initiative process of circulating the petitions and engaging in a discussion with voters. 625 A.2d 307, 311 (Me. 1993). Here, the record clearly demonstrates what transpired: the petitioners presented the Board with a request to schedule a revote to consider a less expensive school project from the one previously approved, and the Board in its discretion determined that the petition failed to comport with the requirements of Section 1504 because it presented articles that were not a reconsideration of the prior bond vote.

It is worth noting here that the Petitioners were never barred from voting on the referendum bond issue they now seek to have reconsidered. District voters were given an opportunity to vote on whether to approve the Project that Petitioners now seek to "repeal." The majority of those voters elected to approve the Project and its associated financing. Because a loud minority is simply disappointed their opposition was unsuccessful at the polls does not mean that Petitioners were

deprived of their First Amendment rights to petition the government. To find otherwise would not only deprive the Board of its discretionary authority to manage the referendum process, it would also open every local school board referendum up to constant challenge by the losing side. This is certainly not the kind of chaos, delay, and uncertainty the legislature intended for in its enactment of 20-A M.R.S. § 1504. Therefore, Count III must be dismissed.

CONCLUSION

For the reasons stated herein, Appellees ask this Court to affirm the Superior Court's Order dismissing Petitioner's Rule 80B appeal and independent claims and affirm the Board of Trustees' decision denying Petitioners-Appellants' May 1, 2024, petition seeking to initiate referendum.

Respectfully submitted this 23rd day of June, 2025.

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CERTIFICATE OF SERVICE

I, Amy K. Olfene, hereby certify that on this 23rd day of June, 2025, I caused an electronic copy of the Brief of Appellees to be served on counsel for Appellants by via electronic mail sent to the following:

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