STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. LIN-25-56

PATRICIA M. MINERICH, et al.

Appellant

v.

BOOTHBAY-BOOTHBAY HARBOR
COMMUNITY SCHOOL DISTRICT, et al.

Appellee

ON APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT

REPLY BRIEF OF APPELLANT PATRICIA M. MINERICH, et al.

Dated: July 14, 2025

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I. INTRODUCTION

As set forth in the initial Brief filed by Appellants Patricia M. Minerich, James Farrin, Virginia Farrin, Elizabeth Grant, Roy Tholl, Stephen Carbone, Pamela Mancusco, and Daniel Zajdel (collectively the "Appellants"), incorporated herein by reference, the Appellee, Boothbay-Boothbay Harbor Community School District, erred in refusing to call a vote following receipt of Appellants' valid petition for reconsideration. In response to Appellants' Brief, Appellee argues, in part, that: (1) this Court does not have jurisdiction over the controversy: (2) the dispute is moot; (3) Appellants waived key arguments related to severability; and (4) Appellants' independent claims are meritless. Each of these arguments is based upon mischaracterization of fact and law.

The principal issue in this dispute is whether Appellee was required to call a reconsideration referendum based upon petitioners' timely submission of valid citizens' petitions. As explained in depth below, changes to the statutory framework governing the procedure of calling a reconsideration referendum make clear that such duty is ministerial and not, as Appellee posits, discretionary. Moreover, these statutory revisions render the critical case law relied upon by Appellee irrelevant to the given controversy.

Accordingly, the Law Court should find that the petitions were properly submitted under the relevant statutory authority and that Appellee improperly

refused to call a reconsideration referendum, 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. **ARGUMENT**

A. **Because The Board's Actions Are Ministerial, The Court Has Jurisdiction Over This Controversy.**

The Board's decision is fatally centered on the idea that the Board's obligation to call an election was discretionary, and not ministerial. Appellee bases its argument on an incorrect interpretation of historical statutes and case law that applied them. Because Appellee's argument does not properly take into account the current language of 20-A M.R.S. § 1504, it mischaracterizes the true nature of the Board's obligations, dooming its jurisdictional arguments.

Specifically, Appellee looks to *Heald v. Sch. Admin. Dist. No. 74*, and *Dobbs v. Me. Sch. Admin. Dist. No. 50*, to support its arguments. However, both *Heald and Dobbs* were decided under 20 M.R.S. § 225, the predecessor statute to 20-A M.R.S. § 1482-A and 20-A M.R.S. § 1504. Critically, the present statutes are materially different from that at issue in both *Heald* and *Dobbs* in both form and substance, depriving the two cases of any precedential value here.

Both *Heald* and *Dobbs* involved the interpretation of 20 M.R.S. § 225, now repealed, which allowed for direct initiative of a school funding matter but contained

no language allowing for reconsideration. In *Heald*, petitioners cited Section 225 as authority to demand the reconsideration of a bond authorization, but the district board rejected their petition. 387 A.2d 1 (Me. 1978). The Court upheld the refusal on the grounds that Section 225, based on its language and legislative history, provided only for direct initiative of an authorization and not for reconsideration of an authorization already granted. The Court further determined that a district school board's responsibility to call an election was discretionary. This determination was based on the final sentence from the introduction to Section 225, which read, "the school directors shall *be authorized to* call such a meeting as follows…" (emphasis added). *Id.* at 4. The Court noted that the "shall be authorized" language did "not require the directors to call such a meeting. It merely authorize[d] them to do so at their discretion." *Id.* at 4 (Me. 1978). Accordingly, the Law Court reasoned that a board could disregard validly submitted reconsideration requests at its discretion. *Id*.

In *Dobbs* the Court again applied the same language in the since-repealed Section 225 to find that the subject school board could resubmit a school construction question to the voters after it had been defeated. *Dobbs v. Maine Sch. Admin. Dist. No. 50*, 419 A.2d 1024 (Me 1980). The Court held that the authority conferred on the board under Section 225 was not limited against calling a second referendum, even though by that point the statute had been amended in Section 225(I) to also give citizens the right to petition for reconsideration (now codified in

Section 1504, at issue here). Importantly, *Dobbs* considered the school board's right to request a reconsideration referendum, not the petitioners' right to do so.

Since the holdings of *Heald* and *Dobbs*, Title 20 was repealed in its entirety and replaced with Title 20-A. As Appellee notes, nearly identical "shall" language is utilized in 20-A M.R.S. § 1504 as was employed in 20 M.R.S. § 225.[1] Red Br. 22-23. Critically though, the discretionary language "authorized to" contained in 20 M.R.S. § 225, which was determinative in both *Heald* and *Dobbs*, was removed in its statutory progeny, 20-A M.R.S. §§ 1482-A and 1504. Now, the revised petition authorization language of Section 1482-A and Section 1504 only grants the Board discretion as to when a meeting is held, but not whether a meeting is to be held at all. *See* 20-A M.R.S. § 1482-A ("A regional school unit board shall hold a regional school unit budget meeting at a time it determines…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

[1] 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."

unit budget meeting. (Emphasis added)). See also 20-A M.R.S. § 1504 ("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." (Emphasis added)).

Importantly, in its revision, the Legislature completely omitted any mention of "authorization"—the critical language relied upon in *Heald* and *Dobbs* – when codifying petition authority. Accordingly, the rationale of the court in *Heald* and *Dobbs* is not controlling here. Now the two relevant statutes both use the mandatory "shall" with no qualification of board "authorization." Accordingly, the Legislature, after the *Heald* and *Dobbs* decisions, deliberately chose language making it clear that the obligation to call a petitioned referendum would be a ministerial and mandatory function upon receipt of a valid petition.

As noted by Appellee, it is well established that mandamus can be used to compel officials to perform mandatory functions. *Dunston v. Town of York,* 590 A.2d 526, 528; Red Br. 17. Accordingly, because the Board's actions are ministerial, Appellants arguments regarding jurisdiction are not persuasive. Instead, the Writ of Mandamus applies and this Court therefore possesses jurisdiction pursuant to Rule

80B to adjudicate this controversy. *Dunston v. Town of York*, 590 A.2d, 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…although the writ no longer exists in Maine").

B. The Passage of Time Has Not Mooted The Controversy.

In its brief, Appellee erroneously argues that, because the sixty-day window prescribed for the Board to hold a reconsideration vote has expired, this appeal is moot. This argument, however, is illogical and contravenes the intent of 20-A M.R.S. § 1504. The Maine Legislature undoubtedly enacted section 1504 to provide recourse for voters seeking to reconsider the results of a regional school unit referendum. Appellants' argument in effect would allow any regional school board to simply ignore, or drag its feet, in responding to any duly submitted request for reconsideration under section 1504 and then claim the request is moot. It would also mean that there would be no practical means to appeal denial of a petition, since no litigation could be completed between the purported 60-day cutoff.

As discussed in Appellants' brief, regional school boards have a strong interest in limiting the use of Section 1504. Accordingly, endorsement of Appellees' argument would greatly incentivize other regional school boards to attempt to moot reconsideration requests through needless delay—stifling the intent of the

Legislature. *See 20 Thames Street LLC v. Ocean State Job Lot of Maine 2017, LLC*, 2020 ME 55, ¶ 8, 231 A.3d 426 ("in examining [a] statute…[courts] construe its terms to give effect to the Legislature's intent in enacting the statute"). Such an interpretation would effectively give school district boards gatekeeping authority over petitions for reconsideration—allowing the fox to guard the henhouse.

In addition, even if the matter is moot—which it is not—well settled exceptions to the mootness doctrine apply. *See Hamilton v. Board of Licensure in Medicine*, 2024 ME 43, ¶ 9, 315 A.3d 762 (noting an exception to the mootness doctrine may be recognized if: (1) sufficient collateral consequences will result from the determination of the questions presented so as to justify relief; (2) the appeal contains questions of great public importance that, in the interest of providing future guidance to the bar and public [courts] may address; or (3) the issues are capable of repetition but evade review because of their fleeting or determinate nature"). Here, all three exceptions are triggered. First, to maintain a matter pursuant to the collateral consequences doctrine, the appellant must demonstrate that a decision on the merits of the appeal will have more than conjectural and insubstantial consequences in the future." *Sordyl v. Sordyl*, 1997 ME 87, ¶ 6, 692 A.2d 1386. This burden is easily met. Dismissing this matter as moot would be an implicit acknowledgment of a school board's ability to moot a citizens' petition by issuing a denial and then waiting out any appeal, with the voters never having the opportunity to learn whether their

elected school officials acted legally or not. The economic impact of such unfettered authority would not be "conjectural and insubstantial."

Second, this Appeal contains questions of great public importance that, that future courts will likely need to address. See *In re K.*, 2020 ME 39, ¶ 12, 228 A.3d 445 ("When addressing the [mootness] exception for questions of great public concern, [courts] examine whether the question is public or private, how much court officials need an authoritative determination for future rulings, and how likely the question is to recur"). In Maine, there are well over 200 school administrative units. Each of these entities is able to raise funds by issuing bonds approved via referendum. Undoubtedly, other district residents may seek to reconsider future bond referenda. Determination of this matter will provide guidance to other boards receiving reconsideration petitions and courts evaluating any challenges to subsequent denials. Accordingly, adjudication of these issues now will greatly aid Mainers going forward.

Last, these issues are capable of repetition. *See Hamilton v. Board of Licensure in Medicine*, 2024 ME 43, ¶ 9, 315 A.3d 762. As of the date of this Brief, it has been 15 months since the Board's successful bond referendum. The CSD has not issued the bond. As evidenced by the Board's need to increase the bond amount between November 2023 and April 2024, there will almost certainly be a need for the Board to authorize an updated (and likely increased) amount for the school

rebuilding project. When it does, the same group of petitioners will likely start a new petition effort. Allowing the mootness doctrine to end this dispute without a resolution on the merits would leave petitioners without guidance as to the content of their petitions. It would embolden the Board to use its claimed discretion to deny a petition and know there would be no practical means to challenge its actions. Accordingly, even if the controversy is moot, exceptions to the mootness doctrine apply.

C. Appellants Have Not Waived Severability Arguments.

Because Appellants were not required to raise the issue of severability before the Board, and did in fact raise such issue before the Superior Court, their severability argument is properly preserved. See *Brown v. Town of Starks*, 2015 ME 47, ¶ 6, 114 A.3d 1003. "An issue is raised and preserved if there was a sufficient basis in the record to alert the court and any opposing party to the existence of that issue." *Banks v. Leary,* 2019 ME 89, ¶ 14, 209 A.3d 109 (citing *Homeward Residential, Inc. v. Gregor*, 2017 ME 128, ¶ 9, 165 A.3d 357).

At the outset, Appellants were not required to, and had no venue to, raise the issue of severability before the Board. Rather, "in order to preserve an issue for appellate review, a party must timely present that issue to the original *tribunal*." *Office of the Public Advocate v. Public Utilities Comm'n,* 2024 ME 11, ¶ 25, 314 A.3d 116 (emphasis added) (citing *Brown v. Town of Starks*, 2015 MR 47, ¶ 6, 114

A.3d 1003). Here, the Board did not act as a tribunal to adjudicate Appellants' appeal to the Board's refusal to hold a reconsideration vote. It did not hold a hearing before rendering its decision to deny the application. Rather, the first opportunity for judicial review of the instant matter was on appeal to the Superior Court.

Moreover, even if Appellants were required to raise the issue of severability to the Board—which they were not—this burden was met. Following the Board's May 14, 2024 Order refusing the petition, on June 10, 2024 Appellants responded to the Board highlighting deficiencies in the refusal. In part, the June 10, 2024 letter noted, "[i]t was a violation of [Appellants] constitutional and statutory rights to refuse the petition based upon a misapplication of state petition requirements to this reconsideration referendum, and based upon an unsupported conclusion that the presence of a second article, which the Trustees felt was not allowed by law, justified refusal of the entire petition *rather than severance of the perceived problematic article*." R. 254 (emphasis added). The June 10, 2024, letter explicitly highlights that severance of the two proposed articles was appropriate should the Board determine that the second article was not allowed by law. As such, although not necessary, such issue was raised to the Board contrary to Appellee's baseless argument.

In addition, in their Rule 80B Appeal to the Superior Court—the first tribunal to hear this matter—Appellants did raise the issue of severability. There, they argued that "even if the Board felt it had no jurisdiction to accept Article 2, or that the

presence of Article 2 was not appropriate in an petition for reconsideration, it had two options before it…It could have presented the Petition, as written, to the voters…Or, at the very least it could have severed Article 2 from the Petition and presented Article 1 to the voters."[2] Appellant Super. Ct. Br. 10-11 (Aug. 12, 2024). Through this argument, Appellants "alert[ed] the court and any opposing party to the existence of" the issue of severability. *See Banks v. Leary,* 2019 ME 89, ¶ 14, 209 A.3d 109 In doing so, Appellants sufficiently raised the issue, preserving it for appeal. *See id.*

D. Appellants' Independent Claims are Properly Maintained and Meritorious.

Appellants have properly asserted their independent claim for relief pursuant to 42 U.S.C. § 1983. They cite *Cayer v. Madawaska*, 2016 ME 143, 148 A.3d 707, for the premise that Section 1983 is not available where the alleged deprivation of civil rights is the same action for which plaintiffs seek review. But Appellants' Section 1983 claim is not confined to the Board's decision itself. The Complaint states at Paragraph 45 states that the Board "intentionally deprived Plaintiffs and other signers and circulators of their First Amendment right to petition their government, without legal justification." Appellants' Superior Court Brief referred to Board/Superintendent communications in the record during the circulation of the

[2] The issue of severability was further addressed in Appellants' Reply Brief to the Superior Court.

petition which "demonstrate their general disdain for the Petitioners and their efforts, [and] which colors their arbitrary action to refuse the Petition with retaliatory and political intent." Appellants' (Plaintiffs') Superior Court Brief, at 14. Their intention to deny the Petition was foretold even before they received it. Moreover, the Board afforded the Petitioners no right to be heard before denying the Petition, nor did it take up Petitioners' request for reconsideration, each of which being a deprivation of due process. Under *Cayer*, a deprivation of rights that occurs before the action or inaction for which a plaintiff seeks relief is properly heard under Section 1983. *Id.* at ¶ 16, 710.

Despite Appellee's assertions, *Jones v. Sec. of State* in fact supports the determination that Appellants' First Amendment rights were abridged. In *Jones*, the Court examined the legality of regulations preventing ballot access. *Jones v. Sec. of State*, 2020 ME 113, ¶¶ 20-25, 238 A.3d 982. There, it noted that:

> to determine whether a ballot-access regulation governing 'the mechanics of the electoral process' violates the United States Constitution, a court 'must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteen Amendments that the plaintiff seeks to vindicate. It must then identify and evaluate the precise interests put forth by the State as justifications for the burden imposed by its rule.' The Court must both 'determine the legitimacy and strengths of each of those interests' and 'consider the extent to which those interests make it necessary to burden the plaintiff's rights.'

Jones v. Sec. of State, 2020 ME 113, ¶ 23, 238 A.3d 982 (internal citations omitted).

The rationale advanced by Appellee is that, absent Board discretion, every referendum would be challenged leading to "chaos, delay, and uncertainty." Red Br. 42. These ambiguous scare tactics pale in comparison to the loss of core political rights suffered by Appellants. In *Jones*, this Court relied on the United States Supreme Court's decision in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), which held that a restriction affecting a mere 17% of voters was not sufficiently compelling to justify a ballot access regulation. *Jones v. Sec. of State*, 2020 ME 113, ¶ 27, 238 A.3d 982 ("[The United States Supreme Court] held that the government's asserted interest in ensuring that circulators are not breaking the law…were insufficient for curtailing First Amendment rights…given the uncontested numbers").

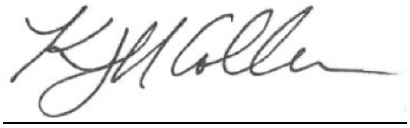
It is uncontested that the November 7, 2023, referendum was rejected by a vote of 1,266 to 1,162—a 52% to 48% vote. Additionally, it is uncontested that the April 24, 2024, referendum narrowly passed by 52 votes, with 1,666 votes cast—a 52% to 48% vote. At minimum, roughly half of the community was not in favor of the school construction bond. Moreover, given the low voter turnout at the April 24, 2024 referendum, it is likely over half of the electorate disagrees with the results of the election. This figure is vastly larger than the 17% found to be inadequate to justify voter access restrictions in *Buckley.* Giving those voters a voice is far more compelling than Appellee's vague concerns about "chaos and delay." Accordingly,

the effect of Appellee's interpretation of 20-A M.R.S. § 1482-A and 20-A M.R.S. § 1504 impermissibly restricts Appellants' core political rights.

II. CONCLUSION

Wherefore, for the reasons stated herein, the Law Court should find that the petitions were properly submitted under the relevant statutory authority and that Appellee improperly refused to call a reconsideration referendum, 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. § 1998.

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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